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10
 11 **UNITED STATES DISTRICT COURT**
 12 **CENTRAL DISTRICT OF CALIFORNIA**
 13

14 CARLOS MORENO, individually, and on
 15 behalf of all others similarly situated,

16 Plaintiff,

17 v.

18 PRETIUM PACKAGING, L.L.C, a
 Delaware limited liability company, and
 19 DOES 1 through 10, inclusive

20 Defendants

Case No. 8:19-cv-02500-JVS-DFM

21 **SECOND AMENDED CLASS**
 22 **ACTION AND REPRESENTATIVE**
 23 **ACTION COMPLAINT:**

1. Failure to Pay Overtime Wages (Cal. Lab. Code §§ 510, 1194 and 1198);
2. Failure to Provide Meal Periods (Cal. Lab. Code §§ 226.7, 512);
3. Failure to Authorize and Permit Rest Periods (Cal. Lab. Code §§ 226.7);
4. Failure to Provide Accurate Itemized Wage Statements (Cal. Lab. Code § 226);
5. Unfair Business Practices (Cal. Bus. & Prof. Code §§ 17200, *et seq.*);
6. Civil Penalties Under PAGA (Cal. Lab. Code §§ 2699, *et seq.*)

24 **DEMAND FOR JURY TRIAL**

1 Plaintiff Carlos Moreno (“Plaintiff”), based upon facts that either have
2 evidentiary support or are likely to have evidentiary support after a reasonable
3 opportunity for further investigation and discovery, alleges as follows:

4 **INTRODUCTION & PRELIMINARY STATEMENT**

5 1. Plaintiff brings this action against Pretium Packaging, L.L.C. and Does
6 1 through 10 (Pretium Packaging L.L.C. and Does 1 through 10 are collectively
7 referred to as “Defendants”) for California Labor Code violations and unfair
8 business practices stemming from Defendants’ failure to provide meal periods,
9 failure to authorize and permit rest periods, failure to timely pay final wages, and
10 failure to furnish accurate wage statements.

11 2. Plaintiff brings the First through Fifth Causes of Action individually
12 and as a class action on behalf of herself and certain current and former employees
13 of Defendants (hereinafter collectively referred to as the “Class” or “Class
14 Members,” and defined more fully below). The Class consists of Plaintiff and all
15 other persons who have been employed by any Defendant in California as an
16 hourly-paid or non-exempt employee during the statute of limitations period
17 applicable to the claims pleaded here.

18 3. Plaintiff brings the Sixth Cause of Action as a representative action
19 under the California Private Attorney General Act (“PAGA”) to recover civil
20 penalties that are owed to Plaintiff, the State of California, and past and present
21 hourly-paid or non-exempt employees employed by Defendants in the State of
22 California during the statute of limitations period for her PAGA claim (hereinafter
23 referred to as the “Aggrieved Employees”).

24 4. Defendants own/owned and operate/operated an industry, business,
25 and establishment within the State of California, including Orange County. As
26 such, and based upon all the facts and circumstances incident to Defendants’
27 business in California, Defendants are subject to the California Labor Code, Wage
28

1 Orders issued by the Industrial Welfare Commission (“IWC”), and the California
2 Business & Professions Code.

3 5. Despite these requirements, throughout the statutory period Defendants
4 maintained a systematic, company-wide policy and practice of:

- 5 (a) Failing to pay employees the proper wages for all overtime
6 hours worked in compliance with the California Labor Code and
7 IWC Wage Orders;
- 8 (b) Failing to provide employees with timely and duty-free meal
9 periods in compliance with the California Labor Code and IWC
10 Wage Orders, failing to maintain accurate records of all meal
11 periods taken or missed, and failing to pay an additional hour’s
12 pay for each workday a meal period violation occurred;
- 13 (c) Failing to authorize and permit employees to take timely and
14 duty-free rest periods in compliance with the California Labor
15 Code and IWC Wage Orders, and failing to pay an additional
16 hour’s pay for each workday a rest period violation occurred;
17 and
- 18 (d) Failing to provide employees with accurate, itemized wage
19 statements containing all the information required by the
20 California Labor Code and IWC Wage Orders.

21 6. On information and belief, Defendants, and each of them were on
22 actual and constructive notice of the improprieties alleged herein and intentionally
23 refused to rectify their unlawful policies. Defendants’ violations, as alleged above,
24 during all relevant times herein were willful and deliberate.

25 7. At all relevant times, Defendants were and are legally responsible for
26 all of the unlawful conduct, policies, practices, acts and omissions as described in
27 each and all of the foregoing paragraphs as the employer of Plaintiff, the Class, and
28 the Aggrieved Employees. Further, Defendants are responsible for each of the

1 unlawful acts or omissions complained of herein under the doctrine of “respondeat
2 superior.”

3 **THE PARTIES**

4 **A. Plaintiff**

5 8. Plaintiff Carlos Moreno is a resident of Anaheim, California who
6 worked for Defendants in Anaheim, California as a Warehouse Associate from
7 approximately April 2017 to the present.

8 9. Plaintiff reserves the right to seek leave to amend this complaint to add
9 new plaintiffs, if necessary, in order to establish suitable representative(s) pursuant
10 to *La Sala v. American Savings and Loan Association* (1971) 5 Cal.3d 864, 872,
11 and other applicable law.

12 **B. Defendants**

13 10. Plaintiff is informed and believes, and based upon that information and
14 belief alleges, that Defendant Pretium Packaging, L.L.C. is, and at all times herein
15 mentioned, was:

- 16 (a) A Delaware limited liability company with its principal place of
17 business in Chesterfield, Missouri.
- 18 (b) A business entity conducting business in numerous counties
19 throughout the State of California, including in Orange County;
20 and,
- 21 (c) The current employer of Plaintiff, and the current and/or former
22 employer of the putative Class, Pretium Packaging, L.L.C.,
23 suffered and permitted Plaintiff, the Class, and the Aggrieved
24 Employees to work, and/or controlled their wages, hours, or
25 working conditions.

26 11. Plaintiff does not know the true names or capacities of the persons or
27 entities sued herein as Does 1-10, inclusive, and therefore sues said Defendants by
28 such fictitious names. Each of the Doe Defendants was in some manner legally

1 responsible for the damages suffered by Plaintiff, the Class, and the Aggrieved
2 Employees as alleged herein. Plaintiff will amend this complaint to set forth the
3 true names and capacities of these Defendants when they have been ascertained,
4 together with appropriate charging allegations, as may be necessary.

5 12. At all times mentioned herein, the Defendants named as Does 1-10,
6 inclusive, and each of them, were residents of, doing business in, availed
7 themselves of the jurisdiction of, and/or injured a significant number of the
8 Plaintiff, the Class, and the Aggrieved Employees in the State of California.

9 13. Plaintiff is informed and believes and thereon alleges that at all
10 relevant times each Defendant, directly or indirectly, or through agents or other
11 persons, employed Plaintiff and the other employees described in the class
12 definitions below, and exercised control over their wages, hours, and working
13 conditions. Plaintiff is informed and believes and thereon alleges that, at all
14 relevant times, each Defendant was the principal, agent, partner, joint venturer,
15 officer, director, controlling shareholder, subsidiary, affiliate, parent corporation,
16 successor in interest and/or predecessor in interest of some or all of the other
17 Defendants, and was engaged with some or all of the other Defendants in a joint
18 enterprise for profit, and bore such other relationships to some or all of the other
19 Defendants so as to be liable for their conduct with respect to the matters alleged
20 below. Plaintiff is informed and believes and thereon alleges that each Defendant
21 acted pursuant to and within the scope of the relationships alleged above, that each
22 Defendant knew or should have known about, and authorized, ratified, adopted,
23 approved, controlled, aided and abetted the conduct of all other Defendants.

24 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

25 14. Plaintiff worked for Defendants in California as a Warehouse
26 Associate from approximately April 2017 to the present. During Plaintiff's
27 employment for Defendants, Defendants paid Plaintiff an hourly wage and
28 classified him as non-exempt from overtime. Defendants typically scheduled

1 Plaintiff to work at least 5 days in a workweek and at least 8 hours per day, but
2 Plaintiff sometimes worked in excess of 12 hours in a workday.

3 15. Throughout Plaintiff's employment, Defendants failed to provide
4 Plaintiff with meal periods, failed to authorize and permit Plaintiff to take rest
5 periods, failed to pay Plaintiff proper overtime wages, and failed to furnish accurate
6 wage statements to Plaintiff. As discussed below, Plaintiff's experience working
7 for Defendants was typical and illustrative.

8 16. Throughout the statutory period, Defendants maintained a policy and
9 practice of not paying Plaintiff, the Class, and the Aggrieved Employees the proper
10 overtime wages for all hours worked in excess of 12 hours in a workday. For
11 instance, Plaintiff worked at least 12.47 hours on March 12, 2018, but as reflected
12 on his paycheck for the pay period ending on March 17, 2018, he was not paid
13 double time correctly for these hours despite working more than 12 hours in a
14 workday. Similarly, Plaintiff worked at least 12.07 hours on March 22, 2018, but
15 as reflected on his paycheck for the pay period ending on March 24, 2018, he was
16 not paid double time correctly for these hours despite working more than 12 hours
17 in a workday. Again, Plaintiff worked at least 12.5 hours on October 10, 2018, but
18 as reflected on his paycheck for the pay period ending on October 13, 2018, he was
19 not paid double time correctly for these hours despite working more than 12 hours
20 in a workday. On information and belief, Defendants' failure to pay Plaintiff
21 overtime correctly was a result of its policy and practice failing to properly
22 calculate double time wages when Plaintiff, the Class, and the Aggrieved
23 Employees worked more than 12 hours in a workday. Accordingly, Defendants
24 frequently paid Plaintiff, the Class, and the Aggrieved Employees less than the
25 wages they were entitled to under the law for their work time. In failing to
26 appropriately compensate Plaintiff, the Class, and the Aggrieved Employees,
27 Defendants also failed to maintain accurate records of the hours Plaintiff, the Class,
28 and the Aggrieved Employees worked.

1 17. Throughout the statutory period, Defendants wrongfully failed to
2 provide Plaintiff, the Class, and the Aggrieved Employees with legally compliant
3 meal periods. Defendants regularly, but not always, required Plaintiff, the Class,
4 and the Aggrieved Employees to work in excess of five consecutive hours a day
5 without providing a 30-minute, uninterrupted, and duty-free meal period for every
6 five hours of work, or without compensating Plaintiff, the Class, and the Aggrieved
7 Employees for meal periods that were not provided by the end of the fifth hour of
8 work or tenth hour of work. Instead, Defendants continued to assert control over
9 Plaintiff, the Class, and the Aggrieved Employees by requiring, pressuring, or
10 encouraging them to perform work tasks which could not be completed without
11 working in lieu of taking mandatory meal periods, or by denying Plaintiff, the
12 Class, and the Aggrieved Employees permission to take a meal period. Some
13 examples of this occurring are on April 25, 2017, resulting in Defendants providing
14 Plaintiff a meal period less than 30 minutes; May 8, 2017, resulting in Defendants
15 providing Plaintiff a meal period after the fifth hour of work; and on February 2,
16 2018, resulting in Defendants failing to provide Plaintiff a meal period at all.
17 Defendants also did not adequately inform Plaintiff, the Class, and the Aggrieved
18 Employees of their right to a second meal break period after working ten or more
19 hours. Accordingly, Defendants' policy and practice was not to provide a second
20 meal period to Plaintiff, the Class, and the Aggrieved Employees in compliance
21 with California law.

22 18. Throughout the statutory period, Defendants have wrongfully failed to
23 authorize and permit Plaintiff, the Class, and the Aggrieved Employees to take
24 legally compliant rest periods. Defendants regularly, but not always, required
25 Plaintiff, the Class, and the Aggrieved Employees to work in excess of four
26 consecutive hours a day without Defendants authorizing and permitting them to
27 take a 10-minute, uninterrupted, duty-free rest period for every four hours of work
28 (or major fraction of four hours), or without compensating Plaintiff, the Class, and

1 the Aggrieved Employees for rest periods that were not authorized or permitted.
2 Instead, Defendants continued to assert control over Plaintiff, the Class, and the
3 Aggrieved Employees by requiring, pressuring, or encouraging them to perform
4 work tasks which could not be completed without working in lieu of taking
5 mandatory rest periods, or by denying Plaintiff, the Class, and the Aggrieved
6 Employees permission to take a rest period. For instance, Defendants would assign
7 tasks to Plaintiff, the Class, and the Aggrieved Employees and then pressure them
8 to continue working throughout their rest periods in order to complete those tasks.
9 Plaintiff felt that he could not complete all of his assigned work unless he worked
10 through his mandatory rest periods. Some examples of this occurring are on April
11 25, 2017, May 8, 2017, and February 2, 2018. Accordingly, Defendants' policy
12 and practice was to not authorize and permit Plaintiff, the Class, and the Aggrieved
13 Employees to take rest periods in compliance with California law.

14 19. Throughout the statutory period, Defendants willfully failed and
15 refused to timely pay Plaintiff, the Class, and the Aggrieved Employees meal
16 period premium wages and rest period premium wages owed to him by Defendants.
17 On information and belief, Defendants' failure to timely pay Plaintiff's meal period
18 premium wages and rest period premium wages was not a single, isolated incident,
19 but was instead consistent with Defendants' policy and practice that applied to
20 Plaintiff, the Class, and the Aggrieved Employees.

21 20. Throughout the statutory period, Defendants failed to furnish Plaintiff,
22 the Class, and the Aggrieved Employees with accurate, itemized wage statements
23 showing all applicable hourly rates, and all gross and net wages earned (including
24 correct wages for meal periods that were not provided in accordance with
25 California law, and correct wages for rest periods that were not authorized and
26 permitted to take in accordance with California law). As a result of these violations
27 of California Labor Code § 226(a), the Plaintiff, the Class, and the Aggrieved
28 Employees suffered injury because, among other things:

- 1 (a) the violations led them to believe that they were not entitled to
2 be paid meal period premium wages, and rest period premium
3 wages, even though they were entitled;
- 4 (b) the violations led them to believe that they had been paid all
5 wages they were entitled to receive, even though they had not
6 been;
- 7 (c) the violations led them to believe they were not entitled to be
8 paid overtime, meal period premium, and rest period premium
9 wages at the correct California rate even though they were;
- 10 (d) the violations led them to believe they had been paid overtime,
11 meal period premium, and rest period premium wages at the
12 correct California rate even though they had not been;
- 13 (e) the violations hindered them from determining the amounts of
14 overtime, meal period premium, and rest period premium wages
15 owed to them;
- 16 (f) in connection with their employment before and during this
17 action, and in connection with prosecuting this action, the
18 violations caused them to have to perform mathematical
19 computations to determine the amounts of wages owed to them,
20 computations they would not have to make if the wage
21 statements contained the required accurate information;
- 22 (g) by understating the wages truly due them, the violations caused
23 them to lose entitlement and/or accrual of the full amount of
24 Social Security, disability, unemployment, and other
25 governmental benefits;
- 26 (h) the wage statements inaccurately understated the wages, hours,
27 and wage rates to which Plaintiff, the Class, and the Aggrieved
28 Employees were entitled, and Plaintiff, the Class, and the

1 Aggrieved Employees were paid less than the wages and wage
2 rates to which they were entitled.

3 Thus, Plaintiff, the Class, and the Aggrieved Employees are owed the amounts
4 provided for in California Labor Code § 226(e).

5 **CLASS ACTION ALLEGATIONS**

6 21. Plaintiff brings certain claims individually, as well as on behalf of each
7 and all other persons similarly situated, and thus, seeks class certification under
8 California Code of Civil Procedure § 382.

9 22. All claims alleged herein arise under California law for which Plaintiff
10 seeks relief authorized by California law.

11 23. The proposed Class consists of and is defined as:

12 All persons who worked for any Defendant in California as an
13 hourly-paid or non-exempt employee at any time during the period
14 beginning four years before the filing of the initial complaint in this
action and ending when notice to the Class is sent.

15 24. Plaintiff undertakes this concerted activity to improve the wages and
16 working conditions of all Class Members.

17 25. There is a well-defined community of interest in the litigation and the
18 Class and Subclass are readily ascertainable:

19 (a) Numerosity: The members of the Class (and each subclass, if
20 any) are so numerous that joinder of all members would be
21 unfeasible and impractical. The membership of the entire Class
22 is unknown to Plaintiff at this time; however, the Class is
23 estimated to be greater than 40 individuals and the identity of
24 such membership is readily ascertainable by inspection of
25 Defendants' records.

26 (b) Typicality: Plaintiff is qualified to, and will, fairly and
27 adequately protect the interests of each Class Member with
28

1 whom there is a shared, well-defined community of interest, and
2 Plaintiff's claims (or defenses, if any) are typical of all Class
3 Members' claims as demonstrated herein.

4 (c) Adequacy: Plaintiff is qualified to, and will, fairly and
5 adequately protect the interests of each Class Member with
6 whom there is a shared, well-defined community of interest and
7 typicality of claims, as demonstrated herein. Plaintiff has no
8 conflicts with or interests antagonistic to any Class Member.
9 Plaintiff's attorneys, the proposed class counsel, are versed in
10 the rules governing class action discovery, certification, and
11 settlement. Plaintiff has incurred, and throughout the duration
12 of this action, will continue to incur costs and attorneys' fees
13 that have been, are, and will be necessarily expended for the
14 prosecution of this action for the substantial benefit of each class
15 member.

16 (d) Superiority: A Class Action is superior to other available
17 methods for the fair and efficient adjudication of the
18 controversy, including consideration of:
19 1) The interests of the members of the Class in individually
20 controlling the prosecution or defense of separate actions;
21 2) The extent and nature of any litigation concerning the
22 controversy already commenced by or against members of
23 the Class;
24 3) The desirability or undesirability of concentrating the
25 litigation of the claims in the particular forum; and
26 4) The difficulties likely to be encountered in the
27 management of a class action.

28 (e) Public Policy Considerations: The public policy of the State of

1 California is to resolve the California Labor Code claims of
2 many employees through a class action. Indeed, current
3 employees are often afraid to assert their rights out of fear of
4 direct or indirect retaliation. Former employees are also fearful
5 of bringing actions because they believe their former employers
6 might damage their future endeavors through negative
7 references and/or other means. Class actions provide the class
8 members who are not named in the complaint with a type of
9 anonymity that allows for the vindication of their rights at the
10 same time as their privacy is protected.

11 26. There are common questions of law and fact as to the Class (and each
12 subclass, if any) that predominate over questions affecting only individual
13 members, including without limitation, whether, as alleged herein, Defendants
14 have:

- 15 (a) Failed to pay Class Members for all hours worked, including
16 overtime wages;
- 17 (b) Failed to provide meal periods and pay meal period premium
18 wages to Class Members;
- 19 (c) Failed to authorize and permit rest periods and pay rest period
20 premium wages to Class Members;
- 21 (d) Failed to provide Class Members with timely final wages;
- 22 (e) Failed to provide Class Members with accurate wage statements;
23 and
- 24 (f) Violated California Business & Professions Code §§ 17200 *et.*
25 *seq.* as a result of their illegal conduct as described above.

26 27. This Court should permit this action to be maintained as a class action
27 pursuant to California Code of Civil Procedure § 382 because:

- 28 (a) The questions of law and fact common to the Class predominate

- 1 over any question affecting only individual members;
- 2 (b) A class action is superior to any other available method for the
- 3 fair and efficient adjudication of the claims of the members of
- 4 the Class;
- 5 (c) The members of the Class are so numerous that it is impractical
- 6 to bring all members of the class before the Court;
- 7 (d) Plaintiff, and the other members of the Class, will not be able to
- 8 obtain effective and economic legal redress unless the action is
- 9 maintained as a class action;
- 10 (e) There is a community of interest in obtaining appropriate legal
- 11 and equitable relief for the statutory violations, and in obtaining
- 12 adequate compensation for the damages and injuries for which
- 13 Defendants are responsible in an amount sufficient to adequately
- 14 compensate the members of the Class for the injuries sustained;
- 15 (f) Without class certification, the prosecution of separate actions
- 16 by individual members of the class would create a risk of:
- 17 1) Inconsistent or varying adjudications with respect to
- 18 individual members of the Class which would establish
- 19 incompatible standards of conduct for Defendants; and/or
- 20 2) Adjudications with respect to the individual members
- 21 which would, as a practical matter, be dispositive of the
- 22 interests of other members not parties to the adjudications,
- 23 or would substantially impair or impede their ability to
- 24 protect their interests, including but not limited to the
- 25 potential for exhausting the funds available from those
- 26 parties who are, or may be, responsible Defendants; and,
- 27 (g) Defendants have acted or refused to act on grounds generally
- 28 applicable to the Class, thereby making final injunctive relief

1 appropriate with respect to the class as a whole.

2 28. Plaintiff contemplates the eventual issuance of notice to the proposed
3 members of the Class that would set forth the subject and nature of the instant
4 action. The Defendants' own business records may be utilized for assistance in the
5 preparation and issuance of the contemplated notices. To the extent that any
6 further notices may be required, Plaintiff would contemplate the use of additional
7 techniques and forms commonly used in class actions, such as published notice, e-
8 mail notice, website notice, first-class mail, or combinations thereof, or by other
9 methods suitable to the Class and deemed necessary and/or appropriate by the
10 Court.

11 **FIRST CAUSE OF ACTION**

12 **(Against all Defendants for Failure to Pay Overtime Wages)**

13 29. Plaintiff incorporates by reference and re-alleges as if fully stated
14 herein paragraphs 1 through 28 in this Complaint.

15 30. California Labor Code § 510 provides that any hours worked in excess
16 of 12 hours in one day shall be compensated at the rate of no less than twice the
17 regular rate of pay for an employee.

18 31. California Labor Code § 1194(a) states: "Notwithstanding any
19 agreement to work for a lesser wage, any employee receiving less than the legal
20 minimum wage or the legal overtime compensation applicable to the employee is
21 entitled to recover in a civil action the unpaid balance of the full amount of this
22 minimum wage or overtime compensation, including interest thereon, reasonable
23 attorney's fees, and costs of suit."

24 32. At all times relevant hereto, Plaintiff and the Class have worked more
25 sometimes more than 12 hours, in a workday, as employees of Defendants.

26 33. At all times relevant hereto, Defendants failed to pay Plaintiff and the
27 Class overtime compensation for the hours they have worked in excess of the
28

1 maximum hours permissible by law as required by California Labor Code §§ 510
2 and 1198.

3 34. By virtue of Defendants' unlawful failure to pay additional premium
4 rate compensation to the Plaintiff and the Class for their overtime hours worked,
5 Plaintiff and the Class have suffered, and will continue to suffer, damages in
6 amounts which are presently unknown to them but which exceed the jurisdictional
7 minimum of a state court and which will be ascertained according to proof at trial.

8 35. By failing to keep adequate time records required by Labor Code §
9 1174(d), Defendants have made it difficult to calculate the full extent of overtime
10 compensation due to Plaintiff and the Class.

11 36. Plaintiff and the Class also request recovery of overtime compensation
12 according to proof, interest, attorneys' fees and costs pursuant to California Labor
13 Code § 1194(a), as well as the assessment of any statutory penalties against
14 Defendants, in a sum as provided by the California Labor Code and/or other
15 statutes.

16 37. California Labor Code § 204 requires employers to provide employees
17 with all wages due and payable twice a month. The Wage Orders also provide that
18 every employer shall pay to each employee, on the established payday for the
19 period involved, overtime wages for all overtime hours worked in the payroll
20 period. Defendants failed to provide Plaintiff and the Class with all compensation
21 due, in violation of California Labor Code § 204.

22 **SECOND CAUSE OF ACTION**

23 **(Against All Defendants for Failure to Provide Meal Periods)**

24 38. Plaintiff incorporates by reference and re-alleges as if fully stated
25 herein paragraphs 1 through 37 in this Complaint.

26 39. Under California law, Defendants have an affirmative obligation to
27 relieve the Plaintiff and the Class of all duty in order to take their first daily meal
28 periods no later than the start of Plaintiff and the Class' sixth hour of work in a

1 workday, and to take their second meal periods no later than the start of the
2 eleventh hour of work in the workday. California Labor Code § 512, and Section
3 11 of the applicable Wage Orders require that an employer provide unpaid meal
4 periods of at least 30 minutes for each five-hour period worked. It is a violation of
5 California Labor Code § 226.7 for an employer to require any employee to work
6 during any meal period mandated under any Wage Order.

7 40. Despite these legal requirements, Defendants regularly failed to
8 provide Plaintiff and the Class with both meal periods as required by California
9 law. By their failure to permit and authorize Plaintiff and the Class to take all meal
10 periods as alleged above (or due to the fact that Defendants made it impossible or
11 impracticable to take these uninterrupted meal periods), Defendants willfully
12 violated the provisions of California Labor Code § 226.7 and the applicable Wage
13 Orders.

14 41. Under California law, Plaintiff and the Class are entitled to be paid one
15 hour of additional wages for each workday he or she was not provided with all
16 required meal period(s), plus interest thereon.

17 **THIRD CAUSE OF ACTION**

18 **(Against All Defendants for Failure to Authorize and Permit Rest Periods)**

19 42. Plaintiff incorporates by reference and re-alleges as if fully stated
20 herein paragraphs 1 through 41 in this Complaint.

21 43. Defendants are required by California law to authorize and permit
22 breaks of 10 uninterrupted minutes for each four hours of work or major fraction of
23 four hours (i.e. more than two hours). California Labor Code § 512, the applicable
24 Wage Orders require that the employer permit and authorize all employees to take
25 paid rest periods of 10 minutes each for each 4-hour period worked. Thus, for
26 example, if an employee's work time is 6 hours and ten minutes, the employee is
27 entitled to two rest breaks. Each failure to authorize rest breaks as so required is
28 itself a violation of California's rest break laws. It is a violation of California

1 Labor Code § 226.7 for an employer to require any employee to work during any
2 rest period mandated under any Wage Order.

3 44. Despite these legal requirements, Defendants failed to authorize
4 Plaintiff and the Class to take rest breaks, regardless of whether employees worked
5 more than 4 hours in a workday. By their failure to permit and authorize Plaintiff
6 and the Class to take rest periods as alleged above (or due to the fact that
7 Defendants made it impossible or impracticable to take these uninterrupted rest
8 periods), Defendants willfully violated the provisions of California Labor Code §
9 226.7 and the applicable Wage Orders.

10 45. Under California law, Plaintiff and the Class are entitled to be paid one
11 hour of premium wages rate for each workday he or she was not provided with all
12 required rest break(s), plus interest thereon.

13 **FOURTH CAUSE OF ACTION**

14 **(Against all Defendants for Failure to Provide and Maintain Accurate and**
15 **Compliant Wage Records)**

16 46. Plaintiff incorporates by reference and re-alleges as if fully stated
17 herein paragraphs 1 through 45 in this Complaint.

18 47. At all material times set forth herein, California Labor Code § 226(a)
19 provides that every employer shall furnish each of his or his employees an accurate
20 itemized wage statement in writing showing nine pieces of information, including:
21 (1) gross wages earned, (2) total hours worked by the employee, (3) the number of
22 piece-rate units earned and any applicable piece rate if the employee is paid on a
23 piece-rate basis, (4) all deductions, provided that all deductions made on written
24 orders of the employee may be aggregated and shown as one item, (5) net wages
25 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
26 name of the employee and the last four digits of his or his social security number or
27 an employee identification number other than a social security number, (8) the
28 name and address of the legal entity that is the employer, and (9) all applicable

1 hourly rates in effect during the pay period and the corresponding number of hours
2 worked at each hourly rate by the employee.

3 48. Defendants have intentionally and willfully failed to provide
4 employees with complete and accurate wage statements. The deficiencies include,
5 among other things, the failure to correctly identify the gross wages earned by
6 Plaintiff and the Class, the failure to list the true “total hours worked by the
7 employee,” and the failure to list the true net wages earned.

8 49. As a result of Defendants’ violation of California Labor Code § 226(a),
9 Plaintiff and the Class have suffered injury and damage to their statutorily-
10 protected rights.

11 50. Specifically, Plaintiff and the members of the Class have been injured
12 by Defendants’ intentional violation of California Labor Code § 226(a) because
13 they were denied both their legal right to receive, and their protected interest in
14 receiving, accurate, itemized wage statements under California Labor Code §
15 226(a).

16 51. Calculation of the true wage entitlement for Plaintiff and the Class is
17 difficult and time consuming. As a result of this unlawful burden, Plaintiff and the
18 Class were also injured as a result of having to bring this action to attempt to obtain
19 correct wage information following Defendants’ refusal to comply with many of
20 the mandates of California’s Labor Code and related laws and regulations.

21 52. Plaintiff and the Class are entitled to recover from Defendants the
22 greater of their actual damages caused by Defendants’ failure to comply with
23 California Labor Code § 226(a), or an aggregate penalty not exceeding four
24 thousand dollars per employee.

25 53. Plaintiff and the Class are also entitled to injunctive relief, as well as
26 an award of attorney’s fees and costs to ensure compliance with this section,
27 pursuant to California Labor Code § 226(h).
28

1 **FIFTH CAUSE OF ACTION**

2 **(Against all Defendants for Violation of California Business & Professions**
3 **Code §§ 17200, et seq.)**

4 54. Plaintiff incorporates by reference and re-alleges as if fully stated
5 herein paragraphs 1 through 53 in this Complaint.

6 55. Defendants, and each of them, are “persons” as defined under
7 California Business & Professions Code § 17201.

8 56. Defendants’ conduct, as alleged herein, has been, and continues to be,
9 unfair, unlawful, and harmful to Plaintiff, other Class members, and to the general
10 public. Plaintiff seeks to enforce important rights affecting the public interest
11 within the meaning of Code of Civil Procedure § 1021.5.

12 57. Defendants’ activities, as alleged herein, are violations of California
13 law, and constitute unlawful business acts and practices in violation of California
14 Business & Professions Code §§ 17200, *et seq.*

15 58. A violation of California Business & Professions Code §§ 17200, *et*
16 *seq.* may be predicated on the violation of any state or federal law. All of the acts
17 described herein as violations of, among other things, the California Labor Code,
18 are unlawful and in violation of public policy; and in addition are immoral,
19 unethical, oppressive, fraudulent and unscrupulous, and thereby constitute unfair,
20 unlawful and/or fraudulent business practices in violation of California Business &
21 Professions Code §§ 17200, *et seq.*

22 **Failure to Pay Overtime Wages**

23 59. Defendants’ failure to pay overtime compensation and other benefits in
24 violation of California Labor Code §§ 510, 1194, and 1198 constitutes unlawful
25 and/or unfair activity prohibited by California Business & Professions Code §§
26 17200, *et seq.*

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1 **Failure to Provide Meal Periods**

2 60. Defendants' failure to provide meal periods in accordance with
3 California Labor Code §§ 226.7 and 512, and the IWC Wage Orders, as alleged
4 above, constitutes unlawful and/or unfair activity prohibited by California Business
5 & Professions Code §§ 17200, *et seq.*

6 **Failure to Authorize and Permit Rest Periods**

7 61. Defendants' failure to authorize and permit rest periods in accordance
8 with California Labor Code § 226.7 and the IWC Wage Orders, as alleged above,
9 constitutes unlawful and/or unfair activity prohibited by Business and Professions
10 Code §§ 17200, *et seq.*

11 62. By and through their unfair, unlawful and/or fraudulent business
12 practices described herein, the Defendants, have obtained valuable property, money
13 and services from Plaintiff, and all persons similarly situated, and have deprived
14 Plaintiff, and all persons similarly situated, of valuable rights and benefits
15 guaranteed by law, all to their detriment.

16 63. Plaintiff and the Class Members suffered monetary injury as a direct
17 result of Defendants' wrongful conduct.

18 64. Plaintiff, individually, and on behalf of members of the putative Class,
19 is entitled to, and do, seek such relief as may be necessary to disgorge money
20 and/or property which the Defendants have wrongfully acquired, or of which
21 Plaintiff and the Class have been deprived, by means of the above-described unfair,
22 unlawful and/or fraudulent business practices. Plaintiff and the Class are not
23 obligated to establish individual knowledge of the wrongful practices of Defendants
24 in order to recover restitution.

25 65. Plaintiff, individually, and on behalf of members of the putative class,
26 is further entitled to and does seek a declaration that the above described business
27 practices are unfair, unlawful and/or fraudulent, and injunctive relief restraining the
28

1 Defendants, and each of them, from engaging in any of the above-described unfair,
2 unlawful and/or fraudulent business practices in the future.

3 66. Plaintiff, individually, and on behalf of members of the putative class,
4 has no plain, speedy, and/or adequate remedy at law to redress the injuries which
5 the Class Members suffered as a consequence of the Defendants' unfair, unlawful
6 and/or fraudulent business practices. As a result of the unfair, unlawful and/or
7 fraudulent business practices described above, Plaintiff, individually, and on behalf
8 of members of the putative Class, has suffered and will continue to suffer
9 irreparable harm unless the Defendants, and each of them, are restrained from
10 continuing to engage in said unfair, unlawful and/or fraudulent business practices.

11 67. Plaintiff also alleges that if Defendants are not enjoined from the
12 conduct set forth herein above, they will continue to avoid paying the appropriate
13 taxes, insurance and other withholdings.

14 68. Pursuant to California Business & Professions Code §§ 17200, *et seq.*,
15 Plaintiff and putative Class Members are entitled to restitution of the wages
16 withheld and retained by Defendants during a period that commences four years
17 prior to the filing of this complaint; a permanent injunction requiring Defendants to
18 pay all outstanding wages due to Plaintiff and Class Members; an award of
19 attorneys' fees pursuant to California Code of Civil Procedure § 1021.5 and other
20 applicable laws; and an award of costs.

21 **SIXTH CAUSE OF ACTION**

22 **(Against all Defendants for Civil Penalties Under the Private Attorneys** 23 **General Act of 2004, Cal. Lab. Code § 2698 et seq.)**

24 69. Plaintiff incorporates by reference and re-alleges as if fully stated
25 herein paragraphs 1 through 20 in this Complaint.

26 70. At all times herein mentioned, Defendants were subject to the Labor
27 Code of the State of California and the applicable Industrial Welfare Commission
28 Orders.

1 71. California Labor Code § 2699(a) specifically provides for a private
2 right of action to recover penalties for violations of the Labor Code:
3 “Notwithstanding any other provision of law, any provision of this code that
4 provides for a civil penalty to be assessed and collected by the Labor and
5 Workforce Development Agency or any of its departments, divisions, commissions,
6 boards, agencies, or employees, for a violation of this code, may, as an alternative,
7 be recovered through a civil action brought by an aggrieved employee on behalf of
8 himself or herself and other current or former employees pursuant to the procedures
9 specified in Section 2699.3.”

10 72. Plaintiff has exhausted his administrative remedies pursuant to
11 California Labor Code § 2699.3. He gave written notice by online filing to the
12 Labor and Workforce Development Agency and by certified mail to Defendants of
13 the specific provisions of the Labor Code that Defendants have violated against
14 Plaintiff and current and former aggrieved employees, including the facts and
15 theories to support the violations. Plaintiff also paid the filing fee.

16 73. The Labor and Workforce Development Agency has not indicated that
17 it intends to investigate Defendants’ Labor Code violations discussed in the notice.
18 Accordingly, Plaintiff may commence a civil action to recover penalties under
19 Labor Code § 2699 pursuant to § 2699.3 for the violations of the Labor Code
20 described in this Complaint. These penalties include, but are not limited to,
21 penalties under California Labor Code §§ 210, 226.3, 558, 1174.5, 1197.1, and
22 2699.

23 74. In addition, Plaintiff seeks penalties for Defendants’ violation of *Labor*
24 *Code* § 1174(d). Pursuant to Labor Code § 1174.5, any person, including any
25 entity, employing labor who willfully fails to maintain accurate and complete
26 records required by *Labor Code* § 1174 is subject to a penalty under § 1174.5.
27 Pursuant to the applicable IWC Order § 7(A)(3), every employer shall keep time
28 records showing when the employee begins and ends each work period. Meal

1 periods, and total hours worked daily shall also be recorded. Additionally, pursuant
2 to the applicable IWC Order § 7(A)(5), every employer shall keep total hours
3 worked in the payroll period and applicable rates of pay.

4 75. During the time period of employment for Plaintiff and the Aggrieved
5 Employees, Defendants failed to maintain records pursuant to the Labor Code and
6 IWC Orders by failing to maintain accurate records showing meal periods, and
7 accurate records showing when employees begin and end each work period.
8 Defendants' failure to provide and maintain records required by the Labor Code
9 IWC Wage Orders deprived Plaintiff and the Aggrieved Employees the ability to
10 know, understand and question the accuracy and frequency of meal periods, and the
11 accuracy of their hours worked stated in Defendants' records. Therefore, Plaintiff
12 and the Aggrieved Employees had no way to dispute the resulting failure to pay
13 wages, all of which resulted in an unjustified economic enrichment to Defendants.
14 As a direct result, Plaintiff and the Aggrieved Employees have suffered and
15 continue to suffer, substantial losses related to the use and enjoyment of such
16 wages, lost interest on such wages and expenses and attorney's fees in seeking to
17 compel Defendants to fully perform its obligation under state law, all to their
18 respective damage in amounts according to proof at trial. Because of Defendants'
19 knowing failure to comply with the Labor Code and applicable IWC Wage Orders,
20 Plaintiff and the Aggrieved Employees have also suffered an injury in that they
21 were prevented from knowing, understanding, and disputing the wage payments
22 paid to them.

23 76. Based on the conduct described in this Complaint, Plaintiff is entitled
24 to an award of civil penalties on behalf of himself, the State of California, and
25 similarly Aggrieved Employees of Defendants. The exact amount of the applicable
26 penalties, in all, is in an amount to be shown according to proof at trial. These
27 penalties are in addition to all other remedies permitted by law.
28

1 77. In addition, Plaintiff seeks an award of reasonable attorney’s fees and
2 costs pursuant to California Labor Code § 2699(g)(1), which states, “Any employee
3 who prevails in any action shall be entitled to an award of reasonable attorney’s
4 fees and costs.”

5 **PRAYER FOR RELIEF**

6 Plaintiff, individually, and on behalf of all others similarly situated only with
7 respect to the class claims, prays for relief and judgment against Defendants, jointly
8 and severally, as follows:

9 Class Certification

- 10 1. That this action be certified as a class action with respect to the First,
11 Second, Third, Fourth, and Fifth Causes of Action;
- 12 2. That Plaintiff be appointed as the representative of the Class and
13 Subclass; and
- 14 3. That counsel for Plaintiff be appointed as Class Counsel.

15 As to the First Cause of Action

- 16 4. That the Court declare, adjudge, and decree that Defendants violated
17 California Labor Code §§ 510 and 1198 and applicable IWC Wage Orders by
18 willfully failing to pay all overtime wages due;
- 19 5. For unpaid wages at overtime wage rates as may be appropriate;
- 20 6. For pre-judgment interest on any unpaid overtime compensation
21 commencing from the date such amounts were due;
- 22 7. For reasonable attorneys’ fees and for costs of suit incurred herein
23 pursuant to California Labor Code § 1194(a); and,
- 24 8. For such other and further relief as the Court may deem equitable and
25 appropriate.

26 As to the Second Cause of Action

- 27 9. That the Court declare, adjudge, and decree that Defendants violated
28 California Labor Code §§ 226.7 and 512, and the IWC Wage Orders;

1 10. For unpaid meal period premium wages as may be appropriate;

2 11. For pre-judgment interest on any unpaid compensation commencing
3 from the date such amounts were due;

4 12. For reasonable attorneys' fees under California Code of Civil
5 Procedure § 1021.5, and for costs of suit incurred herein; and

6 13. For such other and further relief as the Court may deem equitable and
7 appropriate.

8 As to the Third Cause of Action

9 14. That the Court declare, adjudge, and decree that Defendants violated
10 California Labor Code §§ 226.7 and 512, and the IWC Wage Orders;

11 15. For unpaid rest period premium wages as may be appropriate;

12 16. For pre-judgment interest on any unpaid compensation commencing
13 from the date such amounts were due;

14 17. For reasonable attorneys' fees under California Code of Civil
15 Procedure § 1021.5, and for costs of suit incurred herein; and

16 18. For such other and further relief as the Court may deem equitable and
17 appropriate.

18 As to the Fourth Cause of Action

19 19. That the Court declare, adjudge, and decree that Defendants violated
20 the record keeping provisions of California Labor Code § 226(a) and applicable
21 IWC Wage Orders, and willfully failed to provide accurate itemized wage
22 statements thereto;

23 20. For all actual damages, according to proof;

24 21. For statutory penalties pursuant to California Labor Code § 226(e);

25 22. For injunctive relief to ensure compliance with this section, pursuant to
26 California Labor Code § 226(h);

27 23. For reasonable attorneys' fees and for costs of suit incurred herein; and
28

1 24. For such other and further relief as the Court may deem equitable and
2 appropriate.

3 As to the Fifth Cause of Action

4 25. That the Court declare, adjudge, and decree that Defendants violated
5 California Business & Professions Code §§ 17200, *et seq.* by failing to pay wages
6 for all hours worked (including minimum, straight time, and overtime wages),
7 failing to provide meal periods, and failing to authorize and permit rest periods;

8 26. For restitution of unpaid wages to Plaintiff and all Class Members and
9 prejudgment interest from the day such amounts were due and payable;

10 27. For the appointment of a receiver to receive, manage and distribute any
11 and all funds disgorged from Defendants and determined to have been wrongfully
12 acquired by Defendants as a result of violations of California Business &
13 Professions Code §§ 17200 *et seq.*;

14 28. For reasonable attorneys' fees and costs of suit incurred herein
15 pursuant to California Code of Civil Procedure § 1021.5;

16 29. For injunctive relief to ensure compliance with this section, pursuant to
17 California Business & Professions Code §§ 17200, *et seq.*; and,

18 30. For such other and further relief as the Court may deem equitable and
19 appropriate.

20 As to the Sixth Cause of Action

21 31. That the Court declare, adjudge and decree that Defendants violated
22 the California Labor Code by failing to pay overtime wages correctly, failing to
23 provide meal periods, failing to maintain accurate records of meal periods, failing
24 to authorize and permit rest periods, failing to furnish accurate wage statements,
25 failing to pay all final wages to terminated employees, and failing to maintain
26 accurate records of all hours worked;

27 32. For all civil penalties pursuant to California Labor Code §§ 2699, *et*
28 *seq.*, and all other applicable Labor Code provisions;

1 33. For reasonable attorneys' fees and costs of suit incurred herein
2 pursuant to California Labor Code § 2699;

3 34. For such other and further relief as the Court may deem equitable and
4 appropriate.

5 As to all Causes of Action

6 35. For any additional relief that the Court deems just and proper.

7 Respectfully submitted,

8 Dated: March 12, 2020

WILSHIRE LAW FIRM

9
10 By: /s Justin F. Marquez

11 Bobby Saadian
12 Justin F. Marquez
13 Nicol E. Hajjar
14 Attorneys for Plaintiff Carlos Moreno

13 **DEMAND FOR JURY TRIAL**

14 Plaintiff demands a trial by jury as to all causes of action triable by jury.

15
16 Dated: March 12, 2020

WILSHIRE LAW FIRM

17
18 By: /s Justin F. Marquez

19 Bobby Saadian
20 Justin F. Marquez
21 Nicol E. Hajjar
22 Attorneys for Plaintiff Carlos Moreno