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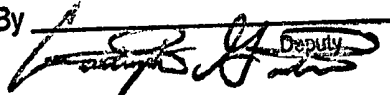
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FILED
ALAMEDA COUNTY

NOV 16 2018

6 Attorneys for Plaintiff CHRISTOPHER JOSHUA,
 7 on behalf of himself and all others similarly situated
 and on behalf of the general public

CLERK OF THE SUPERIOR COURT

By  Deputy

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 9 **IN AND FOR THE COUNTY OF ALAMEDA**

10 CHRISTOPHER JOSHUA, on behalf of
 11 himself and all others similarly situated,
 and on behalf of the general public,

Case No.

RG18928820

Plaintiff,

**PLAINTIFF CHRISTOPHER JOSHUA'S PAGA
 ACTION COMPLAINT**

v.

14 TESLA, INC. DBA TESLA MOTORS,
 15 INC.; TESLA MOTORS, INC.; and
 16 DOES 1-100,

Defendants.

1. Violation of the Private Attorney General Act of 2004 (PAGA) for Failure to Pay Straight, Regular Rate Wages for All Work Performed (Labor Code § 2698, et. seq.)
2. Violation of the PAGA for Failure to Pay All Overtime Wages (Labor Code § 510)
3. Violation of PAGA for Failure to Provide Meal Periods (California Labor Code § 2698, et. seq.)
4. Violation of PAGA for Failure to Provide Rest Periods (California Labor Code § 2698, et. seq.)
5. Violation of PAGA for Failure to Pay Wages Due at Termination and During Employment (California Labor Code § 2698, et. seq.)
6. Violation of PAGA for Knowing and Intentional Failure to Comply with Itemized Employee Wage Statements (California Labor Code § 2698, et. seq.)
7. Violation of PAGA for Failure to Pay Employees Two Times Per Month (California Labor Code § 2698, et. seq.)
8. Violation of PAGA for Failure to Provide Paid Sick Days (California Labor Code § 2698, et. seq.)
9. Violation of PAGA for Failure to Reimburse Employees for Business Expenses (California Labor Code § 2698, et. seq.)

**AFFIDAVIT RE: AMOUNT IN CONTROVERSY
 UNDER \$74,999**

DEMAND FOR JURY TRIAL

BY FAX

1
2
3 Plaintiff CHRISTOPHER JOSHUA (hereinafter "Plaintiff"), on behalf himself and all others
4 similarly aggrieved employees (hereinafter "aggrieved employees"), files this Complaint against
5 Defendants TESLA, INC. DBA TESLA MOTORS, INC.; TESLA MOTORS, INC.; and/or DOES
6 1-100.

7 **I. INTRODUCTION**

8 1. This is a representative action seeking recovery of penalties under the California Labor Code
9 Private Attorney General Act of 2004 (PAGA), California Labor Code Sections 2698 et. seq.,
10 against Defendants TESLA, INC. DBA TESLA MOTORS, INC.; TESLA MOTORS, INC.;
11 (hereinafter "Defendants") and/or DOES 1-100. The PAGA permits an "aggrieved
12 employee" to bring a lawsuit on behalf of himself and other current and former employees to
13 address an employer's violations of the *California Labor Code*.

14 2. This action is brought on behalf of Plaintiff and all other aggrieved employees of Defendants
15 and/or DOES who: worked a shift of at least five (5) hours without receiving a meal period;
16 worked four (4) hours, or a major fraction thereof, without receiving a ten (10) minute net
17 rest break; were not provided accurate itemized wage statements; were not provided paid sick
18 days for all hours worked; were not paid all wages owed twice per month; were not paid
19 compensation for all time worked at the straight or overtime rate; were not reimbursed for
20 business expenses; and, were not paid waiting time penalties. Plaintiff seeks penalties on
21 behalf of himself and all other aggrieved employees of Defendants and/or DOES as provided
22 herein. ~~This Complaint also seeks attorneys' fees and costs under the PAGA, *California*~~
23 ~~*Labor Code* section 2699(g)(1).~~

24 3. At all times mentioned herein, Plaintiff and the other aggrieved employees were not
25 classified as "Exempt" or primarily employed in an executive, professional, or administrative
26 capacity. Thus, under California law, Plaintiff and the aggrieved employees should be:
27 provided meal periods; authorized and permitted to take rest periods; paid one hour of
28 premium pay for all unprovided meal periods; paid one hour of premium pay for all rest

1 periods that were not authorized and/or permitted; paid penalties for not being provided
2 itemized wage statements; paid compensation for all time worked at the regular or overtime
3 rate; paid all wages owed twice per month; reimbursement for business expenses; paid sick
4 days; and paid penalties for not being paid timely at the time of termination.

- 5 4. At all times mentioned herein, Defendants and/or DOES controlled the working conditions of
6 Plaintiff and the aggrieved employees including, but not limited to, having the authority to
7 hire and fire Plaintiff and the other aggrieved employees, setting the wages of Plaintiff and
8 the other aggrieved employees, and instructing Plaintiff and the other aggrieved employees
9 when and/or where to work. In addition, Defendants and/or DOES developed, wrote,
10 dictated, approved and/or authorized wage and hour policies and/or practices that Plaintiff
11 and the aggrieved employees labored under. These policies and/or practices included, but
12 were not limited to, policies and/or practices regarding meal periods, straight-time, rest
13 periods, wage statements, paying compensation at time of termination, and timing of
14 payment. Further, Defendants and/or DOES had the ability to prevent Plaintiff and the other
15 aggrieved employees from working.

16 **II. JURISDICTION AND VENUE**

- 17 5. Plaintiff CHRISTOPHER JOSHUA is an individual residing in California. At all times
18 relevant to this action, Plaintiff was employed by Defendants and/or DOES in
19 California. Plaintiff, and each of the aggrieved employees, were employees of Defendants
20 and/or DOES, and/or its operating divisions and subsidiaries, within the State of California.
21 Plaintiff and each of the aggrieved employees were subject to the unlawful policies
22 ~~beginning one (1) year prior to the date Plaintiff sent Notice to the State of California Labor~~
23 ~~and Workforce Development Agency (LWDA).~~

- 24 6. Venue as to each Defendant and/or DOE is proper in this judicial district. Each Defendant
25 and/or DOE operate industrial facilities, employ hourly employees, conduct business, and
26 commit *California Labor Code* violations within Alameda County and California. Each
27 Defendant and/or DOE is within the jurisdiction of this Court for service of process purposes.
28 The unlawful acts alleged herein have a direct effect on Plaintiff and the other aggrieved

1 employees situated within the State of California and within Alameda County. Defendants
2 and/or DOES employ numerous aggrieved employees in California and/or Alameda County.

3 7. Plaintiff brings this action on behalf of himself and the other aggrieved employees of
4 Defendants and/or DOES pursuant to the PAGA. Plaintiff, as personal representatives of the
5 general public, will and does seek to recover any and all penalties for each and every
6 violation shown to exist or to have occurred during the one (1) year period before Plaintiff
7 filed Notice with the LWDA of his intent to bring this action, in an amount according to
8 proof, as to those penalties that are otherwise only available to public agency enforcement
9 actions. Funds recovered will be distributed in accordance with the PAGA, with at least
10 seventy-five (75) percent of the penalties recovered being reimbursed to the State of
11 California and the LWDA.

12 8. There is no federal question at issue as the issues herein are based solely upon California
13 statutes and law, including the *California Labor Code*, *IWC Wage Orders*, *Code of Civil*
14 *Procedure*, and *Civil Code*.

15 9. The California Superior Court also has jurisdiction in this matter because the penalties sought
16 exceed the minimum jurisdictional limits of the Superior Court and will be established at
17 trial, according to proof. Defendants and/or DOES either own, maintain offices, transact
18 business, have an agent or agents, have their principal place of business in, and/or otherwise
19 are found within the County of Alameda, California.

20 **III. THE PARTIES**

21 **A. Plaintiff**

22 ~~10. Plaintiff CHRISTOPHER JOSHUA, a former employee of Defendants and/or DOES, and~~
23 ~~similar aggrieved employees were and are entitled to statutory meal periods, statutory rest~~
24 ~~periods, accurate itemized wage statements, paid sick days, payment of wages owed twice a~~
25 ~~month, reimbursement for business expenses, compensation for all time worked at the regular~~
26 ~~and overtime rate, and to be paid timely pursuant to California law and/or to receive timely~~
27 ~~wages at the time of termination from Defendants and/or DOES.~~

28 11. Plaintiff and similar aggrieved employees were and are employed in the State of California

1 by the Defendants and/or DOES as production associates, general laborers, operators,
2 material handlers, warehouse associates, service assistants, material planners, engineers,
3 technicians, painters, or similar job designations and titles, and all other similarly situated
4 non-exempt, hourly employees in California during the relevant time period. Plaintiff was
5 employed in a non-exempt capacity.

6 12. A notice correspondence showing compliance with *Labor Code* Section 2699.3 was sent to
7 the LWDA and Defendants on September 11, 2018. This notice demonstrates that Plaintiff is
8 an aggrieved employee and has standing to bring a representative action on behalf of the
9 LWDA and as a private attorney general. No notice of cure by Defendants and/or DOES was
10 provided and no notice of investigation was received from the LWDA in the statutorily
11 proscribed sixty-five (65) day period since the mailing of the notice of the
12 action. Accordingly, Plaintiff files this action as a "Representative Action" as authorized by
13 *Labor Code* section 2699.3(a)(2)(C).

14 **B. Defendants**

15 13. Defendants and/or DOES are engaged in the ownership and operation of industrial work sites
16 which manufacture and sell electric vehicles located within Alameda County and throughout
17 California. During the liability period, Defendants and/or DOES employed Plaintiff and
18 similarly situated persons as non-exempt employees within California. On information and
19 belief, each of the Defendants and/or DOES is conducting business in California.

20 14. TESLA, INC. DBA TESLA MOTORS, INC. and TESLA MOTORS, INC. "continue[] to
21 make products accessible and affordable to more and more people, ultimately accelerating
22 the advent of clean transport and clean energy production." TESLA - ABOUT,
23 <https://www.tesla.com/careers>, (Last visited November 13, 2018).

24 15. TESLA, INC. DBA TESLA MOTORS, INC. and TESLA MOTORS, INC. "hire the world's
25 best and brightest people" to "accelerate the world's transition to sustainable energy." TESLA
26 - CAREERS, <https://www.tesla.com/careers>, (Last visited November 13, 2018). TESLA, INC.
27 DBA TESLA MOTORS, INC. and TESLA MOTORS, INC. claim that their company
28 culture is "fast-paced, energetic and innovative" and that they "work to build an inclusive

environment.” *Id.*

16. However, TESLA, INC. DBA TESLA MOTORS, INC. and TESLA MOTORS, INC. strip their hourly employees of their wages and fail to provide adequate rest and meal periods. As Defendants enjoy a path of success, their hardworking employees are being deprived of the wages they have earned in making TESLA, INC. DBA TESLA MOTORS, INC. and TESLA MOTORS, INC. the successes they are today.

17. Defendants’ and/or DOES’ principal place of business is in the State of California.

18. Defendants and/or DOES have numerous offices and/or contracts in the State of California.

19. California is the nerve center of Defendants’ and/or DOES’ operations.

20. Plaintiff is ignorant of the true names, capacities, relationships and extent of participation in the conduct alleged, of the Defendants sued as DOES 1 through 100, inclusive, but on information and belief alleges that said Defendants are now, and/or at all times mentioned in this Complaint were doing business in the State of California and/or throughout the United States. Plaintiff is informed and believes that each of the Defendants designated as a DOE is legally responsible in some manner for the unlawful acts alleged. Plaintiff will amend this Complaint to allege the true names and capacities of the DOE Defendants when ascertained.

21. Plaintiff is informed and believes each Defendant acted, in whole or in part, in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants as each Defendant has ratified, approved, and/or authorized the acts of each of the remaining Defendants.

~~22. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 100 are partners, agents, owners, and/or shareholders of Defendants and/or DOES and were acting on behalf of Defendants and/or DOES at all times.~~

IV. GENERAL ALLEGATIONS

23. During all, or a portion, of the one (1) year period before Plaintiff filed Notice of his claims with the LWDA, Plaintiff and each of the aggrieved employees were employed by Defendants and/or DOES in the State of California. Plaintiff and the other aggrieved

1 employees are composed of all current and former non-exempt, hourly employees, including
2 but not limited to, production associates, general laborers, operators, material handlers,
3 warehouse associates, service assistants, material planners, engineers, technicians, painters,
4 or similar job designations and titles, of Defendants and/or DOES, or any of its operating
5 divisions and/or subsidiaries, within the State of California.

6 24. At all times mentioned herein, Defendants and/or DOES knew and/or should have known
7 that Plaintiff and the aggrieved employees were entitled to be provided legally compliant
8 meal periods in a timely manner or payment of one hour of pay as additional compensation at
9 Plaintiff and the aggrieved employees' regular rate of pay when they did not receive a
10 timely, uninterrupted meal period.

11 25. By failing to provide a duty-free meal period of not less than thirty (30) minutes for every
12 shift of at least five (5) hours worked per day by Plaintiff and all aggrieved employees, and
13 by failing to provide compensation for these unprovided meal periods, Defendants and/or
14 DOES willfully violated the provisions of *Labor Code* section 226.7, IWC Wage Order No.
15 1-2001, and California Code of Regulations, Section 11070(11). In addition, Defendants
16 and/or DOES failed to provide Plaintiff and the other aggrieved employees another duty-free
17 meal period of not less than thirty (30) minutes for every shift of more than ten (10) hours per
18 day.

19 26. At all times mentioned herein, Defendants and/or DOES knew and/or should have known
20 that Plaintiff and the aggrieved employees were entitled to be authorized and/or permitted to
21 take legally compliant rest periods in a timely manner or payment of one hour of pay as
22 additional compensation at Plaintiff's and the aggrieved employees' regular rate of pay when
23 they were not authorized and/or permitted to take a legally compliant rest period.

24 27. By failing to provide paid ten (10) minute rest periods for every four (4) hours or major
25 fraction thereof, worked per day by Plaintiff and all aggrieved employees and by failing to
26 provide compensation for these periods, Defendants and/or DOES willfully violated the
27 provisions of *Labor Code* section 226.7, IWC Wage Order No. 1-2001, and California Code
28 of Regulations, Section 11070(12).

- 1 28. At all times mentioned herein, Defendants and/or DOES failed to pay all wages owed to
2 Plaintiff and to other terminated or resigned members of the aggrieved employees and failed
3 to timely pay wages during employment.
- 4 29. At all times mentioned herein, Defendants and/or DOES failed to pay Plaintiff and the
5 aggrieved employees all wages earned twice per month.
- 6 30. At all times mentioned herein, Defendants and/or DOES failed to pay Plaintiff and the
7 aggrieved employees one hour of paid sick leave for every thirty (30) hours worked.
- 8 31. At all times mentioned herein, Defendants and/or DOES failed to reimburse Plaintiff and the
9 aggrieved employees for business expenses incurred.
- 10 32. At all times mentioned herein, Defendants and/or DOES knew and/or should have known
11 that Plaintiff and the aggrieved employees were entitled to receive complete and accurate pay
12 statements in accordance with California law.
- 13 33. At all times mentioned herein, Defendants and/or DOES knew and/or should have known
14 that they were not providing complete and accurate pay statements in accordance with
15 California law to Plaintiff and the aggrieved employees.
- 16 34. At all times mentioned herein, Defendants and/or DOES knew and/or should have known
17 that they had a duty to compensate Plaintiff and the other aggrieved employees in accordance
18 with California law, and that Defendants and DOES had the ability to pay such
19 compensation, but willfully and intentionally failed to do so, and Defendants and DOES
20 falsely represented to Plaintiff and the other aggrieved employees that they were properly
21 compensating Plaintiff and the other aggrieved employees.
- ~~22 35. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that~~
23 ~~Plaintiff and the other aggrieved employees were entitled to timely wages at the time of~~
24 ~~termination. Defendants and/or DOES did not pay all timely wages owed, straight-time~~
25 ~~wages owed, meal period premiums, and/or rest period premiums owed at the time of~~
26 ~~termination.~~
- 27 36. At all times mentioned herein, Defendants and/or DOES failed to pay Plaintiff and the other
28 aggrieved employees a sum certain at the time of termination or within seventy-two (72)

1 hours of their resignation, and have failed to pay those sums for thirty (30) days thereafter.

2 37. Plaintiff brings this action on behalf of himself and all other aggrieved employees defined as
3 all Defendants' California based hourly, non-exempt production associates, general laborers,
4 operators, material handlers, warehouse associates, service assistants, material planners,
5 engineers, technicians, painters, or similar job designations and other similar positions
6 employed beginning one year prior to the date Plaintiff sent Notice to the LWDA.

7 38. Plaintiff reserves the right to amend or modify the definition of aggrieved employees with
8 respect to the issues or in any other way.

9 **FIRST CAUSE OF ACTION AGAINST DEFENDANTS AND/OR DOES: Violation of the**
10 **Private Attorneys General Act of 2004 (PAGA) for Failure to Pay Straight, Regular Rate**
11 **Wages for All Work Performed (California Labor Code §2698 et. seq.).**

12 39. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint
13 herein as if fully plead.

14 40. It is fundamental that an employer must pay its employees for the time worked. *California*
15 *Labor Code* section 222 prohibits the withholding on part of a wage. *Labor Code* section
16 223 prohibits the pay of less than a statutory or contractual wage scale. *Labor Code* sections
17 1194-1197.1 prohibits the payment of less than the minimum wage. *Labor Code* section 224
18 only permits deductions from wages when the employer is required or empowered to do so
19 by state or federal law or when the deduction is expressly authorized in writing by the
20 employee for specified purposes that do not in effect reduce the agreed upon wage.

21 41. Section 1197.1 of the *California Labor Code* states "[a]ny employer or other person acting
22 ~~individually as an officer, agent, or employee of another person, who pays or causes to be~~
23 ~~paid to any employee a wage less than the minimum fixed by an applicable state or local law,~~
24 ~~or by an order of the commission shall be subject to a civil penalty, restitution of wages,~~
25 ~~liquidated damages payable to the employee, and any applicable penalties pursuant to~~
26 ~~Section 203."~~

27 42. Defendants and/or DOES have had a continuous policy of not paying Plaintiff and the
28 aggrieved employees for all hours worked, including, but not limited to rounding, before

1 "shifts" start, after "shifts" end, and/or any other time in the day when the employees were
2 performing work tasks, subject to the control of employer and/or otherwise had work duties.

3 43. Defendants and/or DOES have had a continuous policy of not paying Plaintiff and the
4 aggrieved employees at their regular rate for all hours worked. Specifically, Defendants
5 and/or DOES has a continuous and consistent policy of forcing Plaintiff and the aggrieved
6 employees to clock out for a thirty (30) minute meal period, even though Plaintiff and all
7 aggrieved employees work through their meal periods. Thus, Defendants and/or DOES
8 shaves/steals earned wages from Plaintiff and each and every aggrieved employee and every
9 day they work without a meal period and have time deducted.

10 44. Defendants and/or DOES have a continuous policy of not paying Plaintiff and the aggrieved
11 employees for all hours worked by imposing a continuous and consistent policy of requiring
12 employees to go through security and the warehouse upon arriving to work, again when
13 leaving at the end of the day, and any time employees would enter or exit the building. Thus,
14 Plaintiff and the aggrieved employees are not paid for the time spent waiting to get through
15 security and walking through Defendants' and/or DOES' facilities.

16 45. Defendants and/or DOES failed to pay Plaintiff and aggrieved employees the legal minimum
17 wage. Plaintiff and the aggrieved employees who ended their employment with Defendants
18 and/or DOES during the last year were entitled to be paid the minimum wage for all time
19 worked. By failing to pay for all work performed, Defendants' and/or DOES' compensation
20 to Plaintiff and the aggrieved employees fell below the applicable minimum wage.

21 46. Plaintiff and the aggrieved employees have suffered, and continue to suffer, substantial
22 unpaid wages, and lost interest on such wages, and expenses.

23 47. Plaintiff and the aggrieved employees were employed by Defendants and/or DOES at all
24 relevant times. Defendants and/or DOES were required to compensate Plaintiff for all hours
25 worked and were prohibited from making deductions that had the effect of reducing the
26 agreed upon wage.

27 48. Defendants and/or DOES committed the acts alleged herein knowingly and willfully, with
28 the wrongful and deliberate intention of injuring Plaintiff and the aggrieved employees.

1 DEFENDANTS and/or DOES acted with malice or in conscious disregard of Plaintiff' and
2 the aggrieved employees' rights.

3 49. These claims are on behalf of all the non-exempt production associates, general laborers,
4 operators, material handlers, warehouse associates, service assistants, material planners,
5 engineers, technicians, painters, or similar job designations and titles, and all other similarly
6 situated non-exempt, hourly employees of Defendants and/or DOES.

7 50. Plaintiff, as former "non-exempt" employees of Defendants and/or DOES who Defendants'
8 and/or DOES' failed to pay all wages, are aggrieved employees with standing to bring an
9 action under the PAGA. Plaintiff satisfied all prerequisites to serve as representatives of the
10 general public to enforce California's labor laws, and the penalty provisions identified in
11 *Labor Code* section 2699.5.

12 51. Plaintiff, as a representative of the people of the State of California, will seek any and all
13 penalties otherwise capable of being collected by the Labor Commission and/or the
14 Department of Labor Standards Enforcement (DLSE). This includes each of the following, as
15 set forth in *Labor Code* section 2699.5, which provides that section 2699.3(a) applies to any
16 alleged violation of the following provisions: sections 510, 1194, 1197, and 1199.

17 52. Pursuant to Labor Code section 2699(f), Plaintiff, as an aggrieved employee, on behalf of
18 himself and the other aggrieved employees, seeks recovery of applicable civil penalties: one
19 hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial
20 violation per Labor Code section 2699(f)(2) and two hundred dollars (\$200.00) for each
21 aggrieved employee per pay period for each subsequent violation, per Labor Code section
22 2699(f)(2).

23 53. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other
24 aggrieved employees, seeks penalties pursuant to Labor Code Section 558 for violations
25 pursuant to this chapter or any provisions regulating hours and days of the week of the
26 Industrial Welfare Commission under Labor Code Section 558(a)(1) and 558(a)(2). Plaintiff
27 is not seeking wages pursuant to Labor Code Section 558(a)(3).

28 ///

1 **SECOND CAUSE OF ACTION AGAINST DEFENDANTS AND/DOES: Violation of the**
2 **Private Attorneys General Act of 2004 (PAGA) for Failure to Pay All Overtime Wages Owed**

3 54. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint
4 herein as if fully plead.

5 55. California Labor Code section 510 states that eight hours of labor constitutes a day's work.
6 Any work in excess of eight hours in one workday and any work in excess of 40 hours in any
7 one workweek and the first eight hours worked on the seventh day of work in any one
8 workweek shall be compensated at the rate of no less than one and one-half times the regular
9 rate of pay for an employee.

10 56. California Labor Code section 510 dictates that any work in excess of 12 hours in one day
11 shall be compensated at the rate of no less than twice the regular rate of pay for an employee.
12 In addition, any work in excess of eight hours on any seventh day of a workweek shall be
13 compensated at the rate of no less than twice the regular rate of pay of an employee.

14 57. Defendants and/or DOES failed to pay overtime when employees worked over eight (8)
15 hours per day and when employees worked over 40 hours per week.

16 58. Plaintiff and the aggrieved employees have suffered, and continue to suffer, substantial
17 unpaid wages, and lost interest on such wages, and expenses.

18 59. These claims are on behalf of all the non-exempt production associates, general laborers,
19 operators, material handlers, warehouse associates, service assistants, material planners,
20 engineers, technicians, painters, or similar job designations and titles, and all other similarly
21 situated non-exempt, hourly employees of Defendants and/or DOES.

22 ~~60. Plaintiff, as a representative of the people of the State of California, will seek any and all~~
23 ~~penalties otherwise capable of being collected by the Labor commission and/or the~~
24 ~~Department of Labor Standards Enforcement (DLSE) for violations of California Labor Code~~
25 ~~section 510.~~

26 61. Plaintiff, as a representative of the people of the State of California, will seek all penalties
27 otherwise capable of being collected by the Labor Commission and/or the DLSE. This
28 includes each of the following, as set forth in *Labor Code* section 2699.5, which provides

1 that Section 2699.3(a) applies to any alleged violation of the following provisions: sections
2 226.7, 512 and 518.

3 62. Pursuant to Labor Code section 2699(f), Plaintiff, as an aggrieved employee, on behalf of
4 himself and the other aggrieved employees, seeks recovery of applicable civil penalties: one
5 hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial
6 violation per Labor Code section 2699(f)(2) and two hundred dollars (\$200.00) for each
7 aggrieved employee per pay period for each subsequent violation, per Labor Code section
8 2699(f)(2).

9 63. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other
10 aggrieved employees, seeks penalties pursuant to Labor Code Section 558 for violations
11 pursuant to this chapter or any provisions regulating hours and days of the week of the
12 Industrial Welfare Commission under Labor Code Section 558(a)(1) and 558(a)(2). Plaintiff
13 is not seeking wages pursuant to Labor Code Section 558(a)(3).

14 **THIRD CAUSE OF ACTION AGAINST DEFENDANTS AND/DOES: Violation of the**
15 **Private Attorneys General Act of 2004 (PAGA) for Failure to Provide Meal Periods**
16 **(California Labor Code §2698 et. seq.):**

17 64. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint
18 herein as if fully plead.

19 65. Under *California Labor Code* section 512, and IWC Wage Order 1-2001, no employer shall
20 employ any person for a work period of more than five (5) hours without providing a meal
21 period of not less than thirty (30) minutes. During this meal period of not less than thirty (30)
22 minutes, the employee is to be completely free of the employer's control and must not
23 perform any work for the employer. If the employee does perform work for the employer
24 during the thirty (30) minute meal period, the employee has not been provided a meal period
25 in accordance with the law. Also, the employee is to be compensated for any work performed
26 during the thirty (30) minute meal period.

27 66. In addition, an employer may not employ an employee for a work period of more than ten
28 (10) hours per day without providing the employee with another meal period of not less than

1 thirty (30) minutes.

2 67. Under *California Labor Code* section 226.7, if the employer does not provide an employee a
3 meal period in accordance with the above requirements, the employer shall pay the employee
4 one (1) hour of pay at the employee's regular rate of compensation for each workday that the
5 meal period is not provided.

6 68. Defendants and/or DOES have a consistent policy and/or practice of not providing meal
7 periods to Plaintiff and all aggrieved employees and/or providing compensation in lieu
8 thereof. Specifically, Plaintiff and the aggrieved employees are forced to travel through the
9 factory when leaving and returning to their work station. This time is counted as part of their
10 meal period, even though they remain subject to the control of the employer.

11 69. Defendants and/or DOES have a consistent policy and/or practice of not providing meal
12 periods to Plaintiff and all aggrieved employees and/or providing compensation in lieu
13 thereof. Specifically, Plaintiff and the aggrieved employees must to go through security any
14 time employees enter or exit the building. This time is counted as part of their meal period,
15 even though they remain subject to the control of the employer.

16 70. In the alternative, Defendants and/or DOES have a consistent policy and/or practice of
17 requiring Plaintiff and the aggrieved employees within the State of California, to work at
18 least five (5) hours without a meal period and failing to pay such employees one (1) hour of
19 pay at the employees' regular rate of compensation for each workday that the meal period is
20 not provided, or other compensation in lieu thereof, as required by California's state wage
21 and hour laws.

22 ~~71. Defendants and/or DOES have a consistent policy and/or practice of not providing second~~
23 ~~meal periods to Plaintiff and all aggrieved employees and/or providing compensation in lieu~~
24 ~~thereof. Specifically, Plaintiff and the aggrieved employees were not provided with second~~
25 ~~meal periods when they worked ten (10) to twelve (12) hours.~~

26 72. By failing to provide statutory first and/or second meal periods, and by failing to provide
27 compensation for unprovided meal periods, as alleged above, Defendants willfully violated
28 the provisions of the Labor Code section 226.7 and 512.

- 1 73. These claims are on behalf of all the non-exempt production associates, general laborers,
2 operators, material handlers, warehouse associates, service assistants, material planners,
3 engineers, technicians, painters, or similar job designations and titles, and all other similarly
4 situated non-exempt, hourly employees of Defendants and/or DOES.
- 5 74. Plaintiff, as a non-exempt employee who unlawfully was deprived of first and second meal
6 periods, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff
7 has satisfied all prerequisites to serve as a representative of the general public to enforce
8 California's labor laws, and the penalty provisions identified in Labor Code section 2699.5
9 for violations of Labor Code sections 226.7 and 512.
- 10 75. By failing to provide statutory first and/or second meal periods, and by failing to provide
11 compensation for unprovided meal periods, as alleged above, Defendants willfully violated
12 the provisions of *Labor Code* sections 226.7 and 512, and IWC Wage Order No. 1-2001.
- 13 76. As a result of the unlawful acts of Defendants, Plaintiff and the other aggrieved employees
14 have been deprived of premium wages and/or other compensation in amounts to be
15 determined at trial, and are entitled to recovery of such amounts, plus interest, attorneys'
16 fees, and costs.
- 17 77. During the relevant time period, Plaintiff and the other aggrieved employees who were
18 scheduled to work for a period of time in excess of six (6) hours were required to work for
19 periods longer than five (5) hours without an uninterrupted meal period of not less than thirty
20 (30) minutes.
- 21 78. During the relevant time period, Plaintiff and the aggrieved employees who were scheduled
22 ~~to work for a period of time in excess of ten (10) hours and/or (12) hours, and who did not~~
23 ~~waive their legally-mandated meal periods by mutual consent were required to work in~~
24 ~~excess of ten (10) hours and/or twelve (12) hours without receiving a second uninterrupted~~
25 ~~meal period of not less than thirty (30) minutes.~~
- 26 79. During the relevant time period, Defendants and/or DOES failed to pay Plaintiff and the
27 other aggrieved employees the full meal period premium due pursuant to *California Labor*
28 *Code* section 226.7.

1 80. Defendants' and/or DOES' conduct violates applicable IWC Wage Order 1-2001 and
2 *California Labor Code* sections 226.7 and 512(a).

3 81. Plaintiff, as a non-exempt employee who unlawfully was deprived of first and second meal
4 periods, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff
5 has satisfied all prerequisites to serve as a representative of the general public to enforce
6 California's labor laws, and the penalty provisions identified in *Labor Code* section 2699.5.

7 82. Plaintiff, as a representative of the people of the State of California, will seek all penalties
8 otherwise capable of being collected by the Labor Commission and/or the DLSE. This
9 includes each of the following, as set forth in *Labor Code* section 2699.5, which provides
10 that Section 2699.3(a) applies to any alleged violation of the following provisions: sections
11 226.7, 512 and 518.

12 83. Pursuant to Labor Code section 2699(f), Plaintiff, as an aggrieved employee, on behalf of
13 himself and the other aggrieved employees, seeks recovery of applicable civil penalties: one
14 hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial
15 violation per Labor Code section 2699(f)(2) and two hundred dollars (\$200.00) for each
16 aggrieved employee per pay period for each subsequent violation, per Labor Code section
17 2699(f)(2).

18 84. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other
19 aggrieved employees, seeks penalties pursuant to Labor Code Section 558 for violations
20 pursuant to this chapter or any provisions regulating hours and days of the week of the
21 Industrial Welfare Commission under Labor Code Section 558(a)(1) and 558(a)(2). Plaintiff
22 is not seeking wages pursuant to Labor Code Section 558(a)(3).

23 **FOURTH CAUSE OF ACTION AGAINST DEFENDANTS AND/OR DOES: Violation of the**
24 **Private Attorneys General Act of 2004 (PAGA) for Failure to Provide Rest Periods (California**
25 **Labor Code §2698 et. seq.).**

26 85. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint
27 herein as if fully plead.

28 86. Industrial Welfare Commission Order No. 1-2001 section 12(A) states "[e]very employer

1 shall authorize and permit all employees to take rest periods, which insofar as practicable
2 shall be in the middle of each work week period. The authorized rest period time shall be
3 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
4 hours or major fraction thereof.”

5 87. At all times mentioned herein, Defendants and/or DOES failed to authorize and/or permit rest
6 period time based upon the total hours worked daily at the rate of ten (10) minutes net rest
7 time per four (4) hours or major fraction thereof.

8 88. Defendants and/or DOES have a consistent policy and/or practice of not providing rest
9 periods to Plaintiff and all aggrieved employees and/or providing compensation in lieu
10 thereof. Specifically, Plaintiff and the aggrieved employees are forced to go through the
11 factory when leaving and returning to their work station. This time is counted as part of their
12 rest period, even though they remain subject to the control of the employer.

13 89. Defendants and/or DOES have a consistent policy and/or practice of not providing rest
14 periods to Plaintiff and all aggrieved employees and/or providing compensation in lieu
15 thereof. Specifically, Plaintiff and the aggrieved employees must to go through security any
16 time they enter or exit the building. This time is counted as part of their rest period, even
17 though they remain subject to the control of the employer.

18 90. In the alternative, Defendants and/or DOES have a consistent policy and/or practice of
19 requiring Plaintiff and the other aggrieved employees within the State of California, to work
20 for over four (4) hours, or a major fraction thereof, without a ten (10) minute rest period and
21 failing to pay such employees one (1) hour of pay at the employees' regular rate of
22 compensation for each workday that the rest period is not provided, or other compensation,
23 as required by California's state wage and hour laws.

24 91. Plaintiff and the aggrieved employees remained subject to the employer's control throughout
25 the rest period required in order to complete the demanding duties required by Defendants
26 and/or DOES thereby denying them their right to be completely free from employer control
27 under California law. As a result, Defendants' and/or DOES non-exempt employees
28 routinely and regularly are forced to miss their rest periods or take late rest periods.

1 92. By failing to provide rest periods for every four (4) hours or major fraction thereof worked
2 per day by non-exempt employees, and by failing to provide compensation for these
3 unprovided periods, as alleged above, Defendants and/or DOES willfully violated the
4 provisions of Labor Code section 226.7.

5 93. These claims are on behalf of all the non-exempt production associates, general laborers,
6 operators, material handlers, warehouse associates, service assistants, material planners,
7 engineers, technicians, painters, or similar job designations and titles, and all other similarly
8 situated non-exempt, hourly employees of Defendants and/or DOES.

9 94. Plaintiff, as a non-exempt employee who was unlawfully deprived of paid ten (10) minute
10 rest periods, is an aggrieved employee with standing to bring an action under the PAGA.
11 Plaintiff has satisfied all prerequisites to serve as a representative of the general public to
12 enforce California's labor laws, and the penalty provisions identified in Labor Code section
13 2699.5 for violations of Labor Code section 226.7.

14 95. Plaintiff, as a non-exempt employee who was unlawfully deprived of paid ten (10)-minute
15 rest periods, is an aggrieved employee with standing to bring an action under the
16 PAGA. Plaintiff satisfied all prerequisites to serve as a representative of the general public to
17 enforce California's labor laws, and the penalty provisions identified in *Labor Code* section
18 2699.5.

19 96. Plaintiff, as a representative of the people of the State of California, will seek all penalties
20 otherwise capable of being collected by the Labor Commission and/or the DLSE. This
21 includes each of the following, as set forth in *Labor Code* section 2699.5, which provides
22 ~~that section 2699.3(a) applies to any alleged violation of the following provisions: sections~~
23 226.7 and 518.

24 97. Pursuant to Labor Code section 2699(f), Plaintiff, as an aggrieved employee, on behalf of
25 himself and the other aggrieved employees, seeks recovery of applicable civil penalties: one
26 hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial
27 violation per Labor Code section 2699(f)(2) and two hundred dollars (\$200.00) for each
28 aggrieved employee per pay period for each subsequent violation, per Labor Code section

1 2699(f)(2).

2 98. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other
3 aggrieved employees, seeks penalties pursuant to Labor Code Section 558 for violations
4 pursuant to this chapter or any provisions regulating hours and days of the week of the
5 Industrial Welfare Commission under Labor Code Section 558(a)(1) and 558(a)(2). Plaintiff
6 is not seeking wages pursuant to Labor Code Section 558(a)(3).

7 **FIFTH CAUSE OF ACTION AGAINST DEFENDANTS AND/OR DOES: Violation of the**
8 **Private Attorneys General Act of 2004 (PAGA) for Failure to Pay Wages Due at Termination**
9 **and During Employment (California Labor Code §2698 et. seq.).**

10 99. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint
11 herein as if fully plead.

12 100. Defendants and/or DOES and/or their officers and/or managing agents willfully failed to pay,
13 in a timely manner, wages owed to Plaintiff and the other aggrieved employees who left
14 Defendants' and/or DOES' employ or who were terminated.

15 101. Plaintiff and/or the other aggrieved employees who ended their employment with Defendants
16 and/or DOES during the last year were entitled to be promptly paid all lawful compensation,
17 and other premiums, as required by *Labor Code* sections 201 through 203.

18 102. At all relevant times, *California Labor Code* sections 201 and 202 provide that if an
19 employer discharges an employee, the wages earned and unpaid at the time of discharge are
20 due and payable immediately, and if an employee quits his or her employment, his or her
21 wages shall become due and payable no later than seventy-two (72) hours thereafter, unless
22 ~~the employee has given seventy-two (72) hours notice of his or her intention to quit, in which~~
23 ~~case the employee is entitled to his or her wages at the time of quitting.~~

24 103. During the relevant time period, Defendants and/or DOES intentionally and willfully failed
25 to pay Plaintiff and the other aggrieved employees who are no longer employed by
26 Defendants and/or DOES their wages, that were earned and unpaid, within seventy-two (72)
27 hours of their leaving Defendants' and/or DOES' employ.

28 104. Defendants' and/or DOES' failure to pay Plaintiff and the aggrieved employees who are no

1 longer employed by Defendants and/or DOES their wages, that were earned and unpaid,
2 within seventy-two (72) hours of their leaving Defendants' and/or DOES' employ, is in
3 violation of *California Labor Code* sections 201 and 202.

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

8 106. Plaintiff, as a non-exempt employee who Defendants and/or DOES failed to pay all wages,
9 correctly calculate the rate of pay, failed to provide a minimum statutory first and/or second
10 meal periods, and provide paid ten (10) minute rest periods, is an aggrieved employee with
11 standing to bring an action under the PAGA. Plaintiff satisfied all prerequisites to serve as a
12 representative of the general public to enforce California's labor laws, and the penalty
13 provisions identified in *Labor Code* section 2699.5.

14 107. Plaintiff, as a representative of the people of the State of California, seeks all penalties
15 otherwise capable of being collected by the Labor Commission and/or the Department of
16 Labor Standards Enforcement ("DLSE"). This includes each of the following, as set forth in
17 *Labor Code* section 2699.5, which provides that section 2699.3(a) applies to any alleged
18 violation of the following provisions: sections 201 through 203.

19 108. These claims are on behalf of all the non-exempt production associates, general laborers,
20 operators, material handlers, warehouse associates, service assistants, material planners,
21 engineers, technicians, painters, or similar job designations and titles, and all other similarly
22 situated non-exempt, hourly employees of Defendants and/or DOES.

23 109. Pursuant to Labor Code section 2699(f), Plaintiff, as an aggrieved employee, on behalf of
24 himself and the other aggrieved employees, seeks recovery of applicable civil penalties: one
25 hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial
26 violation per Labor Code section 2699(f)(2) and two hundred dollars (\$200.00) for each
27 aggrieved employee per pay period for each subsequent violation, per Labor Code section
28 2699(f)(2).

1 110. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other
2 aggrieved employees, seeks penalties pursuant to Labor Code Section 558 for violations
3 pursuant to this chapter or any provisions regulating hours and days of the week of the
4 Industrial Welfare Commission under Labor Code Section 558(a)(1) and 558(a)(2). Plaintiff
5 is not seeking wages pursuant to Labor Code Section 558(a)(3).

6 **SIXTH CAUSE OF ACTION AGAINST DEFENDANTS AND/OR DOES: Violation of the**
7 **Private Attorneys General Act of 2004 (PAGA) for Knowing and Intentional Failure to**
8 **Comply with Itemized Employee Wage Statement Provisions (California Labor Code §2698 et.**
9 **seq.).**

10 111. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint
11 herein as if fully plead.

12 112. Section 226(a) of the *California Labor Code* requires Defendants and/or DOES to itemize in
13 wage statements all deductions from payment of wages and to accurately report total hours
14 worked by Plaintiff and the other aggrieved employees. Labor Code Section 226(a) requires
15 DEFENDANTS and/or DOES, at the time of each payment of wages, to “furnish each of her
16 or her employees, either as an detachable part of the check, draft, or voucher paying the
17 employee’s wages, or separately when wages are paid by personal check or cash, an accurate
18 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the
19 employee...(3) the number of piece-rate units earned and any applicable piece rate if the
20 employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made
21 on written orders of the employee may be aggregated and shown as one item, (5) net wages
22 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of
23 the employee and only the last four digits of his or her social security number or an employee
24 identification number other than the social security number, (8) the name and address of the
25 legal entity that is the employer...(9) all applicable hourly rates in effect during the pay
26 period and the corresponding number of hours worked at each hourly rate and the
27 corresponding number of hours worked at each hourly rate by the employee....”

28 113. Labor Code Section 226, subdivision (a) also requires that “deductions made from payment
of wages shall be recorded in ink or other indelible form, properly dates, showing the month,
day and year, and a copy of the statement and the record of the deductions shall be kept on

1 file by the employer for at least three years at the place of employment or at a central location
2 within the State of California.”

3 114. During the relevant time period, Defendants and/or DOES intentionally and willfully failed
4 to provide Plaintiff and the aggrieved employees with wage statements at the time of each
5 payment.

6 115. Even if the wage statements were provided adequately, Defendants and/or DOES have
7 knowingly and intentionally failed to comply with Labor Code section 226(a) on each and
8 every wage statement provided to Plaintiff and the other aggrieved employees.

9 116. Defendants and/or DOES knowingly and intentionally did not include the gross wages earned
10 on wage statements. Defendants and/or DOES therefore knowingly and intentionally failed to
11 itemize the gross wages earned on Plaintiff's and the aggrieved employees' wage statements.

12 117. Defendants and/or DOES have knowingly and intentionally failed to comply with *Labor*
13 *Code* section 226(a) on each and every wage statement provided to Plaintiff and the other
14 aggrieved employees.

15 118. In every pay period during the period of the relevant statute of limitations, Defendants and/or
16 DOES knowingly and intentionally did not itemize the total hours worked on wage
17 statements as Labor Code section 226, subsection (a), requires. In every pay period during
18 the period of the relevant statute of limitations, Defendants and/or DOES knowingly and
19 intentionally did not include the total hours worked on wage statements. Defendants and/or
20 DOES therefore knowingly and intentionally failed to itemize the total hours worked on
21 Plaintiff' and the aggrieved employees' wage statements.

22 ~~119. Defendants and/or DOES had a uniform policy of deducting 30 minutes each workday from~~
23 ~~Plaintiff' and the aggrieved employees' wages for meal periods, despite Plaintiff and the~~
24 ~~aggrieved employees working during and throughout the time period of the deduction.~~
25 ~~Defendants and/or DOES violated the Labor Code section 226, subdivision (a) requirement~~
26 ~~of itemizing all deductions from wages. As Defendants and/or DOES knew or had reason to~~
27 ~~know Plaintiff and the aggrieved employees worked during meal periods, Defendants and/or~~
28 ~~DOES knowingly and intentionally failed to comply with Labor Code section 226,~~

1 subdivision (a).

2 120. In every pay period during the period of the relevant statute of limitations, Defendants and/or
3 DOES knowingly and intentionally did not include the net wages earned on wage statements.

4 121. Throughout the statutory period, because of the knowing and intentional failure by
5 Defendants and/or DOES to comply with itemized employee wage statement provisions,
6 Plaintiff and the aggrieved employees have been able to reconstruct only a reasonable
7 estimate of the hours worked and have, therefore, not received full compensation.

8 122. These claims are on behalf of all the non-exempt production associates, general laborers,
9 operators, material handlers, warehouse associates, service assistants, material planners,
10 engineers, technicians, painters, or similar job designations and titles, and all other similarly
11 situated non-exempt, hourly employees of Defendants and/or DOES.

12 123. Plaintiff, as a non-exempt employee who Defendants and/or DOES failed to provide accurate
13 and itemized wage statements, is an aggrieved employee with standing to bring an action
14 under the PAGA. Plaintiff satisfied all prerequisites to serve as a representative of the general
15 public to enforce California's labor laws, and the penalty provisions identified in *Labor Code*
16 section 2699.5.

17 124. Plaintiff, as a representative of the people of the State of California, will seek all penalties
18 otherwise capable of being collected by the Labor Commission and/or the DLSE. This
19 includes each of the following, as set forth in *Labor Code* section 2699.5, which provides
20 that section 2699.3(a) applies to any alleged violation of the following provisions: sections
21 226, 1174, 1199.

22 ~~125. Pursuant to Labor Code section 2699(f), Plaintiff, as an aggrieved employee, on behalf of~~
23 ~~himself and the other aggrieved employees, seeks recovery of applicable civil penalties: one~~
24 ~~hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial~~
25 ~~violation per Labor Code section 2699(f)(2) and two hundred dollars (\$200.00) for each~~
26 ~~aggrieved employee per pay period for each subsequent violation, per Labor Code section~~
27 ~~2699(f)(2).~~

28 126. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other

1 aggrieved employees, seeks penalties pursuant to Labor Code Section 558 for violations
2 pursuant to this chapter or any provisions regulating hours and days of the week of the
3 Industrial Welfare Commission under Labor Code Section 558(a)(1) and 558(a)(2). Plaintiff
4 is not seeking wages pursuant to Labor Code Section 558(a)(3).

5 **SEVENTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the**
6 **Private Attorneys General Act of 2004 (PAGA) for Failing to Provide Paid Sick Days**
7 **(California Labor Code §2698 et. seq.).**

8 127. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint
9 herein as if fully plead.

10 128. Section 246(a) of the Labor Code requires “an employee who, on or after July 1, 2015, works
11 in California for the same employer for thirty (30) or more days within a year from the
12 commencement of employment is entitled to paid sick days as specified in this section.”
13 Labor Code section 246, subdivision (b)(1), provides, in pertinent part, that “an employee
14 shall accrue paid sick days at the rate of not less than one hour per every thirty (30) hours
15 worked, beginning at the commencement of employment or the operative date of this article,
16 whichever is later.”

17 129. By failing to account for all time worked by Plaintiff and the aggrieved employees,
18 Defendants and/or DOES failed to provide Plaintiff and the aggrieved employees with one
19 hour of paid sick leave for every thirty (30) hours worked in accordance with *Labor Code*
20 section 246.

21 130. Defendants’ and/or DOES’ failure to provide Plaintiff and the aggrieved employees sick
22 days, violates California Labor Code section 246.

23 131. Pursuant to California Labor Code section 248.5, when an employer fails to provide sick
24 days, in accordance with section 246, the person acting “on behalf of the public as provided
25 for under applicable state law shall, upon prevailing, be entitled only to equitable, injunctive,
26 or restitutionary relief, and reasonable attorney’s fees and costs.”

27 132. Plaintiff, as a representative of the people of the State of California, will seek all penalties
28 otherwise capable of being collected by the Labor Commission and/or the Department of
Labor Standards Enforcement (“DLSE”). This includes each of the following, as set forth in

1 Labor Code section 2699.5 for violations of sections 246.

2 133. These claims are on behalf of all the non-exempt production associates, general laborers,
3 operators, material handlers, warehouse associates, service assistants, material planners,
4 engineers, technicians, painters, or similar job designations and titles, and all other similarly
5 situated non-exempt, hourly employees of Defendants and/or DOES.

6 134. Plaintiff, as a non-exempt employee who Defendant and/or DOES failed to provide paid sick
7 days, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff
8 satisfied all prerequisites to serve as a representative of the general public to enforce
9 California's labor laws, and the penalty provisions identified in Labor Code section 2699.5.

10 135. Pursuant to Labor Code section 2699(f), Plaintiff, as an aggrieved employee, on behalf of
11 himself and the other aggrieved employees, seeks recovery of applicable civil penalties: one
12 hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial
13 violation per Labor Code section 2699(f)(2) and two hundred dollars (\$200.00) for each
14 aggrieved employee per pay period for each subsequent violation, per Labor Code section
15 2699(f)(2).

16 136. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other
17 aggrieved employees, seeks penalties pursuant to Labor Code Section 558 for violations
18 pursuant to this chapter or any provisions regulating hours and days of the week of the
19 Industrial Welfare Commission under Labor Code Section 558(a)(1) and 558(a)(2). Plaintiff
20 is not seeking wages pursuant to Labor Code Section 558(a)(3).

21 **EIGHTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the**
22 **Private Attorneys General Act of 2004 (PAGA) for Failing to Pay Employees Twice Per Month**
23 **(Lab. Code, section 204(a).**

24 137. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint
25 herein as if fully plead.

26 138. Section 204(a) of the *California Labor Code* requires that all wages earned by any person in
27 any employment are due and payable twice during each calendar month, on days designated
28 in advance by the employer as the regular paydays.

139. *Labor Code* section 226 subdivision (a) provides "[a]ll wages . . . earned by any person in

1 any employment are due and payable twice during each calendar month, on days designated
2 in advance by the employer as the regular paydays. Labor performed between the 1st and
3 15th days, inclusive, of any calendar month shall be paid for between the 16th and 26th day
4 of the month during which the labor was performed, and labor performed between the 16th
5 and the last day, inclusive, of any calendar month shall be paid for between the 1st and 10th
6 day of the following month.”

7 140. Defendant and/or DOES have a consistent policy and/or practice of failing to pay Plaintiff
8 and the aggrieved employees twice per month. By failing to pay employees twice per month,
9 Defendant and/or DOES willfully violated the provisions of *Labor Code* section 204(a).

10 141. During the relevant time period, Defendant and/or DOES intentionally and willfully failed to
11 pay Plaintiff and the aggrieved employees their wages, that were earned and unpaid, twice
12 during each calendar month.

13 142. Defendant and/or DOES failure to pay Plaintiff and the aggrieved employees their wages,
14 that were earned and unpaid, twice during each calendar month, is in violation of *California*
15 *Labor Code* section 204.

16 143. These claims are on behalf of all the non-exempt production associates, general laborers,
17 operators, material handlers, warehouse associates, service assistants, material planners,
18 engineers, technicians, painters, or similar job designations and titles, and all other similarly
19 situated non-exempt, hourly employees of Defendants and/or DOES.

20 144. Plaintiff, as a non-exempt employee who Defendant and/or DOES failed pay all wages owed
21 twice per month, is an aggrieved employee with standing to bring an action under the PAGA.

22 ~~Plaintiff has satisfied all prerequisites to serve as a representative of the general public to~~
23 ~~enforce California’s labor laws, and the penalty provisions identified in *Labor Code* section~~
24 ~~2699.5 for violations of *Labor Code* section 204.~~

25 145. Pursuant to *Labor Code* section 2699(f), Plaintiff, as an aggrieved employee, on behalf of
26 himself and the other aggrieved employees, seeks recovery of applicable civil penalties: one
27 hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial
28 violation per *Labor Code* section 2699(f)(2) and two hundred dollars (\$200.00) for each

1 aggrieved employee per pay period for each subsequent violation, per *Labor Code* section
2 2699(f)(2).

3 146. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other
4 aggrieved employees, seeks penalties pursuant to Labor Code Section 558 for violations
5 pursuant to this chapter or any provisions regulating hours and days of the week of the
6 Industrial Welfare Commission under Labor Code Section 558(a)(1) and 558(a)(2). Plaintiff
7 is not seeking wages pursuant to Labor Code Section 558(a)(3).

8 **NINTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the**
9 **Private Attorneys General Act of 2004 (PAGA) for Failure to Reimburse for Business**
10 **Expenses (*California Labor Code* §2698 et. seq.).**

11 147. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint
12 herein as if fully plead.

13 148. Section 2802(a) of the California Labor Code requires “[a]n employer [to] indemnify his or
14 her employee for all necessary expenditures or losses incurred by the employee in direct
15 consequence of the discharge of his or her duties.”

16 149. Plaintiff and the aggrieved employees incurred expenses in the discharge of their duties
17 without reimbursement from Defendant and/or DOES. Expenses include, but are not limited
18 to, electricity costs for having to charge company equipment at their residences, and the
19 cellular phone costs for having to use their personal cell phones for completing employment
20 duties.

21 150. *Labor Code* section 2802(a) entitles Plaintiff and the aggrieved employees to reimbursement
22 for said necessary expenditures, plus interest and expenses.

23 151. These claims are on behalf of all the non-exempt production associates, general laborers,
24 operators, material handlers, warehouse associates, service assistants, material planners,
25 engineers, technicians, painters, or similar job designations and titles, and all other similarly
26 situated non-exempt, hourly employees of Defendants and/or DOES.

27 152. Plaintiff, as a non-exempt employee who Defendant and/or DOES failed reimburse for
28 business expenses, is an aggrieved employee with standing to bring an action under the
PAGA. Plaintiff has satisfied all prerequisites to serve as a representative of the general

1 public to enforce California's labor laws, and the penalty provisions identified in *Labor Code*
2 section 2699.5 for violations of *Labor Code* section 2802.

3 153. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other
4 aggrieved employees, seeks penalties pursuant to Labor Code Section 558 for violations
5 pursuant to this chapter or any provisions regulating hours and days of the week of the
6 Industrial Welfare Commission under Labor Code Section 558(a)(1) and 558(a)(2). Plaintiff
7 is not seeking wages pursuant to Labor Code Section 558(a)(3).

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff, individually and on behalf of all other aggrieved employees, prays
10 for relief and judgment against Defendants and/or DOES, jointly and severally, as follows:

- 11 A. For penalties as provided under Labor Code Section 558(a)(1) and 558(a)(2).
12 B. For penalties as provided, per each violation, by the PAGA, *Labor Code* section 2699, et.
13 seq. for failure to provide compliant meal periods;
14 C. For all statutory penalties for each pay period during which an employee was underpaid due
15 to failure to provide compliant meal periods;
16 D. For penalties as provided, per each violation, by the PAGA, *Labor Code* section 2699, et.
17 seq. for failure to provide all rest periods;
18 E. For all statutory penalties provided under *Labor Code* for each pay period during which an
19 employee was underpaid due to failure to provide paid rest periods;
20 F. For penalties as provided, per each violation, by the PAGA, *Labor Code* section 2699, et.
21 seq. for failure to timely pay wages at separation;
22 ~~G. For penalties as provided, per each violation, by the PAGA, *Labor Code* section 2699, et.~~
23 ~~seq. for failure to provide compensation at the regular and overtime rate for all time worked;~~
24 H. For penalties as provided, per each violation, by the PAGA, *Labor Code* section 2699, et.
25 seq. for failure to provide compensation at the minimum wage;
26 I. For penalties as provided, per each violation, by the PAGA, *Labor Code* section 2699, et.
27 seq. for failure to provide accurate, itemized wage statements;
28 J. For penalties as provided, per each violation, by the PAGA, *Labor Code* section 2699, et.

1 seq. for failure to pay employees all wages owed twice per month.

2 K. For penalties as provided, per each violation, by the PAGA, *Labor Code* section 2699, et.
3 seq. for failure to reimburse employees for business expenses;

4 L. For penalties as provided, per each violation, by the PAGA, *Labor Code* section 2699, et.
5 seq. for failure to provide one (1) hour of paid sick leave for every thirty (30) hours worked;

6 M. For reasonable attorneys' fees and costs under the PAGA, *Labor Code* section 2699(g)(1).

7 **DEMAND FOR JURY TRIAL**

8 Plaintiff demands a jury trial.

9
10 **THE TURLEY & MARA LAW FIRM, APLC**

11
12 Date: November 15, 2018

Signed: 

William Turley, Esq.

David Mara, Esq.

Attorneys for Plaintiff CHRISTOPHER
JOSHUA, on behalf of himself and all others
similarly situated, and on behalf of the general
public

Affidavit for Plaintiff CHRISTOPHER JOSHUA

1
2 1. This is a legally binding commitment by Plaintiff CHRISTOPHER JOSHUA, on his own
3 behalf, not to recover in his PAGA action in an amount more than \$74,999, this includes - but is
4 not limited to - for all PAGA damages, penalties, amounts recovered, costs, and/or attorney fees.

5 2. Plaintiff CHRISTOPHER JOSHUA hereby agrees, stipulates, warrants and/or commits, on
6 his own behalf, that he will not seek and/or recover in his PAGA action in an amount more than
7 \$74,999, this includes - but is not limited to - for all PAGA damages, penalties, amounts recovered,
8 costs, and/or attorney fees.

9 3. Plaintiff CHRISTOPHER JOSHUA hereby agrees, stipulates, warrants and/or commits
10 that amount on controversy, on his own behalf, not to seek more than \$74,999 on his own behalf,

11 4. The Turley and Mara Law Firm, APLC and/or or any other lawyers in this PAGA action
12 hereby agrees, stipulate, warrants and/or commits to not seek, obtain, receive or request any
13 attorney fees and/or costs on behalf of CHRISTOPHER JOSHUA in this PAGA action that will
14 bring the amount in controversy in this claim in an amount greater than \$74,999.

15 5. Plaintiff CHRISTOPHER JOSHUA hereby agrees, stipulates, commits, and/or warrants on
16 his own behalf not to seek \$74,999 (or greater) for himself and agrees, stipulate, warrants and/or
17 commits that his attorneys will not seek any amount of attorney's fees attributable to his claim that
18 would bring the amount in controversy in an amount greater than \$74,999.

19 6. This is a binding affidavit, that can be enforced in all courts and/or tribunals.

20
21 Dated: November 15, 2018

THE TURLEY & MARA LAW FIRM, APLC

22
23 

24 _____
25 David Mara, Esq.
26 For Plaintiff CHRISTOPHER JOSHUA and the
27 Turley & Mara Law Firm APLC
28