

# EXHIBIT 2

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Superior Court of California,  
County of San Diego  
**04/27/2018** at 10:47:57 AM  
Clerk of the Superior Court  
By Valeria Contreras, Deputy Clerk

Attorneys for Plaintiff, Sergio Cota,  
individually; and on behalf of all current and  
former employees of Defendants

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**COUNTY OF SAN DIEGO**

**SERGIO COTA, individually; and on behalf of  
all others similarly situated,**

**Plaintiff,**

**vs.**

**FRESENIUS USA, INC., a Massachusetts  
corporation; FRESENIUS USA  
MANUFACTURING, INC., a Delaware  
corporation; and DOES 1 through 100, inclusive,**

**Defendants.**

Case No.: 37-2018-00021158-CU-OE-CTL

**CLASS ACTION COMPLAINT FOR:**

1. Failure to Provide Meal Periods [Cal. Lab. Code §§ 226.7, 512];
2. Failure to Authorize and Permit Rest Breaks [Cal. Lab. Code §§ 226.7];
3. Failure to Pay Minimum and Straight Time Wages [Cal. Lab. Code §§ 204, 1194, 1194.2, and 1197];
4. Failure to Pay Overtime Compensation [Cal. Lab. Code §§ 1194 and 1198];
5. Failure to Provide Accurate Itemized Wage Statements [Cal. Lab. Code § 226];
6. Failure to Timely Pay Final Wages At Termination [Cal. Lab. Code §§ 201-203];
7. Unfair Business Practices [Cal. Bus. & Prof. Code §§ 17200, et seq.]; and

**INDIVIDUAL CLAIMS FOR:**

8. Wrongful Termination in Violation of Public Policy
9. Retaliation in Violation of Labor Code Section 98.6; and

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**REPRESENTATIVE ACTION FOR:**

10. Civil penalties under PAGA [Cal. Lab. Code § 2699, *et seq.*]

**DEMAND FOR JURY TRIAL**

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

4  
5 **JURISDICTION AND VENUE**

6 This Court is the proper Court, and this action is properly filed in the Superior Court of  
7 the State of California, County of San Diego, because Defendants maintain offices and  
8 facilities and transacts business in the County of San Diego, and because Defendants’ illegal  
9 payroll policies and practices which are the subject of this action were applied, at least in part,  
10 to Named Plaintiffs and the proposed Class in the County of San Diego.

11 **INTRODUCTION & GENERAL ALLEGATIONS**

12 1. Named Plaintiff brings this action against Fresenius USA, Inc., Fresenius USA  
13 Manufacturing, Inc., and Does 1 through 100 (hereinafter also collectively referred to as  
14 “Defendants”) for California Labor Code violations, unfair business practices, and civil penalties  
15 stemming from Defendants’ failure to provide meal periods, failure to authorize and permit rest  
16 periods, failure to pay minimum and straight time wages, failure to pay overtime wages, failure  
17 to timely pay all wages to terminated employees, and failure to furnish accurate wage statements.

18 2. Named Plaintiff brings the First through Seventh Causes of Action individually  
19 and as a class action on behalf of himself and certain current and former employees of  
20 Defendants (hereinafter collectively referred to as the “Class,” and defined more fully below).

21 3. Named Plaintiff bring the Eighth through Ninth causes of Action individually.

22 4. Named Plaintiff brings the Tenth Cause of Action as a representative action under  
23 the California Private Attorney General Act (“PAGA”) to recover civil penalties that are owed to  
24 Named Plaintiff, the State of California, and past and present employees of Defendants  
25 (hereinafter referred to as the “Aggrieved Employees”).

26 5. Defendants manufacture and distribute medical equipment and products.

27 6. Defendants employed Named Plaintiff to work as a Truck Driver in the County of  
28 San Diego, California from approximately May of 2008 to April of 2017.

1           7. Throughout the time period involved in this case, Defendants have wrongfully  
2 failed to provide Named Plaintiff, the Class, and the Aggrieved Employees with timely and duty-  
3 free meal periods. Defendants regularly required Named Plaintiff, the Class, and the Aggrieved  
4 Employees to work in excess of five consecutive hours a day without providing a 30-minute,  
5 continuous and uninterrupted, duty-free meal period every for five hours of work, or without  
6 compensating Named Plaintiff, the Class, and the Aggrieved Employees for meal periods that  
7 were not provided by the end of the fifth hour of work or tenth hour of work. Defendants did not  
8 adequately inform Named Plaintiff, the Class, and the Aggrieved Employees of their right to take  
9 a meal period by the end of the fifth hour of work, or, for shifts greater than 10 hours, by the end  
10 of the tenth hour of work. Moreover, Defendants did not have adequate written policies or  
11 practices providing meal periods for Named Plaintiff, the Class, and the Aggrieved Employees,  
12 nor did Defendants have adequate policies or practices regarding the timing of meal periods.  
13 Defendants also did not have adequate policies or practices to verify whether Named Plaintiff,  
14 the Class, and the Aggrieved Employees were taking their required meal periods. Instead,  
15 Defendants' policy and practice were to not provide meal periods to Named Plaintiff, the Class,  
16 and the Aggrieved Employees in compliance with California laws and regulations.

17           8. Throughout the time period involved in this case, Defendants failed to maintain  
18 accurate records of meal periods taken or missed by Named Plaintiff, the Class, and the  
19 Aggrieved Employees. Named Plaintiff, the Class, and the Aggrieved Employees recorded their  
20 work hours by clocking in and out of Defendants' timekeeping system.

21           9. Throughout the time period involved in this case, Defendants have wrongfully  
22 failed to authorize and permit Named Plaintiff, the Class, and the Aggrieved Employees to take  
23 timely and duty-free rest periods. Defendants regularly required Named Plaintiff, the Class, and  
24 the Aggrieved Employees to work in excess of four consecutive hours a day without Defendants  
25 authorizing and permitting them to take a 10 minute, continuous and uninterrupted, rest period  
26 for every four hours of work (or major fraction of four hours), or without compensating Named  
27 Plaintiff, the Class, and the Aggrieved Employees for rest periods that were not authorized or  
28 permitted. Defendants did not adequately inform Named Plaintiff, the Class, and the Aggrieved

1 Employees of their right to take a rest period. Moreover, Defendants did not have adequate  
2 policies or practices permitting or authorizing rest periods for Named Plaintiff, the Class, and the  
3 Aggrieved Employees, nor did Defendants have adequate policies or practices regarding the  
4 timing of rest periods. Defendants also did not have adequate policies or practices to verify  
5 whether Named Plaintiff, the Class, and the Aggrieved Employees were taking their required rest  
6 periods. Further, Defendants did not maintain any records reflecting when (or if) Named  
7 Plaintiff, the Class, and the Aggrieved Employees took rest periods. Instead, Defendants' policy  
8 and practice was to not authorize and permit Named Plaintiff, the Class, and the Aggrieved  
9 Employees to take rest periods in compliance with California law.

10 10. Throughout the time period involved in this case, Defendants maintained a policy  
11 and practice of requiring Named Plaintiff, the Class, and the Aggrieved Employees to perform  
12 work "off-the-clock" by working in lieu of taking required meal and rest periods, and by working  
13 during non-scheduled hours, uncompensated. Defendants did not pay Named Plaintiff, the Class,  
14 and the Aggrieved Employees for this work time, and some of this time should have been paid at  
15 the overtime rate.

16 11. Throughout the time period involved in this case, Defendants maintained a policy  
17 and practice of not paying Named Plaintiff, the Class, and the Aggrieved Employees for  
18 overtime.

19 12. Throughout the time period in this case, Defendants willfully failed and refused to  
20 timely pay Named Plaintiff, the Class, and the Aggrieved Employees at the conclusion of their  
21 employment all wages for missed meal periods, rest periods, and hours worked (including  
22 minimum and overtime wages).

23 13. Throughout the time period in this case, Defendants failed to furnish Named  
24 Plaintiff, the Class, and the Aggrieved Employees with accurate, itemized wage statements  
25 showing all gross and net wages earned, including wages for meal periods that were not provided  
26 in accordance with California law, wages for rest periods that were not authorized and permitted  
27 to take in accordance with California law, and correct wages earned for hours worked. As a  
28 result of these violations of California Labor Code § 226(a), Named Plaintiff, the Class, and the

1 Aggrieved Employees suffered injury because, among other things: (a) the violations led them to  
 2 believe that they were not entitled to be paid minimum wages, overtime wages, meal period  
 3 premium wages, and rest period premium wages, even though they were entitled; (b) the  
 4 violations led them to believe that they had been paid the minimum, overtime, meal period  
 5 premium, and rest period premium wages to which they were entitled, even though they had not  
 6 been; (c) the violations hindered them from determining the amounts of minimum, overtime,  
 7 meal period premium, and rest period premium wages owed to them; (d) in connection with their  
 8 employment before and during this action, and in connection with prosecuting this action, the  
 9 violations caused them to have to perform mathematical computations to determine the amounts  
 10 of wages owed to them, computations they would not have to make if the wage statements  
 11 contained the required accurate information; (e) by understating the wages truly due them, the  
 12 violations caused them to lose entitlement and/or accrual of the full amount of Social Security,  
 13 disability, unemployment, and other governmental benefits; (f) the wage statements inaccurately  
 14 understated the wages, hours, and wages rates to which Plaintiff, the Class, and the Aggrieved  
 15 Employees were entitled, and Plaintiff, the Class, and the Aggrieved Employees were paid less  
 16 than the wages and wage rates to which they were entitled. Thus, Named Plaintiff, the Class, and  
 17 the Aggrieved Employees are owed the amounts provided for in Labor Code § 226(e).

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#### 19 **THE PARTIES TO EACH CAUSE OF ACTION**

#### 20 **A. Plaintiff**

21 14. Named Plaintiff Sergio Cota is a California resident who worked for Defendants in  
 22 the State of California as a Truck Driver from approximately May of 2008 to April of 2017.

23 Named Plaintiff was employed as a non-exempt, hourly employee of Defendants.

24 15. Named Plaintiff worked approximately six days per week, approximately 14 hours  
 25 or more per workday. Named Plaintiff also often had to work on Saturdays.

26 16. Named Plaintiff was not provided meal periods as required by California law.  
 27 Specifically, during Named Plaintiff's employment with Defendants, Defendants failed to  
 28 provide Named Plaintiff with uninterrupted, duty-free meal periods of at least thirty (30) minutes

1 in length within the first five (5) hours of work during his shifts. Moreover, Defendants failed to  
2 provide Named Plaintiff with a second uninterrupted, duty-free meal period of at least thirty (30)  
3 minutes in length on shifts in which Named Plaintiff worked more than ten (10) hours.

4 17. Defendants failed to pay Named Plaintiff one (1) hour of pay at Named Plaintiff's  
5 regular rate of compensation for each workday that a meal period was not provided in  
6 compliance with California law.

7 18. Named Plaintiff was not provided rest periods as prescribed by California law.  
8 Specifically, Defendants failed to provide Named Plaintiff with uninterrupted, duty-free ten (10)  
9 minute rest periods for every four (4) hours worked, or major fraction.

10 19. Defendants failed to pay Named Plaintiff one (1) hour of pay at Named Plaintiff's  
11 regular rate of compensation for each workday that a rest period was not provided in compliance  
12 with California law.

13 20. Defendants required Named Plaintiff to perform work "off-the-clock."  
14 Specifically, Defendants failed to pay Named Plaintiff for all hours worked.

15 21. Defendants failed to pay Named Plaintiff one and one-half (1 1/2) times Named  
16 Plaintiff's regular rate of pay for all hours worked in excess of eight (8) hours in any workday or  
17 for all hours worked in excess of forty (40) hours in any workweek, and for the first eight (8)  
18 hours on the seventh (7th) consecutive day of work in a workweek. Defendants also failed to pay  
19 Named Plaintiff double his regular rate of pay for all hours worked in excess of twelve (12) hours  
20 in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th)  
21 consecutive day of work in a workweek.

22 22. Named Plaintiff complained about his work condition to his supervisors and  
23 contacted Defendants' hotline. Defendants retaliated against Named Plaintiff and he was  
24 terminated on April 21, 2017.

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

2           24.     Named Plaintiff is informed and believes, and based upon that information and  
3 belief alleges, that Defendants are, and at all times herein mentioned were:

- 4                   a.     Business entities qualified to conduct business, and actually conducting  
5 business, in numerous counties throughout the State of California; and,  
6                   b.     The employers of Plaintiff and the current and/or former employers of the  
7 putative Class.

8           25.     Named Plaintiff does not know the true names or capacities of the persons or  
9 entities sued herein as Does 1-100, inclusive, and therefore sues said Defendants by such  
10 fictitious names. Each of the Doe Defendants was in some manner legally responsible for the  
11 damages suffered by Named Plaintiff, the Class, and the Aggrieved Employees as alleged herein.  
12 Named Plaintiff will amend this complaint to set forth the true names and capacities of these  
13 Defendants when they have been ascertained, together with appropriate charging allegations, as  
14 may be necessary.

15           26.     At all times mentioned herein, the Defendants named as Does 1-100, inclusive,  
16 and each of them, were residents of, doing business in, availed themselves of the jurisdiction of,  
17 and/or injured a significant number of Plaintiff, the Class, and the Aggrieved Employees in the  
18 State of California.

19           27.     Named Plaintiff is informed and believes and thereon alleges that at all relevant  
20 times each Defendant, directly or indirectly, or through agents or other persons, employed  
21 Named Plaintiff and the other employees described in the class definitions below, and exercised  
22 control over their wages, hours, and working conditions. Named Plaintiff is informed and  
23 believes and thereon alleges that, at all relevant times, each Defendant was the principal, agent,  
24 partner, joint venturer, officer, director, controlling shareholder, subsidiary, affiliate, parent  
25 corporation, successor in interest and/or predecessor in interest of some or all of the other  
26 Defendants, and was engaged with some or all of the other Defendants in a joint enterprise for  
27 profit, and bore such other relationships to some or all of the other Defendants so as to be liable  
28 for their conduct with respect to the matters alleged below. Named Plaintiff is informed and

1 believes and thereon alleges that each Defendant acted pursuant to and within the scope of the  
2 relationships alleged above, that each Defendant knew or should have known about, and  
3 authorized, ratified, adopted, approved, controlled, aided and abetted the conduct of all other  
4 Defendants.

5 28. Defendants Fresenius USA, Inc., Fresenius USA Manufacturing, Inc. and Does 1-  
6 100 are collectively referred to herein as "Defendants."

7 **CLASS ACTION ALLEGATIONS**

8 29. Plaintiff brings the First through Seventh Causes of Action, individually, as well  
9 as on behalf of each and all other persons similarly situated, and thus, seeks class certification  
10 under California Code of Civil Procedure § 382. Named Plaintiff brings the Eighth to Ninth  
11 Causes of Actions individually.

12 30. Plaintiffs bring the Tenth Cause of Action as a representative action under the  
13 California Private Attorney General Act ("PAGA") to recover civil penalties that are owed to the  
14 State of California and past and present employees of Defendants.

15 31. All claims alleged herein arise under California law for which Plaintiff seeks relief  
16 authorized by California law.

17 32. The proposed Class consists of and is defined as:

18 All persons employed by Defendants to work in any hourly paid job position in  
19 California at any time during the period beginning four years before the filing of the  
20 initial complaint in this action and ending when court certifies the Class. For purposes  
21 of this definition, "Defendants" means Fresenius USA, Inc., Fresenius USA  
22 Manufacturing, Inc. and any of the fictitiously named defendants (Does 1 through 100),  
which may include subsidiaries of, or companies owned by Fresenius USA, Inc. and  
Fresenius USA Manufacturing, Inc.

23 33. At all material times, Plaintiff was a member of the Class.

24 34. Named Plaintiff undertakes this concerted activity to improve the wages and  
25 working conditions of all Class members.

26 35. There is a well-defined community of interest in the litigation and the Class is  
27 readily ascertainable:

28 a. Numerosity: The members of the Class (and each subclass, if any) are so

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numerous that joinder of all members would be unfeasible and impractical. The membership of the entire Class is unknown to Plaintiff at this time, however, the Class is estimated to be greater than 100 individuals and the identity of such membership is readily ascertainable by inspection of Defendants' records.

- b. Typicality: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each Class member with whom there is a shared, well-defined community of interest, and Plaintiff's claims (or defenses, if any) are typical of all Class members' claims as demonstrated herein.
- c. Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each Class member with whom there is a shared, well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiff has no conflicts with or interests antagonistic to any Class member. Plaintiff's attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement. Plaintiff has incurred, and throughout the duration of this action, will continue to incur costs and attorneys' fees that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.
- d. Superiority: A Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:
  - 1) The interests of the members of the Class in individually controlling the prosecution or defense of separate actions;
  - 2) The extent and nature of any litigation concerning the controversy already commenced by or against members of the Class;
  - 3) The desirability or undesirability of concentrating the litigation of the claims in the particular forum; and

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

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

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

- a. Failed to provide meal periods and pay meal period premium wages to Class members;
- b. Failed to authorize and permit rest periods and pay rest period premium wages to Class members;
- c. Failed to pay Class members for all hours worked, including minimum wages, straight time wages, and overtime wages;
- d. Failed to promptly pay all wages due to Class members upon their discharge or resignation;
- e. Failed to provide Class members with accurate wages statements; and
- f. Violated Business & Professions Code §§ 17200 et. seq. as a result of their illegal conduct as described above.

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

- a. The questions of law and fact common to the Class predominate over any

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

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

9 **FIRST CAUSE OF ACTION**  
10 **Failure to Provide Required Meal Periods**

11 [California Labor Code §§ 226.7, 510, 512, 1174, 1194, 1197]  
12 (Against All Defendants)

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

15 40. Under California law, Defendants have an affirmative obligation to relieve the  
16 Class of all duty in order to take their first daily meal periods no later than the start of Plaintiff  
17 and the Class' sixth hour of work in a workday, and to take their second meal periods no later  
18 than the start of the eleventh hour of work in the workday, as required under California Labor  
19 Code §§ 226.7, 512, and IWC Wage Orders.

20 41. Despite these legal requirements, Defendants regularly failed to provide Named  
21 Plaintiff and the Class with both meal periods as required by California law.

22 42. Under California law, Named Plaintiff and the Class are entitled to be paid one  
23 hour of additional wages for each instance he or she was not provided with all required meal  
24 period(s).

25 43. Defendants regularly failed to pay Named Plaintiff and the Class the additional  
26 wages to which they were entitled for meal periods and that were not provided.

27 44. California Labor Code section 204 requires employers to provide employees with  
28 all wages due and payable twice a month. Throughout the statute of limitations period applicable

1 to this cause of action, Named Plaintiff and the Class were entitled to be paid twice a month at  
2 rates required by law, including rest break premium wages for each rest break that was not  
3 authorized and permitted. However, during all such times, Defendants systematically failed and  
4 refused to pay Named Plaintiff and the Class all such wages due and failed to pay those wages  
5 twice a month.

6 45. As a proximate result of the aforementioned violations, the CLASS has been  
7 damaged in an amount according to proof at trial, and seek all wages earned and due, interest,  
8 penalties, attorneys' fees, expenses and costs of suit.

9 **SECOND CAUSE OF ACTION**

10 **Failure to Provide Required Rest Periods**

11 **[California Labor Code §§ 226.7 and 512]**

12 **(Against All Defendants)**

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

15 47. Defendants are required by California law to authorize and permit breaks of 10  
16 uninterrupted minutes for each four hours of work, or major fraction of four hours (i.e. more than  
17 two hours). Each failure to authorize rest breaks as so required is itself a violation of  
18 California's rest break laws.

19 48. Despite these legal requirements, Defendants failed to authorize Named Plaintiff  
20 and the Class to take rest breaks, regardless of whether employees worked more than four hours  
21 in a workday.

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

25 50. Defendants regularly failed to pay Named Plaintiff and the Class the additional  
26 wages to which they were entitled for rest breaks Defendants failed authorize and permit. As a  
27 result, Defendants are liable to Named Plaintiff and the Class for one hour of additional wages  
28 for each workday when they did not receive a rest break.

1           51. California Labor Code section 204 requires employers to provide employees with  
2 all wages due and payable twice a month. Throughout the statute of limitations period applicable  
3 to this cause of action, Named Plaintiff and the Class were entitled to be paid twice a month at  
4 rates required by law, including rest break premium wages for each rest break that was not  
5 authorized and permitted. However, during all such times, Defendants systematically failed and  
6 refused to pay Named Plaintiff and the Class all such wages due, and failed to pay those wages  
7 twice a month.

8           52. Defendants are also liable to the Class for the civil penalties provided for in Labor  
9 Code § 558 because of the violations alleged in this cause of action.

10          53. As a proximate result of the aforementioned violations, the Class has been  
11 damaged in an amount according to proof at trial, and seek all wages earned and due, interest,  
12 penalties, attorneys' fees and expenses and costs of suit.

13   **THIRD CAUSE OF ACTION**

14   **Failure to Pay Minimum Wage**

15   **[California Labor Code §§ 226, 510, 1194, 1197]**

16   **(Against All Defendants)**

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

19          55. "Hours worked" is the time during which an employee is subject to the control of  
20 an employer and includes all the time the employee is suffered or permitted to work, whether or  
21 not required to do so.

22          56. Pursuant to California Labor Code §§ 1194 and 1197, payment of less than  
23 minimum wage fixed by the Industrial Welfare Commission is unlawful.

24          57. At all relevant times herein mentioned, Defendants knowingly failed to pay to  
25 Named Plaintiff, and the other members of the Class, compensation for all hours they worked.

26          58. Accordingly, Named Plaintiff and the other members of the Class are entitled to  
27 recover minimum and straight time wages for all non-overtime hours worked for Defendants.

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1           59. By and through the conduct described above, Named Plaintiff and the other  
2 members of the Class, have been deprived of their rights to be paid wages earned by virtue of  
3 their employment with Defendants.

4           60. By virtue of the Defendants' unlawful failure to pay additional compensation to  
5 the Class for their non-overtime hours worked without pay, the Class has suffered, and will  
6 continue to suffer, damages in amounts which are presently unknown to the Class, but which  
7 exceed the jurisdictional minimum of this Court, and which will be ascertained according to  
8 proof at trial.

9           61. By failing to keep adequate time records required by Labor Code § 1174(d),  
10 Defendants have made it difficult to calculate the full extent of minimum wage compensation due  
11 to Named Plaintiff and the Class Members.

12           62. Pursuant to California Labor Code section 1194.2, Named Plaintiff and the Class  
13 are entitled to recover liquidated damages (double damages) for Defendants' failure to pay  
14 minimum wages.

15           63. California Labor Code section 204 requires employers to provide employees with  
16 all wages due and payable twice a month. Throughout the statute of limitations period applicable  
17 to this cause of action, Named Plaintiffs and the Class members were entitled to be paid twice a  
18 month at rates required by law, including minimum and straight time wages. However, during all  
19 such times, Defendants systematically failed and refused to pay Plaintiffs and the Class members  
20 all such wages due and failed to pay those wages twice a month.

21           64. Named Plaintiffs and the Class are also entitled to seek recovery of all unpaid  
22 minimum and straight time wages, interest, and reasonable attorneys' fees and costs pursuant to  
23 Cal. Labor Code §§ 218.5 and 218.6.

24           65. Therefore, pursuant to California Labor Code §§ 200, 203, 218.5, 218.6, 226, 558,  
25 1194, 1197.1, and other applicable provisions under the Labor Code and the IWC Wage Orders,  
26 the Class is entitled to recover the unpaid balance of wages Defendants owe the Class, plus  
27 interest, penalties, attorneys' fees, expenses and costs of suit.  
28

1           66. Plaintiff and the Class are also entitled to seek recovery of all unpaid minimum  
 2 and straight time wages, interest, and reasonable attorneys' fees and costs pursuant to Cal. Labor  
 3 Code §§ 218.5, 218.6, and 1194(a).

4   **FOURTH CAUSE OF ACTION**

5   **Failure to Pay Overtime Compensation**

6   **[California Labor Code §§ 226, 510, 1194, 1197]**

7   **(Against All Defendants)**

8           67. Named Plaintiff incorporates by reference and re-alleges as if fully stated herein  
 9 paragraphs 1 through 66 in this Complaint.

10          68. Pursuant to California Labor Code §§ 510 and 1194, for the four years preceding  
 11 the filing of this lawsuit, Defendants were required to compensate the Class for all overtime  
 12 worked, which is calculated at one and one-half times the regular rate of pay for hours worked in  
 13 excess of eight hours per day and/or forty hours per week, and for the first eight hours on the  
 14 seventh consecutive work day, with double time after eight hours on the seventh day of any work  
 15 week, or after twelve (12) hours in any work day.

16          69. The Class was non-exempt employees, entitled to the protections of California  
 17 Labor Code §§ 510 and 1194. During the course of the Class' employment, Defendants failed to  
 18 compensate the Class for overtime hours worked as required under the foregoing provisions  
 19 California Labor Code by failing to pay the Class overtime at one and one-half or double each  
 20 employee's regular rate of pay as provided by California Labor Code §§ 510 and 1194; failing to  
 21 pay for all hours worked; requiring, permitting or suffering the Class to work through their meal  
 22 breaks; illegally and inaccurately recording the time the Class worked; failing to properly  
 23 maintain records; failing to provide accurate itemized statements for each pay period; failing to  
 24 pay all wages due upon discharge or quitting; and through other methods to be discovered.

25          70. In violation of state law, Defendants knowingly and willfully refused to perform  
 26 their obligations to compensate the Class for all wages earned and all hours worked. As a direct  
 27 result, the Class has suffered, and continue to suffer, substantial losses related to the use and  
 28 enjoyment of such wages, lost interest on such wages, and expenses and attorneys' fees in

1 seeking to compel Defendants to fully perform their obligations under state law, all to their  
2 respective damages in amounts according to proof at time of trial, and within the jurisdiction of  
3 this Court.

4 71. Defendants committed the acts alleged herein knowingly and willfully, with the  
5 wrongful and deliberate intention of injuring the Class, from improper motives amounting to  
6 malice, and in conscious disregard of the Class' rights. The Class is thus entitled to recover  
7 nominal, actual, compensatory, punitive, and exemplary damages in amounts according to proof  
8 at time of trial, and within the jurisdiction of this Court.

9 72. Defendants' conduct described herein violates Labor Code §§ 226, 510, 1194,  
10 1197 and IWC Wage Orders. Therefore, pursuant to California Labor Code §§ 200, 203, 218.5,  
11 226, 558, 1194, 1994.2, 1197.1, and other applicable provisions under the Labor Code and IWC  
12 Wage Orders, the Class is entitled to recover the unpaid balance of wages Defendants owe the  
13 Class, plus interest, penalties, attorneys' fees, expenses and costs of suit.

14  
15 **FIFTH CAUSE OF ACTION**

16 **Failure to Pay All Wages Due to Discharged or Quitting Employees**

17 **[California Labor Code §§ 201, 202, 203, 227.3]**

18 **(Against All Defendants)**

19 73. Named Plaintiff incorporates by reference and re-alleges as if fully stated herein  
20 paragraphs 1 through 72 in this Complaint.

21 74. At all times herein set forth, California Labor Code §§ 201 and 202 provide that if  
22 an employer discharges an employee, the wages earned and unpaid at the time of discharge are  
23 due and payable immediately, and that if an employee voluntarily leaves his or her employment,  
24 his or her wages shall become due and payable not later than seventy-two (72) hours thereafter,  
25 unless the employee has given seventy-two (72) hours previous notice of his or her intention to  
26 quit, in which case the employee is entitled to his or her wages at the time of quitting.

27 75. Within the applicable statute of limitations, the employment of Plaintiff and many  
28 other members of the Class ended, i.e. was terminated by quitting or discharge, and the

1 employment of others will be. However, during the relevant time period, Defendants failed, and  
2 continue to fail to pay Named Plaintiff and terminated Class members, without abatement, all  
3 wages required to be paid by California Labor Code sections 201 and 202 either at the time of  
4 discharge, or within seventy-two (72) hours of their leaving DEFENDANTS' employ.

5 76. Defendants' failure to pay Named Plaintiff and those Class members who are no  
6 longer employed by Defendants their wages earned and unpaid at the time of discharge, or within  
7 seventy-two (72) hours of their leaving Defendants' employment, is in violation of California  
8 Labor Code §§ 201 and 202.

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

13 78. Named Plaintiff and Class members are entitled to recover from Defendants their  
14 additionally accruing wages for each day they were not paid, at their regular hourly rate of pay,  
15 up to 30 days maximum pursuant to California Labor Code § 203.

16  
17 **SIXTH CAUSE OF ACTION**

18 **Failure to Provide Accurate Statements and to Maintain Required Records**

19 **[California Labor Code §§ 226, 226.3, 1174, and 1174.5]**

20 **(Against All Defendants)**

21 79. Plaintiff incorporates by reference and re-alleges as if fully stated herein  
22 paragraphs 1 through 78 in this Complaint.

23 80. At all material times set forth herein, California Labor Code § 226(a) provides that  
24 every employer shall furnish each of his or her employees an accurate itemized wage statement  
25 in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours  
26 worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate  
27 if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made  
28 on written orders of the employee may be aggregated and shown as one item, (5) net wages

1 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the  
2 employee and the last four digits of his or her social security number or an employee  
3 identification number other than a social security number, (8) the name and address of the legal  
4 entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and  
5 the corresponding number of hours worked at each hourly rate by the employee.

6 81. Defendants have intentionally and willfully failed to provide employees with  
7 complete and accurate wage statements. The deficiencies include, among other things, the  
8 failure to correctly identify the gross wages earned by Named Plaintiff and the members of the  
9 Class, the failure to list the true “total hours worked by the employee,” the failure to list the true  
10 net wages earned, and the failure to list the name and address of the legal entity that is the  
11 employer of Named Plaintiff and the Class.

12 82. As a result of Defendants’ violation of California Labor Code § 226(a), Named  
13 Plaintiff and the members of the Class have suffered injury and damage to their statutorily-  
14 protected rights.

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

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

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

27 86. Named Plaintiff and the members of the Class are also entitled to injunctive relief  
28 to ensure compliance with this section, pursuant to California Labor Code § 226(h).

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**SEVENTH CAUSE OF ACTION**

**Unlawful Business Practices**

**[California Business and Professions Code § 17200]**

**(Against All Defendants)**

87. Plaintiff incorporates by reference and re-alleges as if fully stated herein paragraphs 1 through 86 in this Complaint.

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

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

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

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

**Failure to Provide Meal Periods**

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

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**Failure to Authorize and Permit Rest Periods**

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

**Failure to Pay Minimum Wages**

94. Defendants' failure to pay minimum wages and other benefits in violation of the California Labor Code constitutes unlawful and/or unfair activity prohibited by Business and Professions Code §§ 17200, et seq.

**Failure to Pay Overtime Wages**

95. Defendants' failure to pay overtime compensation and other benefits in violation of Cal. Labor Code § 1454, Penal Code §§ 484 and 532 (obtaining labor through false pretenses), constitutes unlawful and/or unfair activity prohibited by Business and Professions Code §§ 17200, et seq.

**Failure to Provide Accurate Itemized Wage Statements**

96. Defendants' failure to provide accurate itemized wage statements in accordance with Labor Code § 226, as alleged above, constitutes unlawful and/or unfair activity prohibited by Business and Professions Code §§ 17200, et seq.

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

98. Named Plaintiff and the other Class members suffered monetary injury as a direct result of Defendants' wrongful conduct.

99. Named Plaintiff, individually, and on behalf of members of the putative Class, is entitled to, and do, seek such relief as may be necessary to disgorge money and/or property which the Defendants have wrongfully acquired, or of which Plaintiff has been deprived, by means of the above-described unfair, unlawful and/or fraudulent business practices. Named Plaintiff, and the members of the putative Class, is not obligated to establish individual

1 knowledge of the wrongful practices of Defendants in order to recover restitution.

2 100. Named Plaintiff, individually, and on behalf of members of the putative class, is  
3 further entitled to and does seek a declaration that the above described business practices are  
4 unfair, unlawful and/or fraudulent, and injunctive relief restraining the Defendants, and each of  
5 them, from engaging in any of the above-described unfair, unlawful and/or fraudulent business  
6 practices in the future.

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

15 102. Named Plaintiff also alleges that if Defendants are not enjoined from the conduct  
16 set forth herein above, they will continue to avoid paying the appropriate taxes, insurance and  
17 other withholdings.

18 103. Pursuant to California Business & Professions Code §§ 17200, et seq., Named  
19 Plaintiff and putative Class members are entitled to restitution of the wages withheld and retained  
20 by Defendants during a period that commences four years prior to the filing of this complaint; a  
21 permanent injunction requiring Defendants to pay all outstanding wages due to Named Plaintiff  
22 and Class members; an award of attorneys' fees pursuant to California Code of Civil Procedure §  
23 1021.5 and other applicable laws; and an award of cost.

24  
25 **EIGHTH CAUSE OF ACTION**

26 **Wrongful Termination in Violation of Public Policy**

27 **(Against all Defendants)**

28 104. Plaintiff incorporates herein by specific reference as though fully set forth the



1 allegations in paragraphs 1 through 103, inclusive.

2 105. At all relevant times herein, the Labor Code Section 98.6 and the public policy of  
3 the State of California based thereupon, required Defendants to refrain from discharging or  
4 constructively discharging employees because they asserted rights under the California Labor  
5 Code laws of this State.

6 106. Defendants terminated Named Plaintiff Sergio Cota's employment in violation of  
7 the foregoing public policy causing Named Plaintiff substantial injury including monetary  
8 damage.

9 107. By reason of Defendants' unlawful acts, practices, and omissions, Named Plaintiff  
10 has suffered monetary damages, humiliation, mental anguish, and emotional distress, in an  
11 amount subject to proof at trial. Named Plaintiff claims such amount as damages together with  
12 pre-judgment interest thereon pursuant to California Civil Code §§ 3287, 3288, and/or any other  
13 applicable provision providing for prejudgment interest.

14 108. The unlawful acts and practices of Defendants alleged herein were reckless and  
15 willful, and caused great physical and emotional harm to Named Plaintiff. Therefore, an award  
16 of punitive damages, sufficient to punish Defendants and to serve as an example to deter them  
17 from similar conduct in the future, should be made. Named Plaintiff claims such amount as  
18 damages together with pre-judgment interest thereon pursuant to California Civil Code §§3287,  
19 3288, and/or any other applicable provision providing for pre-judgment interest.

20  
21 **NINTH CAUSE OF ACTION**

22 **Retaliation**

23 **[California Labor Code § 98.6]**

24 **(Against all Defendants)**

25 109. Plaintiff incorporates herein by specific reference as though fully set forth the  
26 allegations in paragraphs 1 through 108, inclusive.

27 110. California Labor Code § 98.6 provides in part:

28 (a) A person shall not discharge an employee or in any manner

1 discriminate, retaliate, or take any adverse action against any employee or  
2 applicant for employment because the employee or applicant engaged in  
3 any conduct delineated in this chapter, including the conduct described in  
4 subdivision (k) of Section 96, and Chapter 5 (commencing with Section  
5 1101) of Part 3 of Division 2, or because the employee or applicant for  
6 employment has filed a bona fide complaint or claim or instituted or  
7 caused to be instituted any proceeding under or relating to his or her rights  
8 that are under the jurisdiction of the Labor Commissioner, made a written  
9 or oral complaint that he or she is owed unpaid wages, or because the  
10 employee has initiated any action or notice pursuant to Section 2699, or  
11 has testified or is about to testify in a proceeding pursuant to that section,  
12 or because of the exercise by the employee or applicant for employment  
13 on behalf of himself, herself, or others of any rights afforded him or her.

14 (b)(1) Any employee who is discharged, threatened with  
15 discharge, demoted, suspended, retaliated against, subjected to an adverse  
16 action, or in any other manner discriminated against in the terms and  
17 conditions of his or her employment because the employee engaged in any  
18 conduct delineated in this chapter, including the conduct described in  
19 subdivision (k) of Section 96, and Chapter 5 (commencing with Section  
20 1101) of Part 3 of Division 2, or because the employee has made a bona  
21 fide complaint or claim to the division pursuant to this part, or because the  
22 employee has initiated any action or notice pursuant to Section 2699 shall  
23 be entitled to reinstatement and reimbursement for lost wages and work  
24 benefits caused by those acts of the employer.

25 111. At all relevant times, California Labor Code § 98.6 was in full force and  
26 binding on Defendants.

27 112. Defendants' acts and omissions constitute violations of California Labor Code §  
28 98.6, because Named Plaintiff was asserting his rights under the California Labor Code of this

1 State and was fired for doing so.

2 **REPRESENTATIVE ACTION**

3 **TENTH CAUSE OF ACTION**

4 **Representative Action for Civil Penalties**

5 **[California Labor Code §§ 2698-2699.5]**

6 **(Against All Defendants)**

7 113. Named Plaintiff re-alleges and incorporate by reference paragraphs 1 through 28,  
8 and 39 through 103 as though fully set forth herein.

9 114. At all times herein mentioned, Defendants were subject to the Labor Code of the  
10 State of California and the applicable Industrial Welfare Commission Orders.

11 115. Labor Code § 2699(a) specifically provides for a private right of action to recover  
12 penalties for violations of the Labor Code: “Notwithstanding any other provision of law, any  
13 provision of this code that provides for a civil penalty to be assessed and collected by the Labor  
14 and Workforce Development Agency or any of its departments, divisions, commissions, boards,  
15 agencies, or employees, for a violation of this code, may, as an alternative, be recovered through  
16 a civil action brought by an aggrieved employee on behalf of himself or herself and other current  
17 or former employees pursuant to the procedures specified in Section 2699.3.”

18 116. Labor Code § 2699.3 states:

19 (a) A civil action by an aggrieved employee pursuant to  
20 subdivision (a) or (f) of Section 2699 alleging a violation of any  
21 provision listed in Section 2699.5 shall commence only after the  
22 following requirements have been met:

23 (1) (A) The aggrieved employee or representative shall give  
24 written notice by online filing with the Labor and Workforce  
25 Development Agency and by certified mail to the employer of the  
26 specific provisions of this code alleged to have been violated, including  
27 the facts and theories to support the alleged violation.

28 (B) A notice filed with the Labor and Workforce Development  
Agency pursuant to subparagraph (A) and any employer response to that  
notice shall be accompanied by a filing fee of seventy-five dollars (\$75).  
The fees required by this subparagraph are subject to waiver in  
accordance with the requirements of Sections 68632 and 68633 of the  
Government Code.

(C) The fees paid pursuant to subparagraph (B) shall be paid into

1 the Labor and Workforce Development Fund and used for the purposes  
2 specified in subdivision (j) of Section 2699.

3 (2) (A) The agency shall notify the employer and the aggrieved  
4 employee or representative by certified mail that it does not intend to  
5 investigate the alleged violation within 60 calendar days of the postmark  
6 date of the notice received pursuant to paragraph (1). Upon receipt of  
7 that notice or if no notice is provided within 65 calendar days of the  
8 postmark date of the notice given pursuant to paragraph (1), the  
9 aggrieved employee may commence a civil action pursuant to Section  
10 2699.

11 117. Named Plaintiff has exhausted his administrative remedies pursuant to Labor  
12 Code § 2699.3. On August 7, 2017, he gave written notice by online filing with the Labor and  
13 Workforce Development Agency and by certified mail to the Defendants of the specific  
14 provisions of the Labor Code that Defendants have violated against Named Plaintiff and  
15 certain current and former employees of Defendants, including the facts and theories to  
16 support the violations. Named Plaintiff also paid the filing fee required under Labor Code §  
17 2699.3. On April 26, 2018, more than 65 days had elapsed since the filing of Plaintiff's  
18 August 7, 2017 notice and the Labor and Workforce Development Agency has not indicated  
19 that it intends to investigate Defendants' Labor Code violations discussed in the amended  
20 notice. Accordingly, Named Plaintiff may commence a civil action to recover penalties for  
21 himself and other current and former employees under Labor Code § 2699 pursuant to §  
22 2699.3.

23 118. By way of this cause of action, under Labor Code § 2699(f) pursuant to Labor  
24 Code § 2699.3, Named Plaintiff seeks penalties for himself and for similarly Aggrieved  
25 Employees of Defendants for the violations of the Labor Code described above.

26 119. In addition, Named Plaintiff seeks penalties for himself and the Aggrieved  
27 Employees of Defendants under Labor Code § 1174(d). Pursuant to Labor Code § 1174.5, any  
28 person, including any entity, employing labor who willfully fails to maintain accurate and  
complete records required by Labor Code § 1174 is subject to a penalty under § 1174.5.  
Pursuant to the applicable IWC Order § 7(A)(3), every employer shall keep time records

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

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

22 121. Labor Code §§ 2699 and 2699.5 sets forth penalties to be awarded against  
23 Defendants for violating the California Labor Code violations Plaintiff has alleged in this  
24 complaint, including but not limited to Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3,  
25 226.7, 512, 558, 1174.5, 1197.1, and 2699.

26 122. Named Plaintiff is entitled to an award of civil penalties as set forth in Labor  
27 Code § 2699 on behalf of himself, the State of California, and similarly Aggrieved Employees  
28 of Defendants. The exact amount of the applicable penalties, in all, is in an amount to be

1 shown according to proof at trial. These penalties are in addition to all other remedies  
2 permitted by law.

3 123. In addition, Named Plaintiff seeks an award of reasonable attorney's fees and  
4 costs pursuant to Labor Code § 2699(g)(1), which states, "Any employee who prevails in any  
5 action shall be entitled to an award of reasonable attorney's fees and costs."

6 PRAYER FOR RELIEF

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

10 Class Certification

11 124. That this action be certified as a class action with respect to the First, Second,  
12 Third, Fourth, Fifth, Sixth, and Seventh Causes of Action;

13 125. That Plaintiff be appointed as the representative of the Class and subclass; and

14 126. That counsel for Plaintiff be appointed as Class Counsel.

15 As to the First Cause of Action

16 127. That the Court declare, adjudge and decree that Defendants violated Labor Code  
17 §§ 226.7 and 512, and the IWC Wage Orders;

18 128. For general unpaid wages and such general and special damages as may be  
19 appropriate;

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

22 130. For reasonable attorneys' fees and for costs of suit incurred herein; and

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

24 As to the Second Cause of Action

25 132. That the Court declare, adjudge and decree that Defendants violated Labor Code  
26 §§ 226.7 and 512, and the IWC Wage Orders;

27 133. For general unpaid wages and such general and special damages as may be  
28 appropriate;

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

3 135. For reasonable attorneys' fees and for costs of suit incurred herein; and

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

5 As to the Third Cause of Action

6 137. That the Court declare, adjudge and decree that Defendants violated Labor Code  
7 §§ 204 and 1194;

8 138. For general unpaid wages and such general and special damages as may be  
9 appropriate;

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

12 140. For liquidated damages;

13 141. For reasonable attorneys' fees and for costs of suit incurred herein; and

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

15 As to the Fourth Cause of Action

16 143. That the Court declare, adjudge and decree that Defendants violated California  
17 Labor Code §§ 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all  
18 overtime wages due to Plaintiffs and Class members;

19 144. For general unpaid wages at overtime wage rates and such general and special  
20 damages as may be appropriate;

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

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

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

26 As to the Fifth Cause of Action

27 That the Court declare, adjudge and decree that Defendants violated the record keeping  
28 provisions of California Labor Code § 226(a) and applicable IWC Wage Orders as to Plaintiff

1 and class members, and willfully failed to provide accurate itemized wage statements thereto;

2 148. For all actual, consequential and incidental losses and damages, according to  
3 proof;

4 149. For statutory penalties pursuant to California Labor Code § 226(e);

5 150. For injunctive relief to ensure compliance with this section, pursuant to California  
6 Labor Code § 226(g);

7 151. For reasonable attorneys' fees and for costs of suit incurred herein; and

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

9 As to the Sixth Cause of Action

10 153. That the Court declare, adjudge and decree that Defendants violated California  
11 Labor Code §§ 201, 202, and 203 by willfully failing to pay all compensation owed at the time of  
12 termination of the employment of Plaintiff and other terminated class members;

13 154. For all actual, consequential and incidental losses and damages, according to  
14 proof;

15 155. For statutory wage penalties pursuant to California Labor Code § 203 for Plaintiff  
16 and all other class members who have left Defendants' employ;

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

19 157. For reasonable attorneys' fees and for costs of suit incurred herein; and

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

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22 As to the Seventh Cause of Action

23 159. That the Court declare, adjudge and decree that Defendants violated California  
24 Business and Professions Code §§ 17200, et seq. by failing to provide meal periods, failing to  
25 authorize and permit rest periods, failing to pay wages for all hours worked (including minimum,  
26 straight time, and overtime wages), and failing to furnish accurate wage statements;

27 160. For restitution of unpaid wages to Plaintiff and all class members and prejudgment  
28 interest from the day such amounts were due and payable;



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

4 162. For reasonable attorneys' fees and costs of suit incurred herein pursuant to  
5 California Code of Civil Procedure § 1021.5;

6 163. For injunctive relief to ensure compliance with this section, pursuant to California  
7 Business & Professions Code § 17200, et seq.; and,

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

9 As to the Eighth Cause of Action

10 165. That the Court declare, adjudge and decree that Defendants violated Labor Code  
11 §98.6, and the IWC Wage Orders;

12 166. For general unpaid wages and such general and special damages as may be  
13 appropriate;

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

16 168. For reasonable attorneys' fees and for costs of suit incurred herein; and

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

18 As to the Ninth Cause of Action

19 That the Court declare, adjudge and decree that Defendants violated Labor Code §98.6  
20 and the IWC Wage Orders;

21 170. For general unpaid wages and such general and special damages as may be  
22 appropriate;

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

25 172. For reasonable attorneys' fees and for costs of suit incurred herein; and

26 173. For such other and further relief as the Court may deem equitable and appropriate  
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As to all Causes of Action


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

Dated: April 26, 2018

Respectfully submitted,

RASTEGAR LAW GROUP, APC

By: \_\_\_\_\_

  
Farzad Rastegar  
Amir Seyedfarshi  
Attorneys for Plaintiff Sergio Cota, individually;  
and on behalf of all current and former  
employees of Defendants

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**DEMAND FOR JURY TRIAL**

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

Dated: April 26, 2018

RASTEGAR LAW GROUP, APC

By: 

Farzad Rastegar  
Amir Seyedfarshi  
Attorneys for Plaintiff Sergio Cota, individually;  
and on behalf of all current and former  
employees of Defendants

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