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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

WILMER HERNANDEZ, on behalf of
himself and all others similarly situated, and
the general public,

Plaintiff,

v.

ADIDAS AMERICA, INC., an Oregon
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: 2:23-CV-02671-DJC-AC

Amended As a Matter of Right Pursuant to
Labor Code Section 2699.3(a)(2)(C)

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION COMPLAINT**

1. Failure to Provide Meal Periods (Lab. Code §§ 204, 223, 226.7, 512 and 1198);
2. Failure to Provide Rest Periods (Lab. Code §§ 204, 223, 226.7 and 1198);
3. Failure to Pay Hourly Wages and Overtime (Lab. Code §§ 223, 510, 1194, 1194.2, 1197, 1997.1 and 1198);
4. Failure to Pay Proper Sick Pay (Lab. Code § 246);
5. Failure to Provide Accurate Written Wage Statements (Lab. Code §§ 226(a));
6. Failure to Timely Pay All Final Wages (Lab. Code §§ 201, 202 and 203);
7. 212 (Lab. Code §§ 212 and 213);
8. Failure to Indemnify (Lab. Code § 2802);
9. Unfair Competition (Bus. & Prof. Code §§ 17200 *et seq.*); and
10. Civil Penalties (Lab. Code § 2698, *et seq.*)

JURY TRIAL DEMANDED

1 Plaintiff WILMER HERNANDEZ (“Plaintiff”), on behalf of himself, all others similarly
2 situated, the State of California, and the general public, complain and allege as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this class and representative action against Defendants ADIDAS
5 AMERICA, INC., an Oregon corporation; and DOES 1 through 50, inclusive, (collectively referred
6 to as “Defendants”) for alleged violations of the California Labor Code and California Business and
7 Professions Code. As set forth below, Plaintiff alleges that Defendants have:

- 8 a. failed to pay them minimum and overtime wages at the correct rate;
- 9 b. failed to pay them double time wages at the correct rate;
- 10 c. failed to provide them with meal periods;
- 11 d. failed to provide them with rest periods;
- 12 e. failed to pay them premium wages for missed meal and rest periods;
- 13 f. failed to pay them proper sick time pay;
- 14 g. failed to provide them with accurate written wage statements;
- 15 h. failure to pay wages due, negotiable and payable in cash on demand;
- 16 i. failed to reimburse them with necessary business expenditures;
- 17 j. failed to pay them all of their final wages following separation of employment.

18 Based on these alleged Labor Code violations, Plaintiff now brings this class and
19 representative action to recover unpaid wages, liquidated damages, civil and statutory penalties,
20 restitution and related relief on behalf of himself, all others similarly situated, and the general public.

21 **JURISDICTION AND VENUE**

22 2. This matter was removed by Defendant to this Court from Sacramento County
23 Superior Court. Plaintiff reserves the right to challenge the removal papers.

24 **PARTIES**

25 3. Plaintiff WILMER HERNANDEZ is, and at all relevant times mentioned herein, an
26 individual residing in the State of California.

27 4. Plaintiff is informed and believes, and thereupon alleges that Defendant ADIDAS
28 AMERICA, INC. is, and at all relevant times mentioned herein, an Oregon corporation doing business

1 in the State of California.

2 5. Plaintiff is ignorant of the true names and capacities of the defendants sued herein as
3 DOES 1 through 50, inclusive, and therefore sues these defendants by such fictitious names. Plaintiff
4 will amend this Complaint to allege the true names and capacities of the DOE defendants when
5 ascertained. Plaintiff is informed and believes, and thereupon alleges that each of the fictitiously
6 named defendants are responsible in some manner for the occurrences, acts and omissions alleged
7 herein and that Plaintiff's alleged damages were proximately caused by these defendants, and each of
8 them. Plaintiff will amend this complaint to allege both the true names and capacities of the DOE
9 defendants when ascertained.

10 6. Plaintiff is informed and believes, and thereupon alleges that, at all relevant times
11 mentioned herein, some or all of the defendants were the representatives, agents, employees, partners,
12 directors, associates, joint venturers, joint employers, owners, principals or co-participants of some
13 or all of the other defendants, and in doing the things alleged herein, were acting within the course
14 and scope of such relationship and with the full knowledge, consent and ratification by such other
15 defendants.

16 7. Plaintiff is informed and believes, and thereupon alleges that, at all relevant times
17 mentioned herein, some of the defendants pursued a common course of conduct, acted in concert and
18 conspired with one another, and aided and abetted one another to accomplish the occurrences, acts
19 and omissions alleged herein.

20 8. This action has been brought and may be maintained as a class action pursuant to
21 F.R.C.P. Rule 23 because there is a well-defined community of interest among the persons who
22 comprise the readily ascertainable classes defined below and because Plaintiff is unaware of any
23 difficulties likely to be encountered in managing this case as a class action.

24 9. **Relevant Time Period:** The relevant time period is defined as the time period
25 beginning four years prior to the filing of this action until judgment is entered.

- 26 a. **Hourly Employee Class:** All persons employed by Defendants, collectively or
27 separately, and/or any staffing agencies and/or any other third parties in hourly or
28 non-exempt positions in California four years prior to the filing of this action and
ending on the date that final judgment is entered in this action ("Hourly Employee
Class").

- b. **Meal Period Sub-Class:** All **Hourly Employee Class** members who worked in a shift in excess of five hours during the four years prior to the filing of this action and ending on the date that final judgment is entered in this action.
- c. **Rest Period Sub-Class:** All **Hourly Employee Class** members who worked a shift of at least three and one-half (3.5) hours the four years prior to the filing of this action and ending on the date that final judgment is entered in this action.
- d. **Waiting Time Penalties Sub-Class:** All **Hourly Employee Class** members who separated from their employment with Defendants during the period beginning three years before the filing of this action and ending when final judgment is entered.
- e. **Sick-Pay Class:** All persons employed by Defendants in California who, at any time from four years prior to the filing of this action and ending on the date that final judgment is entered in this action, worked for more than 30 days for Defendants, and were not paid for at least one hour of sick time for every 30 hours of work thereafter, or at least 3 days of sick time for every 12-month period of employment.
- f. **Wage Statement Class:** All persons employed by Defendants in California during the period beginning one year before the filing of this action and ending when final judgment is entered.
- g. **Pay Card Class:** All persons employed by Defendants in California, who were paid by pay card (or similar means) at any time during the **Relevant Time Period**.
- h. **Expense Reimbursement Class:** All persons employed by Defendants in California who incurred business expenses during the **Relevant Time Period**.
- i. **UCL Class:** All **Hourly Employee Class** and **Expense Reimbursement Class** members employed by Defendants in California during the four years prior to the filing of this action and ending on the date that final judgment is entered in this action.

10. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the right to amend or modify the class definitions with greater specificity, by further division into sub-classes and/or by limitation to particular issues.

11. **Numerosity:** The class members are so numerous that the individual joinder of each individual class member is impractical. While Plaintiff does not currently know the exact number of class members, Plaintiff is informed and believes, and thereupon alleges that the actual number exceeds the minimum required for numerosity under California law.

12. **Commonality and Predominance:** Common questions of law and fact exist as to all class members and predominate over any questions which affect only individual class members.

1 These common questions include, but are not limited to:

- 2 a. Whether Defendants maintained a policy or practice of failing to provide
- 3 employees with their meal periods;
- 4 b. Whether Defendants maintained a policy or practice of failing to provide
- 5 employees with their rest periods;
- 6 c. Whether Defendants failed to pay premium wages to class members when they
- 7 have not been provided with meal and rest periods at the appropriate rates of pay;
- 8 d. Whether Defendants failed to pay minimum and/or overtime wages to class
- 9 members for all time worked;
- 10 e. Whether Defendants failed to pay proper sick time pay;
- 11 f. Whether Defendants failed to pay wages due, negotiable and payable in cash on
- 12 demand;
- 13 g. Whether Defendants failed to provide class members with accurate written wage
- 14 statements as a result of providing them with written wage statements with
- 15 inaccurate entries for, among other things, amounts of gross and net wages, and
- 16 total hours worked;
- 17 h. Whether Defendants applied policies or practices that result in late and/or
- 18 incomplete final wage payments;
- 19 i. Whether Defendants failed to reimburse class members for all necessary business
- 20 expenses incurred during the discharge of their duties;
- 21 j. Whether Defendants are liable to class members for waiting time penalties under
- 22 Labor Code section 203; and
- 23 k. Whether class members are entitled to restitution of money or property that
- 24 Defendants may have acquired from them through unfair competition;

25 13. **Typicality:** Plaintiff's claims are typical of the other class members' claims. Plaintiff
26 is informed and believes and thereupon alleges that Defendants have a policy or practice of failing to
27 comply with the California Labor Code and Business and Professions Code as alleged in this
28 Complaint.

1 14. **Adequacy of Class Representative:** Plaintiff is an adequate class representative and
2 has no interests that are adverse to, or otherwise conflict with, the interests of absent class members
3 and is dedicated to vigorously prosecuting this action on their behalf. Plaintiff will fairly and
4 adequately represent and protect the interests of the other class members.

5 15. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that
6 they have no known conflicts of interest with Plaintiff or absent class members, are experienced in
7 wage and hour class action litigation, and are dedicated to vigorously prosecuting this action on behalf
8 of Plaintiff and absent class members.

9 16. **Superiority:** A class action is vastly superior to other available means for fair and
10 efficient adjudication of the class members' claims and would be beneficial to the parties and the
11 Court. Class action treatment will allow a number of similarly situated persons to simultaneously and
12 efficiently prosecute their common claims in a single forum without the unnecessary duplication of
13 effort and expense that numerous individual actions would entail. In addition, the monetary amounts
14 due to many individual class members are likely to be relatively small and would thus make it difficult,
15 if not impossible, for individual class members to both seek and obtain relief. Moreover, a class
16 action will serve an important public interest by permitting class members to effectively pursue the
17 recovery of monies owed to them. Further, a class action will prevent the potential for inconsistent
18 or contradictory judgments inherent in individual litigation.

19 **GENERAL ALLEGATIONS**

20 17. Plaintiff worked for Defendants as a non-exempt employee during the relevant and
21 statutory periods.

22 18. Defendants had a common policy and practice of systemically failing to pay Plaintiff
23 and Class members proper wages and overtime for all hours worked, at the proper rates of pay.

24 19. Defendants had a common policy and practice of requiring Plaintiff and Class
25 Members to work off-the-clock for which no wages were paid. Specifically, Plaintiff and Class
26 Members were required to undergo mandatory security bag checks before clocking in for work and
27 after clocking out for the day.

28 20. Next, Plaintiff and Class Members were also consistently required to perform work,

1 including helping customers, after clocking out of their shift. The forgoing and uncompensated
2 working time was under the direction and control of Defendants, for which no wages were paid.

3 21. This uncompensated time caused Plaintiff and Class Members to work in excess of
4 eight (8), ten (10) and/or twelve (12) hours a day and/or forty (40) hours a week, entitling Plaintiff
5 and Class Members to minimum and overtime wages, which they were systemically denied.

6 22. Defendants had a common policy and practice of systemically denying Plaintiff and
7 Class Members the opportunity to take meal periods in compliance with the California Law.
8 Specifically, the uncompensated pre-shift hours, discussed herein, delayed Plaintiff and Class
9 Members' meal periods to commence after the completion of their fifth hour of work.

10 23. Defendants had a common policy and practice of systemically denying Plaintiff and
11 Class Members the opportunity to take rest periods in compliance with the California Law. Plaintiff
12 and Class Members were not provided with rest periods of at least ten (10) minutes for each four (4)
13 hour work period, or major fraction thereof, due to (1) Defendants' policy of requiring employees to
14 work during their rest breaks; (2) no formal compliant written rest period policy that encouraged
15 employees to take their rest periods, or that properly advised Plaintiff and Class Members of their rest
16 period rights.

17 24. Furthermore, Defendants failed to pay Plaintiff and Class Members premium pay
18 wages at their appropriate regular rates of pay for each rest period denied.

19 25. Plaintiff and Class Members were not provided with accurate wage statements as
20 mandated by law pursuant to Labor Code section 226. Specifically, Defendants failed to issue wage
21 statements as "a detachable part of the check, draft, or voucher paying the employee's wages, or
22 separately if wages are paid by personal check or cash, an accurate itemized statement in writing."
23 Additionally, the wage statements issued to Plaintiff and Class Members were not recorded in "ink
24 or other indelible form."

25 26. Defendants failed to comply with Labor Code section 226(a)(1) as "gross wages
26 earned" were not accurately reflected in that: all hours worked were not included.

27 27. Defendants failed to comply with Labor Code section 226(a)(2) as "total hours worked
28 by the employee" were not accurately reflected in that: all hours worked, including overtime, were

1 not included.

2 28. Defendants failed to comply with Labor Code section 226(a)(5) as “net wages earned”
3 were not accurately reflected in that: all hours worked were not included.

4 29. Defendants failed to comply with Labor Code section 226(a)(9) as “all applicable
5 hourly rates in effect during the pay period and the corresponding number of hours worked at each
6 hourly rate by the employee” were not accurately reflected in that: all hours worked, including
7 overtime, were not included.

8 30. Furthermore, Defendants failed to provide Plaintiff and Class Members with paper pay
9 stubs as required by Labor Code § 226, applicable Wage Orders, and DLSE Opinion Letters.
10 Plaintiff’s and Class Members’ wage statement were only provided in electronic format in violation
11 of Labor Code § 226.

12 31. Plaintiff and Class Members were not reimbursed for business expenses incurred in
13 executing their duties under Defendant’s employ. Specifically, Plaintiff and Class Members were
14 required to wear a uniform with Defendant’s logo present, but were not provided reimbursement for
15 the full cost of the uniform. Additionally, Plaintiff and Class Members were required to incur the
16 costs of cleaning and maintaining their work uniforms Plaintiff and Class Members were never
17 reimbursed for the value of the purchases required to complete the uniform.

18 32. Defendants failed to pay Plaintiff and Class Members with an order, check, draft, note,
19 memorandum, or other acknowledgment of indebtedness that was payable on demand, without
20 discount at some established place of business in the state. Defendants issued pay cards to Plaintiff
21 and Class Members for wages earned. These pay cards were useable for a fee and did not have a
22 provision for use and payment in California at no cost to the employee. Therefore, Defendants failed
23 to provide Plaintiff and Class Members with checks, drafts, notes or other acknowledgements of
24 indebtedness that were payable on demand without discount as required by Labor Code § 212, which
25 required Plaintiff and Class Members to incur fees to use, was not fully cashable, and not usable at
26 all financial institutions.

27 33. Defendants had a common policy and practice of systemically failing to pay Plaintiff
28 and Class Members the requisite sick time pay in accordance with California Law. Specifically,

1 Plaintiff and Class Members worked for Defendants for more than 30 days, but were not paid at least
2 one hour of sick pay for every 30 hours of work, or at least 3 days of sick time for every 12 month
3 period of work. Furthermore, Plaintiff and Class Members were not able to use accrued paid sick
4 days. Further, Plaintiff and Class Members were not able to use paid sick days for COVID sick leave,
5 as required for any part-time employee with a variable work schedule that has worked for a company
6 for more than seven (7) days.

7 34. Finally, Defendants also failed to provide suitable seating to Aggrieved Employees
8 (defined *infra*). The operations at Defendant's facilities allowed for the presence and use of a stool or
9 seat by Aggrieved Employees during the performance of their work duties. The nature of the effected
10 job positions can reasonably be accomplished while using a seat or stool. However, Defendant failed
11 to provide Aggrieved Employees suitable seating when the nature of these employees' work
12 reasonably permitted sitting.

13 35. Plaintiff alleges that operations at Defendants' facilities allowed for the presence and
14 use of a stool or seat by the Aggrieved Employees during the performance of their work duties. The
15 nature of the effected job positions can reasonably be accomplished while using a seat or stool.
16 California Labor Code § 1198 requires that " . . . the standard conditions of labor fixed by the
17 commission shall be the . . . standard conditions of labor for employees. The employment of any
18 employee . . . under conditions of labor prohibited by the order is unlawful." Paragraph (14)(A) of
19 the applicable IWC Wage Orders provides that "[a]ll working employees shall be provided with
20 suitable seats when the nature of the work reasonably permits the use of seats." Paragraph 14(B) of
21 the applicable IWC Wage Orders provides that "[w]hen employees are not engaged in the active
22 duties of their employment and the nature of the work requires standing, an adequate number of
23 suitable seats shall be placed in reasonable proximity to the work area and employees shall be
24 permitted to use such seats when it does not interfere with the performance of their duties.

25 36. In violation of the applicable sections of the California Labor Code and the
26 requirements of the applicable IWC Wage Order, Defendants failed to provide Aggrieved Employees
27 suitable seating when the nature of these employees' work reasonably permitted sitting. Defendants
28 knew or should have known that Aggrieved Employees were entitled to suitable seating and/or were

1 entitled to sit when it did not interfere with the performance of their duties, and that Defendants did
2 not provide suitable seating and did not allow them to sit when it did not interfere with the
3 performance of their duties.

4 **FIRST CAUSE OF ACTION**

5 **FAILURE TO PROVIDE MEAL PERIODS**

6 **(Lab. Code §§ 226.7, 512, 1174, and 1198)**

7 **(Plaintiff and Meal Period Sub-Class)**

8 37. Plaintiff incorporates by reference the preceding paragraphs of the Complaint as if
9 fully alleged herein.

10 38. At all relevant times, Plaintiff and the **Meal Period Sub-Class** members have been
11 non-exempt employees of Defendant entitled to the full meal period protections of both the Labor
12 Code and the applicable Industrial Welfare Commission Wage Order.

13 39. Labor Code section 512 and Section 11 of the applicable Industrial Welfare
14 Commission Wage Order impose an affirmative obligation on employers to provide non-exempt
15 employees with uninterrupted, duty-free meal periods of at least thirty minutes for each work period
16 of five hours, and to provide them with two uninterrupted, duty-free meal periods of at least thirty
17 minutes for each work period of ten hours.

18 40. Labor Code section 226.7 and Section 11 of the applicable Industrial Welfare
19 Commission Wage Order (“Wage Order”) both prohibit employers from requiring employees to work
20 during required meal periods and require employers to pay non-exempt employees an hour of
21 premium wages on each workday that the employee is not provided with the required meal period.

22 41. Compensation for missed meal periods constitutes wages within the meaning of Labor
23 Code section 200.

24 42. Labor Code section 1198 makes it unlawful to employ a person under conditions that
25 violate the applicable Wage Order.

26 43. Section 11 of the applicable Wage Order states:

27 “No employer shall employ any person for a work period of more than five (5) hours
28 without a meal period of not less than 30 minutes, except that when a work period of
not more than six (6) hours will complete the day’s work the meal period may be

1 waived by mutual consent of the employer and employee. Unless the employee is
2 relieved of all duty during a 30 minute meal period, the meal period shall be considered
3 an 'on duty' meal period and counted as time worked. An 'on duty' meal period shall
4 be permitted only when the nature of the work prevents an employee from being
relieved of all duty and when by written agreement between the parties an on-the-job
paid meal period is agreed to. The written agreement shall state that the employee
may, in writing, revoke the agreement at any time."

5 44. At all relevant times, Plaintiff was not subject to a valid on-duty meal period
6 agreement. Plaintiff is informed and believes that, at all relevant times, **Meal Period Sub-Class**
7 members were not subject to valid on-duty meal period agreements with Defendants.

8 45. Plaintiff alleges that, at all relevant times during the applicable limitations period,
9 Defendants maintained a policy or practice of not providing Plaintiff and members of the **Meal Period**
10 **Sub-Class** with uninterrupted, duty-free meal periods for at least thirty (30) minutes for each five (5)
11 hour work period, as required by Labor Code section 512 ad the applicable Wage Order. Specifically,
12 the uncompensated pre-shift hours, discussed herein, delayed Plaintiff and Class Members' meal
13 periods to commence after the completion of their fifth hour of work.

14 46. Plaintiff alleges that, at all relevant times during the applicable limitations period,
15 Defendants maintained a policy or practice of failing to pay premium wages to **Meal Period Sub-**
16 **Class** members when they worked five (5) hours without clocking out for any meal period.

17 47. Plaintiff alleges that, at all relevant times during the applicable limitations period,
18 Defendants maintained a policy or practice of not providing Plaintiff and members of the **Meal Period**
19 **Sub-Class** with a second meal period when they worked shifts of ten or more hours and failed to pay
20 them premium wages as required by Labor Code 512 and the applicable Wage Order.

21 48. Moreover, Defendants written policies fail to inform Meal period Class Members of
22 their meal period rights under the Labor Code and applicable Wage Orders.

23 49. At all relevant times, Defendants failed to pay Plaintiff and the **Meal Period Sub-**
24 **Class** members additional premium wages, and/or were not paid premium wages at the employees'
25 regular rates of pay when required meal periods were not provided.

26 50. Pursuant to Labor Code section 204, 218.6, 226.7 and 512, Plaintiff, on behalf of
27 himself and the **Meal Period Sub-Class** members, seek to recover unpaid premium wages, interest
28 thereon, and costs of suit.

1 51. Pursuant to Labor Code section 1194, Code of Civil Procedure section 1021.5, the
2 substantial benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of himself and the
3 **Meal Period Sub-Class** members, seek to recover reasonable attorneys' fees.

4 **SECOND CAUSE OF ACTION**

5 **FAILURE TO PROVIDE REST PERIODS**

6 **(Lab. Code §§ 204, 223, 226.7 and 1198)**

7 **(Plaintiff and Rest Period Sub-Class)**

8 52. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
9 herein.

10 53. At all relevant times, Plaintiff and the **Rest Period Sub-Class** members have been
11 non-exempt employees of Defendants entitled to the full rest period protections of both the Labor
12 Code and the applicable Wage Order.

13 54. Section 12 of the applicable Wage Order imposes an affirmative obligation on
14 employers to permit and authorize employees to take required rest periods at a rate of no less than ten
15 minutes of net rest time for each four hour work period, or major fraction thereof, that must be in the
16 middle of each work period insofar as practicable.

17 55. Labor Code section 226.7 and Section 12 of the applicable Wage Order both prohibit
18 employers from requiring employees to work during required rest periods and require employers to
19 pay non-exempt employees an hour of premium wages at the employees' regular rates of pay, on each
20 workday that the employee is not provided with the required rest period(s).

21 56. Compensation for missed rest periods constitutes wages within the meaning of Labor
22 Code section 200.

23 57. Labor Code section 1198 makes it unlawful to employ a person under conditions that
24 violate the Wage Order.

25 58. Plaintiff alleges that, at all relevant times during the applicable limitations period,
26 Defendants maintained a policy or practice of not providing members of the **Rest Period Sub-Class**
27 with net rest period of at least ten uninterrupted minutes for each four hour work period, or major
28 fraction thereof, as required by the applicable Wage Order.

59. Plaintiff and **Rest Period Sub-Class** members were not provided with rest periods of at least ten (10) minutes for each four (4) hour work period, or major fraction thereof, due to (1) Defendants' policy of requiring employees to work during their rest breaks to help customers if other workers were unavailable; and (2) no formal compliant written rest period policy that encouraged employees to take their rest periods, or that properly advised **Rest Period Sub-Class** members of their rest period rights.

60. At all relevant times, Defendants failed to pay Plaintiff and the **Rest Period Sub-Class** members additional premium wages when required rest periods were not provided.

61. Pursuant to Labor Code section 204, 218.6 and 226.7, Plaintiff, on behalf of himself and **Rest Period Sub-Class** members, seek to recover unpaid premium wages, interest thereon, and costs of suit.

62. Pursuant to Labor Code section 1194, Code of Civil Procedure section 1021.5, the substantial benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of himself and **Rest Period Sub-Class** members, seek to recover reasonable attorneys' fees.

THIRD CAUSE OF ACTION

FAILURE TO PAY HOURLY AND OVERTIME WAGES

(Lab. Code §§ 223, 510, 1194, 1197 and 1198)

(Plaintiff and Hourly Employee Class)

63. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

64. At all relevant times, Plaintiff and **Hourly Employee Class** members are or have been non-exempt employees of Defendants entitled to the full protections of the Labor Code and the applicable Wage Order.

65. Section 2 of the applicable Wage Order defines “hours worked” as “the time during which an employee is subject to the control of the employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.”

66. Section 4 of the applicable Wage Order requires an employer to pay non-exempt employees at least the minimum wage set forth therein for all hours worked, which consist of all hours

1 that an employer has actual or constructive knowledge that employees are working.

2 67. Labor Code section 1194 invalidates any agreement between an employer and an
3 employee to work for less than the minimum or overtime wage required under the applicable Wage
4 Order.

5 68. Labor Code section 1194.2 entitles non-exempt employees to recover liquidated
6 damages in amounts equal to the amounts of unpaid minimum wages and interest thereon in addition
7 to the underlying unpaid minimum wages and interest thereon.

8 69. Labor Code section 1197 makes it unlawful for an employer to pay an employee less
9 than the minimum wage required under the applicable Wage Order for all hours worked during a
10 payroll period.

11 70. Labor Code section 1197.1 provides that it is unlawful for any employer or any other
12 person acting either individually or as an officer, agent or employee of another person, to pay an
13 employee, or cause an employee to be paid, less than the applicable minimum wage.

14 71. Labor Code section 1198 makes it unlawful for employers to employ employees under
15 conditions that violate the applicable Wage Order.

16 72. Labor Code section 204 requires employers to pay non-exempt employees their earned
17 wages for the normal work period at least twice during each calendar month on days the employer
18 designates in advance and to pay non-exempt employees their earned wages for labor performed in
19 excess of the normal work period by no later than the next regular payday.

20 73. Labor Code section 223 makes it unlawful for employers to pay their employees lower
21 wages than required by contract or statute while purporting to pay them legal wages.

22 74. Labor Code section 510 and Section 3 of the applicable Wage Order require employees
23 to pay non-exempt employees overtime wages of no less than one and one-half times their respective
24 regular rates of pay for all hours worked in excess of eight hours in one workday, all hours worked in
25 excess of forty hours in one workweek, and/or for the first eight hours worked on the seventh
26 consecutive day of one workweek.

27 75. Labor Code section 510 and Section 3 of the applicable Wage Order also require
28 employers to pay non-exempt employees overtime wages of no less than two times their respective

1 regular rates of pay for all hours worked in excess of twelve hours in one workday and for all hours
2 worked in excess of eight hours on a seventh consecutive workday during the workweek.

3 76. Plaintiff is informed and believes that, at all relevant times, Defendants have applied
4 centrally devised policies and practices to her and **Hourly Employee Class** members with respect to
5 working conditions and compensation arrangements.

6 77. At all relevant times, Defendants failed to pay hourly wages to Plaintiff and **Hourly**
7 **Employee Class** members for all time worked, including but not limited to, overtime hours at
8 statutory and/or agreed rates.

9 78. Plaintiff and **Hourly Employee Class** members were not paid proper wages and
10 overtime for all hours worked, at the proper rates of pay. Defendants had a common policy and
11 practice of requiring Plaintiff and **Hourly Employee Class** members to work off-the-clock for which
12 no wages were paid. Specifically, Plaintiff and **Hourly Employee Class** members were required to
13 undergo mandatory security bag checks before clocking in for work and after clocking out for the
14 day.

15 79. Next, Plaintiff and **Hourly Employee Class** members were also consistently required
16 to perform work, including helping customers after clocking out of their shift. The forgoing and
17 uncompensated working time was under the direction and control of Defendants, for which no wages
18 were paid.

19 80. This uncompensated time caused Plaintiff and **Hourly Employee Class** members to
20 work in excess of eight (8), ten (10), and twelve (12) hours a day and/or forty (40) hours a week,
21 entitling Plaintiff and **Hourly Employee Class** members to minimum and overtime wages, which
22 they were systemically denied.

23 81. As a result of Defendants' unlawful conduct, Plaintiff and **Hourly Employee Class**
24 members have suffered damages in an amount, subject to proof, to the extent they were not paid the
25 full amount of wages earned during each pay period during the applicable limitations period,
26 including overtime wages.

27 82. Pursuant to Labor Code sections 204, 218.6, 223, 510, 1194 and 1194.2, Plaintiff, on
28 behalf of himself and **Hourly Employee Class** members, seek to recover unpaid straight time and

1 overtime wages, interest thereon and costs of suit.

2 83. Pursuant to Labor Code section 1194, Code of Civil Procedure section 1021.5, the
3 substantial benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of himself and
4 **Hourly Employee Class** members, seek to recover reasonable attorneys' fees.

5 **FOURTH CAUSE OF ACTION**

6 **FAILURE TO PAY PROPER SICK PAY**

7 **(Lab. Code § 246)**

8 **(Plaintiff and Sick Pay Class)**

9 84. Plaintiff re-alleges and incorporate all preceding paragraphs, as though set forth in
10 full herein.

11 85. Labor Code Section 246 affords an employee "who works in California for 30 or
12 more days within a year from the commencement of employment [] paid sick days . . . of not less
13 than one hour per every 30 hours worked" and "no less than 24 hours of accrued sick leave or paid
14 time off by the 120th calendar day of employment or each calendar year, or in each 12-month
15 period."

16 86. Additionally, Subsection (l) of Section 246 provides:

17 For the purposes of this section, an employer shall calculate paid sick leave
18 using any of the following calculations:

19 (1) Paid sick time for nonexempt employees shall be calculated in the same
20 manner as the regular rate of pay for the workweek in which the employee
21 uses paid sick time, whether or not the employee actually works overtime
22 in that workweek.

23 87. Defendants had a common policy and practice of systemically failing to pay Plaintiff
24 and **Sick Pay Class** Members the requisite sick time pay in accordance with California Law.
25 Specifically, Plaintiff and **Sick Pay Class** Members worked for Defendants for more than 30 days,
26 but were not paid at least one hour of sick pay for every 30 hours of work, or at least 3 days of sick
27 time for every 12 month period of work. Furthermore, Plaintiff and **Sick Pay Class** Members were
28 not able to use accrued paid sick days. Further, Plaintiff and **Sick Pay Class** Members were not able
to use paid sick days for COVID sick leave, as required for any part-time employee with a variable

1 work schedule that has worked for a company for more than seven (7) days.

2 88. Therefore, **Sick Pay Class** Members are owed the unpaid balance of said wages
3 pursuant to the Wage order according to proof at trial, interest pursuant to Labor Code §§ 218.6 and
4 1194(a), Civil Code §§ 3287 and § 3289, and reasonable attorneys' fees and costs and/or penalties
5 pursuant to Labor Code § 558(a).

6 **FIFTH CAUSE OF ACTION**

7 **FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS**

8 **(Lab. Code § 226)**

9 **(Plaintiff and Wage Statement Penalties Sub-Class)**

10 89. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
11 herein.

12 90. Labor Code section 226(a) states:

13 An employer, semimonthly or at the time of each payment of wages,
14 shall furnish to his or her employee, either as a detachable part of the
15 check, draft, or voucher paying the employee's wages, or separately if
16 wages are paid by personal check or cash, an accurate itemized
17 statement in writing showing (1) gross wages earned, (2) total hours
18 worked by the employee, except as provided in subdivision (j), (3) the
19 number of piece-rate units earned and any applicable piece rate if the
20 employee is paid on a piece-rate basis, (4) all deductions, provided that
21 all deductions made on written orders of the employee may be
22 aggregated and shown as one item, (5) net wages earned, (6) the
23 inclusive dates of the period for which the employee is paid, (7) the
24 name of the employee and only the last four digits of his or her social
25 security number or an employee identification number other than a
26 social security number, (8) the name and address of the legal entity that
27 is the employer and, if the employer is a farm labor contractor, as
28 defined in subdivision (b) of Section 1682, the name and address of the
legal entity that secured the services of the employer, and (9) all
applicable hourly rates in effect during the pay period and the
corresponding number of hours worked at each hourly rate by the
employee and, beginning July 1, 2013, if the employer is a temporary
services employer as defined in Section 201.3, the rate of pay and the
total hours worked for each temporary services assignment. The
deductions made from payment of wages shall be recorded in ink or
other indelible form, properly dated, showing the month, day, and year,
and a copy of the statement and the record of the deductions shall be
kept on file by the employer for at least three years at the place of
employment or at a central location within the State of California. For
purposes of this subdivision, 'copy' includes a duplicate of the itemized
statement provided to an employee or a computer-generated record that
accurately shows all of the information required by this subdivision.

1 91. The Division of Labor Standards Enforcement (“DLSE”) has sought to harmonize the
2 “detachable part of the check” provision and the “accurate itemized statement in writing” provision
3 of Labor Code section 226(a) by allowing for electronic wage statements so long as each employee
4 retains the right to elect to receive a written paper stub or record and that those who are provided with
5 electronic wage statements retain the ability to easily access the information and convert the electronic
6 statements into hard copies at no expense to the employee. (DLSE Opinion Letter July 6, 2006).

7 92. Plaintiff is informed and believes that, at all relevant times during the applicable
8 limitations period, Defendants have failed to provide **Wage Statement Class** members with written
9 wage statements as described above. Additionally, the wage statements issued to class members
10 failed to account for the unpaid minimum wages, overtime, and premium pay wages described
11 above.

12 93. Furthermore, Defendants failed to provide Plaintiff and **Wage Statement Class**
13 Members with paper pay stubs as required by Labor Code § 226, applicable Wage Orders, and DLSE
14 Opinion Letters. Plaintiff’s and **Wage Statement Class** members’ wage statement were only
15 provided in electronic format in violation of Labor Code § 226.

16 94. Plaintiff is informed and believes that Defendants’ failure to provide her and **Wage**
17 **Statement Class** members with accurate written wage statements were intentional in that Defendants
18 have the ability to provide them with accurate wage statements but have intentionally provided them
19 with written wage statements that Defendants have known do not comply with Labor Code section
20 226(a).

21 95. Plaintiff and **Wage Statement Class** members have suffered injuries, in that
22 Defendants have violated their legal rights to receive accurate wage statements and have misled them
23 about their actual rates of pay and wages earned. In addition, inaccurate information on their wage
24 statements have prevented immediate challenges to Defendants’ unlawful pay practices, has required
25 discovery and mathematical computations to determine the amount of wages owed, has caused
26 difficulty and expense in attempting to reconstruct time and pay records, and/or has led to the
27 submission of inaccurate information about wages and deductions to federal and state government
28 agencies.

96. Pursuant to Labor Code section 226(e), Plaintiff, on behalf of himself and **Wage Statement Class** members, seek the greater of actual damages or \$50.00 for the initial pay period in which a violation of Labor Code section 226(a) occurred, and \$100.00 for each subsequent pay period in which a violation of Labor Code section 226(a) occurred, not to exceed an aggregate penalty of \$4000.00 per class member, as well as awards of reasonable attorneys' fees and costs.

SIXTH CAUSE OF ACTION

FAILURE TO TIMELY PAY ALL FINAL WAGES

(Lab. Code §§ 201-203)

(Plaintiff and Waiting Time Penalties Sub-Class)

97. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

98. At all relevant times, Plaintiff and **Waiting Time Penalties Sub-Class** members have been entitled, upon the end of their employment with Defendants, to timely payment of all wages earned and unpaid before termination or resignation.

99. At all relevant times, pursuant to Labor Code section 201, employees who have been discharged have been entitled to payment of all final wages immediately upon termination.

100. At all relevant times, pursuant to Labor Code section 202, employees who have resigned after giving at least seventy-two (72) hours notice of resignation have been entitled to payment of all final wages at the time of resignation.

101. Plaintiff is informed and believes that, at all relevant time during the applicable limitations period, Defendants have failed to timely pay **Waiting Time Penalties Sub-Class** members all of their final wages in accordance with the Labor Code.

102. Plaintiff is informed and believes that, at all relevant times during the applicable limitations period, Defendants have maintained a policy or practice of paying **Waiting Time Penalties Sub-Class** members their final wages without regard to the requirements of Labor Code sections 201 or 202 by failing to timely pay them all final wages.

103. Plaintiff is informed and believes and thereupon alleges that Defendants' failure to timely pay all final wages to her and **Waiting Time Penalties Sub-Class** members have been willful

1 in that Defendants have the ability to pay final wages in accordance with Labor Code sections 201
2 and/or 202 but have intentionally adopted policies or practices that are incompatible with those
3 requirements.

4 104. Pursuant to Labor Code sections 203 and 218.6, Plaintiff, on behalf of himself and
5 **Waiting Time Penalties Sub-Class** members, seek waiting time penalties from the dates that their
6 final wages have first become due until paid, up to a maximum of thirty days, and interest thereon.

7 105. Pursuant to Code of Civil Procedure section 1021.5, the substantial benefit doctrine
8 and/or the common fund doctrine, Plaintiff, on behalf of himself and **Waiting Time Penalties Sub-**
9 **Class** members, seek awards of reasonable attorneys' fees and costs.

10 **SEVENTH CAUSE OF ACTION**

11 **FAILURE TO PAY WAGES DUE, NEGOTIABLE AND PAYABLE IN CASH ON**

12 **DEMAND**

13 **(Lab. Code §§ 212 and 213**

14 **(Plaintiff and Pay Card Class)**

15 106. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
16 herein.

17 107. Labor Code § 212 states that no employer "shall issue in payment of wages due" by
18 "order, check, draft, note, memorandum, or other acknowledgment of indebtedness, unless it is
19 negotiable and payable in cash, on demand, without discount, at some established place of business
20 in the state."

21 108. 54. Defendants failed to pay Plaintiff and **Pay Card Class** members, with an order,
22 check, draft, note, memorandum, or other acknowledgment of indebtedness that was payable on
23 demand, without discount at some established place of business in the state. Defendants' issued pay
24 cards to Plaintiff and **Pay Card Class** members for wages earned. These pay cards were useable for
25 a fee and did not have a provision for use and payment in California at no cost to the employee.
26 Therefore, Defendants' failed to provide Plaintiff and **Pay Card Class** members with checks, drafts,
27 notes or other acknowledgements of indebtedness that were payable on demand without discount as
28 required by Labor Code § 212, which required Plaintiff and **Pay Card Class** members to incur fees

1 to use, was not fully cashable, and not usable at all financial institutions.

2 109. Such a pattern, practice and uniform administration of corporate policy regarding
3 illegal employee compensation as described herein is unlawful and creates an entitlement to recovery
4 by Plaintiff and the class in a civil action for damages and wages owed and for costs and attorneys'
5 fees.

6 **EIGHTH CAUSE OF ACTION**

7 **FAILURE TO INDEMNIFY**

8 **(Lab. Code § 2802)**

9 **(Plaintiff and Reimbursement Class)**

10 110. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
11 herein.

12 111. Labor Code section 2802(a) states:

13 “An employer shall indemnify his or her employee for all necessary expenditures or
14 losses incurred by the employee in direct consequence of the discharge of his or her
15 duties, or of his or her obedience to the directions of the employer, even though
unlawful, unless the employee, at the time of obeying the directions, believed them to
be unlawful.”

16 112. Plaintiff and **Expense Reimbursement Class** members were not reimbursed for
17 business expenses incurred in executing their duties under Defendant’s employ. Specifically, Plaintiff
18 and **Expense Reimbursement Class** members were required to wear a uniform with Defendant’s
19 logo present, but were not provided reimbursement for the full cost of the uniform. Additionally,
20 Plaintiff and **Expense Reimbursement Class** members were required to incur the costs of cleaning
21 and maintaining their work uniforms Plaintiff and **Expense Reimbursement Class** members were
22 never reimbursed for the value of the purchases required to complete the uniform.

23 113. Accordingly, Plaintiff and **Expense Reimbursement Class** members are entitled to
24 restitution for all unpaid amounts due and owing to within four years of the date of the filing of the
25 Complaint and until the date of entry of judgment.

26 114. Plaintiff, on behalf of himself, and **Expense Reimbursement Class** members, seeks
27 interest thereon and costs pursuant to Labor Code section 218.6, and reasonable attorneys’ fees
28 pursuant to Code of Civil Procedure section 1021.5.

NINTH CAUSE OF ACTION

UNFAIR COMPETITION

(Bus. & Prof. Code §§ 17200 *et seq.*)

(Plaintiff and UCL Class)

115. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

116. Business and Professions Code section 17200 defines “unfair competition” to include any unlawful business practice.

117. Business and Professions Code section 17203-17204 allow a person who has lost money or property as a result of unfair competition to bring a class action in accordance with Code of Civil Procedure section 382 to recover money or property that may have been acquired from similarly situated persons by means of unfair competition.

118. California law requires employers to pay hourly, non-exempt employees for all hours they are permitted or suffered to work, including hours that the employer knows or reasonable should know that employees have worked.

119. Plaintiff and the **UCL Class** members re-alleges and incorporates the FIRST, SECOND, THIRD, FOURTH, SEVENTH, and EIGHTH causes of action herein.

120. Plaintiff lost money or property as a result of the aforementioned unfair competition.

121. Defendants have or may have acquired money by means of unfair competition.

122. Plaintiff is informed and believes and thereupon alleges that by committing the Labor Code violations described in this Complaint, Defendants violated Labor Code sections 212, 215, 216, 225, 226.6, 226.7, 246, 354, 408, 512, 510, 553, 1175, 1174, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2802 as well as applicable Wage Orders, which make it a misdemeanor to commit the violations alleged herein.

123. Defendants have committed criminal conduct through their policies and practices of, *inter alia*, failing to comport with their affirmative obligations as an employer to: provide non-exempt employees with compliant meal and rest periods; pay for all hours worked at the proper rates of pay; proper sick time pay; reporting time pay; and reimbursement for necessary business expenditures.

1 124. Defendants' unlawful conduct as alleged in this Complaint amounts to and constitutes
2 unfair competition within the meaning of Business and Professions Code section 17200 *et seq.*
3 Business and Professions Code sections 17200 *et seq.* protects against unfair competition and allows
4 a person who has suffered an injury-in-fact and has lost money or property as a result of an unfair,
5 unlawful or fraudulent business practice to seek restitution on his own behalf and on behalf of
6 similarly situated persons in a class action proceeding.

7 125. As a result of Defendants' violations of the Labor Code during the applicable
8 limitations period, Plaintiff has suffered an injury-in-fact and has lost money or property in the form
9 of earned wages. Specifically, Plaintiff has lost money or property as a result of Defendants' conduct.

10 126. Plaintiff is informed and believes that other similarly situated persons have been
11 subject to the same unlawful policies or practices of Defendants.

12 127. Due to the unfair and unlawful business practices in violation of the Labor Code,
13 Defendants have gained a competitive advantage over other comparable companies doing business in
14 the State of California that comply with their legal obligations.

15 128. California's Unfair Competition Law ("UCL") permits civil recovery and injunctive
16 for "any unlawful, unfair or fraudulent business act or practice," including if a practice or act violates
17 or is considered unlawful under any other state or federal law.

18 129. Accordingly, pursuant to Business and Professions Code sections 17200 and 17203,
19 Plaintiffs request the issuance of temporary, preliminary and permanent injunctive relief enjoining
20 Defendants, and each of them, and their agents and employees, from further violations of the Labor
21 Code and applicable Wage Orders.

22 130. Accordingly, pursuant to Bus. & Prof. Code sections 17200 and 17203, Plaintiff
23 requests the issuance of temporary, preliminary and permanent injunctive relief enjoining
24 Defendants, and each of them, and their agents and employees, from further violations of the Labor
25 Code and applicable Industrial Welfare Commission Wage Orders; and upon a final hearing seek an
26 order permanently enjoining Defendants, and each of them, and their respective agents and
27 employees, from further violations of the Labor Code and applicable Industrial Welfare Commission
28 Wage Orders.

131. Pursuant to Business and Professions Code section 17203, Plaintiff, on behalf of himself and **UCL Class** members, seek declaratory relief and restitution of all monies rightfully belonging to them that Defendants did not pay them or otherwise retained by means of its unlawful and unfair business practices.

132. Pursuant to Code of Civil Procedure section 1021.5, the substantial benefit doctrine and/or the common fund doctrine, Plaintiff and **UCL Class** members are entitled to recover reasonable attorneys' fees in connection with their unfair competition claims.

133. Pursuant to Business and Professions Code section 17203, Plaintiff, on behalf of himself and **UCL Class** members, seek declaratory relief and restitution of all monies rightfully belonging to them that Defendants did not pay them or otherwise retained by means of its unlawful and unfair business practices.

134. Pursuant to Code of Civil Procedure section 1021.5, the substantial benefit doctrine and/or the common fund doctrine, Plaintiff and **UCL Class** members are entitled to recover reasonable attorneys' fees in connection with their unfair competition claims.

TENTH CAUSE OF ACTION

CIVIL PENALTIES

(Lab. Code §§ 2698, *et seq.*)

135. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

136. During the applicable limitations period, Defendants have violated Labor Code §§ 201, 202, 203, 204, 210, 212, 213, 226, 226.3, 226.7, 246, 510, 512, 515, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, 2699, *et seq.*, and 2802.¹

137. Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf of himself and other current and former employees, to bring a representative civil action to recover civil penalties pursuant to the procedures set forth in Labor Code § 2699.3 that may, but need not, be brought or

¹ Plaintiff hereby reserves the right to seek penalties on behalf of all Aggrieved Employees, for Defendants' violations of the applicable provisions of the Labor Code, suffered by Aggrieved Employees, but not directly suffered by Plaintiff under *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745.

1 maintained as a class action pursuant to Code of Civil Procedure section 382.

2 138. Plaintiff, a former employee against whom Defendants committed one or more of the
3 alleged Labor Code violations during the applicable limitations period, is an aggrieved employee
4 within the meaning of Labor Code § 2699(c). Plaintiff was employed by Defendants as a non-exempt
5 hourly employee in California. Aggrieved Employees include all non-exempt hourly employees of
6 Defendants within the state of California from one year prior to the date of this letter and continuing
7 through the present (Plaintiff and Aggrieved Employees are collectively referred to herein as
8 “Aggrieved Employees”)

9 139. Plaintiff has complied with the procedures for bringing suit specified in Labor Code §
10 2699.3. Notice was provided to the California Labor & Workforce Development Agency (“LWDA”)
11 and 65 days have elapsed without the LWDA providing Plaintiff with any notice of an intent to
12 investigate.

13 140. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff seeks the following civil
14 penalties for Defendants’ violations of Labor Code §§ 201, 202, 203, 204, 212, 213, 223, 226.7,
15 226(a), 246, 510, 512, 1174, 1194, 1194.2, 1197, 1197.1, 1198, and 2802:

- 16 i. For violations of Labor Code §§ 201, 202, 203, 213, 212, 226.7, 246 1174,
17 1194, 1198 and 2802, one hundred dollars (\$100) for each employee per pay
18 period for each initial violation and two hundred dollars (\$200) for each
19 employee per pay period for each subsequent violation (penalties set by Labor
20 Code § 2699(f)(2));
- 21 ii. For violations of Labor Code § 203, a penalty in an amount not exceeding thirty
22 (30) days’ pay as waiting time (penalties set by Labor Code § 256);
- 23 iii. For violations of Labor Code § 204, one hundred dollars (\$100) for each
24 employee for each initial violation that was neither willful nor intentional, two
25 hundred dollars (\$200) for each employee, plus 25% of the amount unlawfully
26 withheld from each employee, for each initial violation that was either willful
27 or intentional, and two hundred dollars (\$200) for each employee, plus twenty-
28 five percent (25%) of the amount unlawfully withheld from each employee,

- 1 for each subsequent violation, regardless of whether the subsequent violation
2 was either willful or intentional (penalties set by Labor Code § 210);
- 3 iv. For violations of Labor Code § 223, one hundred dollars (\$100) for each
4 employee for each initial violation that was neither willful nor intentional, two
5 hundred dollars (\$200) for each employee, plus twenty-five percent (25%) of
6 the amount unlawfully withheld from each employee, for each initial violation
7 that was either willful or intentional, and two hundred dollars (\$200) for each
8 employee, plus twenty-five percent (25%) of the amount unlawfully withheld
9 from each employee, for each subsequent violation, regardless of whether the
10 subsequent violation was either willful or intentional (penalties set by Labor
11 Code § 225.5);
- 12 v. For violations of Labor Code § 226(a), if this action is deemed to be an initial
13 citation, two hundred and fifty dollars (\$250) for each employee for each
14 violation. Alternatively, if an initial citation or its equivalent occurred before
15 the filing of this action, one thousand dollars (\$1,000) for each employee for
16 each violation (penalties set by Labor Code § 226.3);
- 17 vi. For violation of Labor Code §§ 510 and 512, fifty dollars (\$50) for each
18 employee for each initial pay period for which the employee was underpaid,
19 and one hundred dollars (\$100) for each employee for each subsequent pay
20 period for which the employee was underpaid (penalties set by Labor Code §
21 558);
- 22 vii. For violations of Labor Code § 1197, one hundred dollars (\$100) for each
23 aggrieved employee for each initial violation of Labor Code § 1197 that was
24 intentional and two hundred and fifty dollars (\$250) for each aggrieved
25 employee per pay period for each subsequent violation of Labor Code § 1197,
26 regardless of whether the initial violation was intentional (penalties set by
27 Labor Code § 1197.1);
- 28 viii. Pursuant to Labor Code § 2699(g), Plaintiff seeks an award of reasonable

attorneys' fees and costs in connection with Plaintiff's claims for civil penalties.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself, all others similarly situated, and the general public, prays for relief and judgment against Defendants as follows:

- a. An order that the action be certified as a class action;
- b. An order that Plaintiff be appointed class representative;
- c. An order that counsel for Plaintiff be appointed class counsel;
- d. Unpaid wages and overtime;
- e. Actual damages;
- f. Liquidated damages;
- g. Unreimbursed expenses;
- h. Restitution;
- i. Declaratory relief;
- j. Pre-judgment interest;
- k. Statutory penalties;
- l. Civil penalties;

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- m. Costs of suit;
- n. Reasonable attorneys' fees; and
- o. Such other relief as the Court deems just and proper.

Dated: December 14, 2023

D.LAW, INC.



Emil Davtyan
David Yeremian
David Keledjian
David Arakelyan
Attorneys for Plaintiff
WILMER HERNANDEZ, and the putative class

DEMAND FOR JURY TRIAL

Plaintiff, on behalf of himself, all other similarly situated, and the general public, hereby demands a jury trial on all issues so triable.

Dated: December 14, 2023

D.LAW, INC.



Emil Davtyan
David Yeremian
David Keledjian
David Arakelyan
Attorneys for Plaintiff
WILMER HERNANDEZ, and the putative class