

1 **ARMSTRONG TEASDALE LLP**
 2 Jeremy M. Brenner (*pro hac vice*)
 3 Jason R. Stavely (SBN 305698)
 7700 Forsyth Blvd., Suite 1800
 4 St. Louis, MO 63105
 Telephone: 314.621.5070
 5 Facsimile: 314.621.5065
 Email: jstavely@atllp.com
 jbrenner@atllp.com

6 **TROYGOULD PC**
 7 Russell I. Glazer (SBN 166198)
 Benjamin W. Clements (SBN 299126)
 1801 Century Park East, 16th Floor
 8 Los Angeles, CA 90067-2367
 Telephone: 310.553.4441
 9 Facsimile: 310.201.4746
 Email: rglazer@troygould.com
 10 bclements@troygould.com

11 Attorneys for Defendant
 12 PRETIUM PACKAGING, L.L.C.

13 **UNITED STATES DISTRICT COURT**
 14 **CENTRAL DISTRICT OF CALIFORNIA – SOUTHERN DIVISION**

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

17 Plaintiff,

18 v.

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

21 Defendants.
 22

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

Hon. James V. Selna

**DEFENDANT PRETIUM
 PACKAGING, L.L.C.'S ANSWER
 AND AFFIRMATIVE DEFENSES
 TO PLAINTIFF'S SECOND
 AMENDED COMPLAINT**

1 Defendant Pretium Packaging, L.L.C. (“Pretium” or “Defendant”), by and
2 through its counsel, responds to Plaintiff Carlos Moreno’s (“Plaintiff”) Second
3 Amended Complaint as follows:

4 **INTRODUCTION & PRELIMINARY STATEMENT**

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

11 1. Defendant states that allegations in Paragraph 1 of Plaintiff’s Second
12 Amended Complaint states legal conclusions to which no response is required.
13 Defendant states that Plaintiff’s Second Amended Complaint speaks for itself.
14 Defendant denies any characterizations or mischaracterizations of the written
15 document. To the extent a further response is required, Defendant denies the
16 remaining allegations contained in Paragraph 1 of Plaintiff’s Second Amended
17 Complaint.

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

25 2. Defendant states that Plaintiff’s Second Amended Complaint speaks
26 for itself. Defendant denies any characterizations or mischaracterizations of the
27 written document. Defendant admits that this is a putative class action. Answering
28 further, Defendant denies that certification of a class action is proper. To the
extent a further response is required, Defendant denies the remaining allegations
contained in Paragraph 2 of Plaintiff’s Second Amended Complaint.

1 **3. Plaintiff brings the Sixth Cause of Action as a representative action**
2 **under the California Private Attorney General Act ("PAGA") to recover civil**
3 **penalties that are owed to Plaintiff, the State of California, and past and**
4 **present hourly-paid or non-exempt employees employed by Defendants in the**
5 **State of California during the statute of limitations period for her PAGA**
6 **claim (hereinafter referred to as the "Aggrieved Employees")**

7 3. Defendant states that Plaintiff's Second Amended Complaint speaks
8 for itself. Defendant denies any characterizations or mischaracterizations of the
9 written document. To the extent a further response is required, Defendant denies
10 the remaining allegations contained in Paragraph 3 of Plaintiff's Second Amended
11 Complaint.

12 **4. Defendants own/owned and operate/operated an industry, business,**
13 **and establishment within the State of California, including Orange County.**
14 **As such, and based upon all the facts and circumstances incident to**
15 **Defendants' business in California, Defendants are subject to the California**
16 **Labor Code, Wage Orders issued by the Industrial Welfare Commission**
17 **("IWC"), and the California Business & Professions Code.**

18 4. Defendant admits only that it conducts business in Orange County,
19 California. Defendant states that the remaining allegation in Paragraph 4 of
20 Plaintiff's Second Amended Complaint states a legal conclusion to which no
21 response is required. To the extent a response is required, Defendant denies the
22 same.

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

25 **(a) Failing to pay employees the proper wages for all overtime hours**
26 **worked in compliance with the California Labor Code and IWC Wage**
27 **Orders;**

28 **(b) Failing to provide employees with timely and duty-free meal periods**
in compliance with the California Labor Code and IWC Wage Orders, failing
to maintain accurate records of all meal periods taken or missed, and failing
to pay an additional hour's pay for each workday a meal period violation
occurred;

1 (c) Failing to authorize and permit employees to take timely and duty-
2 free rest periods in compliance with the California Labor Code and IWC
3 Wage Orders, and failing to pay an additional hour's pay for each workday a
rest period violation occurred; and

4 (d) Failing to provide employees with accurate, itemized wage
5 statements containing all the information required by the California Labor
Code and IWC Wage Orders.

6 5. Defendant is without sufficient information to admit or deny
7 allegations pertaining to "the statutory period," and therefore, denies the same.
8 Defendant denies the remaining allegations in Paragraphs 5(a)-(d) of Plaintiff's
9 Second Amended Complaint.

10 **6. On information and belief, Defendants, and each of them were on**
11 **actual and constructive notice of the improprieties alleged herein and**
12 **intentionally refused to rectify their unlawful policies. Defendants' violations,**
13 **as alleged above, during all relevant times herein were willful and deliberate.**

14 6. Defendant denies that it was on actual or constructive notice of any
15 "improprieties" alleged in Paragraph 6 of Plaintiff's Second Amended Complaint
16 and Defendant denies that any such "improprieties" exist. Defendant states that the
17 remaining allegations in Paragraph 6 of Plaintiff's Second Amended Complaint
18 state legal conclusions to which no response is required. To the extent a response is
19 required, Defendant denies the same.

20 **7. At all relevant times, Defendants were and are legally responsible for**
21 **all of the unlawful conduct, policies, practices, acts and omissions as described**
22 **in each and all of the foregoing paragraphs as the employer of Plaintiff, the**
23 **Class, and the Aggrieved Employees. Further, Defendants are responsible for**
24 **each of the unlawful acts or omissions complained of herein under the**
doctrine of "respondeat superior."

25 7. Defendant states that the allegations in Paragraph 7 of Plaintiff's
26 Second Amended Complaint state legal conclusions to which no response is
27 required. To the extent a response is required, Defendant denies the same.

1 **THE PARTIES**

2 **A. Plaintiff**

3
4 **8. Plaintiff Carlos Moreno is a resident of Anaheim, California who**
5 **worked for Defendants in Anaheim, California as a Warehouse Associate**
6 **from approximately April 2017 to the present.**

7 8. Defendant admits only that Plaintiff Carlos Moreno has worked for
8 Defendant at its facility in Anaheim, California, since in or about April 2017.
9 Defendant states further that Plaintiff Carlos Moreno is employed by Defendant as
10 a Production Associate. Defendant lacks sufficient knowledge, information and
11 belief to form a basis for admitting or denying the allegations contained in
12 Paragraph 8 of Plaintiff’s Second Amended Complaint relating to Plaintiff’s
13 residence, and therefore, denies the same.

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

18 9. Defendant states that Paragraph 9 of Plaintiff’s Second Amended
19 Complaint does not contain factual allegations to which a response is required. To
20 the extent a response is required, Defendant denies the same.

21 **B. Defendants**

22 **10. Plaintiff is informed and believes, and based upon that information**
23 **and belief alleges, that Defendant Pretium Packaging, L.L.C. is, and at all**
24 **times herein mentioned, was:**

25 (a) **A Delaware limited liability company with its principal place of**
26 **business in Chesterfield, Missouri.**

27 (b) **A business entity conducting business in numerous counties**
28 **throughout the State of California, including in Orange County; and,**

(c) **The current employer of Plaintiff, and the current and/or former**
employer of the putative Class, Pretium Packaging, L.L.C., suffered and
permitted Plaintiff, the Class, and the Aggrieved Employees to work, and/or
controlled their wages, hours, or working conditions.

1 10. Defendant admits that it is a Delaware limited liability company with
2 its principal place of business in Chesterfield, Missouri. Answering further,
3 Defendant admits that it conducts business in Orange County, California, and that
4 it employs Plaintiff Carlos Moreno. Defendant is without sufficient information to
5 admit or deny allegations pertaining to the “Class” or the “Aggrieved Employees,”
6 and therefore, denies the same. To the extent a further response is required,
7 Defendant denies the remaining allegations in Paragraphs 10(a)-(c) of Plaintiff’s
8 Second Amended Complaint.

9
10 **11. Plaintiff does not know the true names or capacities of the persons**
11 **or entities sued herein as Does 1-10, inclusive, and therefore sues said**
12 **Defendants by such fictitious names. Each of the Doe Defendants was in some**
13 **manner legally responsible for the damages suffered by Plaintiff, the Class,**
14 **and the Aggrieved Employees as alleged herein. Plaintiff will amend this**
15 **complaint to set forth the true names and capacities of these Defendants when**
16 **they have been ascertained, together with appropriate charging allegations, as**
17 **may be necessary.**

18 11. Defendant states that Paragraph 11 of Plaintiff’s Second Amended
19 Complaint does not contain factual allegations to which a response is required. To
20 the extent a response is required, Defendant denies the same.

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

25 12. Defendant is without sufficient knowledge or information to form an
26 admission or denial with respect to “Does 1-10” identified in Paragraph 12 of
27 Plaintiff’s Second Amended Complaint, and therefore, denies the same.

28 **13. Plaintiff is informed and believes and thereon alleges that at all**
relevant times each Defendant, directly or indirectly, or through agents or
other persons, employed Plaintiff and the other employees described in the
class definitions below, and exercised control over their wages, hours, and
working conditions. Plaintiff is informed and believes and thereon alleges

1 that, at all relevant times, each Defendant was the principal, agent, partner,
2 joint venturer, officer, director, controlling shareholder, subsidiary, affiliate,
3 parent corporation, successor in interest and/or predecessor in interest of
4 some or all of the other Defendants, and was engaged with some or all of the
5 other Defendants in a joint enterprise for profit, and bore such other
6 relationships to some or all of the other Defendants so as to be liable for their
7 conduct with respect to the matters alleged below. Plaintiff is informed and
8 believes and thereon alleges that each Defendant acted pursuant to and within
the scope of the relationships alleged above, that each Defendant knew or
should have known about, and authorized, ratified, adopted, approved,
controlled, aided and abetted the conduct of all other Defendants.

9 13. Defendant states that the allegations in Paragraph 13 of Plaintiff's
10 Second Amended Complaint state legal conclusions to which no response is
11 required. To the extent a response is required, Defendant denies the same.

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

13
14 **14. Plaintiff worked for Defendants in California as a Warehouse**
15 **Associate from approximately April 2017 to the present. During Plaintiff's**
16 **employment for Defendants, Defendants paid Plaintiff an hourly wage and**
17 **classified him as non-exempt from overtime. Defendants typically scheduled**
Plaintiff to work at least 5 days in a workweek and at least 8 hours per day,
but Plaintiff sometimes worked in excess of 12 hours in a workday.

18 14. Defendant admits that Plaintiff Carlos Moreno has worked for
19 Defendant at its facility in Anaheim, California, since in or about April 2017.
20 Defendant admits further that Plaintiff Carlos Moreno is employed by Defendant
21 as a Production Associate, and that Plaintiff Carlos Moreno is paid an hourly wage
22 and classified as non-exempt from overtime eligibility. Defendant also admits that
23 during Plaintiff's employment, he was typically scheduled to work at least five
24 days in each workweek. Defendant admits that Plaintiff has worked more than
25 eight hours in a workday and more than 40 hours in a workweek, and that Plaintiff
26 has worked in excess of 12 hours in a workday. To the extent a further response is
27 required, Defendant denies all remaining allegations in Paragraph 14 of Plaintiff's
28 Second Amended Complaint.

1
2 **15. Throughout Plaintiff's employment, Defendants failed to provide**
3 **Plaintiff with meal periods, failed to authorize and permit Plaintiff to take rest**
4 **periods, failed to pay Plaintiff proper overtime wages, and failed to furnish**
5 **accurate wage statements to Plaintiff. As discussed below, Plaintiff's**
6 **experience working for Defendants was typical and illustrative.**

7
8 15. Defendant denies the allegations in Paragraph 15 of Plaintiff's Second
9 Amended Complaint.

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

23 16. Defendant admits only that Plaintiff worked at least 12.47 hours on
24 March 12, 2018, 12.07 hours on March 22, 2018, and 12.5 hours on October 10,
25 2018. Defendant states that the alleged paychecks for the pay periods ending
26 March 17, 2018, March 24, 2018, and March 13, 2018 speak for themselves.
27 Defendant denies any characterizations or mischaracterizations of the written
28 document(s). Defendant is without sufficient information to admit or deny

1 allegations pertaining to the “Class” and “Aggrieved Employees,” and therefore,
2 denies the same. Defendant is without sufficient information to admit or deny
3 allegations pertaining to “the statutory period,” and therefore, denies the same. To
4 the extent a further response is required, Defendant denies the remaining
5 allegations contained in Paragraph 16 of Plaintiff’s Second Amended Complaint.

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

17. Defendant states that Paragraph 17 of Plaintiff’s Second Amended
Complaint states legal conclusions to which no response is required. Defendant is
without sufficient information to admit or deny allegations relating to Plaintiff’s
alleged meal periods on April 25, 2017, May 8, 2017, and February 2, 2018, and
therefore, denies the same. Defendant is without sufficient information to admit or
deny allegations pertaining to the “Class” and “Aggrieved Employees,” and
therefore, denies the same. Defendant is without sufficient information to admit or

1 deny allegations pertaining to “the statutory period,” and therefore, denies the
2 same. To the extent a further response is required, Defendant denies the remaining
3 allegations contained in Paragraph 17 of Plaintiff’s Second Amended Complaint.

4
5 **18. Throughout the statutory period, Defendants have wrongfully failed**
6 **to authorize and permit Plaintiff, the Class, and the Aggrieved Employees to**
7 **take legally compliant rest periods. Defendants regularly, but not always,**
8 **required Plaintiff, the Class, and the Aggrieved Employees to work in excess**
9 **of four consecutive hours a day without Defendants authorizing and**
10 **permitting them to take a 10-minute, uninterrupted, duty-free rest period for**
11 **every four hours of work (or major fraction of four hours), or without**
12 **compensating Plaintiff, the Class, and the Aggrieved Employees for rest**
13 **periods that were not authorized or permitted. Instead, Defendants continued**
14 **to assert control over Plaintiff, the Class, and the Aggrieved Employees by**
15 **requiring, pressuring, or encouraging them to perform work tasks which**
16 **could not be completed without working in lieu of taking mandatory rest**
17 **periods, or by denying Plaintiff, the Class, and the Aggrieved Employees**
18 **permission to take a rest period. For instance, Defendants would assign tasks**
19 **to Plaintiff, the Class, and the Aggrieved Employees and then pressure them**
20 **to continue working throughout their rest periods in order to complete those**
21 **tasks. Plaintiff felt that he could not complete all of his assigned work unless**
22 **he worked through his mandatory rest periods. Some examples of this**
23 **occurring are on April 25, 2017, May 8, 2017, and February 2, 2018.**
24 **Accordingly, Defendants’ policy and practice was to not authorize and permit**
25 **Plaintiff, the Class, and the Aggrieved Employees to take rest periods in**
26 **compliance with California law.**

19 18. Defendant states that Paragraph 18 of Plaintiff’s Second Amended
20 Complaint states a legal conclusion to which no response is required. Defendant is
21 without sufficient information to admit or deny allegations relating to Plaintiff’s
22 alleged rest periods on April 25, 2017, May 8, 2017, and February 2, 2018, and
23 therefore, denies the same. Defendant is without sufficient information to admit or
24 deny allegations pertaining to the “Class” and “Aggrieved Employees,” and
25 therefore, denies the same. Defendant is without sufficient information to admit or
26 deny allegations pertaining to “the statutory period,” and therefore, denies the
27 same. Defendant lacks sufficient knowledge, information and belief to form a
28

1 basis for admitting or denying the allegations contained in Paragraph 18 of
2 Plaintiff's Second Complaint relating to how Plaintiff "felt." To the extent a
3 further response is required, Defendant denies the remaining allegations contained
4 in Paragraph 18 of Plaintiff's Second Amended Complaint.

5
6 **19. Throughout the statutory period, Defendants willfully failed and**
7 **refused to timely pay Plaintiff, the Class, and the Aggrieved Employees meal**
8 **period premium wages and rest period premium wages owed to him by**
9 **Defendants. On information and belief, Defendants' failure to timely pay**
10 **Plaintiff's meal period premium wages and rest period premium wages was**
11 **not a single, isolated incident, but was instead consistent with Defendants'**
12 **policy and practice that applied to Plaintiff, the Class, and the Aggrieved**
13 **Employees.**

14 19. Defendant is without sufficient information to admit or deny
15 allegations pertaining to "the statutory period," the "Class," and the "Aggrieved
16 Employees," and therefore, denies the same. To the extent a further response is
17 required, Defendant denies the allegations in Paragraph 19 of Plaintiff's Second
18 Amended Complaint.

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

28 (a) the violations led them to believe that they were not entitled to be
paid meal period premium wages, and rest period premium wages, even
though they were entitled;

(b) the violations led them to believe that they had been paid all wages
they were entitled to receive, even though they had not been;

(c) the violations led them to believe they were not entitled to be paid
overtime, meal period premium, and rest period premium wages at the
correct California rate even though they were;

1 (d) the violations led them to believe they had been paid overtime, meal
2 period premium, and rest period premium wages at the correct California
rate even though they had not been;

3 (e) the violations hindered them from determining the amounts of
4 overtime, meal period premium, and rest period premium wages owed to
them;

5 (f) in connection with their employment before and during this action,
6 and in connection with prosecuting this action, the violations caused them to
7 have to perform mathematical computations to determine the amounts of
wages owed to them, computations they would not have to make if the wage
8 statements contained the required accurate information;

9 (g) by understating the wages truly due them, the violations caused
10 them to lose entitlement and/or accrual of the full amount of Social Security,
disability, unemployment, and other governmental benefits;

11 (h) the wage statements inaccurately understated the wages, hours, and
12 wage rates to which Plaintiff, the Class, and the Aggrieved Employees were
entitled, and Plaintiff, the Class, and the Aggrieved Employees were paid less
13 than the wages and wage rates to which they were entitled.

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

15 20. Defendant states that Paragraph 20 of Plaintiff's Second Amended
16 Complaint states legal conclusions to which no response is required. Defendant
17 also states that the documents referenced in Paragraph 20 of Plaintiff's Second
18 Amended Complaint speak for themselves. Defendant denies any
19 characterizations or mischaracterizations of the written document(s). Defendant is
20 without sufficient information to admit or deny allegations pertaining to the
21 "Class" and "Aggrieved Employees," and therefore, denies the same. Defendant is
22 without sufficient information to admit or deny allegations pertaining to "the
23 statutory period," and therefore, denies the same. Defendant lacks sufficient
24 knowledge, information and belief to form a basis for admitting or denying the
25 allegations contained in Paragraphs 20(a)-(f) of Plaintiff's Second Complaint
26 relating to what Plaintiff "believed," whether Plaintiff was "hindered" in any way,
27 and whether Plaintiff performed "mathematical computations." To the extent a
28

1 further response is required, Defendant denies the remaining allegations contained
2 in Paragraph 20 of Plaintiff's Second Amended Complaint.

3 **CLASS ACTION ALLEGATIONS**

4
5 **21. Plaintiff brings certain claims individually, as well as on behalf of**
6 **each and all other persons similarly situated, and thus, seeks class certification**
7 **under California Code of Civil Procedure § 382.**

8 21. Defendant states that Paragraph 21 of Plaintiff's Second Amended
9 Complaint does not contain factual allegations to which a response is required.
10 Defendant is without sufficient information to admit or deny allegations pertaining
11 to "other persons similarly situated," and therefore, denies the same. To the extent
12 a response is required, Defendant admits that Plaintiff seeks certification of a class
13 action, but denies that class certification is appropriate in this case.

14 **22. All claims alleged herein arise under California law for which**
15 **Plaintiff seeks relief authorized by California law.**

16 22. Defendant states that Plaintiff's Second Amended Complaint speaks
17 for itself. Defendant denies any characterizations or mischaracterizations of the
18 written document. Defendant states that the allegations in Paragraph 22 of
19 Plaintiff's Second Amended Complaint state legal conclusions to which no
20 response is required. To the extent a response is required, Defendant denies the
21 same.

22 **23. The proposed Class consists of and is defined as: All persons who**
23 **worked for any Defendant in California as an hourly-paid or non-exempt**
24 **employee at any time during the period beginning four years before the filing**
25 **of the initial complaint in this action and ending when notice to the Class is**
26 **sent.**

27 23. Defendant admits that Plaintiff seeks certification of a class action,
28 but denies that certification is appropriate in this case. To the extent a further
response is required, Defendant denies the allegations in Paragraph 23 of
Plaintiff's Second Amended Complaint.

1
2 **24. Plaintiff undertakes this concerted activity to improve the wages and**
3 **working conditions of all Class Members.**

4 24. Defendant lacks sufficient knowledge, information and belief to form
5 a basis for admitting or denying the allegations contained in Paragraph 24 of
6 Plaintiff's Second Complaint relating to Plaintiff's reasons for filing the Second
7 Amended Complaint. To the extent a further response is required, Defendant
8 denies the allegations contained in Paragraph 24 of Plaintiff's Second Amended
9 Complaint.

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

12 (a) **Numerosity: The members of the Class (and each subclass, if any)**
13 **are so numerous that joinder of all members would be unfeasible and**
14 **impractical. The membership of the entire Class is unknown to Plaintiff at**
15 **this time; however, the Class is estimated to be greater than 40 individuals**
16 **and the identity of such membership is readily ascertainable by inspection of**
17 **Defendants' records.**

18 (b) **Typicality: Plaintiff is qualified to, and will, fairly and adequately**
19 **protect the interests of each Class Member with whom there is a shared, well-**
20 **defined community of interest, and Plaintiff's claims (or defenses, if any) are**
21 **typical of all Class Members' claims as demonstrated herein.**

22 (c) **Adequacy: Plaintiff is qualified to, and will, fairly and adequately**
23 **protect the interests of each Class Member with whom there is a shared, well-**
24 **defined community of interest and typicality of claims, as demonstrated**
25 **herein. Plaintiff has no conflicts with or interests antagonistic to any Class**
26 **Member. Plaintiff's attorneys, the proposed class counsel, are versed in the**
27 **rules governing class action discovery, certification, and settlement. Plaintiff**
28 **has incurred, and throughout the duration of this action, will continue to**
incur costs and attorneys' fees that have been, are, and will be necessarily
expended for the prosecution of this action for the substantial benefit of each
class member.

(d) **Superiority: A Class Action is superior to other available methods**
for the fair and efficient adjudication of the controversy, including
consideration of:

1) **The interests of the members of the Class in individually controlling**
the prosecution or defense of separate actions;

1 **2) The extent and nature of any litigation concerning the controversy**
2 **already commenced by or against members of the Class;**

3 **3) The desirability or undesirability of concentrating the litigation of the**
4 **claims in the particular forum; and**

5 **4) The difficulties likely to be encountered in the management of a class**
6 **action.**

7 **(e) Public Policy Considerations: The public policy of the State of**
8 **California is to resolve the California Labor Code claims of many employees**
9 **through a class action. Indeed, current employees are often afraid to assert**
10 **their rights out of fear of direct or indirect retaliation. Former employees are**
11 **also fearful of bringing actions because they believe their former employers**
12 **might damage their future endeavors through negative references and/or**
13 **other means. Class actions provide the class members who are not named in**
14 **the complaint with a type of anonymity that allows for the vindication of their**
15 **rights at the same time as their privacy is protected.**

16 25. Defendant states that Paragraph 25 of Plaintiff's Second Amended
17 Complaint states legal conclusions to which no response is required. Defendant is
18 without sufficient information to admit or deny allegations pertaining to the
19 "Class" and "Subclass" and therefore, denies the same. Defendant admits that
20 Plaintiff seeks certification of a class action, but denies that certification is
21 appropriate in this case. To the extent a further response is required, Defendant
22 denies the allegations contained in Paragraph 25 of Plaintiff's Second Amended
23 Complaint.

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

28 **(a) Failed to pay Class Members for all hours worked, including**
 overtime wages;

(b) Failed to provide meal periods and pay meal period premium wages
 to Class Members;

(c) Failed to authorize and permit rest periods and pay rest period
 premium wages to Class Members;

(d) Failed to provide Class Members with timely final wages;

(e) Failed to provide Class Members with accurate wage statements;

and

1 **(f) Violated California Business & Professions Code §§ 17200 et. seq. as**
2 **a result of their illegal conduct as described above.**

3 26. Defendant states that Paragraph 26 of Plaintiff’s Second Amended
4 Complaint states legal conclusions to which no response is required. Defendant is
5 without sufficient information to admit or deny allegations pertaining to the
6 “Class” and therefore, denies the same. Defendant admits that Plaintiff seeks
7 certification of a class action, but denies that certification is appropriate in this
8 case. To the extent a further response is required, Defendant denies the allegations
9 contained in Paragraph 26 of Plaintiff’s Second Amended Complaint.

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

12 **(a) The questions of law and fact common to the Class predominate over**
13 **any question affecting only individual members;**

14 **(b) A class action is superior to any other available method for the fair**
15 **and efficient adjudication of the claims of the members of the Class;**

16 **(c) The members of the Class are so numerous that it is impractical to**
17 **bring all members of the class before the Court;**

18 **(d) Plaintiff, and the other members of the Class, will not be able to**
19 **obtain effective and economic legal redress unless the action is maintained as**
20 **a class action;**

21 **(e) There is a community of interest in obtaining appropriate legal and**
22 **equitable relief for the statutory violations, and in obtaining adequate**
23 **compensation for the damages and injuries for which Defendants are**
24 **responsible in an amount sufficient to adequately compensate the members of**
25 **the Class for the injuries sustained;**

26 **(f) Without class certification, the prosecution of separate actions by**
27 **individual members of the class would create a risk of:**

28 **1) Inconsistent or varying adjudications with respect to individual**
members of the Class which would establish incompatible standards of
conduct for Defendants; and/or

2) Adjudications with respect to the individual members which would,
as a practical matter, be dispositive of the interests of other members not
parties to the adjudications, or would substantially impair or impede their
ability to protect their interests, including but not limited to the potential for
exhausting the funds available from those parties who are, or may be,
responsible Defendants; and,

1 **(g) Defendants have acted or refused to act on grounds generally**
2 **applicable to the Class, thereby making final injunctive relief appropriate**
3 **with respect to the class as a whole.**

4 27. Defendant states that Paragraph 27 of Plaintiff’s Second Amended
5 Complaint states legal conclusions to which no response is required. Defendant is
6 without sufficient information to admit or deny allegations pertaining to the
7 “Class” and therefore, denies the same. Defendant admits that Plaintiff seeks
8 certification of a class action, but denies that certification is appropriate in this
9 case. To the extent a further response is required, Defendant denies the allegations
10 contained in Paragraph 27 of Plaintiff’s Second Amended Complaint.

11 **28. Plaintiff contemplates the eventual issuance of notice to the**
12 **proposed members of the Class that would set forth the subject and nature of**
13 **the instant action. The Defendants’ own business records may be utilized for**
14 **assistance in the preparation and issuance of the contemplated notices. To the**
15 **extent that any further notices may be required, Plaintiff would contemplate**
16 **the use of additional techniques and forms commonly used in class actions,**
17 **such as published notice, email notice, website notice, first-class mail, or**
18 **combinations thereof, or by other methods suitable to the Class and deemed**
19 **necessary and/or appropriate by the Court.**

20 28. Defendant is without sufficient information to admit or deny
21 allegations pertaining to the “Class,” and therefore, denies the same. Further
22 answering, Defendant states that Paragraph 28 of Plaintiff’s Second Amended
23 Complaint does not contain factual allegations to which a response is required.
24 Defendant admits that Plaintiff seeks to send notice of a class action, but denies
25 that class notice is appropriate in this case. To the extent a further response is
26 required, Defendant denies the allegations contained in Paragraph 28 of Plaintiff’s
27 Second Amended Complaint.

28 **FIRST CAUSE OF ACTION**
 (Against all Defendants for Failure to Pay Overtime Wages)

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

1 29. Defendant repeats and realleges every Answer set forth above, as if
2 set forth at length herein in response to the allegations contained in Paragraph 29
3 of Plaintiff’s Second Amended Complaint.

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

7 30. Defendant states that allegations in Paragraph 30 of Plaintiff’s Second
8 Amended Complaint state legal conclusions to which no response is required. To
9 the extent a response is required, Defendant states that the statutes referenced
10 speaks for themselves, and denies any characterizations or interpretations that are
11 inconsistent therewith.

12 **31. California Labor Code § 1194(a) states: “Notwithstanding any**
13 **agreement to work for a lesser wage, any employee receiving less than the**
14 **legal minimum wage or the legal overtime compensation applicable to the**
15 **employee is entitled to recover in a civil action the unpaid balance of the full**
16 **amount of this minimum wage or overtime compensation, including interest**
17 **thereon, reasonable attorney’s fees, and costs of suit.”**

18 31. Defendant states that allegations in Paragraph 31 of Plaintiff’s Second
19 Amended Complaint state legal conclusions to which no response is required. To
20 the extent a response is required, Defendant states that the statutes referenced
21 speaks for themselves, and denies any characterizations or interpretations that are
22 inconsistent therewith.

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

26 32. Defendant admits only that during Plaintiff’s employment, he
27 sometimes worked shifts greater than 12 hours. Defendant is without sufficient
28 information to admit or deny allegations pertaining to the “Class,” and therefore,
denies the same. To the extent a further response is required, Defendant denies the
allegations contained in Paragraph 32 of Plaintiff’s Second Amended Complaint.

1 **33. At all times relevant hereto, Defendants failed to pay Plaintiff and**
2 **the Class overtime compensation for the hours they have worked in excess of**
3 **the maximum hours permissible by law as required by California Labor Code**
4 **§§ 510 and 1198.**

5 33. Defendant states that allegations in Paragraph 33 of Plaintiff’s Second
6 Amended Complaint states legal conclusions to which no response is required.
7 Defendant is without sufficient information to admit or deny allegations pertaining
8 to the “Class,” and therefore, denies the same. To the extent a further response is
9 required, Defendant denies the allegations contained in Paragraph 33 of Plaintiff’s
10 Second Amended Complaint.

11 **34. By virtue of Defendants’ unlawful failure to pay additional premium**
12 **rate compensation to the Plaintiff and the Class for their overtime hours**
13 **worked, Plaintiff and the Class have suffered, and will continue to suffer,**
14 **damages in amounts which are presently unknown to them but which exceed**
15 **the jurisdictional minimum of a state court and which will be ascertained**
16 **according to proof at trial.**

17 34. Defendant states that allegations in Paragraph 34 of Plaintiff’s Second
18 Amended Complaint states legal conclusions to which no response is required.
19 Defendant is without sufficient information to admit or deny allegations pertaining
20 to the “Class,” and therefore, denies the same. To the extent a further response is
21 required, Defendant denies any liability to Plaintiff.

22 **35. By failing to keep adequate time records required by Labor Code §**
23 **1174(d), Defendants have made it difficult to calculate the full extent of**
24 **overtime compensation due to Plaintiff and the Class.**

25 35. Defendant states that allegations in Paragraph 35 of Plaintiff’s Second
26 Amended Complaint states legal conclusions to which no response is required.
27 Defendant is without sufficient information to admit or deny allegations pertaining
28 to the “Class,” and therefore, denies the same. To the extent a further response is
required, Defendant denies the allegations in Paragraph 35 of Plaintiff’s Second
Amended Complaint.

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

36. Defendant states that allegations in Paragraph 36 of Plaintiff’s Second Amended Complaint states legal conclusions to which no response is required. Defendant is without sufficient information to admit or deny allegations pertaining to the “Class,” and therefore, denies the same. To the extent a further response is required, Defendant denies the allegations in Paragraph 36 of Plaintiff’s Second Amended Complaint and specifically denies that Plaintiff is entitled to any relief requested in Paragraph 36.

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

37. Defendant states that allegations in Paragraph 37 of Plaintiff’s Second Amended Complaint state legal conclusions to which no response is required. Defendant states that the statutes referenced speaks for themselves, and denies any characterizations or interpretations that are inconsistent therewith. Defendant is without sufficient information to admit or deny allegations pertaining to the “Class,” and therefore, denies the same. To the extent a further response is required, Defendant denies the allegations in Paragraph 37 of Plaintiff’s Second Amended Complaint and specifically denies that Plaintiff is entitled to any relief requested in Paragraph 37.

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SECOND CAUSE OF ACTION
(Against All Defendants for Failure to Provide Meal Periods)

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

38. Defendant repeats and realleges every Answer set forth above, as if set forth at length herein in response to the allegations contained in Paragraph 38 of Plaintiff’s Second Amended Complaint.

39. Under California law, Defendants have an affirmative obligation to relieve the Plaintiff and the Class of all duty in order to take their first daily meal periods no later than the start of Plaintiff and the Class’ sixth hour of work in a workday, and to take their second meal periods no later than the start of the eleventh hour of work in the workday. California Labor Code § 512, and Section 11 of the applicable Wage Orders require that an employer provide unpaid meal periods of at least 30 minutes for each five-hour period worked. It is a violation of California Labor Code § 226.7 for an employer to require any employee to work during any meal period mandated under any Wage Order.

39. Defendant states that allegations in Paragraph 39 of Plaintiff’s Second Amended Complaint state legal conclusions to which no response is required. Defendant states that the statutes and authority referenced speak for themselves, and denies any characterizations or interpretations that are inconsistent therewith.

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

40. Defendant states that allegations in Paragraph 40 of Plaintiff’s Second Amended Complaint state legal conclusions to which no response is required. Defendant states that the statutes and authority referenced speaks for themselves, and denies any characterizations or interpretations that are inconsistent therewith.

1 Defendant is without sufficient information to admit or deny allegations pertaining
2 to the “Class,” and therefore, denies the same. To the extent a further response is
3 required, Defendant denies the allegations in Paragraph 40 of Plaintiff’s Second
4 Amended Complaint.

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

8 41. Defendant states that the allegation in Paragraph 41 of Plaintiff’s
9 Second Amended Complaint states a legal conclusion to which no response is
10 required. Defendant states that the statutes and authority referenced speaks for
11 themselves, and denies any characterizations or interpretations that are inconsistent
12 therewith. Defendant is without sufficient information to admit or deny allegations
13 pertaining to the “Class,” and therefore, denies the same. To the extent a further
14 response is required, Defendant denies the allegation in Paragraph 41 of Plaintiff’s
15 Second Amended Complaint and specifically denies that Plaintiff is entitled to any
16 relief requested in Paragraph 41.

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 42. Defendant repeats and realleges every Answer set forth above, as if
22 set forth at length herein in response to the allegations contained in Paragraph 42
23 of Plaintiff’s Second Amended Complaint.

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

1 **failure to authorize rest breaks as so required is itself a violation of**
2 **California’s rest break laws. It is a violation of California Labor Code § 226.7**
3 **for an employer to require any employee to work during any rest period**
4 **mandated under any Wage Order.**

4 43. Defendant states that allegations in Paragraph 43 of Plaintiff’s Second
5 Amended Complaint state legal conclusions to which no response is required. To
6 the extent a response is required, Defendant states that the statutes and authority
7 referenced speaks for themselves, and denies any characterizations or
8 interpretations that are inconsistent therewith.

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

14 44. Defendant states that allegations in Paragraph 44 of Plaintiff’s Second
15 Amended Complaint state legal conclusions to which no response is required.
16 Defendant states that the statutes and authority referenced speaks for themselves,
17 and denies any characterizations or interpretations that are inconsistent therewith.
18 Defendant is without sufficient information to admit or deny allegations pertaining
19 to the “Class,” and therefore, denies the same. To the extent a further response is
20 required, Defendant denies the allegations in Paragraph 44 of Plaintiff’s Second
21 Amended Complaint.

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

25 45. Defendant states that the allegation in Paragraph 45 of Plaintiff’s
26 Second Amended Complaint states a legal conclusion to which no response is
27 required. Defendant states that the statutes and authority referenced speaks for
28 themselves, and denies any characterizations or interpretations that are inconsistent

1 therewith. Defendant is without sufficient information to admit or deny allegations
2 pertaining to the “Class,” and therefore, denies the same. To the extent a further
3 response is required, Defendant denies the allegation in Paragraph 45 of Plaintiff’s
4 Second Amended Complaint and specifically denies that Plaintiff is entitled to any
5 relief requested in Paragraph 45.

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7 **FOURTH CAUSE OF ACTION**
8 **(Against all Defendants for Failure to Provide and Maintain Accurate and**
9 **Compliant Wage Records)**

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

11 46. Defendant repeats and realleges every Answer set forth above, as if
12 set forth at length herein in response to the allegations contained in Paragraph 46
13 of Plaintiff’s Second Amended Complaint.

14 **47. At all material times set forth herein, California Labor Code §**
15 **226(a) provides that every employer shall furnish each of his or his employees**
16 **an accurate itemized wage statement in writing showing nine pieces of**
17 **information, including: (1) gross wages earned, (2) total hours worked by the**
18 **employee, (3) the number of piece-rate units earned and any applicable piece**
19 **rate if the employee is paid on a piece-rate basis, (4) all deductions, provided**
20 **that all deductions made on written orders of the employee may be aggregated**
21 **and shown as one item, (5) net wages earned, (6) the inclusive dates of the**
22 **period for which the employee is paid, (7) the name of the employee and the**
23 **last four digits of his or his social security number or an employee**
24 **identification number other than a social security number, (8) the name and**
25 **address of the legal entity that is the employer, and (9) all applicable hourly**
26 **rates in effect during the pay period and the corresponding number of hours**
27 **worked at each hourly rate by the employee.**

24 47. Defendant states that allegations in Paragraph 47 of Plaintiff’s Second
25 Amended Complaint state legal conclusions to which no response is required. To
26 the extent a response is required, Defendant states that the statutes and authority
27 referenced speaks for themselves, and denies any characterizations or
28 interpretations that are inconsistent therewith.

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

7 48. Defendant states that allegations in Paragraph 48 of Plaintiff’s Second
8 Amended Complaint state legal conclusions to which no response is required.
9 Defendant states that the statutes and authority referenced speaks for themselves,
10 and denies any characterizations or interpretations that are inconsistent therewith.
11 Defendant is without sufficient information to admit or deny allegations pertaining
12 to the “Class,” and therefore, denies the same. To the extent a further response is
13 required, Defendant denies the allegations in Paragraph 48 of Plaintiff’s Second
14 Amended Complaint.

15 **49. As a result of Defendants’ violation of California Labor Code §**
16 **226(a), Plaintiff and the Class have suffered injury and damage to their**
17 **statutorily protected rights.**

18 49. Defendant states that the allegation in Paragraph 49 of Plaintiff’s
19 Second Amended Complaint states a legal conclusion to which no response is
20 required. Defendant states that the statutes and authority referenced speaks for
21 themselves, and denies any characterizations or interpretations that are inconsistent
22 therewith. Defendant is without sufficient information to admit or deny allegations
23 pertaining to the “Class,” and therefore, denies the same. To the extent a further
24 response is required, Defendant denies the allegation in Paragraph 49 of Plaintiff’s
25 Second Amended Complaint and specifically denies that Plaintiff has suffered any
26 injury or damage as alleged in Paragraph 49.

27 **50. Specifically, Plaintiff and the members of the Class have been**
28 **injured by Defendants’ intentional violation of California Labor Code §**
226(a) because they were denied both their legal right to receive, and their

1 **protected interest in receiving, accurate, itemized wage statements under**
2 **California Labor Code § 226(a).**

3 50. Defendant states that the allegation in Paragraph 50 of Plaintiff's
4 Second Amended Complaint states a legal conclusion to which no response is
5 required. Defendant states that the statutes and authority referenced speaks for
6 themselves, and denies any characterizations or interpretations that are inconsistent
7 therewith. Defendant is without sufficient information to admit or deny allegations
8 pertaining to the "Class," and therefore, denies the same. To the extent a further
9 response is required, Defendant denies the allegation in Paragraph 50 of Plaintiff's
10 Second Amended Complaint and specifically denies that Plaintiff has suffered any
11 injury or damage alleged in Paragraph 50.

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

18 51. Defendant states that allegations in Paragraph 51 of Plaintiff's Second
19 Amended Complaint state legal conclusions to which no response is required.
20 Defendant states that the statutes and authority referenced speaks for themselves,
21 and denies any characterizations or interpretations that are inconsistent therewith.
22 Defendant is without sufficient information to admit or deny allegations pertaining
23 to the "Class," and therefore, denies the same. To the extent a further response is
24 required, Defendant denies the allegation in Paragraph 51 of Plaintiff's Second
25 Amended Complaint and specifically denies that Plaintiff has suffered any injury
26 or damage as alleged in Paragraph 51.

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

1 52. Defendant states that the allegation in Paragraph 52 of Plaintiff’s
2 Second Amended Complaint states a legal conclusion to which no response is
3 required. Defendant states that the statutes and authority referenced speaks for
4 themselves, and denies any characterizations or interpretations that are inconsistent
5 therewith. Defendant is without sufficient information to admit or deny allegations
6 pertaining to the “Class,” and therefore, denies the same. To the extent a further
7 response is required, Defendant denies the allegation in Paragraph 52 of Plaintiff’s
8 Second Amended Complaint and specifically denies that Plaintiff is entitled to any
9 relief requested in Paragraph 52.

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

13 53. Defendant states that the allegation in Paragraph 53 of Plaintiff’s
14 Second Amended Complaint states a legal conclusion to which no response is
15 required. Defendant states that the statutes and authority referenced speaks for
16 themselves, and denies any characterizations or interpretations that are inconsistent
17 therewith. Defendant is without sufficient information to admit or deny allegations
18 pertaining to the “Class,” and therefore, denies the same. To the extent a further
19 response is required, Defendant denies the allegation in Paragraph 53 of Plaintiff’s
20 Second Amended Complaint and specifically denies that Plaintiff is entitled to any
21 relief requested in Paragraph 53.

22 **FIFTH CAUSE OF ACTION**
23 **(Against all Defendants for Violation of California Business & Professions**
24 **Code §§ 17200, et seq.)**

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

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1 54. Defendant repeats and realleges every Answer set forth above, as if
2 set forth at length herein in response to the allegations contained in Paragraph 54
3 of Plaintiff’s Second Amended Complaint.

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

6 55. Defendant states that the allegation in Paragraph 55 of Plaintiff’s
7 Second Amended Complaint states a legal conclusion to which no response is
8 required. To the extent a response is required, Defendant states that the statutes and
9 authority referenced speaks for themselves, and denies any characterizations or
10 interpretations that are inconsistent therewith.

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

15 56. Defendant states that allegations in Paragraph 56 of Plaintiff’s Second
16 Amended Complaint state legal conclusions to which no response is required.
17 Defendant states that the statutes and authority referenced speaks for themselves,
18 and denies any characterizations or interpretations that are inconsistent therewith.
19 Defendant is without sufficient information to admit or deny allegations pertaining
20 to the “Class,” and therefore, denies the same. To the extent a further response is
21 required, Defendant denies the allegations in Paragraph 56 of Plaintiff’s Second
22 Amended Complaint.

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

26 57. Defendant states that allegations in Paragraph 57 of Plaintiff’s Second
27 Amended Complaint state legal conclusions to which no response is required.
28 Defendant states that the statutes and authority referenced speaks for themselves,
and denies any characterizations or interpretations that are inconsistent therewith.

1 To the extent a further response is required, Defendant denies the allegations in
2 Paragraph 57 of Plaintiff's Second Amended Complaint.

3
4 **58. A violation of California Business & Professions Code §§ 17200, et**
5 **seq. may be predicated on the violation of any state or federal law. All of the**
6 **acts described herein as violations of, among other things, the California**
7 **Labor Code, are unlawful and in violation of public policy; and in addition**
8 **are immoral, unethical, oppressive, fraudulent and unscrupulous, and thereby**
9 **constitute unfair, unlawful and/or fraudulent business practices in violation of**
10 **California Business & Professions Code §§ 17200, et seq.**

11 58. Defendant states that allegations in Paragraph 58 of Plaintiff's Second
12 Amended Complaint state legal conclusions to which no response is required.
13 Defendant states that the statutes and authority referenced speaks for themselves,
14 and denies any characterizations or interpretations that are inconsistent therewith.
15 To the extent a further response is required, Defendant denies the allegations in
16 Paragraph 58 of Plaintiff's Second Amended Complaint.

17 **Failure to Pay Overtime Wages**

18 **59. Defendants' failure to pay overtime compensation and other benefits**
19 **in violation of California Labor Code §§ 510, 1194, and 1198 constitutes**
20 **unlawful and/or unfair activity prohibited by California Business &**
21 **Professions Code §§ 17200, et seq.**

22 59. Defendant states that allegations in Paragraph 59 of Plaintiff's Second
23 Amended Complaint state legal conclusions to which no response is required.
24 Defendant states that the statutes and authority referenced speaks for themselves,
25 and denies any characterizations or interpretations that are inconsistent therewith.
26 To the extent a further response is required, Defendant denies the allegations in
27 Paragraph 59 of Plaintiff's Second Amended Complaint.

28 **Failure to Provide Meal Periods**

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

1 60. Defendant states that allegations in Paragraph 60 of Plaintiff’s Second
2 Amended Complaint state legal conclusions to which no response is required.
3 Defendant states that the statutes and authority referenced speaks for themselves,
4 and denies any characterizations or interpretations that are inconsistent therewith.
5 To the extent a further response is required, Defendant denies the allegations in
6 Paragraph 60 of Plaintiff’s Second Amended Complaint.

7
8 **Failure to Authorize and Permit Rest Periods**

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

13 61. Defendant states that allegations in Paragraph 61 of Plaintiff’s Second
14 Amended Complaint state legal conclusions to which no response is required.
15 Defendant states that the statutes and authority referenced speaks for themselves,
16 and denies any characterizations or interpretations that are inconsistent therewith.
17 To the extent a further response is required, Defendant denies the allegations in
18 Paragraph 61 of Plaintiff’s Second Amended Complaint.

19 **62. By and through their unfair, unlawful and/or fraudulent business**
20 **practices described herein, the Defendants, have obtained valuable property,**
21 **money and services from Plaintiff, and all persons similarly situated, and have**
22 **deprived Plaintiff, and all persons similarly situated, of valuable rights and**
23 **benefits guaranteed by law, all to their detriment.**

24 62. Defendant states that allegations in Paragraph 62 of Plaintiff’s Second
25 Amended Complaint state legal conclusions to which no response is required.
26 Defendant states that the statutes and authority referenced speaks for themselves,
27 and denies any characterizations or interpretations that are inconsistent therewith.
28 Defendant is without sufficient information to admit or deny allegations pertaining
to “persons similarly situated,” and therefore, denies the same. To the extent a
further response is required, Defendant denies the allegations in Paragraph 62 of

1 Plaintiff's Second Amended Complaint and specifically denies that Plaintiff was
2 deprived of any "valuable rights and benefits guaranteed by law."

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

5 63. Defendant states that allegations in Paragraph 63 of Plaintiff's Second
6 Amended Complaint state legal conclusions to which no response is required.
7 Defendant is without sufficient information to admit or deny allegations pertaining
8 to the "Class," and therefore, denies the same. To the extent a further response is
9 required, Defendant denies the allegations in Paragraph 63 of Plaintiff's Second
10 Amended Complaint.

11
12 **64. Plaintiff, individually, and on behalf of members of the putative
Class, is entitled to, and do, seek such relief as may be necessary to disgorge
13 money and/or property which the Defendants have wrongfully acquired, or of
14 which Plaintiff and the Class have been deprived, by means of the above-
described unfair, unlawful and/or fraudulent business practices. Plaintiff and
15 the Class are not obligated to establish individual knowledge of the wrongful
practices of Defendants in order to recover restitution.**

16 64. Defendant states that allegations in Paragraph 64 of Plaintiff's Second
17 Amended Complaint state legal conclusions to which no response is required.
18 Defendant is without sufficient information to admit or deny allegations pertaining
19 to the "Class," and therefore, denies the same. To the extent a further response is
20 required, Defendant denies the allegations in Paragraph 64 of Plaintiff's Second
21 Amended Complaint and specifically denies that Plaintiff is entitled to relief
22 requested in Paragraph 64.

23
24 **65. Plaintiff, individually, and on behalf of members of the putative
class, is further entitled to and does seek a declaration that the above
25 described business practices are unfair, unlawful and/or fraudulent, and
26 injunctive relief restraining the Defendants, and each of them, from engaging
in any of the above-described unfair, unlawful and/or fraudulent business
27 practices in the future.**

28

1 65. Defendant states that allegations in Paragraph 65 of Plaintiff’s Second
2 Amended Complaint state legal conclusions to which no response is required.
3 Defendant is without sufficient information to admit or deny allegations pertaining
4 to the “Class,” and therefore, denies the same. To the extent a further response is
5 required, Defendant denies the allegations in Paragraph 65 of Plaintiff’s Second
6 Amended Complaint and specifically denies that Plaintiff is entitled to relief
7 requested in Paragraph 65.

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

17 66. Defendant states that allegations in Paragraph 66 of Plaintiff’s Second
18 Amended Complaint state legal conclusions to which no response is required.
19 Defendant is without sufficient information to admit or deny allegations pertaining
20 to the “Class,” and therefore, denies the same. To the extent a further response is
21 required, Defendant denies the allegations in Paragraph 66 of Plaintiff’s Second
22 Amended Complaint and specifically denies that Plaintiff suffered any injury or
23 will suffer any injury as alleged in Paragraph 66.

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

27 67. Defendant denies the allegations in Paragraph 67 of Plaintiff’s Second
28 Amended Complaint.

68. Pursuant to California Business & Professions Code §§ 17200, et
seq., Plaintiff and putative Class Members are entitled to restitution of the

1 **wages withheld and retained by Defendants during a period that commences**
2 **four years prior to the filing of this complaint; a permanent injunction**
3 **requiring Defendants to pay all outstanding wages due to Plaintiff and Class**
4 **Members; an award of attorneys' fees pursuant to California Code of Civil**
5 **Procedure § 1021.5 and other applicable laws; and an award of costs.**

6 68. Defendant states that allegations in Paragraph 68 of Plaintiff's Second
7 Amended Complaint state legal conclusions to which no response is required.
8 Defendant is without sufficient information to admit or deny allegations pertaining
9 to the "Class," and therefore, denies the same. To the extent a further response is
10 required, Defendant denies the allegations in Paragraph 68 of Plaintiff's Second
11 Amended Complaint and specifically denies that Plaintiff is entitled to relief
12 requested in Paragraph 68.

12 **SIXTH CAUSE OF ACTION**

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

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

17 69. Defendant repeats and realleges every Answer set forth above, as if
18 set forth at length herein in response to the allegations contained in Paragraph 69
19 of Plaintiff's Second Amended Complaint.

20 **70. At all times herein mentioned, Defendants were subject to the Labor**
21 **Code of the State of California and the applicable Industrial Welfare**
22 **Commission Orders.**

23 70. Defendant states that the allegations in Paragraph 70 of Plaintiff's
24 Second Amended Complaint state legal conclusions to which no response is
25 required. To the extent a response is required, Defendant denies the same.

26 **71. California Labor Code § 2699(a) specifically provides for a private**
27 **right of action to recover penalties for violations of the Labor Code:**
28 **"Notwithstanding any other provision of law, any provision of this code that**
provides for a civil penalty to be assessed and collected by the Labor and
Workforce Development Agency or any of its departments, divisions,

1 **commissions, boards, agencies, or employees, for a violation of this code, may,**
2 **as an alternative, be recovered through a civil action brought by an aggrieved**
3 **employee on behalf of himself or herself and other current or former**
4 **employees pursuant to the procedures specified in Section 2699.3.”**

5 71. Defendant states that the allegations in Paragraph 71 of Plaintiff’s
6 Second Amended Complaint state legal conclusions to which no response is
7 required. To the extent a response is required, Defendant states that the statutes
8 referenced speaks for themselves, and denies any characterizations or
9 interpretations that are inconsistent therewith.

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**
13 **Defendants of the specific provisions of the Labor Code that Defendants have**
14 **violated against Plaintiff and current and former aggrieved employees,**
15 **including the facts and theories to support the violations. Plaintiff also paid**
16 **the filing fee.**

17 72. Defendant admits only that it received a document titled “Carlos
18 Moreno v. Pretium Packaging L.L.C.; Notice of Labor Code Violations and PAGA
19 Penalties” dated November 26, 2019 by certified mail. Defendant lacks sufficient
20 knowledge, information and belief to form a basis for admitting or denying the
21 allegations contained in Paragraph 72 of Plaintiff’s Second Amended Complaint
22 relating to Plaintiff’s online filing to the Labor and Workforce Development
23 Agency and payment of the filing fee, and therefore, denies the same. Defendant
24 states that the remaining allegations in Paragraph 72 of Plaintiff’s Second
25 Amended Complaint state legal conclusions to which no response is required. To
26 the extent a response is required, Defendant denies the same and specifically
27 denies that Plaintiff exhausted his administrative remedies and that Defendant
28 committed any Labor Code provisions.

73. The Labor and Workforce Development Agency has not indicated
that it intends to investigate Defendants’ Labor Code violations discussed in

1 the notice. Accordingly, Plaintiff may commence a civil action to recover
2 penalties under Labor Code § 2699 pursuant to § 2699.3 for the violations of
3 the Labor Code described in this Complaint. These penalties include, but are
4 not limited to, penalties under California Labor Code §§ 210, 226.3, 558,
1174.5, 1197.1, and 2699.

5 73. Defendant lacks sufficient knowledge, information and belief to form
6 a basis for admitting or denying the allegations contained in Paragraph 73 of
7 Plaintiff's Second Amended Complaint relating to whether the Labor and
8 Workforce Development Agency has indicated that it intends to investigate the
9 alleged Labor Code violations, and therefore, denies the same. Defendant states
10 that the remaining allegations in Paragraph 73 of Plaintiff's Second Amended
11 Complaint state legal conclusions to which no response is required. To the extent a
12 response is required, Defendant states that the statutes referenced speaks for
13 themselves, and denies any characterizations or interpretations that are inconsistent
14 therewith. Further answering, Defendant denies any Labor Code violations.

15 **74. In addition, Plaintiff seeks penalties for Defendants' violation of**
16 **Labor Code § 1174(d). Pursuant to Labor Code § 1174.5, any person,**
17 **including any entity, employing labor who willfully fails to maintain accurate**
18 **and complete records required by Labor Code § 1174 is subject to a penalty**
19 **under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every**
20 **employer shall keep time records showing when the employee begins and ends**
21 **each work period. Meal periods, and total hours worked daily shall also be**
22 **recorded. Additionally, pursuant to the applicable IWC Order § 7(A)(5),**
23 **every employer shall keep total hours worked in the payroll period and**
24 **applicable rates of pay.**

25 74. Defendant states that the allegations in Paragraph 74 of Plaintiff's
26 Second Amended Complaint state legal conclusions to which no response is
27 required. To the extent a response is required, Defendant states that the statutes
28 referenced speaks for themselves, and denies any characterizations or
interpretations that are inconsistent therewith. Further answering, Defendant denies
that it violated Labor Code § 1174.5, or any other law or IWC Order.

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

21 75. Defendant states that the records referenced in Paragraph 75 of
22 Plaintiff’s Second Amended Complaint speak for themselves. Defendant denies
23 any characterizations or mischaracterizations of the written documents. Defendant
24 states that allegations in Paragraph 75 of Plaintiff’s Second Amended Complaint
25 state legal conclusions to which no response is required. Defendant is without
26 sufficient information to admit or deny allegations pertaining to the “Aggrieved
27 Employees,” and therefore, denies the same. To the extent a further response is
28 required, Defendant denies the allegations in Paragraph 75 of Plaintiff’s Second
Amended Complaint and specifically denies that Plaintiff is entitled to the relief
requested in Paragraph 75 and denies that it violated the Labor Code and any
applicable IWC Wage Orders.

76. Based on the conduct described in this Complaint, Plaintiff is
entitled to an award of civil penalties on behalf of himself, the State of
California, and similarly Aggrieved Employees of Defendants. The exact

1 amount of the applicable penalties, in all, is in an amount to be shown
2 according to proof at trial. These penalties are in addition to all other
remedies permitted by law.

3 76. Defendant states that the allegations in Paragraph 76 of Plaintiff's
4 Second Amended Complaint state legal conclusions to which no response is
5 required. Defendant is without sufficient information to admit or deny allegations
6 pertaining to the "Aggrieved Employees," and therefore, denies the same. To the
7 extent a further response is required, Defendant denies the allegations in Paragraph
8 76 of Plaintiff's Second Amended Complaint and specifically denies that Plaintiff
9 is entitled to the relief requested in Paragraph 76.

10
11 **77. In addition, Plaintiff seeks an award of reasonable attorney's fees
and costs pursuant to California Labor Code § 2699(g)(1), which states, "Any
12 employee who prevails in any action shall be entitled to an award of
reasonable attorney's fees and costs."**

13
14 77. Defendant states that the allegations in Paragraph 77 of Plaintiff's
15 Second Amended Complaint state legal conclusions to which no response is
16 required. To the extent a response is required, Defendant states that the statute
17 referenced speaks for itself, and denies any characterizations or interpretations that
18 are inconsistent therewith. Defendant specifically denies that Plaintiff is entitled to
19 the relief requested in Paragraph 77.

20 **PRAYER FOR RELIEF**

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

23 **Class Certification**

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

27 **As to the First Cause of Action**

1 4. That the Court declare, adjudge, and decree that Defendants violated
2 California Labor Code §§ 510 and 1198 and applicable IWC Wage Orders by
willfully failing to pay all overtime wages due;

3 5. For unpaid wages at overtime wage rates as may be appropriate;

4 6. For pre-judgment interest on any unpaid overtime compensation
commencing from the date such amounts were due;

5 7. For reasonable attorneys' fees and for costs of suit incurred herein
6 pursuant to California Labor Code § 1194(a); and,

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

8 As to the Second Cause of Action

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

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

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

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

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

15 As to the Third Cause of Action

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

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

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

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

20 18. For such other and further relief as the Court may deem equitable
21 and appropriate.

22 As to the Fourth Cause of Action

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

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

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

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

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

and

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

3 **As to the Fifth Cause of Action**

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

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

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

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

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

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

21 **As to the Sixth Cause of Action**

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

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

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

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

As to all Causes of Action

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

 Defendant denies that Plaintiff is entitled to any relief as a result of the
allegations contained in Plaintiff's Second Amended Complaint or the Second
Amended Complaint generally, and in particular, denies that Plaintiff is entitled to
the relief sought in the "Prayer for Relief" section found at the conclusion of

1 Plaintiff's Second Amended Complaint or its subparagraphs (1)-(35). Defendant
2 requests that judgment be awarded in its favor and that it be awarded its costs and
3 disbursements incurred in this action, including without limitation its attorneys'
4 fees, and such other further relief as this Court may deem just and proper.

5 **AFFIRMATIVE AND OTHER DEFENSES**

6 Without in any way limiting its denial of liability, Defendant asserts the
7 following affirmative and other defenses to Plaintiff's Second Amended
8 Complaint:

9 1. Plaintiff fails to state a claim upon which relief may be granted, in
10 whole or part, against Defendant, either on behalf of Plaintiff or those persons
11 whom Plaintiff purports to represent, or to whom Plaintiff purports to be similarly
12 situated.

13 2. Plaintiff and the putative class members fail to satisfy the class action
14 requirements of Rule 23. Thus, certification of a class and class treatment in this
15 matter are not appropriate.

16 3. Pleading in the alternative, Plaintiff's and/or putative class members'
17 claims are barred, in whole or in part, by the doctrines of estoppel, quasi-estoppel,
18 and/or equitable estoppel. For example, Plaintiff and/or putative class members
19 may have failed to disclose the claim(s) in this lawsuit in bankruptcy.

20 4. Pleading in the alternative, Defendant is entitled to an off-set for any
21 overpayments of wages it provided for work never actually performed, any
22 damages incurred by Plaintiff and/or putative class members' respective acts or
23 omissions, or inadvertent overpayment for hours worked.

24 5. Pleading in the alternative, Plaintiff's and/or putative class members'
25 claims are barred, in whole or in part, to the extent Plaintiff and the putative class
26 members' seek relief for any purported claims that were not brought before the
27 expiration of the applicable statute of limitations, including but not limited to,
28 California Code of Civil Procedure Sections 338, 339, and 340, and California

1 Business and Professions Code Section 17208.

2 6. Pleading in the alternative, Plaintiff's and/or the putative class action
3 members' claims are barred, in whole or in part, to the extent Plaintiff and/or the
4 putative class action members failed to comply with all the directions of Defendant
5 concerning the services for which Plaintiff and/or the putative class action
6 members were engaged under California Labor Code Section 2856.

7 7. Pleading in the alternative, Plaintiff's and/or the putative class action
8 members' requests for injunctive relief are barred, in whole or in part, because
9 Plaintiff and/or the putative class action members has an adequate and complete
10 remedy at law and/or cannot make the requisite showing to obtain injunctive relief
11 in a labor dispute under California Labor Code Section 1138.1, *et seq.*

12 8. Pleading in the alternative, Defendant compensated Plaintiff and/or
13 putative class action members for all hours worked in accordance with all
14 obligations under Federal and state laws.

15 9. Pleading in the alternative, Plaintiff's and/or putative class action
16 members' claim for unpaid overtime compensation fail to the extent they did not
17 work in excess of twelve (12) hours per day during part of the time period relevant
18 to this lawsuit.

19 10. Pleading in the alternative, Plaintiff's and/or putative class action
20 members' claims fail to the extent the time periods for which they are claiming
21 entitlement to overtime pay fall within the *de minimus* exception.

22 11. Pleading in the alternative, the claims for relief asserted herein are
23 barred, in whole or in part, to the extent that any putative class action member or
24 other putative beneficiary of this action has given a release to Defendant in
25 exchange for adequate consideration.

26 12. Pleading in the alternative, the claims for relief asserted herein are
27 barred, in whole or in part, to the extent that any putative class action member has
28 agreed to submit any such claims exclusively to final and binding arbitration

1 and/or has waived the right to commence or participate in a class action.

2 13. Pleading in the alternative, some or all of Plaintiff's and/or the
3 putative class action members' claims are barred by the doctrine of laches and/or
4 waiver. For example, Plaintiff and/or putative class action members continued to
5 work overtime allegedly without requisite overtime compensation for some time,
6 but never demanded payment of overtime compensation, and did not cease
7 working overtime hours and accruing alleged damages.

8 14. Pleading in the alternative, Plaintiff's and/or some or all of the
9 members of the putative class action's claims are barred, in whole or in part, by the
10 doctrine of unclean hands. For example, Plaintiff and/or putative class action
11 members continued to work overtime allegedly without requisite overtime
12 compensation for some time, but never demanded payment of overtime
13 compensation, and did not cease working overtime hours and accruing alleged
14 damages.

15 15. Pleading in the alternative, Plaintiff's and/or some or all of the
16 members of the putative class action's claims are barred, in whole or in part,
17 because they have failed to mitigate their damages. For example, Plaintiff and/or
18 putative class members continued to work overtime allegedly without requisite
19 overtime compensation for some time, but never demanded payment of overtime
20 compensation, and did not cease working overtime hours and accruing alleged
21 damages.

22 16. Pleading in the alternative, certification of a class, as applied to the
23 facts and circumstances of this case, would constitute a denial of Defendant's due
24 process rights, both substantive and procedural, in violation of the Fourteenth
25 Amendment to the United States Constitution and of the laws and constitution of
26 the State of California.

27 17. Pleading in the alternative, Plaintiff's sixth claim seeking civil
28 penalties under the Private Attorneys General Act of 2004 is barred due to

1 Plaintiff's failure to exhaust his administrative remedies.

2 18. Pleading in the alternative, Plaintiff's sixth claim seeking civil
3 penalties under the Private Attorneys General Act of 2004 is barred due to
4 Plaintiff's failure provide adequate notice to Defendant and the Labor &
5 Workforce Development Agency.

6 19. Pleading in the alternative, the fines Plaintiff seeks pursuant to the
7 sixth claim under the Private Attorneys General Act of 2004 are excessive.

8 20. In the event that a purported class action is certified for trial,
9 Defendant reserves the right to assert any and all other and further defenses against
10 any individual member of any class that may be certified.

11 21. Defendant hereby gives notice that it intends to rely upon such other
12 defenses as may become available or ascertained during the course of discovery
13 proceedings in this case, and hereby reserves the right to amend this Answer to
14 assert any such defenses.

15 WHEREFORE, having fully answered Plaintiff's Second Amended
16 Complaint, Defendant Pretium Packaging, L.L.C., prays for judgment against
17 Plaintiff and/or putative class members and in Defendant's favor, and for such
18 other and further relief as the Court may deem just and proper.

19 Dated: April 27, 2020

Respectfully submitted,

20 **ARMSTRONG TEASDALE LLP**
21 Jeremy M. Brenner
Jason R. Stavely

22 **TROYGOULD PC**
23 Russell I. Glazer
Benjamin W. Clements

24 By: 
25 Jason R. Stavely
26 **Attorneys for Defendant**
PRETIUM PACKAGING, L.L.C.

27
28