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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

FRANCISCO CALDERON, as an individual
and on behalf of all others similarly situated,

Plaintiff,

vs.

SMILEDIRECTCLUB, LLC, a Tennessee
limited liability company; JEFFREY
SULITZER, D.M.D., PROFESSIONAL
CORPORATION, a California corporation;
and DOES 1 through 100,

Defendants.

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Superior Court of California
County of Los Angeles

APR 06 2020

Sherri R. Cauce, Executive Officer/Clerk of Court

By Steven Drew, Deputy

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Case No.: 20STCV03799

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT:**

- (1) **FAILURE TO PAY ALL
OVERTIME WAGES OWED
(LABOR CODE §§ 204, 510, 558,
1194, 1198);**
- (2) **FAILURE TO PAY ALL MINIMUM
WAGES OWED (LABOR CODE §§
1194, 1194.2, 1197);**
- (3) **FAILURE TO PROVIDE MEAL
PERIODS (LABOR CODE §§ 226.7,
512);**
- (4) **FAILURE TO AUTHORIZE AND
PERMIT ALL REST PERIODS
(LABOR CODE §§ 226.7, 516);**

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- (5) **FAILURE TO PROVIDE ACCURATE, ITEMIZED WAGE STATEMENTS (LABOR CODE § 226 *et seq.*);**
- (6) **FAILURE TO TIMELY PAY ALL WAGES UPON TERMINATION (LABOR CODE §§ 201-203);**
- (7) **UNFAIR COMPETITION (BUS & PROF CODE § 17200 *et seq.*);**
- (8) **CIVIL PENALTIES UNDER THE LABOR CODE PRIVATE ATTORNEYS GENERAL ACTION OF 2004 (LABOR CODE § 2698 *et seq.*)**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

[Complaint Filed: February 20, 2020]

1 Plaintiff Francisco Calderon (“Plaintiff”), on behalf of himself and all others similarly
2 situated, hereby brings this First Amended Class and Representative Action Complaint (“FAC”)
3 against Smiledirectclub, LLC, a Tennessee limited liability company, Jeffrey Sulitzer, D.M.D.,
4 Professional Corporation, a California Corporation, and DOES 1 to 100, inclusive (collectively
5 “Defendants”), and on information and belief alleges as follows:

6 **JURISDICTION**

7 1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this
8 FAC for recovery of unpaid wages and penalties under California Business & Professions Code
9 § 17200 *et. seq.*, Labor Code §§ 201-203, 204, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1194,
10 1194.2, 1197, 1198, 2698 *et seq.*, and Industrial Welfare Commission Wage Order 4 (“Wage
11 Order 4”), in addition to seeking declaratory relief and restitution. This FAC is brought pursuant
12 to California Code of Civil Procedure § 382. This Court has jurisdiction over Defendants’
13 violations of the California Labor Code because the amount in controversy exceeds this Court’s
14 jurisdictional minimum.

15 **VENUE**

16 2. Venue is proper in this judicial district pursuant to Cal. Code of Civ. Proc. §§
17 395(a) and 395.5, as at least some of the acts and omissions complained of herein occurred in the
18 County of Los Angeles. Defendants own, maintain offices, transact business, have agent(s)
19 within the County of Los Angeles, and/or otherwise are found within the County of Los Angeles,
20 and Defendants are within the jurisdiction of this Court for purposes of service of process.

21 **PARTIES**

22 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
23 Plaintiff was and currently is, a California resident. During the four years immediately preceding
24 the filing of the lawsuit in this action and within the statute of limitations periods applicable to
25 each cause of action pled herein, Plaintiff was employed by Defendants as a non-exempt
26 employee. Plaintiff was, and is, a victim of Defendants’ policies and/or practices complained of
27 herein, lost money and/or property, and has been deprived of the rights guaranteed by Labor Code
28 §§ 201-203, 204, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1194, 1194.2, 1197, 1198, 2698 *et seq.*;

1 California Business & Professions Code § 17200 *et seq.* (“Unfair Competition Law”); and Wage
2 Order 4, which sets employment standards for the professional, technical, clerical, mechanical
3 and similar occupations, which includes the industry in which Plaintiff worked for Defendants.

4 4. Plaintiff is informed and believes, and based thereon alleges, that during the four
5 years preceding the filing of the lawsuit and continuing to the present, Defendants did (and
6 continue to do) business by being the first digital brand for straightening teeth. According to their
7 website, Defendants represent 95% of the doctor-directed at-home clear aligner industry.
8 Defendants employed Plaintiff and other, similarly-situated hourly, non-exempt employees
9 within, among other counties, Los Angeles County and the state of California and, therefore, were
10 (and are) doing business in Los Angeles County and the State of California.

11 5. Plaintiff does not know the true names or capacities, whether individual, partner,
12 or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said
13 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
14 amend this FAC when such true names and capacities are discovered. Plaintiff is informed, and
15 believes, and based thereon alleges, that each of said fictitious defendants, whether individual,
16 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,
17 and proximately caused Plaintiff and the Classes (as defined in Paragraph 18) to be subject to the
18 unlawful employment practices, wrongs, injuries and damages complained of herein.

19 6. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
20 herein, Defendants were and are the employers of Plaintiff and all members of the Classes.

21 7. At all times herein mentioned, each of said Defendants participated in the doing
22 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
23 Defendants, and each of them, were the agents, servants, and employees of each and every one of
24 the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned
25 were acting within the course and scope of said agency and employment. Defendants, and each
26 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or
27 omissions complained of herein.

28 8. At all times mentioned herein, Defendants, and each of them, were members of

and engaged in a joint venture, partnership, and common enterprise, and acting within the course and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all members of the Classes.

GENERAL FACTUAL ALLEGATIONS

9. Defendants maintain, and maintained throughout the time period relevant to this action, various locations known as SmileShops throughout California, including inside the CVS Pharmacy in Woodlands, California, where Plaintiff worked. Plaintiff worked for Defendants as an hourly, non-exempt employee approximately March 2019 through approximately January 2, 2020. During his employment, Plaintiff worked as a Smile Guide and performed various duties throughout his employment, including without limitation, explaining the products and guiding customers through timelines and payment plans.

10. During his employment with Defendants, Plaintiff was typically scheduled to begin his shift at 11:30 a.m. and would clock-in using Defendants' UltiPro timekeeping system that automatically populated his clock-in time.

11. Throughout Plaintiff's employment with Defendants, Defendants would keep track of Plaintiff's time worked and would unlawfully shave Plaintiff's work time and/or round Plaintiff's work time such that Plaintiff would not be fully paid for all time worked. This time shaving/rounding practice utilized by Defendants was not-even handed over time and would round and shave in Defendants' favor such that Plaintiff was routinely underpaid for his time worked. Further, during Plaintiff's employment with Defendants, because he would on occasion work in excess of 8 hours per workday and/or 40 hours per work week, had Plaintiff been properly paid for all of the time that he actually worked, he would have been paid additional overtime wages. This practice by Defendants resulted in Defendants not properly tracking the time worked by Plaintiff, and also resulted in Defendants paying Plaintiff less than he was owed for the work he performed, including failing to pay him all required minimum wages and overtime wages.

12. Throughout Plaintiff's employment with Defendants, Plaintiff was not provided all required meal periods due to Defendants' meal period policies/practices which fail to provide

uninterrupted, duty-free and timely 30-minute meal periods when employees work in excess of 5.0 hours in a day. Specifically, due to his job duties, Plaintiff was often prevented from taking meal periods that commenced before the end of the fifth hour of work and/or a meal period altogether. This policy and practice of Defendants of failing to provide lawful and timely meal periods to Plaintiff violates California law.

13. Although Plaintiff was not provided with all legally-compliant meal periods to which he was entitled, Defendants failed to compensate Plaintiff with the required meal period premium for each workday in which he experienced a meal period violation as mandated by Labor Code § 226.7. Upon information and belief during at least a portion of the class period, Defendants maintained no payroll code or other mechanism for the payment of meal period premium payments under Labor Code § 226.7 in the event that a legally compliant meal period was not provided to Plaintiff and their non-exempt employees.

14. Plaintiff was also not authorized and permitted to take all required rest periods due to Defendants' rest period policies/practices. Defendants' rest period policies/practices fail to authorize and permit all rest periods for every four hours worked, or *major fraction thereof*. Specifically, during the shifts when Plaintiff worked alone, Defendants' policy and practice prohibited him from taking any rest periods.

15. On those occasions when Plaintiff was not authorized and permitted to take all legally required rest periods to which he was entitled, Defendants failed to compensate Plaintiff with the required rest period premium for each workday in which he experienced a rest period violation as mandated by Labor Code § 226.7. Further, upon information and belief during at least a portion of the class period, Defendants maintained no payroll code or other mechanism for the payment of rest period premium payments under Labor Code § 226.7 in the event that a legally compliant rest period was not provided to their non-exempt employees.

16. As a result of Defendants' failure to pay all overtime and minimum wages owed, and failure to pay all meal and rest period premium wages, Defendants failed to provide Plaintiff with accurate, itemized wage statements. Additionally, Defendants' wage statements were also deficient in the pay periods Defendants paid Plaintiff a non-discretionary bonus based on his sales

for the month. Specifically, when Defendants paid Plaintiff wages identified as “CO LOOKBACK”, Defendants failed to list the pay rate and hours on his wage statements.

17. As a further result of Defendants’ failure to pay all overtime and minimum wages owed, and failure to pay all meal and rest period premium wages, Defendants failed to pay Plaintiff all of his wages owed upon his separation of employment with Defendants.

CLASS ACTION ALLEGATIONS

18. **Class Definitions:** Plaintiff brings this action on behalf of himself and the following Classes pursuant to § 382 of the Code of Civil Procedure:

- a. The Overtime Class consists of all of Defendants’ current and former non-exempt employees in California who: worked in excess of 8 hours in a work day and/or in excess of 40 hours in a work week, and were subject to Defendants’ timekeeping system, during the four years preceding the filing of the lawsuit through the present.
- b. The Minimum Wage Class consists of all of Defendants’ current and former non-exempt employees in California who were subject to Defendants’ timekeeping system, during the four years preceding the filing of the lawsuit through the present.
- c. The Meal Period Class consists of all of Defendants’ current and former non-exempt employees in California who: worked at least one shift in excess of 5.0 hours during the four years immediately preceding the filing of the lawsuit through the present.
- d. The Rest Period Class consists of all of Defendants’ current and former non-exempt employees in California who worked at least one shift of 3.5 hours or more during the four years immediately preceding the filing of the lawsuit through the present.
- e. The Wage Statement Class consists of members of the: (i) Overtime Class; (ii) Minimum Wage Class; (iii) Meal Period Class; (iv) Rest Period Class; and/or (v) any non-exempt employee who received a wage statement with a “CO

LOOKBACK” that did not have the hourly rate or hours listed, during the one year immediately preceding the filing of the lawsuit through the present.

f. The Waiting Time Penalty Class consists of Defendants’ formerly employed members of the: (i) Overtime Class; (ii) Minimum Wage Class; (iii) Meal Period Class; and/or (iv) Rest Period Class, during the three years immediately preceding the filing of the lawsuit through the present.

g. The UCL Class consists of members of the: (i) Overtime Class; (ii) Minimum Wage Class; (iii) Meal Period Class; (iv) Rest Period Class; (v) Wage Statement Class; and/or (vi) Waiting Time Penalty Class, during the four years immediately preceding the filing of the lawsuit through the present.

19. Plaintiff reserves the right under Rule 3.765(b) of the California Rules of Court, to amend or modify the description of the various classes with greater specificity or further division into subclasses or limitation to particular issues.

20. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the Classes is unknown to Plaintiff at this time; however, it is estimated that the members of the Classes number greater than one hundred (100) individuals. The identity of such membership is readily ascertainable via inspection of Defendants’ employment records.

21. **Common Questions of Law and Fact Predominate/Well Defined Community of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated employees, which predominate over questions affecting only individual members. Those common questions include, without limitation:

i. Whether Defendants properly paid all minimum wages and/or overtime wages at the regular rate to members of the Minimum Wage Class and Overtime Class pursuant to Labor Code §§ 204, 221, 510, 558, 1192, 1194, 1194.2, 1197, 1197.1 and 1198;

ii. Whether Defendants provided all legally compliant meal periods to members of the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;

- 1 iii. Whether Defendants authorized and permitted all legally compliant rest periods to
2 members of the Rest Period Class pursuant to Labor Code §§ 226.7 and 516;
3 iv. Whether Defendants provided accurate, itemized wage statements to members of
4 the Classes;
5 v. Whether Defendants’ policies and/or practices for the timing and amount of
6 payment of final wages to members of the Waiting Time Class at the time of their
7 separation of employment were lawful; and
8 vi. Whether Defendants engaged in unlawful, unfair, illegal, and/or deceptive
9 business practices by and through the wage and hour policies and practices
10 described above, and whether as a result Defendants owe the classes restitution.

11 22. **Predominance of Common Questions:** Common questions of law and fact
12 predominate over questions that affect only individual members of the Classes. The common
13 questions of law set forth above are numerous and substantial and stem from Defendants’ policies
14 and/or practices applicable to each individual class member, such as Defendants’ uniform
15 minimum wage, overtime wage payment, and meal and rest period policies/practices. As such,
16 the common questions predominate over individual questions concerning each individual class
17 member’s showing as to their eligibility for recovery or as to the amount of their damages.

18 23. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because
19 Plaintiff was employed by Defendants as a non-exempt employee in California during the
20 statute(s) of limitations period applicable to each cause of action pled in the lawsuit. As alleged
21 herein, Plaintiff, like the members of the Classes, was not provided all legally required minimum
22 wages, and overtime wages, was not provided with all required meal periods, was not authorized
23 and permitted to take all required rest periods, did not receive meal and rest period premium
24 wages when he was not provided compliant meal and rest periods, was not provided with accurate,
25 itemized wage statements, and was not paid all wages upon termination of his employment..

26 24. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps
27 to represent fairly and adequately the interests of the members of the Classes. Moreover,
28 Plaintiff’s attorneys are ready, willing and able to fully and adequately represent the members of

1 the Classes and Plaintiff. Plaintiff's attorneys have prosecuted and defended numerous wage-
2 and-hour class actions in state and federal courts in the past and are committed to vigorously
3 prosecuting this action on behalf of the members of the Classes.

4 25. **Superiority:** The California Labor Code is broadly remedial in nature and serves
5 an important public interest in establishing minimum working conditions and standards in
6 California. These laws and labor standards protect the average working employee from
7 exploitation by employers who have the responsibility to follow the laws and who may seek to
8 take advantage of superior economic and bargaining power in setting onerous terms and
9 conditions of employment. The nature of this action and the format of laws available to Plaintiff
10 and members of the Classes make the class action format a particularly efficient and appropriate
11 procedure to redress the violations alleged herein. If each employee were required to file an
12 individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they
13 would be able to exploit and overwhelm the limited resources of each individual plaintiff with
14 their vastly superior financial and legal resources. Moreover, requiring each member of the
15 Classes to pursue an individual remedy would also discourage the assertion of lawful claims by
16 employees who would be disinclined to file an action against their former and/or current employer
17 for real and justifiable fear of retaliation and permanent damages to their careers at subsequent
18 employment. Further, the prosecution of separate actions by the individual class members, even
19 if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications
20 with respect to the individual class members against Defendants herein; and which would
21 establish potentially incompatible standards of conduct for Defendants; and/or legal
22 determinations with respect to individual class members which would, as a practical matter, be
23 dispositive of the interest of the other class members not parties to adjudications or which would
24 substantially impair or impede the ability of the class members to protect their interests. Further,
25 the claims of the individual members of the Classes are not sufficiently large to warrant vigorous
26 individual prosecution considering all of the concomitant costs and expenses attending thereto.
27 As such, the Classes identified in Paragraph 18 are maintainable as a Class under § 382 of the
28 Code of Civil Procedure.

1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY ALL OVERTIME WAGES**

3 **(AGAINST ALL DEFENDANTS)**

4 26. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

5 27. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194 and
6 1198 which provide that all non-exempt employees are entitled to all overtime wages for all
7 overtime worked (hours in excess of 8 in one day and/or 40 in one week), and provide a private
8 right of action for the failure to pay all overtime compensation for overtime work performed.

9 28. At all times relevant herein, Defendants were required to properly compensate
10 Plaintiff and the members of the Overtime Class for all overtime hours worked pursuant to
11 California Labor Code §§ 510 and 1194, and Wage Order 4. Labor Code § 510 and Wage Order
12 4, Section 3 require an employer to pay an employee “one and one-half (1½) times the regular
13 rate of pay” for work in excess of 8 hours per workday and/or in excess of 40 hours per workweek.
14 Labor Code § 510. Defendants caused Plaintiff and the members of the Overtime Class to work
15 in excess of 8 hours in a workday and/or 40 hours in a workweek but did not properly compensate
16 Plaintiff and the members of the Overtime Class at one and one-half their regular rate of pay for
17 such hours.

18 29. The foregoing practices and policies are unlawful and create entitlement to
19 recovery by Plaintiff and the members of the Overtime Class in a civil action for the unpaid
20 amount of overtime premium owing, including interest thereon, as well as statutory penalties,
21 civil penalties, and attorneys’ fees and costs of suit, pursuant to Labor Code §§ 204, 218.5, 218.6,
22 510, 558, 1194 and 1198, Wage Order 4, California Code of Civil Procedure § 1021.5 California
23 Code of Civil Procedure § 1021.5, and Civil Code §§ 3287(b) and 3289.

24 **SECOND CAUSE OF ACTION**

25 **FAILURE TO PAY ALL MINIMUM WAGES OWED**

26 **(AGAINST ALL DEFENDANTS)**

27 30. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

28 31. This cause of action is brought pursuant to Labor Code §§ 204, 558, 1194 and

1 1198 which provide that all non-exempt employees are entitled to all minimum wages for all
2 hours worked, and provide a private right of action for the failure to pay all minimum wage
3 compensation for all work performed.

4 32. At all times relevant herein, Defendants were required to properly compensate
5 Plaintiff and the members of the Minimum Wage Class for all hours worked pursuant to California
6 Labor Code §§ 1194, 1197 and 1198, and Wage Order 4. Wage Order 4, Section 4 requires an
7 employer to pay to every employee on the established payday for the period involved not less
8 than the applicable minimum wage for all hours worked in the payroll period. Defendants caused
9 Plaintiff and the members of the Minimum Wage Class to work hours in a workweek but did not
10 properly compensate Plaintiff and the members of the Minimum Wage Class at least minimum
11 wages for such hours.

12 33. At all times relevant herein, Defendants lacked good faith and had no reasonable
13 grounds for believing that their practices in failing to pay all minimum wages owed at the
14 applicable rate was not a violation of any provision of the Labor Code relating to minimum wage,
15 or an order of the Industrial Welfare Commission. Defendants therefore, in addition to owing
16 minimum wages to Plaintiff and the members of the Minimum Wage Class, also owe liquidated
17 damages in an amount equal to the wages unlawfully unpaid, and interest thereon, pursuant to
18 Labor Code § 1194.2.

19 34. The foregoing practices and policies are unlawful and create entitlement to
20 recovery by Plaintiff and the members of the Minimum Wage Class in a civil action for the unpaid
21 amount of minimum wages owing, including interest thereon, as well as statutory penalties,
22 liquidated damages, civil penalties, and attorneys' fees and costs of suit, pursuant to Labor Code
23 §§ 204, 218.5, 218.6, 558, 1194, 1194.2, 1197, 1197.1 and 1198, Wage Order 4, California Code
24 of Civil Procedure § 1021.5 California Code of Civil Procedure § 1021.5, and Civil Code §§
25 3287(b) and 3289.

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1 **THIRD CAUSE OF ACTION**

2 **FAILURE TO PROVIDE MEAL PERIODS**

3 **(AGAINST ALL DEFENDANTS)**

4 35. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

5 36. Plaintiff is informed and believes, and based thereon alleges, that Defendants
6 failed in their affirmative obligation to provide all of their non-exempt employees in California,
7 including Plaintiff and members of the Meal Period Class, with all legally compliant meal periods
8 in accordance with the mandates of the California Labor Code and Wage Order 4, § 11. Despite
9 Defendants' violations, Defendants did not pay an additional hour of pay to Plaintiff and members
10 of the Meal Period Class at their respective regular rates of compensation, in accordance with
11 California Labor Code §§ 226.7, and 512.

12 37. As a result, Defendants are responsible for paying premium compensation for meal
13 period violations including interest thereon, as well as statutory penalties, civil penalties, and
14 costs of suit, pursuant to Labor Code §§ 226.7, 512, and 558, Wage Order 4, California Code of
15 Civil Procedure § 1021.5 and Civil Code §§ 3287(b) and 3289.

16 **FOURTH CAUSE OF ACTION**

17 **FAILURE TO AUTHORIZE AND PERMIT ALL REST PERIODS**

18 **(AGAINST ALL DEFENDANTS)**

19 38. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

20 39. Wage Order 4, § 12 and California Labor Code §§ 226.7 and 516 establish the
21 right of employees to be authorized and permitted to take a paid rest period of at least ten (10)
22 minutes net rest time for each four (4) hour period worked, or *major fraction thereof*.

23 40. As alleged herein, Defendants failed to authorize and permit Plaintiff and members
24 of the Rest Period Class to take all required rest periods.

25 41. The foregoing violations create an entitlement to recovery by Plaintiff and
26 members of the Rest Period Class in a civil action for the unpaid amount of rest period premiums
27 owing, including interest thereon, as well as statutory penalties, civil penalties, and costs of suit
28 according to California Labor Code §§ 226.7, 516, 558, Wage Order 4, California Code of Civil

1 Procedure § 1021.5, and Civil Code §§ 3287(b) and 3289.

2 **FIFTH CAUSE OF ACTION**

3 **FAILURE TO PROVIDE ACCURATE, ITEMIZED WAGE STATEMENTS**

4 **(AGAINST ALL DEFENDANTS)**

5 42. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

6 43. Plaintiff is informed and believes, and based thereon alleges, that Defendants
7 knowingly and intentionally, as a matter of uniform practice and policy, failed to furnish Plaintiff
8 and the Wage Statement Class Members with accurate, itemized wage statements that included
9 among other requirements, all applicable rates of pay, hours, accurate total gross wages earned,
10 meal and rest period premiums, and total net wages earned in violation of Labor Code § 226 *et*
11 *seq.*

12 44. Defendants' failure to furnish Plaintiff and the members of the Wage Statement
13 Class with complete and accurate, itemized wage statements resulted in actual injury, as said
14 failures led to, among other things, the non-payment of all of minimum and overtime wages
15 earned and non-payment of their meal and rest period premiums, and deprived them of the
16 information necessary to identify discrepancies in Defendants' reported data.

17 45. Defendants' failures created an entitlement to Plaintiff and members of the Wage
18 Statement Class in a civil action for damages and/or penalties pursuant to Labor Code § 226,
19 including statutory penalties civil penalties, reasonable attorneys' fees, and costs according to suit
20 pursuant to Labor Code § 226 *et seq.*

21 **SIXTH CAUSE OF ACTION**

22 **FAILURE TO PAY ALL WAGES UPON TERMINATION**

23 **(AGAINST ALL DEFENDANTS)**

24 46. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

25 47. This cause of action is brought pursuant to Labor Code §§ 201-203, which require
26 an employer to pay all wages immediately at the time of separation of employment in the event
27 the employer discharges the employee or the employee provides at least 72 hours of notice of
28 their intent to quit. In the event the employee provides less than 72 hours of notice of their intent

1 to quit, said employee's wages become due and payable not later than 72 hours upon said
2 employee's last date of employment.

3 48. Plaintiff is informed and believes, and based thereon alleges, that Defendants
4 failed to timely pay Plaintiff and members of the Waiting Time Penalty Class all final wages due
5 to them at their separation from employment, including, unpaid minimum wages, overtime wages,
6 and meal and rest period premium wages.

7 49. Further, Plaintiff is informed and believes, and based thereon alleges, that as a
8 matter of uniform policy and practice, Defendants continue to fail to pay Plaintiff and members
9 of the Waiting Time Penalty Class all earned wages at the end of employment in a timely manner
10 pursuant to the requirements of Labor Code §§ 201-203.

11 50. Defendants' failure to pay all final wages was willful within the meaning of Labor
12 Code § 203. Defendants' willful failure to timely pay Plaintiff and the members of the Waiting
13 Time Penalty Class their earned wages upon separation from employment results in a continued
14 payment of wages up to thirty days from the time the wages were due.

15 51. Therefore, Plaintiff and members of the Waiting Time Penalty Class are entitled
16 to compensation pursuant to Labor Code § 203, plus reasonable attorneys' fees and costs of suit.

17 **SEVENTH CAUSE OF ACTION**

18 **UNFAIR COMPETITION**

19 **(AGAINST ALL DEFENDANTS)**

20 52. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

21 53. Defendants have engaged and continue to engage in unfair and/or unlawful
22 business practices in California in violation of California Business and Professions Code § 17200
23 *et seq.*, by failing to pay all overtime and/or minimum wages owed, failing to provide all required
24 meal periods and failing to authorize and permit all required rest periods, and failing to pay meal
25 and rest period premium wage payments.

26 54. Defendants' utilization of these unfair and/or unlawful business practices deprived
27 Plaintiff and continues to deprive members of the Classes of compensation to which they are
28 legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage
over Defendants' competitors who have been and/or are currently employing workers and

attempting to do so in honest compliance with applicable wage and hour laws.

55. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged herein, Plaintiff for himself and on behalf of the members of the Classes, seeks full restitution of monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

56. The acts complained of herein occurred within the last four years immediately preceding the filing of the lawsuit in this action.

57. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and those of the Classes, to obtain restitution and injunctive relief on behalf of Defendants' current non-exempt employees, and to enforce important rights affecting the public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs, which he is entitled to recover under Code of Civil Procedure § 1021.5.

EIGHTH CAUSE OF ACTION

LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004

(AGAINST ALL DEFENDANTS)

58. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

59. Defendants have committed several Labor Code violations against Plaintiff and other aggrieved employees. Plaintiff, an "aggrieved employee" within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of himself and other aggrieved employees, brings this representative action against Defendants to recover the civil penalties due to Plaintiff, the other aggrieved employees, and the State of California according to proof pursuant to Labor Code § 558 and § 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; (3) \$50.00 for each initial violation and \$100.00 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; and/or (4) \$100.00 for each initial violation and \$200.00

for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the following Labor Code violations:

- a) Defendants violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Plaintiff and other aggrieved employees all overtime compensation earned;
- b) Defendants violated Labor Code §§ 1194, 1194.2, and 1197 by failing to pay Plaintiff and other aggrieved employees the statutory minimum wage for all hours worked;
- c) Defendants violated Labor Code §§ 226.7, 512, and 558 by failing to provide all legally required meal periods and failing to pay meal period premiums to Plaintiff and other aggrieved employees;
- d) Defendants violated Labor Code §§ 226.7, 516, and 558 by failing to provide all legally required rest periods and failing to pay rest period premiums to Plaintiff and other aggrieved employees;
- e) Defendants violated Labor Code § 226 by failing to furnish Plaintiff and other aggrieved employees with accurate and compliant itemized wage statements;
- f) Defendants violated Labor Code §§ 201, 202 and 203 by failing to timely pay all final wages due to Plaintiff and other aggrieved employees;
- g) Defendants violated Labor Code § 1174 by failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees; and
- h) Defendants violated Labor Code § 204 by failing to pay Plaintiff and other aggrieved employees all earned wages at least twice during each calendar month.

60. On January 30, 2020, Plaintiff notified Defendants via certified mail, and the California Labor and Workforce Development Agency (“LWDA”) via e-mail, of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code § 2698 *et seq.* with respect to violations of the California Labor Code identified in Paragraph 59 (a)-(h). Now that sixty-five days have passed from Plaintiff notifying Defendants of these violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the Labor Code Private Attorneys General Act with respect to these

violations.

61. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and the interests of other aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which he is entitled to receive under California Labor Code § 2699.

PRAYER

WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf this suit is brought against Defendants, as follows:

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiff as representative of the Classes;
3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
4. Upon the First Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194 and 1198.
5. Upon the Second Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 204, 558, 1194, 1197, 1197.1 and 1198;
6. Upon the Third Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;
7. Upon the Fourth Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;
8. Upon the Fifth Cause of Action, for penalties pursuant to Labor § 226;
9. Upon the Sixth Cause of Action, for statutory waiting time penalties pursuant to Labor Code § 203;
10. Upon the Seventh Cause of Action, for restitution to Plaintiff and members of the Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or practices declared by this Court to be in violation of Business and Professions Code § 17200 *et seq.*;
11. Upon the Eighth Cause of Action, for civil penalties due to Plaintiff, other

aggrieved employees, and the State of California according to proof pursuant to Labor Code §§ 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; (3) \$50.00 for each initial violation and \$100.00 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; and/or (4) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the Labor Code violations cited in Paragraph 59 (a)-(h) above;

12. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code § 218.6 and Civil Code §§ 3287 and 3289;

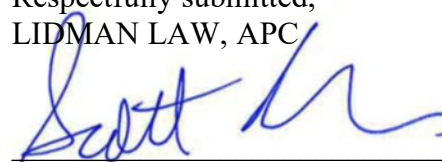
13. On all causes of action, for attorneys' fees and costs as provided by Labor Code § 218.5 and Code of Civil Procedure § 1021.5 and all other applicable statutes; and

14. For such other and further relief the Court may deem just and proper.

Dated: April 6, 2020

Respectfully submitted,
LIDMAN LAW, APC

By:



Scott M. Lidman
Elizabeth Nguyen
Milan Moore
Attorneys for Plaintiff
FRANCISCO CALDERON

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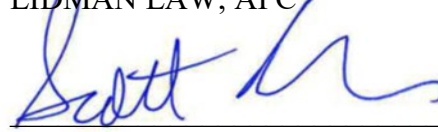
DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

Dated: April 6, 2020

Respectfully submitted,
LIDMAN LAW, APC

By:



Scott M. Lidman
Elizabeth Nguyen
Milan Moore
Attorneys for Plaintiff
FRANCISCO CALDERON