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18 **UNITED STATES DISTRICT COURT**
19 **NORTHERN DISTRICT OF CALIFORNIA**

20	GERARDO ALVAREZ, on behalf of himself and) Case No.
21	on behalf of all other similarly situated)
22	individuals,) COMPLAINT
23	Plaintiff,)
24) CLASS ACTION COMPLAINT FOR
25	v.) VIOLATIONS OF CALIFORNIA
26) LABOR CODE AND WAGE ORDERS,
27	PERFORMANCE FOOD GROUP, INC., a) AND CALIFORNIA BUSINESS AND
28	Colorado Corporation, PERFORMANCE) PROFESSIONS CODE §§17200, et seq.,
	FOODSERVICE, and DOES 1-10, inclusive;) and PRIVATE ATTORNEY GENERALS
) ACT, Cal. Labor Code §§ 2698–2699.5
	Defendants.) DEMAND FOR JURY TRIAL
)

29 Plaintiff, Gerardo (“Gerry”) Alvarez (“Plaintiff” on behalf of himself and all other
30 similarly situated individuals, upon information and belief and the investigation of counsel, allege

1 as follows:

2 **INTRODUCTION**

3 1. Plaintiff and Class Members are non-exempt, hourly employees who has worked
4 for DEFENDANTS at their California production and transport facilities.

5 2. Plaintiff is, an at all times relevant hereto, has been a resident of California.

6 3. Performance Food Group, is, at all times mentioned herein, a Colorado corporation
7 with the capacity to sue and be sued in California and doing business in California.

8 4. Defendant, Performance Foodservice, is, upon information and belief, at all times
9 mentioned herein, a wholly owned Division of Performance Food Group, with facilities located
10 throughout the state of California, including within the jurisdiction of the USDC for the Northern
11 District of California in Hayward (Alameda County) and Berkeley (Alameda County) California.

12 5. Performance Food Group and Performance Foodservice are hereinafter collectively
13 referred to as “Defendants”.

14 6. This is a class action brought pursuant to California Code of Civil Procedure
15 section 382 by Plaintiff on behalf of themselves and all others similarly situated current and
16 former nonexempt hourly workers against Defendants to challenge their policies and practices
17 within the applicable class period of (1) requiring their non-exempt employees to work substantial
18 amounts of time without pay, including over time; (2) failing to provide their non-exempt
19 employees with legally compliant meal and rest periods to which they are entitled by law at their
20 plant(s) in California, (3) uniformly failing and refusing to pay Rest Period Premiums, (4)
21 uniformly illegally rounding shift time and meal break time to benefit DEFENDANTS and its
22 subsidiaries/co DEFENDANTS; (5) uniformly failing to pay rest break premiums to workers not
23 provided with Rest Break; and uniformly failing to pay meal break premiums to workers whose
24 meal breaks were interrupted to answer work related questions posed by supervisory personnel;
25 (6) within the class period failing to provide legally compliant first and second meal breaks within
26 the time limits called for under California law, failing to pay premiums within the class period for
27 these same violations

28

1 7. Defendants through their officers, employees, and/or owners, controlled all policies
2 and practices complained of herein.

3 8. The resultant illegal practices have adversely affected the pecuniary interests
4 Plaintiff and Class Members and resulted in class wide violations of California law.

5 9. Plaintiff seeks full compensation on behalf of themselves and all others similarly
6 situated for all unpaid wages, unpaid overtime, denied meal and rest periods, and waiting time
7 penalties. Plaintiff further seek meal and rest break premiums, on behalf of themselves and the
8 proposed California-law Classes, for DEFENDANTS' violations of the Labor Code and California
9 Industrial Welfare Commission ("IWC") wage orders, as set forth below. Finally, Plaintiff seek
10 reasonable attorneys' fees and costs under the California Labor Code, California Code of Civil
11 Procedure § 1021.5, and/or other applicable law.

12 10. Plaintiff and Class Members were not provided with legal compliant meal and/or
13 rest breaks. DEFENDANTS uniformly failed to pay wage premiums to Plaintiff and Class
14 Members for on duty meal and rest breaks.

15 11. Furthermore, Plaintiff and class members were required by DEFENDANTS to
16 answer work related questions after paid time had concluded and before paid time had begun, but
17 were not paid overtime pay on days in which they worked 8 hours or longer and likewise were not
18 paid for all time worked on days of less than 8 hours.

19 12. Upon information and believe, DEFENDANTS chose and implemented the
20 time/attendance keeping system in use at all of its California facilities and controlled the meal
21 breaks, rest break and pay policies at all of its California facilities.

22 13. DEFENDANTS's unlawful conduct has been widespread, repeated, and willful
23 throughout their California facility(ies). DEFENDANTS knew, or should has known, that their
24 policies and practices has been unlawful and unfair and were resulting in substantial pecuniary
25 harm to their low hourly wage workers.

26 **JURISDICTION & VENUE**

27 14. Jurisdiction is founded on 28 U.S.C. sec. 1331 and/or 1332, as the parties are
28

1 completely diverse in citizenship and the amount in controversy exceeds \$75,000. This court has
2 supplemental jurisdiction over the state law claims asserted in this action under 28 U.S.C. sec.
3 1367.

4 15. Venue as to Defendants is proper in the Northern District as the Defendants
5 routinely and habitually conduct business in Alameda County, and all illegal practices are in effect
6 and adversely affecting Defendants' hourly work force at all of Defendants' facilities throughout
7 California.

8 CLASS ACTION ALLEGATIONS

9 16. Plaintiff was formerly, and during the applicable period of limitations prior to
10 the commencement of this action, employed by DEFENDANTS as non-exempt hourly
11 employees at DEFENDANTS, California facilities. This matter is maintainable as a class
12 action with a Class consisting of: "All individuals who are currently employed, or formerly has been
13 employed, as nonexempt hourly employees at DEFENDANTS' facilities in California, at any time within
14 four years prior to the filing of the original complaint until resolution of this action."

15 17. Common illegal policies of Defendants uniformly applied to Plaintiff and Class
16 Members, includes:

- 17 • failure to pay for all hours worked;
- 18 • failure to pay all overtime wages owed;
- 19 • failure to afford legally-compliant meal and rest periods;
- 20 • failure to authorize payment of Rest Break premiums by all DEFENDANTS when
21 legally compliant Rest Breaks were not provided resulting from the implementation
22 of the time/attendance keeping system of DEFENDANTS as directed by
23 DEFENDANTS;
- 24 • failure to authorize payment of meal break premiums or rest break premiums when
25 meal and rest breaks for on duty meal and rest periods, resulting from the
26 implementation of the time/attendance keeping system of DEFENDANTS as
27 directed by DEFENDANTS;
- 28

- 1 • failure to authorize payment of meal break premiums when meal breaks did not
2 start within 5 hours, when second meal breaks were not provided within 10 hours
3 on of the start of shifts of 12 hours, or longer, not to pay meal break premiums to
4 workers on shifts of between 10 and 12 hours to workers who had not signed meal
5 break waivers, but who had not signed meal break waivers, waiving second meal
6 breaks on shifts of between 10 and 12 hours resulting from the implementation of
7 the time/attendance keeping system of DEFENDANTS as directed by
8 DEFENDANTS;
- 9 • failure to pay all wages due and owing upon termination of employment resulting
10 from the implementation of the time/attendance keeping system of DEFENDANTS
11 as directed by DEFENDANTS;
- 12 • failure to issue legal compliant wage statements/pay stubs resulting from the
13 implementation of the time/attendance keeping system and/or payroll systems of
14 DEFENDANTS as directed by DEFENDANTS;
- 15 • illegally rounding of shift and meal break hours, to illegally benefit
16 DEFENDANTS and all DEFENDANTS resulting from the implementation of the
17 time/attendance keeping system of DEFENDANTS as directed by DEFENDANTS;
- 18 • failure to track required work performed by non-exempt hourly workers after paid
19 hours.

20 18. Numerosity: Class Members are so numerous that joinder is impracticable.

21 Although the exact number of Class Members is unknown to Plaintiff, Plaintiff avers, upon
22 information and belief, that the Class includes thousands, if not tens of thousands, of employees.

23 19. Typicality: Plaintiff' claims are typical of the claims of the Class. DEFENDANTS'
24 common course of conduct in violation of law as alleged herein has caused Plaintiff and Class
25 Members to sustain the same or similar injuries and damages. Plaintiff' claims are thereby
26 representative of and co-extensive with the claims of the Class.

27 20. Adequacy of Representation: Plaintiff is a member of the Class, does not has any
28

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