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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

MAY 29 2020

BY 
LILIANA MARISCAL, DEPUTY

6 Attorneys for Plaintiff Herbert Hurtado on behalf of himself
7 and others similarly situated

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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF SAN BERNARDINO**

12
13 HERBERT HURTADO, on behalf of himself
and others similarly situated,

Case No.: CIVDS2006540

14
15 **FIRST AMENDED CLASS AND**
REPRESENTATIVE ACTION
16 **COMPLAINT FOR:**

17 Plaintiff,

18 v.

1. Failure to Pay Minimum Wages for all Hours Worked
2. Failure to Pay All Overtime Wages Owed
3. Meal Period Liability Under Labor Code § 226.7
4. Rest Break Liability Under Labor Code § 226.7
5. Failure to Provide Accurate Itemized Employee Wage Statements
6. Failure to Reimburse For Business Expenses
7. Failure to Timely Pay Wages Due At Termination
8. Violation of Business & Professions Code §§ 17200 et seq.
9. Penalties Pursuant to Labor Code § 2699

18 J. MCCULLOUGH CORP. dba OREMOR
19 AUTOMOTIVE GROUP, a California
corporation; OREMOR OF FRESNO, INC.
20 dba FRESNO LEXUS, a California
corporation; OREMOR OF GLENDALE LLC
21 dba TOYOTA OF GLENDALE, a California
company; OREMOR OF RIVERSIDE, LLC
22 dba BMW OF RIVERSIDE, a California
company; OREMOR OF RIVERSIDE II, LLC
23 dba INFINITI OF RIVERSIDE, a California
company; OREMOR OF RIVERSIDE RC,
24 LLC dba RIVERSIDE CHEVROLET, a
California company; OREMOR OF
25 TEMECULA, LLC dba TEMECULA
26 VALLEY TOYOTA, a California company;
27 OREMOR OF TUSTIN, INC. dba TUSTIN
TOYOTA, a California corporation;
28 OREMOR EUROPEAN, LLC dba
MERCEDES BENZ OF EL CAJON, a

DEMAND FOR JURY TRIAL

1 California company; UNITED RECOVERY,
2 INC., a California corporation; OREMOR OF
3 ITALY, INC. dba FIAT OF ONTARIO, a
4 California corporation; OREMOR OF ITALY
5 II, LLC dba MASERATI & ALFA ROMEO
6 OF ONTARIO, a California company;
7 OREMOR OF WOODLAND HILLS LLC dba
8 LEXUS OF WOODLAND HILLS, a
9 California company; ACQUIRECORP'S
10 NORWALK AUTO AUCTION dba
11 NORWALK AUTO AUCTION, a California
12 corporation; JEEP CHRYSLER OF
13 ONTARIO, INC. dba JEEP CHRYSLER
14 DODGE RAM FIAT, DODGE OF
15 ONTARIO, a California corporation;
16 ROMERO MOTORS CORPORATION dba
17 ONTARIO HYUNDAI MAZDA, a California
18 corporation; EMPIRE NISSAN, INC., a
19 California corporation; and DOES 1 through
20 100,
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Defendants.

1 Plaintiff Herbert Hurtado, an individual, ("Plaintiff"), on behalf of himself, the State of
2 California, and all others similarly situated, alleges and complains of defendants, J. McCullough
3 Corp. dba Oremor Automotive Group, a California corporation; Oremor of Fresno, Inc. dba
4 Fresno Lexus, a California corporation; Oremor of Glendale LLC dba Toyota of Glendale, a
5 California company; Oremor of Riverside, LLC dba BMW of Riverside, a California company;
6 Oremor of Riverside II, LLC dba Infiniti of Riverside, a California company; Oremor of
7 Riverside RC, LLC dba Riverside Chevrolet, a California company; Oremor of Temecula, LLC
8 dba Temecula Valley Toyota, a California company; Oremor of Tustin, Inc. dba Tustin Toyota,
9 a California corporation; Oremor European, LLC dba Mercedes Benz of El Cajon, a California
10 company; United Recovery, Inc., a California corporation; Oremor of Italy, Inc. dba Fiat of
11 Ontario, a California corporation; Oremor of Italy II, LLC dba Maserati & Alfa Romeo of
12 Ontario, a California company; Oremor of Woodland Hills LLC dba Lexus of Woodland Hills,
13 a California company; Aquirecorp's Norwalk Auto Auction dba Norwalk Auto Auction, a
14 California corporation; Jeep Chrysler of Ontario, Inc. dba Jeep Chrysler Dodge Ram Fiat, Dodge
15 of Ontario, a California corporation; Romero Motors Corporation dba Ontario Hyundai Mazda,
16 a California corporation; and Empire Nissan, Inc., a California corporation, and DOES 1 through
17 100 (collectively, "Defendants"), and each of them, as follows:

18 **I. INTRODUCTION**

19 1. This is a Class Action, pursuant to California Code of Civil Procedure section
20 382, on behalf of Plaintiff and the following Class: *All persons who are or were employed by*
21 *Defendants in the State of California as non-exempt hourly employees at any time from October*
22 *1, 2015 and continuing into the present* (the "Class" or "Class Members").

23 2. Throughout the time period involved in this case, Defendants willfully maintained
24 a consistent policy of: failing to pay all wages, including minimum wages, for all hours worked;
25 failing to pay all overtime wages owed by improperly calculating rates and/or failing to pay all
26 overtime hours worked; failing to provide timely duty-free meal periods; failing to authorize and
27 permit duty-free rest breaks; failing to maintain and provide accurate itemized wage statements;
28 failing to reimburse for business expenses; and failing to pay all wages owed timely and upon

1 separation of employment. Defendants' illegal conduct has also given rise to derivative claims
2 for unfair business practices and violation of the Private Attorneys General Act of 2004
3 ("PAGA").

4 3. Plaintiff, on behalf of himself and all other similarly-situated employees, pursuant
5 to California Business and Professions Code sections 17200 through 17208, also seek all monies
6 owed but withheld and retained by Defendants to which Plaintiff and Class Members are entitled.
7 Plaintiff seeks an order by the Court awarding restitution, injunctive relief, and all other legal
8 and equitable relief allowed, plus interest, attorneys' fees and costs.

9 4. Plaintiff, on behalf of himself and all other similarly-situated aggrieved
10 employees also brings this representative action against Defendants to recover wages and
11 penalties owed pursuant to Labor Code section 2699 (the "Aggrieved Employees"). Plaintiff was
12 compelled to retain the services of counsel to file this action to protect his interests and those of
13 other similarly-situated Aggrieved Employees and has thereby incurred attorneys' fees and costs,
14 which he is entitled to recover under Labor Code section 2699.

15 5. For purposes of the allegations set forth herein, Class Members, along with those
16 similarly-situated Aggrieved Employees comprising the PAGA representative action are
17 collectively referred to as "Employees" except as otherwise specified.

18 **II. JURISDICTION AND VENUE**

19 6. This Court has subject matter jurisdiction over all causes of action asserted herein
20 pursuant to Article VI, section 10 of the California Constitution and California Code of Civil
21 Procedure section 410.10 by virtue of the fact that this is a civil action in which the matter in
22 controversy, exclusive of interest, exceeds \$25,000, and because each cause of action asserted
23 arises under the laws of the State of California or is subject to adjudication in the courts of the
24 State of California.

25 7. This Court has personal jurisdiction over Defendants because each has caused
26 injuries in San Bernardino County and the State of California through their acts, and by their
27 violation of the California Labor Code, California state common law, and California Business &
28 Professions Code sections 17200, *et seq.* Defendants also transact business throughout California

1 and have obtained the benefits of the laws of the United States and the State of California and
2 are therefore subject to the personal jurisdiction of this Court.

3 8. Venue as to each defendant is proper in this judicial district, pursuant to Code of
4 Civil Procedure section 395. Defendants operate within California and do business within San
5 Bernardino County. The unlawful acts alleged herein have a direct effect on Plaintiff and
6 Employees within the State of California and San Bernardino County.

7 9. This case should be classified as complex according to California Rules of Court,
8 Rule 3.400 and assigned to a complex litigation judge and department, as it is a class action, will
9 involve substantial documentary evidence, a large number of witnesses, and is likely to involve
10 extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
11 and would require substantial post judgment judicial supervision.

12 **III. PARTIES**

13 10. Plaintiff Herbert Hurtado is a resident of San Bernardino, California. At all
14 relevant times herein, Defendants employed Plaintiff as an hourly, non-exempt employee from
15 January 2005 through February 2019 and subjected him to the same employment policies and
16 practices that affected Employees.

17 11. Plaintiff is informed and believes, and based thereon alleges, that Defendants are
18 J. McCullough Corp. dba Oremor Automotive Group, a California corporation; Oremor of
19 Fresno, Inc. dba Fresno Lexus, a California corporation; Oremor of Glendale LLC dba Toyota
20 of Glendale, a California company; Oremor of Riverside, LLC dba BMW of Riverside, a
21 California company; Oremor of Riverside II, LLC dba Infiniti of Riverside, a California
22 company; Oremor of Riverside RC, LLC dba Riverside Chevrolet, a California company;
23 Oremor of Temecula, LLC dba Temecula Valley Toyota, a California company; Oremor of
24 Tustin, Inc. dba Tustin Toyota, a California corporation; Oremor European, LLC dba Mercedes
25 Benz of El Cajon, a California company; United Recovery, Inc., a California corporation; Oremor
26 of Italy, Inc. dba Fiat of Ontario, a California corporation; Oremor of Italy II, LLC dba Maserati
27 & Alfa Romeo of Ontario, a California company; Oremor of Woodland Hills LLC dba Lexus of
28 Woodland Hills, a California company; Aquirecorp's Norwalk Auto Auction dba Norwalk Auto

1 Auction, a California corporation; Jeep Chrysler of Ontario, Inc. dba Jeep Chrysler Dodge Ram
2 Fiat, Dodge of Ontario, a California corporation; Romero Motors Corporation dba Ontario
3 Hyundai Mazda, a California corporation; and Empire Nissan, Inc., a California corporation.

4 12. Plaintiff is informed and believes, and based thereon alleges, that Defendants are
5 and at all times relevant hereto were business entities organized and existing under and by virtue
6 of the laws of the State of California and doing business in California and, at all times hereinafter
7 mentioned, were and are employers as defined in and subject to the Labor Code and Industrial
8 Welfare Commission ("IWC") Wage Orders, whose employees are engaged throughout this
9 county and the State of California. During the relevant period, Defendants employed Plaintiff
10 and Employees within the State of California.

11 13. The true names and capacities, whether individual, corporate, associate, or
12 otherwise, of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown
13 to Plaintiff, who therefore sues defendants by such fictitious names under Code of Civil
14 Procedure section 474. Plaintiff is informed and believes and based thereon alleges that each of
15 the defendants designated herein as DOE is legally responsible in some manner for the unlawful
16 acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the
17 true names and capacities of the defendants designated hereinafter as DOES when such identities
18 become known.

19 14. Whenever, heretofore or hereinafter, reference is made to "Defendants," it shall
20 include DOES 1 through 100 identified herein.

21 15. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
22 acted in all respects pertinent to this action, as the agent of the other defendants, carried out a
23 joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each
24 Defendant are legally attributable to other defendants. Plaintiff is further informed and believes
25 and based thereon alleges that Defendants are joint employers in that they employed Plaintiff and
26 Employees, at the same time and were operating as a joint enterprise and single entity at all
27 relevant time periods.

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1 16. California courts have recognized that the definition of “employer” for purposes
2 of enforcement of the California Labor Code goes beyond the concept of traditional employment
3 to reach irregular working arrangements for the purpose of preventing evasion and subterfuge of
4 California’s labor laws. *Martinez v. Combs* (2010) 49 Cal.4th 35, 65. As such, anyone who
5 directly or indirectly, or through an agent or any other person, engages, suffers, or permits any
6 person to work or exercises control over the wages, hours, or working conditions of any person,
7 may be liable for violations of the California Labor Code as to that person.

8 17. California law also permits and recognizes the piercing of a corporate veil
9 between sister companies under the single enterprise rule. *Hasso v. Hapke* (2014) 227
10 Cal.App.4th 107, 155; *Greenspan v. LADT, LLC* (2010) 191 Cal.App.4th 486, 512. The single
11 enterprise rule applies where “there are two or more personalities, there is but one enterprise; and
12 that this enterprise has been so handled that it should respond, as a whole, for the debts of certain
13 component elements of it.” *Hasso, supra*, 227 Cal.App.4th at 155; *Greenspan, supra*, 191
14 Cal.App.4th at 512.

15 18. At all times throughout their employment, Plaintiff and Employees were regularly
16 and consistently subject to the common policies and practices utilized by Defendants.

17 19. Accordingly, all Defendants engaged, suffered, and permitted Plaintiff and
18 Employees to perform services from which they benefitted. Moreover, the aforementioned
19 entities had the right to exercise control over the wages, hours, and/or working conditions over
20 Plaintiff and Employees at all relevant times herein, so as to be considered joint employers. By
21 reason of their status as joint employers, they are each liable for civil penalties for violation of
22 the California Labor Code as to Plaintiff and Employees as set forth herein.

23 **IV. FACTUAL BACKGROUND**

24 **Defendant Systematically Violated State Wage And Hour Laws**

25 20. Since January 2005 through February 2019, Plaintiff Herbert Hurtado worked as
26 an hourly-paid, nonexempt employee in Defendants’ Tustin, California dealership.

27 21. Employees are nonexempt employees pursuant to the applicable Industrial
28 Welfare Commission (“IWC”) Wage Order. This action seeks recovery for wages and

1 compensation due and owing to Employees under California laws and for the maximum period
2 allowed to the present, as set out below. Defendants maintained and enforced against its
3 Employees, among others, unlawful practices and policies in violation of California wage and
4 hour laws, including:

5 a. failing to pay Plaintiff and Employees all wages, including the minimum wage
6 and overtime, pursuant to California Labor Code provisions and IWC Wage Orders;

7 b. forcing Plaintiff and Employees to work off-the-clock performing pre-shift and
8 post-shift tasks such as meetings, doing paperwork, or servicing automobiles;

9 c. requiring Plaintiff and Employees to work during meal periods, plus pressuring
10 them to denote sham meal breaks as taken for timekeeping purposes;

11 d. failing to separately compensate Plaintiff and Employees who are paid on a piece-
12 rate basis rest periods and other non-productive time;

13 e. failing to pay Plaintiff and Employees for all overtime hours worked as a result of
14 unaccounted off-the-clock hours worked;

15 f. underpaying Plaintiff and Employees overtime wages because the calculation of
16 the regular rate failed to include all remuneration and omitted non-discretionary bonus pay;

17 g. failing to provide Plaintiff and Employees premium pay for missed or deficient
18 meal breaks;

19 h. failing to provide Plaintiff and Employees premium pay for missed or deficient
20 rest periods;

21 i. failing to pay Plaintiff and Employees with timely, accurate, and itemized wage
22 statements;

23 j. failing to reimburse Plaintiff and Employees for all business-related expenses;

24 k. failing to timely pay Plaintiff and former Employees wages due at termination;

25 l. failing to pay Plaintiff and Employees and the State of California penalties
26 pursuant to Labor Code sections 2699(a) and (f).

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1 22. Pursuant to Business & Professions Code sections 17200-17208, Plaintiff, on
2 behalf of himself and all Employees, also seeks injunctive relief, restitution, and disgorgement
3 of all benefits that Defendants have enjoyed from their violations herein alleged.

4 23. For months prior to the filing of this Complaint, Plaintiff – by and through counsel
5 – conducted investigation into the allegations herein, and engaged in extensive discussions with
6 counsel for Defendants regarding the violations alleged in this Complaint.

7 **V. CLASS ACTION ALLEGATIONS**

8 24. Plaintiff brings this action on behalf of himself and all others similarly situated,
9 as a class action pursuant to Code of Civil Procedure section 382. Plaintiff seeks to represent a
10 proposed class comprised of and defined as follows:

11 *All persons who are or were employed by Defendants in the State of California as*
12 *non-exempt hourly employees at any time from October 1, 2015 and continuing*
 into the present (again, “Class” or “Class Members”).

13 25. Plaintiff reserves the right under California Rule of Court, Rule 3.765(b), to
14 amend or modify the class description identified herein with greater specificity or further division
15 into subclasses or limitation to particular issues.

16 26. This action has been brought and may properly be maintained as a class action
17 under the provisions of Code of Civil Procedure section 382 because there is a well-defined
18 community of interest in the litigation and the Class is easily ascertainable.

19 **A. Numerosity**

20 27. The potential members of the Class as defined are so numerous that joinder of all
21 the members of the Class is impracticable. While the precise number of Class Members has not
22 been determined at this time, Plaintiff is informed and believes that there are over one hundred
23 (100) Class Members employed by Defendants within the State of California at any given time.
24 Accounting for employee turnover during the relevant periods necessarily increases this number
25 substantially.

26 28. Plaintiff alleges Defendants’ employment records would provide information as
27 to the number and location of all Class Members. Joinder of all members of the Class is not
28 practicable.

1 **B. Commonality**

2 29. There are questions of law and fact common to the Class that predominate over
3 any questions affecting only individual Class Members. These common questions of law and fact
4 include, without limitation:

5 i. Whether Defendants violated Labor Code sections 1194, 1194.2, 1197, 1197.1,
6 and IWC Wage Order 4-2001 by not compensating Plaintiff and Class Members minimum wages
7 for all hours worked;

8 ii. Whether Defendants violated Labor Code sections 510, 1198, and/or IWC Wage
9 Order No. 4-2001 by not compensating Plaintiff and Class Members with proper overtime wages;

10 iii. Whether Defendants violated Labor Code sections 226.2 by failing to separately
11 compensate Plaintiff and Class Members for rest periods;

12 iv. Whether Defendants violated Labor Code sections 226.7 by failing to provide
13 Plaintiff and Class Members duty-free rest breaks or pay premiums for missed or deficient rest
14 breaks;

15 v. Whether Defendants violated Labor Code sections 226.7 and 512 by failing to
16 provide Plaintiff and Class Members for duty-free meal periods or pay premiums for missed or
17 deficient meal periods;

18 vi. Whether Defendants violated Labor Code section 226(a) by not furnishing Class
19 Members with accurate wage statements;

20 vii. Whether Defendants violated Labor Code section 2802(a) by failing to reimburse
21 employees for all necessary expenditures and losses incurred in direct consequence of the
22 discharge of their duties;

23 viii. Whether Defendants violated Labor Code sections 201 and 202 by failing to pay
24 Plaintiff and Class Members upon termination and/or resignation all wages earned;

25 ix. Whether Defendants are liable to Class Members for waiting time penalties under
26 Labor Code section 203, along with Labor Code sections 204 and 210 by not paying all their
27 wages owed within seven days of the close of payroll;

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1 x. Whether Defendants engaged in unfair business practices in violation of the
2 Unfair Competition Law, Business and Professions Code sections 17200, *et seq.*;

3 xi. Whether Class Members are entitled to costs and attorneys' fees;

4 xii. Whether Class Members are entitled to interest; and

5 xiii. The proper formula(s) for calculating damages, restitution, and interest owed to
6 Plaintiff and Class Members.

7 **C. Typicality**

8 30. The claims of Plaintiff are typical of the claims of the Class. Plaintiff and Class
9 Members sustained injuries and damages arising out of and caused by Defendants' common
10 course of conduct in violation of laws and regulations that have the force and effect of law and
11 statutes, as alleged herein.

12 **D. Adequacy of Representation**

13 31. Plaintiff will fairly and adequately represent and protect the interest of the Class.
14 Counsel who represent Plaintiff and Class Members are competent and experienced in litigating
15 wage and hour class actions, and have the financial resources to litigate the claims at issue.

16 **E. Superiority of Class Action**

17 32. A class action is superior to other available means for the fair and efficient
18 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and
19 questions of law and fact common to the Class predominate over any questions affecting only
20 individual members of the Class. Each member of the Class has been damaged and is entitled to
21 recovery by reason of Defendants' illegal policy and/or practice of failing to properly pay
22 minimum wages and/or overtime for all hours worked, failing to provide timely duty-free meal
23 periods and/or pay premiums owed thereon, failing to authorize and permit duty-free rest breaks
24 and/or pay premiums owed thereon, failing to maintain and provide accurate itemized wage
25 statements, failing to reimburse for necessary business expenses incurred, failing to pay all wages
26 owed in a timely manner, failing to pay all wages due upon termination and/or resignation, and
27 engaging in unfair business practices.

28 ///

33. Class action treatment will allow those similarly-situated persons to litigate their claims in a manner that is most efficient and economical for the parties and the judicial system. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

FIRST CAUSE OF ACTION
FAILURE TO PAY MINIMUM WAGES
Cal. Labor Code §§ 1194, 1194.2, 1197, 1197.1, and IWC Wage Order No. 4-2001
[On Behalf of Plaintiff and the Class Against All Defendants]

34. Plaintiff, on behalf of himself and the Class, re-alleges and incorporates by reference all of the allegations contained in the preceding paragraphs of the Complaint as though fully alleged herein.

35. Throughout the period time applicable to this cause, Defendants failed to pay the minimum wage for all hours worked and other compensable time. Employees were forced to work off-the-clock without compensation (including pre-shift and post-shift duties such as meetings, paperwork, or servicing automobiles), forced to perform non-productive activities without compensation, *see, Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36, 40, and, where applicable, were not separately compensated for rest breaks. Labor Code § 226.2; *Bluford v. Safeway, Inc.* (2013) 216 Cal.App.4th 864, 872.

36. Labor Code section 1197 entitled "Pay of Less Than Minimum Wage" states: The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of less wage than the minimum so fixed is unlawful.

37. The applicable minimum wages fixed by the commission for work during the relevant period is found in the IWC Wage Orders.

38. The minimum wage provisions of California Labor Code are enforceable by private civil action pursuant to Labor Code section 1194(a) which states:

Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorneys' fees and costs of suit.

1 39. As described in Labor Code sections 1185 and 1194.2, any action for wages
2 incorporates the applicable IWC Wage Order of the California Industrial Welfare Commission.

3 40. Labor Code section 1194.2 also provides for the following remedies:

4 In any action under Section 1194...to recover wages because of the payment of a
5 wage less than the minimum wages fixed by an order of the commission, an
6 employee shall be entitled to recover liquidated damages in an amount equal to
the wages unlawfully unpaid and interest thereon.

7 41. Defendants have the ability to pay minimum wages for all time worked and have
8 willfully refused to pay such wages with the intent to secure for Defendants a discount upon this
9 indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Plaintiff and
10 Employees.

11 42. Wherefore, Plaintiff and the Class are entitled to recover the unpaid minimum
12 wages, liquidated damages in an amount equal to the minimum wages unlawfully unpaid, interest
13 thereon, and reasonable attorneys' fees and costs of suit pursuant to Labor Code section 1194(a).

14 **SECOND CAUSE OF ACTION**
15 **FAILURE TO PAY OVERTIME WAGES**
16 **Cal. Labor Code §§ 510 and 1198 and IWC Wage Order No. 4-2001**
 [On Behalf of Plaintiff and the Class Against All Defendants]

17 43. Plaintiff, on behalf of himself and the Class, re-alleges and incorporates by
18 reference all of the allegations contained in the preceding paragraphs of this Complaint as though
19 fully set forth herein.

20 44. At all times relevant to this Complaint, Labor Code section 510(a) was in effect
21 and provided: "Eight hours of labor constitutes a day's work. Any work in excess of eight hours
22 in one workday and any work in excess of forty hours in any one workweek...shall be
23 compensated at the rate of no less than one and one-half times the regular rate of pay for an
24 employee."

25 45. Pursuant to Section 3 of IWC Wage Order No. 4-2001, employees shall not be
26 employed more than eight (8) hours in any workday and/or more than forty (40) hours in any
27 workweek unless the employee receives one and one-half (1 ½) times such employee's regular
28 rate of pay for all hours worked over forty (40) hours in the workweek.

1 46. At all times mentioned, Plaintiff and Employees regularly worked shifts that
2 consisted of more than eight hours in a workday and/or more than forty hours in a workweek –
3 including those hours resulting from off-the-clock work and/or missed meal breaks - were not
4 paid proper overtime wages for all overtime hours worked as a result of, but not limited to,
5 Defendants' failure to properly calculate the regular rate of pay.

6 47. Overtime pay is computed based on the regular rate of pay. The regular rate of
7 pay includes many different kinds of remuneration. Under California law, the determination of
8 regular rate of pay for purposes of determining overtime pay must include the employee's non-
9 discretionary pay. *See*, https://www.dir.ca.gov/dlse/FAQ_Overtime.htm

10 48. Labor Code section 200 defines "wages" as "all amounts for labor performed by
11 employees of every description, whether the amount is fixed or ascertained by the standard of
12 time, task, piece, commission basis or other methods of calculation."

13 49. During their employment, when Plaintiff and Employees worked overtime,
14 Defendants failed to include all compensation when calculating the regular rates of pay used to
15 figure overtime premiums. For instance, Plaintiff and Employees would often receive, along with
16 their hourly base rates of pay for their work, additional remuneration and/or non-discretionary
17 bonus pay. However, Defendants calculated the regular rates of pay for Plaintiff and Employees
18 based on the hourly rates they received only and omitting the other non-hourly pay earnings
19 received during the pay period.

20 50. As a result, Plaintiff and Employees were underpaid overtime wages when they
21 worked in excess of eight (8) hours in any workday and/or forty (40) hours in a workweek where
22 such non-discretionary bonuses and/or additional forms of remuneration were earned.

23 51. Further, the work times of Plaintiff and Employees have been, and continue to be,
24 greater than eight (8) hours per day and/or forty (40) hours per week. Yet, because Defendants
25 owe Plaintiff and Employees the legally required wages for unpaid hours that were worked off-
26 the-clock, as described in the following minimum wage cause of action, Plaintiff and Employees
27 suffered damages in the amounts attributable to those overtime hours as well.

28 ///

1 52. Accordingly, by requiring Plaintiff and Employees to work in excess of eight (8)
2 hours per day and/or forty (40) hours per week without properly compensating overtime wages,
3 as described above, Defendants willfully violated the provisions of Labor Code section 1194.

4 53. As a result of the unlawful acts of Defendants, Plaintiff and the Class have been
5 deprived of overtime wages in amounts to be determined at trial, and are entitled to recovery of
6 such amounts, plus interest and penalties thereon, costs and attorneys' fees.

7
8 **THIRD CAUSE OF ACTION**
9 **FAILURE TO PROVIDE MEAL PERIODS**
10 **Cal. Labor Code §§ 226.7, 512, and IWC Wage Order No. 4-2001**
11 **[On behalf of Plaintiff and the Class Against All Defendants]**

12 54. Plaintiff, on behalf of himself and the Class, re-alleges and incorporates by
13 reference all of the allegations contained in the preceding paragraphs of this Complaint as though
14 fully alleged herein.

15 55. Under California law, Defendants have an affirmative obligation to relieve
16 Plaintiff and Employees of all duty in order to take their first daily meal periods no later than the
17 start of the employees' sixth hour of work in a workday, and to take their second meal period no
18 later than the start of the employees' eleventh hour of work in the workday.

19 56. Despite these legal requirements, Defendants regularly failed to provide both first
20 and second meal periods that comply with Labor Code sections 512, 226.7, and IWC Wage Order
21 No. 4-2001. Specifically, Plaintiff took numerous meal periods after his fifth hour of work and/or
22 after his tenth hour of work. On occasion, the demands of Plaintiff's job duties were such that he
23 was prevented from taking a meal period all together. Having been subjected to late, short,
24 interrupted, and missed meal periods, Plaintiff and Employees thus did not receive their
25 statutorily-mandated meal periods.

26 57. To the extent Defendants claim that Plaintiff and Employees waived their rights
27 to second meal periods for shifts worked in excess of ten (10) hours, the waivers are not
28 applicable to those occasions when Plaintiff and Employees frequently worked shifts in excess
of twelve (12) hours a day and/or to the extent the waivers are ineffective on-duty meal period
agreements where the nature of the work does not prevent them from being relieved of all duties.

1 58. Under Labor Code section 226.7 and IWC Wage Order No. 4-2001, Plaintiff and
2 each Class Member is entitled to be paid one hour of additional wages for each day he or she was
3 not provided with all required meal periods. Defendants regularly failed to pay Plaintiff and Class
4 Members the additional wages to which they were entitled for non-compliant meal periods.

5 59. As a result, Defendants are liable to Plaintiff and each Class Member for one hour
6 of additional wages for each work day when a compliant meal period was not provided, in a sum
7 to be proven at trial.

8
9 **FOURTH CAUSE OF ACTION**
10 **FAILURE TO AUTHORIZE AND PERMIT REST PERIODS**
 Cal. Labor Code § 226.7 and IWC Wage Order No. 4-2001
11 **[On behalf of Plaintiff and the Class Against All Defendants]**

12 60. Plaintiff, on behalf of himself and the Class, re-alleges and incorporates by
13 reference all of the allegations contained in the preceding paragraphs of this Complaint as though
14 fully alleged herein.

15 61. Under Wage Order No. 4-2001, section 12, an employer must authorize and
16 permit all employees to take ten (10) minute duty free rest periods for every major fraction of
17 four hours worked. Labor Code section 226.7 provides "an employer shall not require an
18 employee to work during a meal or rest or recovery period mandated pursuant to an applicable
19 statute, or applicable regulation, standard, or order of the Industrial Welfare Commission."

20 62. Defendants are required by California law to authorize and permit breaks of 10
21 (ten) uninterrupted minutes for each four hours of work or major fraction thereof (i.e. more than
22 two hours). That is, the required number of rest breaks is equal to the number of work hours,
23 divided by four, and if the work time is not evenly divided by four, if the remaining fractional
24 part is two or less it is rounded down, and if it is more than two hours, it is rounded up. Thus, for
25 example, if an Employee's work time is 6 hours and ten minutes, the Employee is entitled to two
26 rest breaks. If the work time is nine hours, the Employee is still entitled to only two rest breaks.
27 (There is an exception: if the shift is under three and one-half hours, no rest break is required.)
28 Each failure to authorize rest breaks as so required is itself a violation of California's rest break
laws.

1 63. By operation of law, Defendants had a duty to provide Plaintiff and Employees
2 with rest periods completely free of all duties, and enable Plaintiff and Employees to leave the
3 work areas during those rest periods if they so desired. Rest breaks that require employees to
4 remain on-call and/or on premises directly contravenes *Augustus v. ABM Security Services, Inc.*
5 (2016) 2 Cal.5th 257. In *Augustus*, the court expressly rejected the employer's assertions that it
6 could provide an on-duty rest period to employees who worked as security guards and further
7 explained that "employers [must] relinquish any control over how employees spend their break
8 time, and relieve their employees of all duties." *Id.* at 273. During breaks employers must relieve
9 employees of all duties and relinquish control over how employees spend their time.

10 64. Despite these legal requirements, Defendants failed to authorize and permit
11 Plaintiff and Employees to take timely, duty-free rest breaks in that: first, Plaintiff and Employees
12 frequently experienced interruptions to the extent rest breaks were taken; and second, Defendants
13 required Plaintiff and Employees to be on call and/or not leave their work area while taking a
14 rest break.

15 65. Following *Brinker*, the Courts of Appeal have confirmed that liability for on-duty
16 breaks arises when an employer adopts a uniform policy that fails to provide off-duty breaks.
17 *Brinker Rest. Corp. v. Sup. Ct.*, (2012) 53 Cal.4th 1004, 1033.

18 66. In violation of section 226.7, and Wage Order No. 4-2001, Defendants did not
19 provide Plaintiff and Employees with timely ten (10) minute rest breaks completely free of all
20 duties, nor did Defendants enable Plaintiff, or Employees to leave their work areas during rest
21 periods.

22 67. Despite these legal requirements, Defendants failed to authorize and permit
23 Plaintiff and Employees to take rest breaks regardless of whether employees worked more than
24 four hours in a workday.

25 68. In addition to failing to authorize and permit compliant rest breaks, Plaintiff and
26 Class Members were not compensated with one (1) hour's worth of pay at their regular rate of
27 compensation when they were not provided with a compliant rest break in accordance with Labor
28 Code section 226.7(b).

1 69. As a result, Defendants are liable to Plaintiff and each Class Member for one hour
2 of additional of pay at the employee's regular rate of compensation for each work day when a
3 compliant rest break was not provided, in a sum to be proven at trial.

4 **FIFTH CAUSE OF ACTION**
5 **FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS**
6 **Cal. Labor Code §§ 226 and 226.3**
7 **[On Behalf of Plaintiff and the Class Against All Defendants]**

8 70. Plaintiff, on behalf of himself and the Class, re-alleges and incorporates by
9 reference all of the allegations contained in the preceding paragraphs as though fully set forth
10 herein.

11 71. Labor Code section 226(a) requires employers, semi-monthly or at the time or
12 each payment of wages, to furnish each of his or her employees, an accurate itemized statement
13 in writing showing:

- 14 (1) gross wages earned;
- 15 (2) total hours worked by the employee;
- 16 (3) the number of piece-rate units earned and any applicable piece rate if the
17 employee is paid on a piece rate;
- 18 (4) all deductions, provided that all deductions made on written orders of the
19 employee may be aggregated and shown as one item;
- 20 (5) net wages earned;
- 21 (6) the inclusive dates of the period for which the employee is paid;
- 22 (7) the name of the employee and only the last four digits of his or her social
23 security number or an employee identification number other than a social
24 security number;
- 25 (8) the name and address of the legal entity that is the employer...; and
- 26 (9) all applicable hourly rates in effect during the pay period and the corresponding
27 number of hours worked at each hourly rate by the employee....

28 73. In addition to these nine different categories of information that must be included
on all wage statements enumerated above, pursuant to Labor Code section 226.2, Employees'
itemized statements must separately state: (a) the total hours of compensable rest and recovery
periods, the rate of compensation, and the gross wages paid for those periods during the pay
period; and (b) the total hours of other non-productive time, the rate of compensation, and the
gross wages paid for that time during the pay period.

1 74. During the relevant time period, due to Defendants' failure to: account for and
2 pay for all hours worked (straight time and overtime hours); properly calculate the regular rate
3 of pay for purposes of paying overtime compensation; separately pay for rest breaks as required;
4 provide duty-free meal and rest breaks and/or pay premiums owed thereon; and/or reimburse for
5 business expenses incurred has resulted in wage statements issued by Defendants that are non-
6 compliant.

7 75. Defendants have failed to issue itemized statements in writing to Plaintiff and
8 Employees that accurately indicate: the correct amount of gross wages earned; the total hours
9 worked; the compensable piece rate units; the total number of hours and corresponding rates of
10 pay for rest breaks and/or non-productive time; indicate the premium payments made, or due and
11 owing, as a result of non-compliant meal and rest breaks; the net wages earned; and the applicable
12 hourly rates in effect during the pay period and the corresponding number of hours worked at
13 each hourly rate in violation of Labor Code sections 226(a)(1), (2), (3), (5), and (9).

14 76. Defendants have therefore knowingly and intentionally failed to comply with
15 Labor Code section 226(a). Further, IWC Wage Order No. 4-2001 also require Defendants to
16 maintain accurate records showing the total wages paid each payroll period, the total hours
17 worked in the payroll period, and the applicable rates of pay. Defendants likewise failed to keep
18 accurate records of total wages paid and applicable rates of pay pursuant to the relevant Wage
19 Order provisions.

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

26 78. The absence of accurate information on their wage statements has delayed timely
27 challenge to Defendants' unlawful pay practices, requires discovery and mathematical
28 computations to determine the amount of wages owed, causes difficulty and expense in

1 attempting to reconstruct time and pay records, and led to submission of inaccurate information
2 about wages and amounts deducted from wages to state and federal governmental agencies.
3 Plaintiff would not have to engage in these efforts and incur these costs had Defendants used the
4 proper regular rates of pay in order to compute overtime rates. This also delayed Plaintiff's ability
5 to demand and recover the underpayment of wages from Defendants.

6 79. Thus, Plaintiff and Class Members have been injured by Defendants' intentional
7 violation of Labor Code section 226(a) because they were denied both their legal right to receive,
8 and their protected interest in receiving, accurate itemized wage statements.

9 80. Plaintiff and Class Members are thus entitled to recover from Defendants the
10 greater of their actual damages caused by Defendants' failure to comply with Labor Code section
11 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per employee
12 pursuant to Labor Code section 226(e), and/or any other allowable penalties including those
13 pursuant to Labor Code section 226.3.

14 **SIXTH CAUSE OF ACTION**
15 **FAILURE TO REIMBURSE BUSINESS EXPENSES**
16 **Cal. Labor Code § 2802**

17 **[On Behalf of Plaintiff and the Class Against All Defendants]**

18 81. Plaintiff, on behalf of himself and the Class, re-alleges and incorporates by
19 reference all of the allegations contained in the preceding paragraphs of this Complaint as though
20 fully set forth herein.

21 82. Labor Code section 2802 provides that "[a]n employer shall indemnify his or her
22 employee for all necessary expenditures or losses incurred by the employee in direct consequence
23 of the discharge of his or her duties." "Necessary" business expenses is defined to include all
24 "reasonable expenses." See, Labor Code § 2802(c).

25 83. Plaintiff and Employees incurred necessary business expenses – including but not
26 limited to: purchase and use of personal cell phone to communicate with customers - and in
27 discharging other work-related duties for Defendants. However, Defendants did not pay fully, or
28 at all, for these necessary business expenses incurred by Plaintiff and Employees.

1 84. Defendants' failure to pay for or reimburse the work-related business expenses of
2 Plaintiff and Employees violated non-waivable rights secured to Plaintiff and Employees by
3 Labor Code section 2802.

4 85. Plaintiff and Class Members are entitled to reimbursement for these necessary
5 expenditures, plus interest pursuant to Labor Code section 2802(b) and attorneys' fees and costs
6 under Labor Code section 2802(c).

7 **SEVENTH CAUSE OF ACTION**
8 **FAILURE TO PAY ALL WAGES WITHIN A TIMELY MANNER**
9 **AND UPON SEPARATION OF EMPLOYMENT**
10 **Cal. Labor Code §§ 201, 202, 203, 204, and 210**
11 **[On behalf of Plaintiff and the Class Against All Defendants]**

12 86. Plaintiff, on behalf of himself and the Class, re-alleges and incorporates by
13 reference all of the allegations contained in the preceding paragraphs of this Complaint as though
14 fully alleged herein.

15 87. Labor Code sections 201 and 202 provide that if an employer discharges an
16 employee, the wages earned and unpaid at the time of discharge are due and payable immediately,
17 and that if an employee voluntarily leaves his employment, his or her wages shall become due
18 and payable not later than seventy-two (72) hours thereafter, unless the employee has given
19 seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee
20 is entitled to his or her wages at the time of quitting.

21 88. Labor Code section 203 provides that if an employer willfully fails to pay
22 compensation promptly upon discharge or resignation, as required by sections 201 and 202, then
23 the employer is liable for penalties in the form of continued compensation up to thirty (30) work
24 days.

25 89. As alleged herein and above, Defendants' failure to pay wages was willful in that
26 Defendants knew wages (including for off-the-clock work, underpaid overtime, unpaid
27 premiums, and reimbursement of expenses) were owed to Plaintiff and Class Members, but failed
28 to pay said wages, at the time of termination, or within 72 hours of resignation, thus entitling
Plaintiff and Class Members to penalties under Labor Code section 203, which provides that an

1 employee's wages shall continue as a penalty until paid for a period of up to thirty (30) days from
2 the time they were due.

3 90. Labor Code section 204 requires that all wages earned by any person in any
4 employment between the 1st and 15th days, inclusive, of any calendar month, other than those
5 wages due upon termination of an employee, are due and payable between the 16th and the 26th
6 day of the month during which the labor was performed, and that all wages earned by any person
7 in any employment between the 16th and the last day, inclusive, of any calendar month, other
8 than those wages due upon termination of an employee, are due and payable between the 1st and
9 10th day of the following month. Section 204 also requires that all wages earned for labor in
10 excess of the normal work period shall be paid no later than the payday for the next regular
11 payroll period.

12 91. The requirements of Labor Code section 204 shall be deemed satisfied by the
13 payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more
14 than seven calendar days following the close of the payroll period when the wages were earned.

15 92. During the relevant time period, Defendants failed to pay Plaintiff and Class
16 Members all wages due to them within any time period specified by Labor Code section 204
17 including, but not limited to, unpaid minimum and overtime wages, along with unpaid meal and
18 rest break premiums.

19 93. Labor Code section 210 imposes upon Defendants for each violation of failing to
20 pay the wages of each employees a penalty of \$100.00. Furthermore, Labor Code section 210
21 imposes upon Defendants for each subsequent violation, or any willful or intentional violation,
22 of failure to pay the wages of each employee a penalty of \$200.00, plus 25% of the amount
23 unlawfully withheld.

24 94. Pursuant to Labor Code sections 218.5 and 218.6, along with Cal. Civ. Code
25 sections 3287(b) and 3289, Plaintiff and the Class, request that the Court award reasonable
26 attorneys' fees and the costs incurred by them in this action, along with pre-judgment interest on
27 all amounts recovered herein, as well as any statutory penalties Defendants may owe under the
28 California Labor Code and/or any other statute.

EIGHTH CAUSE OF ACTION
UNFAIR COMPETITION LAW VIOLATIONS
Cal. Business & Professions Code §§ 17200 *et seq.*
[On Behalf of Plaintiff and the Class Against All Defendants]

95. Plaintiff, on behalf of himself and the Class, re-alleges and incorporates by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth herein.

96. The Unfair Competition Law (“UCL”), California Business & Professions Code sections 17200 *et seq.*, prohibits any unlawful, unfair, or fraudulent business practices. Business & Professions Code section 17204 allows “any person who has suffered injury in fact and has lost money or property” to prosecute a civil action for violation of the UCL. Such a person may bring such an action on behalf of himself or herself and others similarly situated who are affected by the unlawful, unfair, or fraudulent business practice.

97. The statute of limitations for a claim under the UCL is four years. Accordingly, the actionable period for this cause of action is four years prior to the filing of this Complaint through the present, and on-going until the violations are corrected, and/or the Class is certified.

98. Labor Code section 90.5(a) states that it is the public policy of California to enforce vigorously minimum labor standards in order to ensure employees are not required to work under substandard and unlawful conditions, and to protect employers who comply with the law from those who attempt to gain competitive advantage at the expense of their workers by failing to comply with minimum labor standards.

99. A violation of Business and Professions Code sections 17200 *et seq.* may be predicated upon the violation of any state or federal law. Defendants’ policies and practices have violated state law in at least the following respects:

- (a) Requiring Plaintiff and Class Members to work without paying them minimum wage for all hours worked in violation of Labor Code sections 1194, 1194.2, 1197, and IWC Wage Order No. 4-2001;
- (b) Requiring Plaintiff and Class Members to work overtime without paying them proper compensation in violation of Labor Code sections 510, 1198, and IWC Wage Order No. 4-2001;

- 1 (c) Failing to provide timely duty-free meal periods and to authorize and
2 permit duty-free rest breaks in violation of Labor Code sections 226.2,
3 226.7, 512, and IWC Wage Order No. 4-2001;
4 (d) Failing to timely pay all wages to Plaintiff and Class Members during
5 their employment and upon separation of employment in violation of
6 Labor Code sections 201, 202, 203, 204, and 210;
7 (e) Failing to maintain and provide Plaintiff and Class Members with accurate
8 itemized wage statements in violation of Labor Code sections 226; and
9 (f) Failing to reimburse Plaintiff and Class Members for necessary business
10 expenses incurred in performing their job duties in violation of Labor
11 Code section 2802.

12 Thus, Defendants engaged in unlawful competition in violation of Section 17200 *et seq.* of the
13 California Business & Professions Code by violating sections 201, 202, 203, 204, 210, 226,
14 226.2, 226.7, 510, 512, 1194, 1194.2, 1197, and 2802 of the California Labor Code and IWC
15 Wage Order No. 4-2001.

16 100. As a direct and proximate result of Defendants' unlawful business practices,
17 Plaintiff and Class Members have suffered economic injuries because Defendants' conduct has
18 damaged Plaintiff and Class Members by wrongfully denying them all straight-time and overtime
19 hours worked at the correct pay rates, failing to pay all meal and rest breaks premiums owed, and
20 neglecting to reimburse for necessary business expenses, along with the corresponding interest,
21 in a timely manner and upon separation, and while supplying them inaccurate and misleading
22 wage statements. Such conduct is substantially injurious to Plaintiff and Class Members.

23 101. Additionally, Defendants intentionally avoided paying Plaintiff and Class
24 Members' wages and monies, thereby creating for Defendants an artificially lower cost of doing
25 business in order to undercut their competitors and establish a greater foothold in the
26 marketplace. Through its action alleged herein, Defendants have engaged in unfair competition
27 within the meaning of section 17200 of the California Business & Professions Code.

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102. Defendants have profited from their unlawful, unfair, and/or fraudulent acts and practices. Plaintiff and Class Members are entitled to monetary relief pursuant to Business & Professions Code sections 17203 and 17208 for all unpaid wages, including underpaid overtime compensation, from at least four years prior to the filing of this Complaint through the date of such restitution, at rates specified by law. Defendants should be required to disgorge all the profits and gains they have reaped and restore such profits and gains to Plaintiff and Class Members, from whom they were unlawfully taken.

103. Defendants' course of conduct, act and practice in violation of the California laws mentioned above constitute independent violations of sections 17200 *et seq.* of the California Business & Professions Code.

104. Plaintiff and similarly-situated Class Members are entitled to enforce all applicable penalty provisions of the Labor Code pursuant to Business & Professions Code section 17202.

105. Plaintiff has assumed the responsibility of enforcement of the laws and public policies specified herein by suing on behalf of himself and other similarly-situated Class Members previously or presently employed by Defendants in California. Plaintiff's success in this action will enforce important rights affecting the public interest. Plaintiff will incur a financial burden in pursuing this action in the public interest. Therefore, an award of reasonable attorneys' fees to Plaintiff is appropriate pursuant to Code of Civil Procedure section 1021.5.

NINTH CAUSE OF ACTION
PENALTIES PURSUANT TO PRIVATE ATTORNEYS GENERAL ACT OF 2004
Cal. Labor Code §§ 2698 *et seq.*
[On Behalf of Plaintiff and Aggrieved Employees Against All Defendants]

106. Plaintiff, on behalf of himself and Aggrieved Employees, re-alleges and incorporates by reference all of the allegations contained in the previous paragraphs of this Complaint as though fully set forth herein.

107. Plaintiff, on behalf of himself and Aggrieved Employees, brings this representative action against Defendants to recover wages and penalties pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Labor Code section 2698 *et seq.*

1 108. Based on the above allegations incorporated by reference, Defendants have
2 violated Labor Code sections 201, 202, 203, 204, 210, 226, 226.2, 226.3, 226.7, 510, 512, 1174,
3 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, and 2802, as well as IWC Wage Order No. 4-2001.

4 109. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code
5 section 2699 because of Defendants' violations of Labor Code sections 201, 202, 203, 204, 210,
6 226, 226.2, 226.3, 226.7, 510, 512, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2802, as
7 well as IWC Wage Order No. 4-2001.

8 110. Under Labor Code sections 2699(a), (f), and 2699.5, for each such violation,
9 Plaintiff and Aggrieved Employees are entitled to penalties in an amount to be shown at the time
10 of trial subject to the following formula:

11 \$100 for the initial violation per employee per pay period; and

12 \$200 for each subsequent violation per employee per pay period.

13 These penalties shall be allocated seventy-five percent (75%) to the Labor and Workforce
14 Development Agency ("LWDA") and twenty-five percent (25%) to the affected employees.

15 These penalties may be stacked separately for each of Defendants' violations of the California
16 Labor Code.

17 111. Plaintiff has fully and completely exhausted his administrative remedies under
18 PAGA prior to proceeding with the PAGA claim. On or around January 07, 2020, Plaintiff
19 provided written notice by online submission to the LWDA and by certified mail to Defendants
20 of the specific code provisions alleged to have been violated and paid the required filing fee.
21 Plaintiff has not received notice from the LWDA of its intent to investigate the alleged violations
22 within sixty-five (65) calendar days of the postmark date of the aforesaid letter.

23 112. Plaintiff, as a personal representative of the general public, will and does seek to
24 recover any and all penalties for each and every violation shown to exist or to have occurred
25 during the one year period before Plaintiff filed Notice with the LWDA of his intent to bring an
26 action, in an amount according to proof, as to those penalties that are otherwise only available to
27 public agency enforcement actions. Funds recovered will be distributed in accordance with the
28

1 PAGA, with at least 75% of the penalties recovered being reimbursed to the State of California
2 and the LWDA.

3 113. Plaintiff was compelled to retain the services of counsel to file this action to
4 protect his interests and those of other similarly Aggrieved Employees, and to assess and collect
5 the wages and penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and
6 costs, which he is entitled to recover under Labor Code section 2699(g)(1).

7 **PRAYER FOR RELIEF**

8 **WHEREFORE**, Plaintiff prays for the following relief:

- 9 1. For an order certifying this action as a class action;
- 10 2. For compensatory damages in the amount of the unpaid minimum wage and
11 overtime compensation for work performed by Plaintiff and Class Members, as may be proven;
- 12 3. For liquidated damages in the amount equal to the unpaid minimum wage and
13 interest thereon, as may be proven;
- 14 4. For compensatory damages in the amount of the hourly wage made by Plaintiff
15 and Class Members for each noncompliant meal periods for which premium pay was not paid,
16 as may be proven;
- 17 5. For compensatory damages in the amount of the hourly wage made by Plaintiff
18 and Class Members for each day of noncompliant rest breaks for which premium pay was not
19 paid, as may be proven;
- 20 6. For penalties pursuant to Labor Code section 203 for Plaintiff and Class Members
21 who quit or were fired in an amount equal to their daily wage multiplied by thirty (30) days, as
22 may be proven;
- 23 7. For actual damages and/or penalties pursuant to Labor Code section 226(e) for
24 Plaintiff and Class Members, as may be proven;
- 25 8. For reimbursement of business expenditures, as may be proven.
- 26 9. For restitution for unfair competition pursuant to Business & Professions Code
27 sections 17200 *et seq.*, including disgorgement of profits, as may be proven;

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1 10. For a civil penalty in the amount of \$100 for the initial violation and \$200 for each
2 subsequent violation as specified in section 2699(f)(2) of the California Labor Code in the
3 representative action brought on behalf of Plaintiff and Aggrieved Employees pursuant the
4 Private Attorneys General Act of 2004;

5 11. For a civil penalties available under section 210 of the California Labor Code and
6 the Labor Code Private Attorneys General Act of 2004;

7 12. For all civil penalties available under section 226.3 of the California Labor Code
8 and the Labor Code Private Attorneys General Act of 2004;

9 13. For all civil penalties available under section 1174.5 of the California Labor Code
10 and the Labor Code Private Attorneys General Act of 2004;

11 14. For all civil penalties available under section 1197.1 of the California Labor Code
12 and the Labor Code Private Attorneys General Act of 2004;

13 15. For an order enjoining Defendants and their agents, servants, and employees, and
14 all persons acting under, in concert with, or for them, from acting in derogation of any rights or
15 duties adumbrated in this complaint;

16 16. For an award of pre-judgment and post-judgment interest;

17 17. For an award providing for the payment of the costs of this suit;

18 18. For an award of attorneys' fees, to the extent provided by law; and

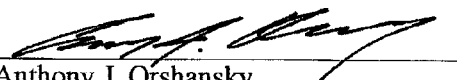
19 19. For such other and further relief as the Court may deem proper and just.
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21 Respectfully submitted,

22 DATED: March 18, 2020

23 COUNSELONE, PC

24 By

25 

26 Anthony J. Orshansky
27 Justin Kachadoorian
28 Attorneys for Plaintiff, putative Class
 Members, and Aggrieved Employees

1 **DEMAND FOR JURY TRIAL**

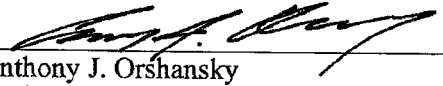
2 Plaintiff hereby demands trial of his claims by jury to the extent authorized by law.

3 Respectfully submitted,

4 DATED: March 18, 2020

5 COUNSELONE, PC

6 By

7 

8 Anthony J. Orshansky
9 Justin Kachadoorian
10 Attorneys for Plaintiff, putative Class
11 Members, and Aggrieved Employees
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