

1 Douglas Han (SBN 232858)
2 Shunt Tatavos-Gharajeh (SBN 272164)
3 Daniel J. Park (SBN 274973)
4 Joy D. Llaguno (SBN 311867)
5 **JUSTICE LAW CORPORATION**
6 411 N. Central Avenue, Suite 500
7 Glendale, California 91203
8 Tel: (818) 230-7502
9 Fax: (818) 230-7259

10 *Attorneys for Plaintiff*

ENDORSED
FILED
ALAMEDA COUNTY

MAY - 3 2017

CLERK OF THE SUPERIOR COURT
By MICHELLE BANKS Deputy

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF ALAMEDA**

13 KEITH LACY; individually, and on behalf of
14 other members of the general public similarly
15 situated;

16 Plaintiff,

17 vs.

18 AZUMA FOODS INTERNATIONAL, INC.,
19 USA, a California Corporation; and DOES 1
20 through 100, inclusive,

21 Defendants.

Case No.: RG16827402

22 **FIRST AMENDED CLASS ACTION**
23 **COMPLAINT FOR DAMAGES**

- 24 (1) Violation of California Labor Code
25 §§ 510 and 1198 (Unpaid
26 Overtime);
- 27 (2) Violation of California Labor Code
28 §§ 226.7 and 512(a) (Unpaid Meal
Period Premiums);
- (3) Violation of California Labor Code
§ 226.7 (Unpaid Rest Period
Premiums);
- (4) Violation of California Labor Code
§§ 1194, 1197, and 1197.1 (Unpaid
Minimum Wages);
- (5) Violation of California Labor Code
§§ 201 and 202 (Final Wages Not
Timely Paid);
- (6) Violation of California Labor Code
§ 226(a) (Non-Compliant Wage
Statements);
- (7) Violation of California Labor Code
§ 2698, *et seq.* (California Labor
Code Private Attorneys General Act
of 2004); and
- (8) Violation of California Business &
Professions Code §§ 17200, *et seq.*

DEMAND FOR JURY TRIAL

COMES NOW, Plaintiff KEITH LACY (“Plaintiff”), individually, and on behalf of other members of the general public similarly situated, and on behalf of aggrieved employees pursuant to the Private Attorneys General Act (“PAGA”), and allege as follows:

JURISDICTION AND VENUE

1. This class action is brought pursuant to the California Code of Civil Procedure section 382. The monetary damages and restitution sought by Plaintiff exceeds the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial. The monetary damages and restitution sought by Plaintiff exceeds the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial. The “amount in controversy” for the named Plaintiff, including but not limited to claims for compensatory damages, restitution, penalties, wages, premium pay, and pro rata share of attorneys’ fees, is less than seventy-five thousand dollars (\$75,000).

2. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, Section 10, which grants the superior court “original jurisdiction in all other causes” except those given by statute to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

3. This Court has jurisdiction over Defendant because, upon information and belief, Defendant is a citizen of California, has sufficient minimum contacts in California, or otherwise intentionally avails itself of the California market so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

4. Venue is proper in this Court because, upon information and belief, Defendant maintains offices, has agents, and/or transacts business in the State of California, County of Alameda. The majority of the acts and omissions alleged herein relating to Plaintiff took place in the State of California, County of Alameda. Defendants employed Plaintiff within the State of California, County of Alameda.

///

///

5. The total “amount in controversy” as a result of this lawsuit, inclusive of claims for compensatory damages, restitution, wages, premium pay, penalties, and attorneys’ fees is less than five-million dollars (\$5,000,000).

PARTIES

6. Plaintiff KEITH LACY is an individual residing in the State of California,
County of Alameda.

7. Defendant AZUMA FOODS INTERNATIONAL, INC., USA, at all times herein mentioned, was and is, upon information and belief, a California corporation, and at all times herein mentioned, an employer whose employees are engaged throughout the State of California, including the County of Alameda.

8. At all relevant times, Defendant AZUMA FOODS INTERNATIONAL, INC., USA was the “employer” of Plaintiff within the meaning of all applicable California state laws and statutes.

9. At all times herein relevant, Defendants AZUMA FOODS INTERNATIONAL, INC., USA, and DOES 1 through 100, and each of them, were the agents, partners, joint venturers, joint employers, representatives, servants, employees, successors-in-interest, co-conspirators and assigns, each of the other, and at all times relevant hereto were acting within the course and scope of their authority as such agents, partners, joint venturers, joint employers, representatives, servants, employees, successors, co-conspirators and assigns, and all acts or omissions alleged herein were duly committed with the ratification, knowledge, permission, encouragement, authorization and consent of each defendant designated herein.

/ / /

/ / /

/ / /

1 10. The true names and capacities, whether corporate, associate, individual or
2 otherwise, of defendants DOES 1 through 100, inclusive, are unknown to Plaintiff who sues
3 said defendants by such fictitious names. Plaintiff is informed and believes, and based on that
4 information and belief alleges, that each of the defendants designated as a DOE is legally
5 responsible for the events and happenings referred to in this Complaint, and unlawfully caused
6 the injuries and damages to Plaintiff and the other class members as alleged in this Complaint.
7 Plaintiff will seek leave of court to amend this Complaint to show the true names and
8 capacities when the same have been ascertained.

9 11. Defendant AZUMA FOODS INTERNATIONAL, INC., USA, and DOES 1
10 through 100 will hereinafter collectively be referred to as “Defendants.”

11 12. Plaintiff further alleges that Defendants, directly or indirectly controlled or
12 affected the working conditions, wages, working hours, and conditions of employment of
13 Plaintiff and the other class members so as to make each of said defendants employers and
14 employers liable under the statutory provisions set forth herein.

15 **CLASS ACTION ALLEGATIONS**

16 13. Plaintiff brings this action on his own behalf and on behalf of all other members
17 of the general public similarly situated, and, thus, seeks class certification under Code of Civil
18 Procedure section 382.

14.19 The proposed class is defined as follows:

20 All current and former California-based hourly-paid or non-exempt individuals
21 employed by Defendants within the State of California at any time during the
22 period from four years preceding the filing of this Complaint to final judgment.

23 15. Plaintiff reserves the right to establish subclasses as appropriate.

24 16. The class is ascertainable and there is a well-defined community of interest in
25 the litigation:

26 a. Numerosity: The class members are so numerous that joinder of all class
27 members is impracticable. The membership of the entire class is
28 unknown to Plaintiff at this time; however, the class is estimated to be

greater than fifty (50) individuals and the identity of such membership is readily ascertainable by inspection of Defendants' employment records.

b. Typicality: Plaintiff's claims are typical of all other class members' as demonstrated herein. Plaintiff will fairly and adequately protect the interests of the other class members with whom he has a well-defined community of interest.

c. Adequacy: Plaintiff will fairly and adequately protect the interests of each class member, with whom he has a well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiff has no interest that is antagonistic to the other class members. Plaintiff's attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement. Plaintiff has incurred, and during the pendency 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 this litigation because individual joinder of all class members is impractical.

e. Public Policy Considerations: Certification of this lawsuit as a class action will advance public policy objectives. Employers of this great state violate employment and labor laws every day. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. However, class actions provide the class members who are not named in the complaint anonymity that allows for the vindication of their rights.

///

///

1 17. There are common questions of law and fact as to the class members that
2 predominate over questions affecting only individual members. The following common
3 questions of law or fact, among others, exist as to the members of the class:

4 a. Whether Defendants' failure to pay wages, without abatement or
5 reduction, in accordance with the California Labor Code, was willful;

6 b. Whether Defendants' had a corporate policy and practice of failing to
7 pay their hourly-paid or non-exempt employees within the State of
8 California for all hours worked, missed meal periods and rest breaks in
9 violation of California law;

10 c. Whether Defendants required Plaintiff and the other class members to
11 work over eight (8) hours per day and/or over forty (40) hours per week
12 and failed to pay the legally required overtime compensation to Plaintiff
13 and the other class members;

14 d. Whether Defendants deprived Plaintiff and the other class members of
15 meal and/or rest periods or required Plaintiff and the other class
16 members to work during meal and/or rest periods without compensation;

17 e. Whether Defendants failed to pay minimum wages to Plaintiff and the
18 other class members for all hours worked;

19 f. Whether Defendants failed to pay all wages due to Plaintiff and the other
20 class members within the required time upon their discharge or
21 resignation;

22 g. Whether Defendants failed to timely pay all wages due to Plaintiff and
23 the other class members during their employment;

24 h. Whether Defendants complied with wage reporting as required by the
25 California Labor Code; including, *inter alia*, section 226;

26 i. Whether Defendants' conduct was willful or reckless;

27 j. Whether Defendants engaged in unfair business practices in violation of
28 California Business & Professions Code section 17200, et seq.;

- 1 k. The appropriate amount of damages, restitution, and/or monetary
2 penalties resulting from Defendants' violation of California law; and
3 l. Whether Plaintiff and the other class members are entitled to
4 compensatory damages pursuant to the California Labor Code.

5 **GENERAL ALLEGATIONS**

6 18. At all relevant times set forth herein, Defendants employed Plaintiff and other
7 persons as hourly-paid or non-exempt employees within the State of California, including the
8 County of Alameda.

9 19. Defendants, jointly and severally, employed Plaintiff as an hourly-paid, non-
10 exempt employee from approximately April 2016 to approximately May 2016, in the State of
11 California, County of Alameda.

12 20. Defendants hired Plaintiff and the other class members and classified them as
13 hourly-paid, non-exempt employees, and failed to compensate them for all hours worked,
14 missed meal periods and/or rest breaks.

15 21. Defendants had the authority to hire and terminate Plaintiff and the other class
16 members; to set work rules and conditions governing Plaintiff's and the other class members'
17 employment; and to supervise their daily employment activities.

18 22. Defendants exercised sufficient authority over the terms and conditions of
19 Plaintiff's and the other class members' employment for them to be joint employers of Plaintiff
20 and the other class members.

21 23. Defendants directly hired and paid wages and benefits to Plaintiff and the other
22 class members.

23 24. Defendants continue to employ hourly-paid or non-exempt employees within the
24 State of California.

25 25. Plaintiff and the other class members worked over eight (8) hours in a day,
26 and/or forty (40) hours in a week during their employment with Defendants.

27 ///

28 ///

1 26. Plaintiff is informed and believes, and based thereon alleges, that Defendants
2 engaged in a uniform policy and systematic scheme of wage abuse against their hourly-paid or
3 non-exempt employees within the State of California. This scheme involved, *inter alia*, failing
4 to pay them for all hours worked, missed meal periods and rest breaks in violation of
5 California law.

6 27. Plaintiff is informed and believes, and based thereon alleges, that Defendants
7 knew or should have known that Plaintiff and the other class members were entitled to receive
8 certain wages for overtime compensation and that they were not receiving wages for overtime
9 compensation.

10 28. Plaintiff is informed and believes, and based thereon alleges, that Defendants
11 failed to provide Plaintiff and the other class members the required rest and meal periods
12 during the relevant time period as required under the Industrial Welfare Commission Wage
13 Orders and thus they are entitled to any and all applicable penalties.

14 29. Plaintiff is informed and believes, and based thereon alleges, that Defendants
15 knew or should have known that Plaintiff and the other class members were entitled to receive
16 all meal periods or payment of one additional hour of pay at Plaintiff's and the other class
17 member's regular rate of pay when a meal period was missed, and they did not receive all meal
18 periods or payment of one additional hour of pay at Plaintiff's and the other class member's
19 regular rate of pay when a meal period was missed.

20 30. Plaintiff is informed and believes, and based thereon alleges, that Defendants
21 knew or should have known that Plaintiff and the other class members were entitled to receive
22 all rest periods or payment of one additional hour of pay at Plaintiff's and the other class
23 member's regular rate of pay when a rest period was missed, and they did not receive all rest
24 periods or payment of one additional hour of pay at Plaintiff's and the other class members'
25 regular rate of pay when a rest period was missed.

26 ///

27 ///

28 ///

1 31. Plaintiff is informed and believes, and based thereon alleges, that Defendants
2 knew or should have known that Plaintiff and the other class members were entitled to receive
3 at least minimum wages for compensation and that they were not receiving at least minimum
4 wages for all hours worked.

5 32. Plaintiff is informed and believes, and based thereon alleges, that Defendants
6 knew or should have known that Plaintiff and the other class members were entitled to receive
7 all wages owed to them upon discharge or resignation, including overtime and minimum wages
8 and meal and rest period premiums, and they did not, in fact, receive all such wages owed to
9 them at the time of their discharge or resignation.

10 33. Plaintiff is informed and believes, and based thereon alleges, that Defendants
11 knew or should have known that Plaintiff and the other class members were entitled to receive
12 complete and accurate wage statements in accordance with California law, but, in fact, they did
13 not receive complete and accurate wage statements from Defendants. The deficiencies
14 included, *inter alia*, the failure to include the total number of hours worked by Plaintiff and the
15 other class members.

16 34. Plaintiff is informed and believes, and based thereon alleges, that Defendants
17 knew or should have known that Plaintiff and the other class members were entitled to
18 reimbursement for necessary business-related expenses.

19 35. Plaintiff is informed and believes, and based thereon alleges, that Defendants
20 knew or should have known that they had a duty to compensate Plaintiff and the other class
21 members pursuant to California law, and that Defendants had the financial ability to pay such
22 compensation, but willfully, knowingly, and intentionally failed to do so, and falsely
23 represented to Plaintiff and the other class members that they were properly denied wages, all
24 in order to increase Defendants' profits.

25 36. At all material times set forth herein, Defendants failed to pay overtime wages
26 to Plaintiff and the other class members for all hours worked. Plaintiff and the other class
27 members were required to work more than eight (8) hours per day and/or forty (40) hours per
28 week without overtime compensation.

37. At all material times set forth herein, Defendants failed to provide the requisite uninterrupted meal and rest periods to Plaintiff and the other class members.

38. At all material times set forth herein, Defendants failed to pay Plaintiff and the other class members at least minimum wages for all hours worked.

39. At all material times set forth herein, Defendants failed to pay Plaintiff and the other class members all wages owed to them upon discharge or resignation.

40. At all material times set forth herein, Defendants failed to provide complete or accurate wage statements to Plaintiff and the other class members.

41. At all material times set forth herein, Defendants failed to properly compensate Plaintiff and the other class members pursuant to California law in order to increase Defendants' profits.

42. California Labor Code section 218 states that nothing in Article 1 of the Labor Code shall limit the right of any wage claimant to “sue directly . . . for any wages or penalty due to him [or her] under this article.”

FIRST CAUSE OF ACTION

(Violation of California Labor Code §§ 510 and 1198)

(Against All DEFENDANTS and DOES 1 through 100)

43. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 42, and each and every part thereof with the same force and effect as though fully set forth herein.

44. California Labor Code section 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order provide that it is unlawful to employ persons without compensating them at a rate of pay either time-and-one-half or two-times that person’s regular rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

/ / /

/ / /

///

1 45. Specifically, the applicable IWC Wage Order provides that Defendants are and
2 were required to pay Plaintiff and the other class members employed by Defendants, and
3 working more than eight (8) hours in a day or more than forty (40) hours in a workweek, at the
4 rate of time-and-one-half for all hours worked in excess of eight (8) hours in a day or more
5 than forty (40) hours in a workweek.

6 46. The applicable IWC Wage Order further provides that Defendants are and were
7 required to pay Plaintiff and the other class members overtime compensation at a rate of two
8 times their regular rate of pay for all hours worked in excess of twelve (12) hours in a day.

9 47. California Labor Code section 510 codifies the right to overtime compensation
10 at one-and-one-half times the regular hourly rate for hours worked in excess of eight (8) hours
11 in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh day
12 of work, and no overtime compensation at twice the regular hourly rate for hours worked in
13 excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day
14 of work.

15 48. During the relevant time period, Plaintiff and the other class members worked in
16 excess of eight (8) hours in a day, and/or in excess of forty (40) hours in a week.

17 49. During the relevant time period, Defendants intentionally and willfully failed to
18 pay overtime wages owed to Plaintiff and the other class members.

19 50. Defendants' failure to pay Plaintiff and the other class members the unpaid
20 balance of overtime compensation, as required by California laws, violates the provisions of
21 California Labor Code sections 510 and 1198, and is therefore unlawful.

22 51. Pursuant to California Labor Code section 1194, Plaintiff and the other class
23 members are entitled to recover unpaid overtime compensation, as well as interest, costs, and
24 attorneys' fees.

25 ///

26 ///

27 ///

28

1 **SECOND CAUSE OF ACTION**

2 **(Violation of California Labor Code §§ 226.7 and 512(a))**

3 **(Against All DEFENDANTS and DOES 1 through 100)**

4 52. Plaintiff incorporates by reference the allegations contained in paragraphs
5 1 through 51, and each and every part thereof with the same force and effect as though fully set
6 forth herein.

7 53. At all relevant times, the IWC Order and California Labor Code sections 226.7
8 and 512(a) were applicable to Plaintiff's and the other class members' employment by
9 Defendants.

10 54. At all relevant times, California Labor Code section 226.7 provides that no
11 employer shall require an employee to work during any meal or rest period mandated by an
12 applicable order of the California IWC.

13 55. At all relevant times, the applicable IWC Wage Order and California Labor
14 Code section 512(a) provide that an employer may not require, cause or permit an employee to
15 work for a work period of more than five (5) hours per day without providing the employee
16 with a meal period of not less than thirty (30) minutes, except that if the total work period per
17 day of the employee is no more than six (6) hours, the meal period may be waived by mutual
18 consent of both the employer and employee.

19 56. At all relevant times, the applicable IWC Wage Order and California Labor
20 Code section 512(a) further provide that an employer may not require, cause or permit an
21 employee to work for a work period of more than ten (10) hours per day without providing the
22 employee with a second uninterrupted meal period of not less than thirty (30) minutes, except
23 that if the total hours worked is no more than twelve (12) hours, the second meal period may
24 be waived by mutual consent of the employer and the employee only if the first meal period
25 was not waived.

26 ///

27 ///

28 ///

1 57. During the relevant time period, Plaintiff and the other class members who
2 were scheduled to work for a period of time no longer than six (6) hours, and who did not
3 waive their legally-mandated meal periods by mutual consent, were required to work for
4 periods longer than five (5) hours without an uninterrupted meal period of not less than thirty
5 (30) minutes and/or rest period.

6 58. During the relevant time period, Plaintiff and the other class members who were
7 scheduled to work for a period of time in excess of six (6) hours were required to work for
8 periods longer than five (5) hours without an uninterrupted meal period of not less than thirty
9 (30) minutes and/or rest period.

10 59. During the relevant time period, Defendants intentionally and willfully required
11 Plaintiff and the other class members to work during meal periods and failed to compensate
12 Plaintiff and the other class members the full meal period premium for work performed during
13 meal periods.

14 60. During the relevant time period, Defendants failed to pay Plaintiff and the other
15 class members the full meal period premium due pursuant to California Labor Code section
16 226.7.

17 61. Defendants' conduct violates applicable IWC Wage Order and California Labor
18 Code sections 226.7 and 512(a).

19 62. Pursuant to applicable IWC Wage Order and California Labor Code section
20 226.7(b), Plaintiff and the other class members are entitled to recover from Defendants one
21 additional hour of pay at the employee's regular rate of compensation for each work day that
22 the meal or rest period is not provided.

23 **THIRD CAUSE OF ACTION**

24 **(Violation of California Labor Code § 226.7)**

25 **(Against All DEFENDANTS and DOES 1 through 100)**

26 63. Plaintiff incorporates by reference the allegations contained in paragraphs 1
27 through 62, and each and every part thereof with the same force and effect as though fully set
28 forth herein.

1 64. At all times herein set forth, the applicable IWC Wage Order and California
2 Labor Code section 226.7 were applicable to Plaintiff's and the other class members'
3 employment by Defendants.

4 65. At all relevant times, California Labor Code section 226.7 provides that no
5 employer shall require an employee to work during any rest period mandated by an applicable
6 order of the California IWC.

7 66. At all relevant times, the applicable IWC Wage Order provides that "[e]very
8 employer shall authorize and permit all employees to take rest periods, which insofar as
9 practicable shall be in the middle of each work period" and that the "rest period time shall be
10 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
11 hours or major fraction thereof" unless the total daily work time is less than three and one-half
12 (3 ½) hours.

13 67. During the relevant time period, Defendants required Plaintiff and other class
14 members to work four (4) or more hours without authorizing or permitting a ten (10) minute
15 rest period per each four (4) hour period worked or greater fraction thereof.

16 68. During the relevant time period, Defendants willfully required Plaintiff and the
17 other class members to work during rest periods and failed to pay Plaintiff and the other class
18 members the full rest period premium for work performed during rest periods.

19 69. During the relevant time period, Defendants failed to pay Plaintiff and the other
20 class members the full rest period premium due pursuant to California Labor Code section
21 226.7

22 70. Defendants' conduct violates applicable IWC Wage Orders and California
23 Labor Code section 226.7.

24 71. Pursuant to the applicable IWC Wage Orders and California Labor Code section
25 226.7(b), Plaintiff and the other class members are entitled to recover from Defendants one
26 additional hour of pay at the employees' regular hourly rate of compensation for each work
27 day that the rest period was not provided.

28 ///

1 **FOURTH CAUSE OF ACTION**

2 **(Violation of California Labor Code §§ 1194, 1197, and 1197.1)**

3 **(Against All DEFENDANTS and DOES 1 through 100)**

4 72. Plaintiff incorporates by reference the allegations contained in paragraphs 1
5 through 71, and each and every part thereof with the same force and effect as though fully set
6 forth herein.

7 73. At all relevant times, California Labor Code sections 1194, 1197, and 1197.1
8 provide that the minimum wage to be paid to employees, and the payment of a lesser wage
9 than the minimum so fixed is unlawful.

10 74. During the relevant time period, Defendants failed to pay minimum wage to
11 Plaintiff and the other class members as required, pursuant to California Labor Code sections
12 11194, 1197, and 1197.1.

13 75. Defendants' failure to pay Plaintiff and the other class members the minimum
14 wage as required violates California Labor Code sections 1194, 1197, and 1197.1. Pursuant to
15 those sections Plaintiff and the other class members are entitled to recover the unpaid balance
16 of their minimum wage compensation as well as interest, costs, and attorney's fees, and
17 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

18 76. Pursuant to California Labor Code section 1197.1, Plaintiff and the other class
19 members are entitled to recover a penalty of \$100.00 for the initial failure to timely pay each
20 employee minimum wages, and \$250.00 for each subsequent failure to pay each employee
21 minimum wages.

22 77. Pursuant to California Labor Code section 1194.2, Plaintiff and the other class
23 members are entitled to recover liquidated damages in an amount equal to the wages
24 unlawfully unpaid and interest thereon.

25 ///

26 ///

27 ///

1 **FIFTH CAUSE OF ACTION**

2 **(Violation of California Labor Code §§ 201 and 202)**

3 **(Against All DEFENDANTS and DOES 1 through 100)**

4 78. Plaintiff incorporates by reference the allegations contained in paragraphs 1
5 through 77, and each and every part thereof with the same for and effect as though fully set
6 forth herein.

7 79. At all relevant times herein set forth, California Labor Code sections 201 and
8 202 provide that if an employer discharges an employee, the wages earned and unpaid at the
9 time of discharge are due and payable immediately, and if an employee quits his or her
10 employment, his or her wages shall become due and payable not later than seventy-two (72)
11 hours thereafter, unless the employee has given seventy-two (72) hours notice of his or her
12 intention to quit, in which case the employee is entitled to his or her wages at the time of
13 quitting.

14 80. During the relevant time period, Defendants intentionally and willfully failed to
15 pay the other class members who are no longer employed by Defendants their wages, earned
16 and unpaid, within seventy-two (72) hours of their leaving Defendants' employ.

17 81. Defendants' failure to pay the other class members who are no longer employed
18 by Defendants' their wages, earned and unpaid, within seventy-two (72) hours of their leaving
19 Defendants' employ, is in violation of California Labor Code sections 201 and 202.

20 82. California Labor Code section 203 provides that if an employer willfully fails to
21 pay wages owed, in accordance with sections 201 and 202, then the wages of the employee
22 shall continue as a penalty from the due date thereof at the same rate until paid or until an
23 action is commenced; but the wages shall not continue for more than thirty (30) days.

24 83. The other class members are entitled to recover from Defendants the statutory
25 penalty wages for each day they were not paid, up to a thirty (30) day maximum pursuant to
26 California Labor Code section 203.

27 ///

28 ///

1 **SIXTH CAUSE OF ACTION**

2 **(Violation of California Labor Code § 226(a))**

3 **(Against all DEFENDANTS and DOES 1 through 100)**

4 84. Plaintiff incorporates by reference the allegations contained in paragraphs 1
5 through 83, and each and every part thereof with the same force and effect as though fully set
6 forth herein.

7 85. At all material times set forth herein, California Labor Code section 226(a)
8 provides that every employer shall furnish each of his or her employees an accurate itemized
9 statement in writing showing (1) gross wages earned, (2) total hours worked by the employee,
10 (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid
11 on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of
12 the employee may be aggregated and shown as one item, (5) net wages earned, (6) the
13 inclusive dates of the period for which the employee is paid, (7) the name of the employee and
14 his or her social security number, (8) the name and address of the legal entity that is the
15 employer, and (9) all applicable hourly rates in effect during the pay period and the
16 corresponding number of hours worked at each hourly rate by the employee. The deductions
17 made from payments of wages shall be recorded in ink or other indelible form, properly dated,
18 showing the month, day, and year, and a copy of the statement or a record of the deductions
19 shall be kept on file by the employer for at least three years at the place of employment or at a
20 central location within the State of California.

21 86. Defendants have intentionally and willfully failed to provide Plaintiff and the
22 other class members with complete and accurate wage statements. The deficiencies include,
23 but is not limited to: the failure to include the total number of hours worked by Plaintiff and
24 the other class members.

25 87. As a result of Defendants' violation of California Labor Code section 226(a),
26 Plaintiff and the other class members have suffered injury and damage to their statutorily-
27 protected rights.

28 ///

1 88. More specifically, Plaintiff and the other class members have been injured by
2 Defendants' intentional and willful violation of California Labor Code section 226(a) because
3 they were denied both their legal right to receive, and their protected interest in receiving,
4 accurate and itemized wage statements pursuant to California Labor Code section 226(a).

5 89. Plaintiff and the other class members are entitled to recover from Defendants the
6 greater of their actual damages caused by Defendants' failure to comply with California Labor
7 Code section 226(a), or an aggregate penalty not exceeding four thousand dollars per
8 employee.

9 90. Plaintiff and the other class members are also entitled to injunctive relief to
10 ensure compliance with this section, pursuant to California Labor Code section 226(g).

11 **SEVENTH CAUSE OF ACTION**

12 **(Violation of California Labor Code § 2698, *et seq.*)**

13 **(Against DEFENDANTS, and DOES 1 through 100 by PLAINTIFF LACY)**

14 91. Plaintiff Lacy incorporates by reference the allegations contained in paragraphs
15 1 through 90, and each and every part thereof with the same force and effect as though fully set
16 forth herein.

17 92. PAGA expressly establishes that any provision of the California Labor Code
18 which provides for a civil penalty to be assessed and collected by the LWDA, or any of its
19 departments, divisions, commissions, boards, agencies or employees for a violation of the
20 California Labor Code, may be recovered through a civil action brought by an aggrieved
21 employee on behalf of himself or herself, and other current or former employees.

22 93. On August 11, 2016, Plaintiff Lacy provided written notice to the LWDA and
23 Defendants of the specific provisions of the Labor Code he contends were violated, and the
24 theories supporting his contentions. To date, he has not received a response.

25 94. Plaintiff Lacy and other employees are "aggrieved employees" as defined by
26 California Labor Code section 2699(c) in that they are all current or former employees of
27 Defendants, and one or more of the alleged violations was committed against them.

28 ///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

15
16
17
18
19
20
21
22
23
24
25
26
27
28

16
17
18
19
20
21
22
23
24
25
26
27
28

20
21
22
23
24
25
26
27
28

21
22
23
24
25
26
27
28

24
25
26
27
28

25
26
27
28

1 **Failure to Provide Complete and Accurate Wage Statements**

2 101. Defendant's failure to provide complete and accurate wage statements to
3 Plaintiff Lacy and the other aggrieved employees in accordance with Labor Code section
4 226(a) constitutes unlawful and/or unfair activity prohibited by California Labor Code section
5 226(a).

6 **Failure to Keep Complete and Accurate Payroll Records**

7 102. Defendant's failure to keep complete and accurate payroll records relating
8 to Plaintiff Lacy and the other aggrieved employees in accordance with California Labor Code
9 section 1174(d) constitutes unlawful or unfair activity prohibited by California Labor Code
10 section 1174(d).

11 103. Pursuant to California Labor Code section 2699, Plaintiff Lacy, individually,
12 and on behalf of all aggrieved employees, request and are entitled to recover from Defendants
13 and each of them, unpaid wages, and/or untimely wages according to proof, interest, attorneys'
14 fees and costs pursuant to California Labor Code section 218.5, as well as all statutory
15 penalties against Defendants, and each of them, including but not limited to:

- 16 a. Penalties under California Labor Code section 2699 in the amount of a
17 hundred dollars (\$100) for each aggrieved employee per pay period for
18 the initial violation, and two hundred dollars (\$200) for each aggrieved
19 employee per pay period for each subsequent violation;
- 20 b. Penalties under California Code of Regulations Title 8 section 11070 in
21 the amount of fifty dollars (\$50) for each aggrieved employee per pay
22 period for the initial violation, and one hundred dollars (\$100) for each
23 aggrieved employee per pay period for each subsequent violation;
- 24 c. Penalties under California Labor Code section 210 in addition to, and
25 entirely independent and apart from, any other penalty provided in the
26 California Labor Code in the amount of a hundred dollars (\$100) for
27 each aggrieved employee per pay period for the initial violation, and two
28

1 hundred dollars (\$200) for each aggrieved employee per pay period for
2 each subsequent violation; and

3 d. Wages under California Labor Code section 558 in addition to, and
4 entirely independent and apart from, any other penalty provided in the
5 California Labor Code; and

6 e. Any and all additional penalties and sums as provided by the California
7 Labor Code and/or other statutes.

8 104. Pursuant to California Labor Code section 2699(i), civil penalties recovered by
9 aggrieved employees shall be distributed as follows: seventy-five percent (75%) to the Labor
10 and Workforce Development Agency for the enforcement of labor laws and education of
11 employers and employees about their rights and responsibilities and twenty-five percent (25%)
12 to the aggrieved employees. Wages recovered pursuant to California Labor Code section 558
13 shall be paid directly to the affected employees.

14 105. Further, Plaintiff Lacy is entitled to seek and recover reasonable attorneys' fees
15 and costs pursuant to California Labor Code sections 2699, 218.5, and 210 and any other
16 applicable statute.

17 **EIGHTH CAUSE OF ACTION**

18 **(Violation of California Business & Professions Code §§ 17200, et seq.)**

19 **(Against All DEFENDANTS and DOES 1 through 100)**

20 106. Plaintiff incorporates by reference the allegations contained in paragraphs 1
21 through 105, and each and every part thereof with the same force and effect as though fully set
22 forth herein.

23 107. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
24 unlawful and harmful to Plaintiff, other class members, to the general public, and Defendants'
25 competitors. Accordingly, Plaintiff seeks to enforce important rights affecting the public
26 interest within the meaning of Code of Civil Procedure section 1021.5.

27 ///

28 ///

1 108. Defendants' activities as alleged herein are violations of California law, and
2 constitute unlawful business acts and practices in violation of California Business &
3 Professions Code section 17200, et seq.

4 109. A violation of California Business & Professions Code section 17200, et seq.
5 may be predicated on the violation of any state or federal law. In this instant case, Defendants'
6 policies and practices of requiring employees, including Plaintiff and the other class members,
7 to work overtime without paying them proper compensation violate California Labor Code
8 sections 510 and 1198. Additionally, Defendants' policies and practices of requiring
9 employees, including Plaintiff and the other class members, to work through their meal and
10 rest periods without paying them proper compensation violate California Labor Code sections
11 226.7 and 512(a). Moreover, Defendants' policies and practices of failing to timely pay wages
12 to Plaintiff and the other class members violate California Labor Code sections 201, 202 and
13 203. Defendants also violated California Labor Code section 226(a).

14 110. As a result of the herein described violations of California law, Defendants
15 unlawfully gained an unfair advantage over other businesses.

16 111. Plaintiff and the other class members have been personally injured by
17 Defendants' unlawful business acts and practices as alleged herein, including but not
18 necessarily limited to the loss of money and/or property.

19 112. Plaintiff and the other class members have been personally injured by
20 Defendants' unlawful business acts and practices as alleged herein, including but not
21 necessarily limited to the loss of money and/or property.

22 113. Pursuant to California Business & Professions Code sections 17200, et seq.,
23 Plaintiff and the other class members are entitled to restitution of the wages withheld and
24 retained by Defendants during a period that commences four years prior to the filing of this
25 Complaint; an award of attorneys' fees pursuant to California Code of Civil procedure section
26 1021.5 and other applicable laws; and an award of costs.

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEMAND FOR JURY TRIAL

Plaintiff, individually, and on behalf of other members of the general public similarly situated, requests a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all other members of the general public similarly situated, prays for relief and judgment against Defendants, jointly and severally, as follows:

Class Certification

1. That this action be certified as a class action;
2. That Plaintiff be appointed as the representative of the Class;
3. That counsel for Plaintiff be appointed as Class Counsel; and
4. That Defendants provide to Class Counsel immediately the names and most current/last known contact information (address, e-mail and telephone numbers) of all class members.

As to the First Cause of Action

5. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all overtime wages due to Plaintiff and the other class members;
6. For general unpaid wages at overtime wage rates and such general and special damages as may be appropriate;
7. For pre-judgment interest on any unpaid overtime compensation commencing from the date such amounts were due;
8. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Labor Code section 1194; and
9. For such other and further relief as the court may deem just and proper.

///
///
///

As to the Second Cause of Action

10. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7 and 512 and applicable IWC Wage Orders by willfully failing to provide all meal periods (including second meal periods) to Plaintiff and the other class members;

11. That the Court make an award to Plaintiff and the other class members of one (1) hour of pay at each employee's regular rate of compensation for each workday that a meal period was not provided;

12. For all actual, consequential, and incidental losses and damages, according to proof;

13. For premium wages pursuant to California Labor Code section 226.7(b);

14. For pre-judgment interest on any unpaid wages from the date such amounts were due;

15. For reasonable attorneys' fees and costs of suit incurred herein; and

16. For such other and further relief as the court may deem just and proper.

As to the Third Cause of Action

17. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 226.7 and applicable IWC Wage Orders by willfully failing to provide all rest periods to Plaintiff and the other class members;

18. That the Court make an award to Plaintiff and the other class members of one (1) hour of pay at each employee's regular rate of compensation for each workday that a rest period was not provided;

19. For all actual, consequential, and incidental losses and damages, according to proof;

20. For premium wages pursuant to California Labor Code section 226.7(b);

21. For pre-judgment interest on any unpaid wages from the date such amounts were due; and

22. For such other and further relief as the court may deem just and proper.

As to the Fourth Cause of Action

23. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 1194, 1197, and 1197.1 by willfully failing to pay minimum wages to Plaintiff and the other class members;

24. For general unpaid wages and such general and special damages as may be appropriate;

25. For statutory wage penalties pursuant to California Labor Code section 1197.1 for Plaintiff and the other class members in the amount as may be established according to proof at trial;

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

27. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Labor Code section 1194(a);

28. For liquidated damages pursuant to California Labor Code section 1194.2; and

29. For such other and further relief as the court may deem just and proper.

As to the Fifth Cause of Action

30. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 201, 202, and 203 by willfully failing to pay all compensation owed at the time of termination of the employment of the other class members no longer employed by Defendants;

31. For all actual, consequential, and incidental losses and damages, according to proof;

32. For statutory wage penalties pursuant to California Labor Code section 203 for the other class members who have left Defendants' employ;

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

34. For such other and further relief as the court may deem just and proper.

///

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

2 35. That the Court declare, adjudge and decree that Defendants violated the record
3 keeping provisions of California Labor Code section 226(a) and applicable IWC Wage Orders
4 as to Plaintiff and the other class members, and willfully failed to provide accurate itemized
5 wage statements thereto;

6 36. For actual, consequential and incidental losses and damages, according to proof;

7 37. For statutory penalties pursuant to California Labor Code section 226(e);

8 38. For injunctive relief to ensure compliance with this section, pursuant to
9 California Labor Code section 226(g); and

10 39. For such other and further relief as the court may deem just and proper.

11 **As to the Seventh Cause of Action**

12 40. For civil penalties and wages pursuant to California Labor Code sections
13 2699(a), (f) and (g) and 558 plus costs and attorneys' fees for violation of California Labor
14 Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 558, 1174(d), 1194,
15 1197, 1197.1, and 1198; and

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

18 **As to the Eighth Cause of Action**

19 42. That the Court decree, adjudge and decree that Defendants violated
20 California Business and Professions Code sections 17200, et seq. by failing to provide Plaintiff
21 and the other class members all overtime compensation due to them, failing to provide all meal
22 and rest periods to Plaintiff and the other class members, failing to pay at least minimum
23 wages to Plaintiff and the other class members, failing to pay Plaintiff's and the other class
24 members' wages timely as required by California Labor Code section 201, 202 and 203 and by
25 violating California Labor Code section 226(a).

26 43. For restitution of unpaid wages to Plaintiff and all the other class members and
27 all pre-judgment interest from the day such amounts were due and payable;

28 ///

1 44. For the appointment of a receiver to receive, manage and distribute any and all
2 funds disgorged from Defendants and determined to have been wrongfully acquired by
3 Defendants as a result of violation of California Business and Professions Code sections
4 17200, et seq.;

5 45. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
6 California Code of Civil Procedure section 1021.5; and

7 46. For such other and further relief as the court may deem just and proper.
8
9

10 Dated: May 2, 2017

JUSTICE LAW CORPORATION

11
12 By: 

13 Shunt Tatavos-Gharajeh
14 Attorneys for Plaintiff
15
16
17
18
19
20
21
22
23
24
25
26
27
28