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ATTORNEYS FOR

Plaintiff Richard MARTIN Individually and on behalf of all others similarly situated; Andre
BERNSTEIN

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

(Sacramento Division)

ROBERT WESTFALL, individually and
on behalf of all others similarly situated;
DAVID ANDERSON; LYNN BOBBY;
DAVID ELLINGER,

Plaintiffs,

v.

Case No.: 2:16-cv-02632-KJM-GGH

**SECOND AMENDED CLASS ACTION
COMPLAINT**

1. California Wages and Overtime Violations Under Labor Code §§510, 1194, 1199
2. Failure to Provide Meal Breaks Under Labor Code §§ 226.7 and 512
3. Failure to Provide Rest Breaks Under

Complaint

1 Richard MARTIN, Individually and on
2 behalf of all others similarly situated,

3 Plaintiff-Intervenor,

4 BALL METAL BEVERAGE
5 CONTAINER CORPORATION., a
6 Colorado Corporation, Does 1-20
7 inclusive,

8 Defendants.

Labor Code § 226.7

- 4. Violation of Labor Code § 226(a)
- 5. Penalties Pursuant to Labor Code § 203
- 6. Violation of Business & Professions Code § 17200
- 7. Penalties Pursuant to Labor Code §2699, et seq.
- 8. Penalties Pursuant to Labor Code § 2699 et seq.

(Amendment permitted as a Matter of Right Pursuant to Labor Code §2699.3(a)(2)(C)

9
10 Plaintiffs Robert Westfall, David Anderson, Lynn Bobby, David Ellinger individually,
11 on behalf of himself, all others similarly situated, (collectively “Plaintiffs”) complain of
12 Defendant BALL METAL BEVERAGE CONTAINER CORPORATION (“Defendant BALL”) and each of them, as follows:

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14
15 **I**

16 **INTRODUCTION**

17 1. This is a Class Action, pursuant to Code of Civil Procedure § 382, on behalf of
18 Plaintiffs and all non-exempt employees who hold or held the position of "Electronic
19 Technician," "Machinist/Mechanic," and/or "Maintenance", or non-exempt employees who
20 worked in the production, engineering, and production support departments of, Defendant and
21 any subsidiaries or affiliated companies and Does 1 to 20, and who are currently employed by or
22 formerly employed at the Fairfield Plant, located at or near 2400 Huntington Dr, Fairfield, CA
23 94533.

24 2. This is also a Representative Action, pursuant to Labor Code § 2699 et seq., on
25 behalf of Plaintiff and all individuals who hold or held the position of "Electronic Technician,"
26 "Machinist/Mechanic," and/or "Maintenance", or non-exempt employees who worked in the
27 production, engineering, and production support departments of, Defendant and any
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1 subsidiaries or affiliated companies and Does 1 to 20, and who are currently employed by or
2 formerly employed at the Fairfield Plant, located at or near 2400 Huntington Dr, Fairfield, CA
3 94533 (“aggrieved employees”).

4 3. This is also a Representative Action, pursuant to Labor Code §§ 2699 *et seq.*, and
5 §§ 6300 *et seq.* on behalf of Plaintiff-Intervenor Richard Martin and all employees who are
6 currently employed by or formerly employed in the Internal Coating “spray operation” area of
7 the Fairfield Plant, located at or near 2400 Huntington Dr, Fairfield, CA 94533.

8 4. Plaintiffs, Plaintiff-Intervenor, and the aggrieved employees are persons
9 employed in the Manufacturing Industry as that term is defined in Industrial Welfare
10 Commission Order No. 1-2001 (hereinafter Wage Order #1).

11 5. Plaintiffs, Plaintiff-Intervenor is not a person covered within the Executive
12 Exemption, the Administrative Exemption, or Professional Exemption contained within Wage
13 Order #1.

14 6. Wage Order #1 provides that “An ‘alternative workweek schedule’ means any
15 regularly scheduled workweek requiring an employee to work more than eight (8) hours in a 24-
16 hour period.

17 7. At all times relevant within the last four years, Plaintiffs, Plaintiff-Intervenor and
18 the aggrieved parties were regularly scheduled to work in excess of eight hours in a 24-hour
19 period.

20 8. Attached hereto as Exhibit 1 is a true and correct copy of the workweek schedule
21 for the Plaintiffs and other aggrieved employees for the 2016 calendar year.

22 9. At all times relevant within the last four years, Plaintiffs, Plaintiff-Intervenor
23 worked an “alternative workweek schedule” as defined in Wage Order #1.

24 10. Wage Order #1 provides that all work performed in excess of 12 hours per day
25 and any work in excess of eight (8) hours on those days worked beyond the regularly schedule
26 number of workdays established by the alternative workweek shall be paid at double the
27 employee’s regular rate of pay.

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1 11. At all times relevant times within the four years prior to the filing of the
2 complaint, when Plaintiffs, Plaintiff-Intervenor and the aggrieved parties were an extra non-
3 scheduled shift, and worked in excess of eight hours, they were paid time-and-a-half, and not
4 double time.

5 12. At all times relevant time within the four years prior to the filing of the
6 complaint, Plaintiffs and the aggrieved parties were required as part of their job duties to
7 monitor pages over the plant intercom system (hereinafter “The Pages”). On a typical workday,
8 the number of Pages would routinely exceeds 70 per day. Those pages were spread out through
9 the day based on Plant needs, and thus over any given period of time would average in excess of
10 6 pages an hour, including during the rest and meal break periods.

11 13. At all times relevant time within the four years prior to the filing of the complaint
12 , if the Plaintiffs, Plaintiff-Intervenor and aggrieved employees did not respond to a Page
13 received while they were on their rest break, they were subject to discipline.

14 14. At all times relevant time within the four years prior to the filing of the
15 complaint, if the Plaintiffs, Plaintiff-Intervenor and aggrieved employees did not respond to a
16 Page received by them while they were on their meal break, they were subject to discipline.

17 15. At all times relevant time within the four years prior to the filing of the
18 complaint, while ostensibly on their meal break, Plaintiffs, Plaintiff-Intervenor and the
19 aggrieved employees were not free of all duties as they were required to monitor The Pages.

20 16. At all times relevant time within the four years prior to the filing of the
21 complaint, while ostensibly on their rest break, Plaintiffs, Plaintiff-Intervenor s and the
22 aggrieved employees were not free of all duties as they were required to monitor The Pages.

23 17. At all times relevant time within the four years prior to the filing of the
24 complaint, while ostensibly on their meal break, if the Plaintiffs, Plaintiff-Intervenor and the
25 aggrieved employees had to respond to a Page, they were not compensated for the actual time
26 worked during their meal period, and the Plaintiffs and Plaintiff-Intervenor and the aggrieved
27 employees were not paid at the overtime rate; and/or double the regular rate in instances where
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1 such practices resulted in Plaintiffs and the aggrieved employees working in excess of 12 hours
2 in a workday

3 18. At all times relevant time within the four years prior to the filing of the
4 complaint, the Plaintiffs and Plaintiff Intervenor and aggrieved employees were subject to
5 annual bonuses which were paid by Defendant. The amount of the bonus paid to each employee
6 differs. Some employees' bonuses are calculated using a percentage that is applied with
7 reference to the employee's gross income for the preceding year and/or their cumulative hours
8 and/or their cumulative overtime hours for the preceding year. Conversely, other employees'
9 bonuses are calculated using a percentage based on number of overtime hours worked. The
10 "percentage-pay" bonus that did not spread the bonus across the non-overtime and/or mandatory
11 hours for the previous year, in order to calculate the regular rate. Rather, overtime was paid at
12 the regular rate of 1.5x the straight hourly pay. Additionally, the Defendant paid two
13 simultaneous bonuses (the BBPNCA bonus and the "Corporate" bonus), without recalculating
14 the regular rate based on the one bonus. Instead, Defendant paid the second bonus as a straight
15 percentage of the underlying gross income (*i.e.* without the other simultaneous bonus).
16 Additionally, Defendant excluded vacation payback, disability pay, medical leave, and other
17 pay, when calculating the percentage bonus. At all times relevant time within the four years
18 prior to the filing of the complaint, the Plaintiffs and Plaintiff Intervenor and aggrieved
19 employees worked scheduled weeks of four (4) consecutive twelve (12) hour workdays,
20 followed by four (4) days off work. The first eight hours of every day would be scheduled
21 regular time, and the last four hours would be paid as scheduled and mandatory overtime.
22 Employees were encouraged to volunteer for fifth and sixth days for such shifts. If insufficient
23 employees volunteered, then employees would be assigned mandatory overtime. Whether
24 mandatory or voluntary, fifth days and sixth days on shifts were paid as straight overtime for all
25 twelve hours. Defendant's employees at the Fairfield location averaged about 400 hours of
26 overtime a year. As a result of these violations, Defendant failed to pay overtime at the regular
27 rate of pay. Additionally, Defendant failed to pay double the regular rate of pay as required.
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1 19. Additionally, as a result of these violations, Defendant failed to pay overtime in
2 within the time periods specified in §§ 204 *et seq.* of the *Labor Code*.

3 20. Defendant failed to pay sick pay at the regular rate of pay as required under
4 § 264(1) of the *Labor Code*, because Defendant failed to include sick pay in the gross income
5 that Defendants the applied a “percentage bonus” to. Furthermore, Defendant did not include
6 the shift-differential and/or the continuous-operating bonus in calculation of the regular rate
7 when paying sick time.

8 21. At all relevant times within the four years prior to the filing of the complaint, the
9 Plaintiffs, Plaintiff Intervenor and aggrieved employees were required to pass through a security
10 gate to commence their work-day, but they were not compensated for the time reasonably
11 necessary to traverse from the security gate until the point that they could first clock in for their
12 shifts. During such times, Claimant and similarly situated employees were under the control of
13 Defendant, and/or suffered or permitted to work, but were not paid for such work. Employees
14 are owed wages at the overtime rate for this time. Additionally, Employees are owed
15 doubletime to the extent that they worked, when considering such hours worked, more than 12
16 consecutive hours.

17 22. Additionally, Richard Martin, and other employees in the Internal Coating “spray
18 operation” area of the Fairfield Plant, were subjected to “regulatory violations,” “general
19 violations,” and “repeat violations,” as defined in 8 C.C.R. § 334, relating to airborne exposures.

20 23. Plaintiffs, Plaintiff-Intervenor on behalf of themselves and all aggrieved
21 employees, bring this action pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512,
22 515, 558, 1194, 1199, 2699; Wage Order 7-2001; and California Code of Regulations, Title 8,
23 Section 11070, seeking wages and/or overtime, meal break premiums, rest break premiums,
24 penalties, injunctive and other equitable relief, and reasonable attorneys’ fees and costs.

25 24. Plaintiffs, Plaintiff-Intervenor on behalf of themselves and all aggrieved
26 employees, pursuant to Business & Professions Code §§ 17200-17208, also seek injunctive
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1 relief, restitution, and disgorgement of all benefits Defendant enjoyed from its unlawful conduct
2 as described herein.

3 **II**

4 **JURISDICTION AND VENUE**

5 25. This Court has subject matter jurisdiction over all causes of action asserted for
6 the reasons set forth in the Notice of Removal, ECF No. 1.

7 26. This Court has personal jurisdiction over Defendant because Defendant has
8 caused injuries in the County of Solano and State of California through their acts, and by their
9 violation of the California Labor Code, California state common law, and California Business &
10 Professions Code sections 17200, *et seq.*

11 27. Venue as to each Defendant is proper in this judicial district, pursuant to section
12 1391(b) of title 28 of the *United States Code*. Defendant operates within California and does
13 business within Solano County. The unlawful acts alleged herein have a direct effect on
14 Plaintiff and all aggrieved employees within the State of California.

15 **III**

16 **PARTIES**

17 **A. PLAINTIFF**

18 28. Plaintiff Robert Westfall, is a competent adult and was a resident of California,
19 was an employee of the Defendants. Plaintiff Westfall was employed by the Defendants to
20 perform services as a “Electronic Technician” commencing on or about January 2001 and
21 continuing through present. Plaintiff Westfall’s claims are common to those of the Proposed
22 Class Members.

23 29. Plaintiffs, Plaintiff-Intervenor and all aggrieved employees were regularly
24 required to:

25 a. Work without being compensated for all hours worked and at the proper
26 corresponding rate;

1 b. Work without being provided meal periods uninterrupted by the Pages or
2 provided a meal period premium at the proper corresponding rate;

3 c. Work without being provided their rest periods uninterrupted by The
4 Pages or provided a rest period premium at the proper corresponding rate; and

5 d. Work without being provided an accurate itemized wage statement that
6 accurately report total hours worked.

7 30. Plaintiff Richard Martin, is a competent adult and a resident of Virginia, is a
8 former employee of the Defendants. Pursuant to stipulation between Plaintiff Westfall, Martin,
9 and Defendant, Plaintiff Martin is conditionally stipulated to as a Plaintiff-Intervenor herein,
10 subject to the agreement that, in the event that certain agreed to conditions are not met, Martin
11 shall take appropriate action to seek his dismissal as a Plaintiff herein.

12 **B. DEFENDANTS**

13 31. Defendant BALL is believed to be a Colorado corporation operating within the
14 State of California.

15 32. Defendant BALL has done and does business throughout the State of California.

16 33. The true names and capacities, whether individual, corporate, associate, or
17 otherwise, of Defendants sued herein as DOES 1 to 20, inclusive, are currently unknown to
18 Plaintiffs, who therefore sues Defendants by such fictitious names under Code of Civil
19 Procedure § 474. Plaintiffs, Plaintiff-Intervenor are informed and believes, and based thereon
20 alleges, that each of the Defendants designated herein as a DOE is legally responsible in some
21 manner for the unlawful acts referred to herein. Plaintiffs, Plaintiff-Intervenor will seek leave of
22 court to amend this Complaint to reflect the true names and capacities of the Defendants
23 designated hereinafter as DOES when such identities become known.

24 34. Plaintiffs, Plaintiff-Intervenor are informed and believe, and based thereon
25 allege, that each Defendant acted in all respects pertinent to this action as the agent of the other
26 Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto,
27 and the acts of each Defendant are legally attributable to the other Defendants. Furthermore,
28

1 Defendants in all respects acted as the employer and/or joint employer of Plaintiffs and the
2 aggrieved employees.

3 **IV**

4 **CLASS ACTION ALLEGATIONS**

5 35. Plaintiffs Westfall, Bobby, Anderson and Ellinger bring this action on behalf of
6 themselves and all others similarly situated as a Class Action pursuant to § 382 of the Code of
7 Civil Procedure and/or Rule 23(b)(3) and/or Rule 23(b)(2) of the Code of Civil Procedure.
8 Plaintiff Westfall, Anderson, Bobby and Ellinger seeks to represent All non-exempt employees
9 who hold or held the position of "Electronic Technician," "Machinist/Mechanic," and/or
10 "Maintenance", or non-exempt employees who worked in the production, engineering, and
11 production support departments of, Defendant and any subsidiaries or affiliated companies and
12 Does 1 to 20, and who are currently employed by or formerly employed at the Fairfield Plant,
13 located at or near 2400 Huntington Dr, Fairfield, CA 94533 ("Proposed Class").

14 36. Plaintiff Martin brings this action on behalf of himself and all others similarly
15 situated as a Class Action pursuant to § 382 of the Code of Civil Procedure and/or Rule 23(b)(3)
16 and/or Rule 23(b)(2) of the Code of Civil Procedure. Plaintiff seeks to represent All non-
17 exempt employees who hold or held the position of "Electronic Technician,"
18 "Machinist/Mechanic," and/or "Maintenance", or non-exempt employees who worked in the
19 production, engineering, and production support departments of, Defendant and any
20 subsidiaries or affiliated companies and Does 1 to 20, and who are currently employed by or
21 formerly employed at the Fairfield Plant, located at or near 2400 Huntington Dr, Fairfield, CA
22 94533 ("Proposed Class").

23 37. Plaintiffs, Plaintiff-Intervenor reserves the right under Rule 3.765(b) of the
24 California Rules of Court and similar applicable governing Federal Rules and Code provisions
25 to amend or modify the class description with greater specificity, by division into subclasses, or
26 by limitation to particular issues.

1 38. Plaintiffs, Plaintiff-Intervenor are informed and believe that this action has been
2 brought and may properly be maintained as a class action under the provisions of § 382 of the
3 Code of Civil Procedure because there is a well-defined community of interest in the litigation
4 and the Proposed Classes are easily ascertainable.

5 **A. Numerosity**

6 39. Plaintiffs, Plaintiff-Intervenor are informed and believes that the potential
7 members of the Proposed Classes as defined are so numerous that joinder of all the members of
8 the Proposed Classes is impracticable.

9 40. While the precise number of proposed Class Members has not been determined
10 at this time, Plaintiffs, Plaintiff-Intervenor are informed and believes that Defendant currently
11 employ, and during the relevant time periods employed approximately 385 Class Members.

12 41. Plaintiffs, Plaintiff-Intervenor allege that Defendant's employment records
13 would provide information as to the number and location of all members of the Proposed
14 Classes.

15 42. Plaintiffs, Plaintiff-Intervenor are informed and believes that joinder of all
16 members of the Proposed Classes is not practicable.

17 **B. Commonality**

18 43. There are questions of law and fact common to the Proposed Classes that
19 predominate over any questions affecting only individual Proposed Class Members. These
20 common questions of law and fact include, without limitation:

21 a. Whether Defendant failed to pay wages and/or overtime compensation
22 and/or double-time compensation, and at the proper corresponding rate, as required by the Labor
23 Code and Wage Orders under Labor Code §§ 510, 1194, and 1199;

24 b. Whether Defendant violated Labor Code §§ 226.7 and 512 and IWC
25 Wage Order 1-2001 or other applicable IWC Wage Orders, by failing to provide required meal
26 periods free from the duty to monitor The Pages and interruptions throughout the term of
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1 employment and failing to compensate said employees one (1) hours wages in lieu of meal
2 period missed;

3 c. Whether Defendant violated Labor Code § 226.7 and IWC Wage Order
4 1-2001 or other applicable IWC Wage Orders, by failing to inform Plaintiffs and the Proposed
5 Classes of their right to take rest periods free from duties to monitor The Pages interruptions
6 throughout the term of employment and failing to compensate said employees one (1) hours
7 wages at the regular rate in lieu of rest periods missed;

8 d. Whether Defendants violated Labor Code § 226(a) and Wage Order 1-
9 2001 or other applicable IWC Wage Orders, and Cal. Code Regs., Title 8, Section 11070 by
10 failing to provide accurate itemized wage statements that accurately reported, among other
11 things, total hours worked, and the applicable rates, for Plaintiffs and the members of the
12 Proposed Classes;

13 e. Whether Defendant violated §§ 201-203 of the Labor Code by willfully
14 failing to pay Plaintiffs, Plaintiff-Intervenor and the members of the Proposed Classes all
15 compensation that was due and owing upon termination and which was attributable to the
16 alleged violations herein, whether such compensation was due and owing for time spent while
17 on the clock, based on unpaid or underpaid premiums related to failure to provide meal and rest
18 periods, and/or arising in whole or in part based on Defendant's alleged failure to compensate
19 Plaintiffs, Plaintiff-Intervenor and the members of the Proposed Classes for various entitlements
20 which were tied to the regular rate calculation;

21 f. Whether Defendant violated § 204 of the Labor Code by failing to timely
22 pay regular wages, premiums, and overtime, and/or underpayments of such wages, premiums,
23 and overtime, attributable to the alleged violations during the course of employment of Plaintiffs
24 and the members of the Proposed Classes;

25 g. Whether Defendant violated §§ 221, 223, 3751 of the Labor Code by
26 making non-permitted deductions when calculating the percentage bonuses;

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1 h. Whether Defendant employees in the Internal Coating “spray operation”
2 area of the Fairfield Plant, were subjected to airborne exposures constituting “regulatory
3 violations,” “general violations,” and “repeat violations,” (as those terms are defined in 8 C.C.R.
4 § 334);

5 i. Whether Defendant violated § 17200 et seq. of the Business &
6 Professions Code by engaging in the acts previously alleged;

7 j. Whether Plaintiffs, Plaintiff-Intervenor and the members of the Proposed
8 Classes are entitled to equitable relief pursuant to Business & Professions Code § 17200, et seq.;
9 and

10 k. Whether Defendant violated Labor Code § 2699, et seq. by engaging in
11 the acts alleged herein.

12 **C. Typicality**

13 44. Plaintiffs, Plaintiff-Intervenor are informed and believe that their claims are
14 typical of the claims of the Proposed Classes.

15 45. Plaintiffs, Plaintiff-Intervenor are informed and believes that Plaintiffs, Plaintiff-
16 Intervenor and all members of the Proposed Classes sustained injuries and damages arising out
17 of and caused by Defendant’s common course of conduct in violation of laws, regulations that
18 have the force and effect of law, and statutes as alleged herein.

19 **D. Adequacy of Representation**

20 46. Plaintiffs will fairly and adequately represent and protect the interests of the
21 members of the proposed Classes. Counsel who represent Plaintiffs and the Proposed Classes
22 are competent and experienced in litigating employment class actions.

23 **E. Superiority of Class Action**

24 47. Plaintiffs, Plaintiff-Intervenor are informed and believes that a class action is
25 superior to other available means for the fair and efficient adjudication of this controversy.

26 48. Plaintiffs, Plaintiff-Intervenor are informed and believes that individual joinder
27 of all Proposed Class Members is not practicable, and questions of law and fact common to the
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1 Proposed Classes predominate over any questions affecting only individual members of the
2 Proposed Classes.

3 49. Plaintiffs, Plaintiff-Intervenor are informed and believes that each member of the
4 Proposed Classes has been damaged and is entitled to recovery by reason of Defendant's illegal
5 policy and/or practice of failing to provide wages and/or overtime, meal periods, rest periods,
6 failing to provide accurate itemized wage statements, and failing to pay all wages upon
7 resignation or termination.

8 50. Plaintiffs, Plaintiff-Intervenor are informed and believes that Class action
9 treatment will allow those similarly situated persons to litigate their claims in the manner that is
10 most efficient and economical for the parties and the judicial system.

11 51. Plaintiffs, Plaintiff-Intervenor are unaware of any difficulties that are likely to be
12 encountered in the management of this action that would preclude its maintenance as a class
13 action.

14
15 **VI**

16 **FIRST CAUSE OF ACTION**

17 **FAILURE TO PAY WAGES AND/OR OVERTIME UNDER**

18 **LABOR CODE §§ 510, 1194, and 1199**

19 **By Plaintiffs WESTFALL, ANDERSON, BOBBY, ELLINGER, and MARTIN,**

20 **individually and on behalf of all employees similarly situated, against ALL**

21 **DEFENDANTS, and DOES 1 through 20**

22 52. Plaintiffs, on behalf of themselves and the Proposed Classes, reallege and
23 incorporate by reference all previous paragraphs.

24 53. Plaintiffs and the Proposed Classes were forced to work on a regular and
25 consistent basis without receiving compensation for all hours worked at the proper rate.

26 54. Plaintiffs and the Proposed Classes were not provided meal and rest breaks free
27 from duty as a result of a paging system that was used to communicate in the Fairfield,
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1 California plant. Each missed meal period was an on-duty meal period and should have been
2 paid at the regular rate of pay. Plaintiffs and the Proposed Classes were not paid for the on-duty
3 meal breaks at the regular rate of pay. Failure to pay wages for the on duty meal break deprived
4 Plaintiffs and the Proposed Classes, of, among other compensation owed, overtime wages.

5 55. Plaintiffs and the Proposed Classes were required to attend turnover meetings at
6 the beginning and end of each shift to advise and communicate with the oncoming shift
7 employees of the events that had occurred during the prior shift. Plaintiffs and the Proposed
8 Classes were not always paid for this time which often extended beyond the scheduled twelve
9 hour shift. Plaintiffs and the Proposed Classes are owed wages at the overtime rate for this time.
10 Plaintiffs and the Proposed Classes are owed doubletime to the extent that they worked, when
11 considering such hours worked, more than twelve consecutive hours.

12 56. Plaintiffs and the Proposed Classes were required to pass through a security gate
13 to commence their work day but they were not compensated for the time reasonably necessary
14 to traverse form the security gate until the point that they could first clock in for their shifts.
15 During such times, Plaintiffs and the Proposed Classes were under the control of Defendant
16 and/or suffered or permitted to work, but were not paid for such work. Plaintiffs and the
17 Proposed Classes are owed wages at the overtime rate for this time. Additionally, Plaintiffs and
18 the Proposed Classes are owed doubletime to the extent that they worked, when considering
19 such hours worked, more than twelve consecutive hours.

20 57. Defendant has been paying annual bonuses to Plaintiffs and the Proposed
21 Classes, which bonuses are paid in mid-February annually. The amount of the bonus paid to
22 each employee differs. Some employees' bonuses are calculated using a percentage that is
23 applied with reference to the employee's gross income for the preceding year and/or their
24 cumulative hours and/or their cumulative overtime hours for the preceding year. Conversely,
25 other employees' bonuses are calculated using a percentage based on number of overtime hours
26 worked. Plaintiffs and the Proposed Classes worked scheduled weeks of four (4) consecutive
27 twelve (12) hour workdays, followed by four (4) days off work. The first eight hours of every
28 day would be scheduled regular time, and the last four hours would be paid as scheduled and
mandatory overtime. Employees were encouraged to volunteer for fifth and sixth days for such

1 shifts. If insufficient employees volunteered, then employees would be assigned mandatory
2 overtime. Whether mandatory or voluntary, fifth days and sixth days on shifts were paid as
3 straight overtime for all twelve hours. Defendant’s employees at the Fairfield location averaged
4 about 400 hours of overtime a year. Defendant does not spread the bonus across the non-
5 overtime and/or mandatory hours for the previous year, in order to calculate the regular rate.
6 Rather, overtime is paid at the regular rate of 1.5x the straight hourly pay. Additionally, the
7 Defendant paid two simultaneous bonuses (the BBPNCA bonus and the “Corporate” bonus),
8 without recalculating the regular rate based on the one bonus. Instead, Defendant paid the
9 second bonus as a straight percentage of the underlying gross income (*i.e.* without the other
10 simultaneous bonus). As a result of these violations, Defendant failed to pay overtime at the
11 regular rate of pay.

12 58. In addition, Defendant failed to pay Plaintiffs and the Proposed Classes sick pay
13 at the regular rate of pay as required under § 264(1) of the *Labor Code*, because Defendant failed
14 to include sick pay in the gross income that Defendants the applied a “percentage bonus” to.
15 Furthermore, Defendant did not include the shift-differential and/or the continuous-operating
16 bonus in calculation of the regular rate when paying sick time. Defendant also violated *Labor*
17 *Code* §227.3 which requires employers to pay unused vacation time at the regular rate.
18 Defendant violated this section by failing to include shift differential and/or the continuous
19 operating bonus in the calculation of the regular rate at the time of Plaintiffs and the Proposed
20 Class Members use of vacation time and/or upon payment at termination of employment.

21 59. Defendant often scheduled Plaintiffs and the Proposed Classes for mandatory
22 fifth and/or sixth days of 12-hour shifts, and Plaintiffs maintain that section 511(b) of the *Labor*
23 *Code*, by implication, requires the payment of doubletime for all hours worked in excess of
24 eight hours on the fifth, sixth, and seventh days of consecutive shifts that all exceed 10 hours in
25 length. Additionally, Defendants failed to adhere to its designated start time and/or to its
26 designated week start for purposes of calculating overtime and doubletime.

27 60. As a result of the unlawful acts of Defendant, Plaintiffs and the members of the
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1 Proposed Classes have been deprived of wages and/or overtime in amounts to be determined at
2 trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys'
3 fees, and costs.

4 **VII**

5 **SECOND CAUSE OF ACTION**

6 **FAILURE TO PROVIDE MEAL PERIODS PURSUANT TO**

7 **LABOR CODE § 226.7 AND LABOR CODE § 512**

8 **By Plaintiffs WESTFALL, ANDERSON, BOBBY, and ELLINGER, individually and on**

9 **behalf of all employees similarly situated, against ALL DEFENDANTS, and DOES 1**

10 **through 20**

11
12 61. Plaintiffs on behalf of himself and the Proposed Classes, realleges and
13 incorporate by reference all previous paragraphs.

14 62. Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of
15 compensation for one or more meal periods the employer fails to provide each day.

16 63. Employees are entitled to a first meal period of at least thirty (30) minutes for
17 shifts over five (5) hours, to be provided within the first five (5) hours of the shift, and a second
18 meal period of at least thirty (30) minutes for shifts over ten (10) hours, to be provided within
19 ten (10) hours of work.

20 64. Plaintiffs and the Proposed Classes consistently worked shifts over five (5)
21 hours.

22 65. Defendant failed to provide Plaintiffs and the Proposed Class with proper
23 uninterrupted meal breaks free from all duties including Pages, of not less than thirty (30)
24 minutes as required by the Labor Code during the relevant time period.

25 66. Defendant's Fairfield plant manufactures cans and employees in the engineering,
26 production and support departments generally work a rotating schedule working twelve-hour
27 shifts, four days on, four days off. Defendant utilized a paging system to communicate with
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1 employees of the needs and changes to the production line. The paging system had a speaker in
2 the breakroom. The applicable Wage Order, 1-2001, requires that “suitable resting facilities
3 shall be provided in an area separate from the toilet rooms and shall be available to employees
4 during work hours.” The same Wage Order requires that “if a meal period occurs on a shift
5 beginning or ending at or between the hours of 10:00 p.m. and 6:00 a.m., facilities shall be
6 available for securing hot food and drink or for heating food or drink, and a suitable sheltered
7 place shall be provided in which to consume such food or drink.” While Defendant provided a
8 room that complied on its face with these two portions of the Wage Order, when the employees
9 used the suitable resting facilities, they did so on the condition that they remained vigilant and
10 continued to work by monitoring pages, thus depriving them of meal and rest breaks free from
11 duties. Employees are owed a meal break premium and rest break premium at the regular rate of
12 pay for each day that they worked.

13 67. Additionally, even for those meal periods for which Defendants paid a meal
14 period premium, Defendants failed to pay the premium at the regular rate of pay, because,
15 amongst other matters, Defendants did not include the shift-differential, economic value added
16 bonus, and/or the continuous-operating bonus, among others, in calculation of the regular rate.

17 68. Pursuant to Labor Code § 226.7, Plaintiffs and the Proposed Classes are entitled
18 to damages in an amount equal to one (1) hour of wages at the regular rate of compensation for
19 one or more denied meal breaks per day in a sum to be proven at trial.

20 **VIII**

21 **THIRD CAUSE OF ACTION**

22 **FAILURE TO ALLOW REST PERIODS PURSUANT TO LABOR CODE § 226.7**

23 **By Plaintiffs WESTFALL, ANDERSON, BOBBY, and ELLINGER, individually and on**

24 **behalf of all employees similarly situated, against ALL DEFENDANTS, and DOES 1**

25 **through 20**

26 69. Plaintiffs, on behalf of themselves and the Proposed Classes, reallege and
27 incorporate by reference all previous paragraphs.

1 70. Labor Code § 226.7 requires an employer to pay an additional hour (1) of
2 compensation at the regular rate of pay for each rest period the employer fails to provide.

3 71. Employees are entitled to a paid ten (10) minute rest break for every four (4)
4 hours worked (or major fraction thereof).

5 72. While Defendant provided a break room that complied on its face with the two
6 portions of the Wage Order described above, when the employees used the suitable resting
7 facilities, they did so on the condition that they remained vigilant and continued to work by
8 monitoring pages, thus depriving them of rest breaks free from duties. Employees are owed a
9 rest break premium at the regular rate of pay for each day that they worked.

10 73. Defendant failed to provide Plaintiffs and the Proposed Class with proper
11 uninterrupted rest breaks free from all duties including pages, of not less than ten (10) minutes
12 as required by the Labor Code during the relevant time period.

13 74. Pursuant to Labor Code § 226.7, Plaintiffs and the Proposed Classes are entitled
14 to damages in an amount equal to one (1) hour of wages at the regular rate of compensation for
15 one or more denied rest periods each day in a sum to be proven at trial.

16 **IX**

17 **FOURTH CAUSE OF ACTION**

18 **VIOLATION OF LABOR CODE § 226(a)**

19 **By Plaintiffs WESTFALL, ANDERSON, BOBBY, and ELLINGER, individually and on**

20 **behalf of all employees similarly situated, against ALL DEFENDANTS, and DOES 1**

21 **through 20**

22 75. Plaintiffs, on behalf of themselves and the Proposed Classes, reallege and
23 incorporate by reference all previous paragraphs.

24 76. Labor Code section 226 requires employers to furnish to employees with “an
25 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked
26 by the employee, . . . (3) the number of piece-rate units earned and any applicable piece rate if
27 the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made
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1 on written orders of the employee may be aggregated and shown as one item, (5) net wages
2 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the
3 employee and only the last four digits of his or her social security number or an employee
4 identification number other than a social security number, (8) the name and address of the legal
5 entity that is the employer . . . and (9) all applicable hourly rates in effect during the pay period
6 and the corresponding number of hours worked at each hourly rate by the employee”

7 77. Section 226(a) of the California Labor Code requires employers to itemize in
8 wage statements all deductions from payment of wages, the appropriate rates of pay, and to
9 accurately report total hours worked by the employees. It also requires that an employer include
10 its name and address on the wage statement. Defendant has knowingly and intentionally failed
11 to comply with Labor Code § 226(a) on wage statements provided to Plaintiffs and the Proposed
12 Classes.

13 78. IWC Wage Orders require employers to maintain time records showing, among
14 others, when the employee begins and ends each work period, meal periods, split shift intervals
15 and total daily hours worked in an itemized wage statements, and must show all deductions
16 from payment of wages, and accurately report total hours worked by employees. Defendant
17 failed to keep accurate records detailing, among other things, the total daily hours worked for
18 Plaintiffs and members of the Proposed Classes.

19 79. Defendant provided itemized wages statements that failed to reflect, among
20 other things, the correct regular wage rate, overtime wage rate, and accurate number of hours
21 worked.

22 80. An employee suffering injury as a result of a knowing and intentional failure by
23 an employer to comply with Labor Code § 226(a) is entitled to recover the greater of all actual
24 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one
25 hundred dollars (\$100) per employee for each violation in a subsequent pay period, not
26 exceeding an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of
27 costs and reasonable attorneys’ fees.

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X

FIFTH CAUSE OF ACTION

WAITING TIME PENALTIES UNDER LABOR CODE § 203

By Plaintiffs WESTFALL, ANDERSON, BOBBY, and ELLINGER, individually and on behalf of all employees similarly situated, against ALL DEFENDANTS, and DOES 1 through 20

81. Plaintiffs, on behalf of the Proposed Classes, reallege and incorporate by reference all previous paragraphs.

82. Numerous members of the Proposed Classes are no longer employed by Defendant. They were either terminated or quit Defendant’s employ.

83. Defendant’s failure to pay wages, as alleged above was willful in that Defendant knew wages to be due but failed to pay them, thus entitling Plaintiffs and the Proposed Classes to penalties under Labor Code § 203, which provides that an employee’s wages shall continue as a penalty until paid for a period of up to thirty (30) days from the time they were due.

84. Defendant has failed to pay others a sum certain at the time of termination or within seventy-two (72) hours of their resignation, and have failed to pay those sums for thirty (30) days thereafter. Pursuant to the provisions of Labor Code § 203, the Proposed Classes whose employment ended are entitled to a penalty in the amount of their daily wage multiplied by thirty (30) days.

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XI

SIXTH CAUSE OF ACTION

UNFAIR COMPETITION PURSUANT TO

BUSINESS & PROFESSIONS CODE § 17200

By Plaintiffs WESTFALL, ANDERSON, BOBBY, MARTIN and ELLINGER,

individually and on behalf of all employees similarly situated, against ALL

DEFENDANTS, and DOES 1 through 20

85. Plaintiffs, Plaintiff-Intervenor on behalf of themselves and the Proposed Classes, reallege and incorporate by reference all previous paragraphs.

86. This is a Class Action for Unfair Business Practices. Plaintiffs, Plaintiff-Intervenor, on behalf of themselves, on behalf of the general public, and on behalf of the Proposed Classes, bring this claim pursuant to Business & Professions Code § 17200, et seq. The conduct of Defendant as alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiffs, Plaintiff-Intervenor, the general public, and the Proposed Classes. Plaintiffs, Plaintiff-Intervenor seek to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

87. Plaintiffs, Plaintiff-Intervenor are “persons” within the meaning of Business & Professions Code § 17204, and therefore has standing to bring this cause of action for injunctive relief, restitution, and other appropriate equitable relief.

88. Business & Profession Code § 17200, et seq. prohibits unlawful and unfair business practices.

89. California’s wage and hour laws express fundamental public policies. Providing employees with proper wages and compensation are fundamental public policies of this State and of the United States. Labor Code § 90.5(a) articulates the public policies of this State to enforce vigorously minimum labor standards, to ensure that employees are not required or permitted to work under substandard and unlawful conditions, and to protect law-abiding

1 employers and their employees from competitors who lower their costs by failing to comply
2 with minimum labor standards.

3 90. Defendant has violated statutes and public policies as alleged herein. Through
4 the conduct alleged in this Complaint, Defendant has acted contrary to these public policies,
5 have violated specific provisions of the Labor Code, and have engaged in other unlawful and
6 unfair business practices in violation of Business & Profession Code § 17200, et seq., depriving
7 Plaintiffs, Plaintiff-Intervenor, and all persons similarly situated, and all interested persons of
8 rights, benefits, and privileges guaranteed to all employees under law.

9 91. Defendant's conduct, as alleged hereinabove, constitutes unfair competition in
10 violation of § 17200 et seq. of the Business & Professions Code.

11 92. Defendant, by engaging in the conduct herein alleged, either knew or in the
12 exercise of reasonable care, should have known that the conduct was unlawful. As such it is a
13 violation of § 17200 et seq. of the Business & Professions Code.

14 93. As a proximate result of the above-mentioned acts of Defendant, Plaintiffs,
15 Plaintiff-Intervenor and others similarly situated have been damaged in a sum as may be proven.

16 94. Unless restrained, Defendant will continue to engage in the unlawful conduct as
17 alleged above. Pursuant to the Business & Professions Code, this court should make such
18 orders or judgments, including the appointment of a receiver, as may be necessary to prevent the
19 use or employment by Defendant, its agents, or employees, of any unlawful or deceptive
20 practices prohibited by the Business & Professions Code, and/or, including but not limited to,
21 restitution and disgorgement of profits which may be necessary to restore Plaintiffs, Plaintiff-
22 Intervenor and members of the Proposed Classes the money Defendant has unlawfully failed to
23 pay.

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XII

SEVENTH CAUSE OF ACTION

**BY PLAINTIFF IN HIS REPRESENTATIVE CAPACITY ON BEHALF OF ALL
OTHER EMPLOYEES SIMILARLY SITUATED-PRIVATE ATTORNEY GENERAL
ACT—LABOR CODE SECTION 2698, ET. SEQ. AGAINST DEFENDANTS**

**By Plaintiffs WESTFALL, ANDERSON, BOBBY, and ELLINGER, individually and on
behalf of all employees similarly situated, against ALL DEFENDANTS, and DOES 1
through 20**

95. Plaintiffs incorporates paragraphs 1 through 75 of this complaint as if fully alleged herein.

96. Plaintiffs and the Plaintiff Class Members are aggrieved employees as defined *in Labor Code §2699(a)*. Plaintiffs bring this cause of action on behalf of themselves and the Plaintiff Class Members affected by the labor law violations alleged in this complaint.

97. Defendant committed the following violations of the California Labor Code against Plaintiffs and Plaintiff Class Members, and, on information and belief, against other current or former “Electronic Technician” while they were and are employed by Defendant, and each of them:

a. Defendants, and each of them, violated *Labor Code §§226.7 and 512* by not providing lawful meal breaks free from all duties for Plaintiffs and Plaintiff Class Members or paying meal period premiums in lieu thereof at the regular rate of pay.

b. Defendants, and each of them, violated *Labor Code §226.7* by not providing lawful rest periods for Plaintiffs and Plaintiff Class Members or paying rest period premiums in lieu thereof at the regular rate of pay;

c. Defendants, and each of them, violated *Labor Code §226(a)* by not providing an accurate itemized wage statement to Plaintiffs and Plaintiff Class Members;

d. Defendants, and each of them, violated *Labor Code §510 and §1194* by failing to

1 pay Plaintiffs and Plaintiff Class Members wages for all hours worked including payment of
2 overtime wages at the regular rate for all hours worked beyond an eight (8) hour day and forty
3 (40) hours per week.

4 e. Defendants, and each of them, violated *Labor Code §1194, 1197.1, IWC Wage*
5 *Order No. 1-2001 §4* by failing to pay minimum wages to Plaintiffs and Plaintiff Class
6 Members.

7 f. Defendants, and each of them, violated *Labor Code §227.3* which requires
8 employers to pay unused vacation time at the regular rate. Defendant violated this section by
9 failing to include shift differential and/or the continuous operating bonus in the calculation of
10 the regular rate.

11 g. Defendants, and each of them, violated *Labor Code §1174* by failing to
12 accurately record all time worked on their time records.

13 h. Defendants, and each of them, violated *Labor Code §204* by failing to pay
14 Plaintiffs and the Plaintiff Class Members for all overtime and doubletime no later than the
15 second payday after the overtime and doubletime labor occurred. Defendants, and each of them,
16 violated *Labor Code §246* by failing to provide a reasonable minimum increment, not to exceed
17 two hours for the use of paid sick leave.

18 i. Defendants, and each of them, violated *Labor Code §§ 221, 224, 3751, IWC*
19 *Wage Order No. 1-2001 §11* by deducting from employee wages based on reductions to
20 financial performance that were attributable to cash shortage, breakage, loss of equipment and
21 payments relating to workers' compensation benefits.

22 j. Defendants, and each of them, violated *Labor Code §§201-203* by failing to
23 timely pay Plaintiffs and Plaintiff Class Members all wages owed to an employee who is
24 discharged or quits.

1 k. Defendants, and each of them, violated *Business and Professions Code* §§17200
2 *et. seq.* by committing unlawful business practices.

3 98. Pursuant to *Labor Code Section 2699(a)* Plaintiff seeks to recover civil penalties,
4 as otherwise provided by statute, for which Defendants, and each of them, are liable as a
5 result of Defendants' violation of the *Labor Code* set forth herein above in an amount to be
6 proved at trial.
7

8 Wherefore, Plaintiffs request relief as pray for hereinafter.

9 **XII**

10 **EIGHTH CAUSE OF ACTION**

11 **BY PLAINTIFF-IN-INTERVENTION RICHARD MARTIN IN HIS**
12 **REPRESENTATIVE CAPACITY ON BEHALF OF ALL OTHER EMPLOYEES**
13 **SIMILARLY SITUATED-PRIVATE ATTORNEY GENERAL ACT—LABOR CODE**
14 **SECTION 2698, ET. SEQ. AGAINST DEFENDANTS**

15 **By Plaintiffs MARTIN, individually and on behalf of all employees similarly situated,**
16 **against ALL DEFENDANTS, and DOES 1 through 20**

17 99. Plaintiff Martin incorporates the foregoing paragraphs of this complaint as if
18 fully alleged herein.

19 100. Plaintiff Martin all employees who are currently employed by or formerly
20 employed in the Internal Coating “spray operation” area of the Fairfield Plant, located at or
21 near 2400 Huntington Dr, Fairfield, CA 94533, are aggrieved employees as defined in *Labor*
22 *Code* §2699(a). Plaintiff Martin brings this cause of action on behalf of himself and the
23 Class Members affected by the labor law violations alleged in this cause of action.

24 101. Defendant committed the following violations of the California Labor Code
25 against Plaintiff and relevant Class Members while they were and are employed by
26 Defendant, including:

27 a. Defendants, and each of them, violated 8 C.C.R § 5149 by not providing adequate
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1 training regarding handled chemicals.

2 b. Defendants, and each of them, violated 8 C.C.R § 5144 by not providing adequate
3 engineering controls. (See also 8 C.C.R. § 5153(b)(1); id., § 5153(e)& (g).)

4 c. Defendants, and each of them, violated 8 C.C.R § 5192, § 5149; § 5149; § 5144 by
5 not providing adequate response training.
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7 102. Pursuant to *Labor Code Section 2699(a)* Plaintiff seeks to recover civil
8 penalties, as otherwise provided by statute, for which Defendants, and each of them, are
9 liable as a result of Defendants' violation of the *Labor Code* set forth herein above in an
10 amount to be proved at trial.

11 Wherefore, Plaintiff request relief as pray for hereinafter.
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14 **XIII**

15 **RELIEF REQUESTED**

16 **WHEREFORE**, Plaintiffs, Plaintiff-Intervenor pray for the following relief:

17 1. For compensatory damages in the amount of unpaid wages and/or overtime not
18 paid to Plaintiffs, Plaintiff-Intervenor and each other member of the Proposed Classes from at
19 least four (4) years prior to the filing of this action to the present as may be proven;

20 2. For compensatory damages in the amount of Plaintiffs, Plaintiff-Intervenor and
21 each member of the Proposed Classes' correct hourly premium wage for each rest period and/or
22 meal period missed or taken late during the liability period as may be proven;
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1 3. For penalties pursuant to Labor Code § 226(e) for violation of Labor Code
2 § 226(a) in the amount of fifty dollars (\$50) for the initial pay period in which a violation occurs
3 and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not
4 exceeding an aggregate penalty of four thousand dollars (\$4,000);

5 4. For penalties pursuant to Labor Code § 203 for all employees who were
6 terminated or resigned equal to their daily wage times thirty (30) days;

7 5. That the court determine that the failure of the Defendants to pay wages to the
8 Plaintiffs, Plaintiff-Intervenor and Plaintiff Class members be adjudged and decreed to violate
9 the applicable regulations and statutes;

10 6. An award of prejudgment and post judgment interest;

11 7. An order enjoining Defendant and its agents, servants, and employees, and all
12 persons acting under, in concert with, or for it from providing Plaintiffs, Plaintiff-Intervenor
13 with proper wages, premiums, and/or overtime, meal periods, rest periods, accurate itemized
14 wage statements, and wages upon termination/resignation pursuant to Labor Code §§ 203,
15 226(a), 226.7, 510, 512, 515, 558, 1194, 1199 and IWC 7-2001;

16 8. For restitution for unfair competition pursuant to Business & Professions Code
17 § 17200, including disgorgement or profits, in an amount as may be proven;

18 9. For penalties and other relief pursuant to Labor Code §2699, et seq.;

19 10. As Plaintiffs, Plaintiff-Intervenor have properly given Defendant Notice,
20 Plaintiffs, Plaintiff-Intervenor seeks unpaid wages and penalties pursuant to Labor Code §558,
21 as permitted by Labor Code §2699(f), in the amount of, fifty dollars (\$50) for each initial
22 violation for each underpaid employee for each pay period for which the employee was
23 underpaid in addition to an amount sufficient to recover such underpaid wages and one hundred
24 (\$100) dollars for each subsequent violation for each underpaid employee for each pay period
25 for which the employee was underpaid in addition to an amount sufficient to recover such
26 underpaid wages;

27 11. Prejudgment interest;
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- 12. An award providing for payment of costs of suit;
- 13. An award of attorneys' fees; and
- 14. Such other and further relief as this Court may deem proper and just.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial of his claims by jury to the extent authorized by law.

Dated: May 30, 2024

Eason & Tambornini, ALC

By: /s/ MATTHEW R. EASON
Matthew R. Eason
Erin M. Scharg
Attorneys for Plaintiff and the Proposed Class