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11 and on behalf of all others similarly situated.

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

14 BARRY WILLNER and JULIA PETTIS,
15 individually and on behalf of all others
16 similarly situated,

17 Plaintiff,

18 vs.

19 GOLDEN EMPIRE MORTGAGE, INC., a
20 California corporation; and DOES 1
through 20, inclusive,

21 Defendants.

Case No.: 19STCV16055

Assigned for all purposes to:
Hon. Amy D. Hogue, Dept. 7

**THIRD AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Improper Deductions from Wages
2. Failure to Pay Wages;
3. Failure to Provide Meal Periods;
4. Failure to Permit Rest Breaks;
5. Failure to Provide Accurate Itemized Wage Statements;
6. Failure to Pay All Wages Due Upon Separation of Employment;
7. Failure to Reimburse for Business Expenses;
8. Violation of Business and Professions Code §§ 17200, *et seq.*; and
9. Enforcement of Labor Code §§ 2698, *et seq.* (PAGA")

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Superior Court of California
County of Los Angeles

AUG 14 2020

Sherri B. Carter, Executive Office/Clerk
By: *Maisha Pryor*, Deputy
Maisha Pryor

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1 Plaintiffs Barry Willner and Julia Pettis, individually, and on behalf of others similarly
2 situated, alleges as follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiffs Barry Willner and Julia Pettis (“Plaintiffs”) bring this putative class
5 action against defendant Golden Empire Mortgage, Inc. (“Defendant”), and DOES 1 through
6 20, inclusive (collectively, “Defendants”), on behalf of themselves individually, and a putative
7 class of California citizens who are and were employed by Defendants as loan officers.

8 2. Defendants provide direct lending services to homebuyers and investors.

9 3. Through this action, Plaintiffs allege that Defendants engaged in a systematic
10 pattern of wage and hour violations under the California Labor Code and Industrial Welfare
11 Commission (“IWC”) Wage Orders, all of which contribute to Defendants’ deliberate unfair
12 competition.

13 4. Plaintiffs are informed and believe, and thereon allege, that Defendants have
14 increased their profits by violating state wage and hour laws by, among other things:

- 15 (a) making improper deductions from employees’ earned wages;
- 16 (b) failing to pay all wages (including minimum wages and overtime
17 wages);
- 18 (c) failing to provide lawful meal periods or compensation in lieu thereof;
- 19 (d) failing to authorize or permit lawful rest breaks or provide compensation
20 in lieu thereof;
- 21 (e) failing to provide accurate itemized wage statements;
- 22 (f) failing to pay all wages due upon separation of employment; and
- 23 (g) failing to reimburse all business expenses incurred by the employee in
24 direct consequence of the discharge of his or her duties.

25 5. Plaintiffs seek monetary relief against Defendants on behalf of themselves and
26 all others similarly situated in California to recover, among other things, unpaid wages and
27 benefits, interest, attorneys’ fees, costs and expenses, and penalties pursuant to Labor Code §§
28

201-204, 226, 226.7, 510, 512, 1194, 1194.2, 1197, 1198, 2800, and 2802, and Code of California Civil Procedure § 1021.5.

JURISDICTION AND VENUE

6. This is a class action pursuant to California Code of Civil Procedure § 382. The monetary damages and restitution sought by Plaintiff exceeds the minimal jurisdictional limits of the Superior Court and will be established according to proof at trial.

7. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those given by statutes to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

8. This Court has jurisdiction over all Defendants because, upon information and belief, they are citizens of California, have sufficient minimum contacts in California, or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

9. Venue is proper in this Court because, upon information and belief, Defendants reside, transact business, or have offices in this county, and the acts and omissions alleged herein took place in this county.

THE PARTIES

10. Plaintiffs are residents of California and worked for Defendants in California during the relevant time periods as alleged herein. Defendants classified Plaintiffs as exempt employees.

11. Plaintiffs are informed and believe, and thereon allege that at all times hereinafter mentioned, Defendants were and are subject to the Labor Code and IWC Wage Orders as employers, whose employees were and are engaged throughout this county and the State of California.

12. Plaintiffs are unaware of the true names or capacities of the defendants sued herein under the fictitious names DOES 1 through 20, but will seek leave of this Court to

1 amend this Complaint and serve such fictitiously named defendants once their names and
2 capacities become known.

3 13. Plaintiffs are informed and believe, and thereon allege, that DOES 1 through 20
4 are or were the partners, agents, owners, shareholders, managers, or employees of Defendants
5 at all relevant times.

6 14. Plaintiffs are informed and believes, and thereon allege, that each defendant
7 acted in all respects pertinent to this action as the agent of the other defendant, carried out a
8 joint scheme, business plan, or policy in all respects pertinent hereto, and the acts of each
9 defendant are legally attributable to the other defendant. Furthermore, defendants in all respects
10 acted as the employer and/or joint employer of Plaintiff and the class members.

11 15. Plaintiffs are informed and believe, and thereon allege, that each and all of the
12 acts and omissions alleged herein were performed by, or are attributable to, Defendants and/or
13 DOES 1 through 20, acting as the agent or alter ego for the other, with legal authority to act on
14 the other's behalf. The acts of any and all Defendants were in accordance with, and represent,
15 the official policy of Defendants.

16 16. At all relevant times, Defendants, and each of them, acted within the scope of
17 such agency or employment, or ratified each and every act or omission complained of herein.
18 At all relevant times, Defendants, and each of them, aided and abetted the acts and omissions of
19 each and all the other Defendants in proximately causing the damages herein alleged.

20 17. Plaintiffs are informed and believe, and thereon allege, that each of said
21 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
22 omissions, occurrences, and transactions alleged herein.

23 **CLASS ACTION ALLEGATIONS**

24 18. Plaintiffs bring this action under Code of Civil Procedure § 382 on behalf of
25 themselves and all others similarly situated who were affected by Defendants' Labor Code,
26 Business and Professions Code §§ 17200, and IWC Wage Order violations.

27 19. All claims alleged herein arise under California law for which Plaintiffs seek
28 relief authorized by California law.

1 20. Plaintiffs' proposed class consists of and is defined as follows:

2 Class

3 All California citizens currently or formerly employed by Defendants in the State
4 of California as employees paid at least in part on a commission-basis within four
5 years prior to the filing of this action to the date the class is certified ("Class").

6 21. Plaintiff also seeks to certify the following subclass of employees:

7 Waiting Time Subclass

8 All Class Members who separated their employment with Defendants at any time
9 within three years prior to the filing of this action to the date the class is certified
10 ("Waiting Time Subclass").

11 22. Plaintiffs reserve the right to modify or re-define the Class, establish additional
12 subclasses, or modify or re-define any class or subclass definition as appropriate based on
13 investigation, discovery, and specific theories of liability.

14 23. Members of the Class and the Waiting Time Subclass described above will be
15 collectively referred to as "Class Members."

16 24. There are common questions of law and fact as to the Class Members that
17 predominate over any questions affecting only individual members including, but not limited to,
18 the following:

19 (a) Whether Defendants made improper deductions from Plaintiff and Class
20 Members' wages.

21 (b) Whether Defendants failed to pay Plaintiffs and Class Members all
22 wages (including minimum wages and overtime wages) for all hours
23 worked by Plaintiff and Class Members.

24 (c) Whether Defendants required Plaintiffs and Class Members to work over
25 eight (8) hours per day, over twelve (12) hours per day, and/or over forty
26 (40) hours per week and failed to pay them overtime compensation for
27 all overtime hours worked at the proper rate.
28

- 1 (d) Whether Defendants deprived Plaintiffs and Class Members of timely
2 meal periods or required Plaintiffs and Class Members to work through
3 meal periods without compensation.
- 4 (e) Whether Defendants deprived Plaintiffs and Class Members of rest
5 breaks or required Plaintiffs and Class Members to work through rest
6 breaks.
- 7 (f) Whether Defendants failed to provide Plaintiffs and Class Members
8 accurate itemized wage statements.
- 9 (g) Whether Defendants failed to timely pay the Waiting Time Subclass all
10 wages due upon termination or within seventy-two (72) hours of
11 resignation.
- 12 (h) Whether Defendants' conduct was willful or reckless.
- 13 (i) Whether Defendants engaged in unfair business practices in violation of
14 Business and Professions Code §§ 17200, *et seq.*

15 25. There is a well-defined community of interest in this litigation and the proposed
16 Class and Subclass are readily ascertainable:

17 (a) Numerosity: The Class Members are so numerous that joinder of all
18 members is impractical. Although the members of the entire Class and the Waiting Time
19 Subclass are unknown to Plaintiff at this time, on information and belief, the class is estimated
20 to be greater than fifty (50) individuals. The identities of the Class Members are readily
21 ascertainable by inspection of Defendants' employment and payroll records.

22 (b) Typicality: The claims (or defenses, if any) of Plaintiffs are typical of the
23 claims (or defenses, if any) of the Class Members because Defendants' failure to comply with
24 the provisions of California's wage and hour laws entitled each Class Member to similar pay,
25 benefits, and other relief. The injuries sustained by Plaintiffs are also typical of the injuries
26 sustained by the Class Members, because they arise out of and are caused by Defendants'
27 common course of conduct as alleged herein.

28

1 (c) Adequacy: Plaintiffs will fairly and adequately represent and protect the
2 interests of all Class Members because it is in Plaintiffs' best interest to prosecute the claims
3 alleged herein to obtain full compensation and penalties due to Plaintiffs and the Class
4 Members. Plaintiffs' attorneys, as proposed class counsel, are competent and experienced in
5 litigating large employment class actions and versed in the rules governing class action
6 discovery, certification, and settlement. Plaintiffs have incurred and, throughout the duration of
7 this action, will continue to incur attorneys' fees and costs that have been and will be
8 necessarily expended for the prosecution of this action for the substantial benefit of the Class
9 Members.

10 (d) Superiority: The nature of this action makes use of class action
11 adjudication superior to other methods. A class action will achieve economies of time, effort,
12 and expense as compared with separate lawsuits and will avoid inconsistent outcomes because
13 the same issues can be adjudicated in the same manner for the entire Class and Waiting Time
14 Subclass at the same time. If appropriate, this Court can, and is empowered to, fashion methods
15 to efficiently manage this case as a class action.

16 (e) Public Policy Considerations: Employers in the State of California
17 violate employment and labor laws every day. Current employees are often afraid to assert their
18 rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing
19 actions because they believe their former employers might damage their future endeavors
20 through negative references and/or other means. Class actions provide class members who are
21 not named in the complaint with a type of anonymity that allows for the vindication of their
22 rights while affording them privacy protections.

23 **GENERAL ALLEGATIONS**

24 26. At all relevant times mentioned herein, Defendants employed Plaintiffs and
25 other California residents throughout California and at Defendants' California business
26 location(s).

27 27. Plaintiffs were employed by Defendants in California during the relevant time
28 period, but Defendants misclassified Plaintiffs as exempt employees.

1 28. Defendants continue to employ loan officers within California, and on
2 information and belief, Plaintiffs allege that such employees are and were misclassified as
3 exempt employees.

4 29. Plaintiffs are informed and believe, and thereon allege, that at all times herein
5 mentioned, Defendants were advised by skilled lawyers, employees, and other professionals
6 who were knowledgeable about California's wage and hour laws, employment and personnel
7 practices, and the requirements of California law.

8 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
9 should have known that Plaintiff and Class Members were entitled to all earned wages without
10 unlawful deductions. In violation of the California Labor Code, Defendants made unlawful
11 deductions from Plaintiff's and Class Members' wages for Defendants' costs of doing business,
12 such as deductions for credit report fees, appraisal fees, title fees, and administrative costs for
13 early payment default or early pay-off, among other deductions.

14 31. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
15 should have known that Plaintiffs and Class Members were entitled to receive wages for all
16 time worked (including minimum wages and overtime wages) and that they were not receiving
17 all wages earned for work that was required to be performed. In violation of the Labor Code
18 and IWC Wage Orders, Plaintiffs and Class Members were not paid all wages (including
19 minimum wages and overtime wages).

20 32. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
21 should have known that Plaintiffs and Class Members were entitled to receive all required meal
22 periods or payment of one (1) additional hour of pay at Plaintiffs' and Class Members' regular
23 rate of compensation when they did not receive a timely, uninterrupted meal period. In
24 violation of the Labor Code and IWC Wage Orders, Plaintiffs and Class Members did not
25 receive all meal periods or payment of one (1) additional hour of pay at Plaintiffs' and Class
26 Members' regular rate of compensation when they did not receive a timely, uninterrupted meal
27 period.
28

1 33. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
2 should have known that Plaintiffs and Class Members were entitled to receive all rest breaks or
3 payment of one (1) additional hour of pay at Plaintiffs' and Class Members' regular rate of
4 compensation when a rest break was late, missed, or interrupted. In violation of the Labor Code
5 and IWC Wage Orders, Plaintiffs and Class Members did not receive all rest breaks or payment
6 of one (1) additional hour of pay at Plaintiffs' and Class Members' regular rate of
7 compensation when a rest break was missed, late, or interrupted.

8 34. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
9 should have known that Plaintiffs and class members were entitled to reimbursement for
10 necessary expenditures incurred in connection with the performance and execution of their job
11 duties. In violation of the California Labor Code, Plaintiffs and class members did not receive
12 adequate reimbursement for necessary business expenses, including but not limited to
13 reimbursement for use of their personal cell phones, home internet, and personal automobiles.

14 35. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
15 should have known that Plaintiffs and Class Members were entitled to receive itemized wage
16 statements that accurately showed their gross and net wages earned, total hours worked, all
17 applicable hourly rates in effect, and the number of hours worked at each hourly rate in
18 accordance with California law. In violation of the Labor Code, Plaintiffs and Class Members
19 were not provided with accurate itemized wage statements.

20 36. Defendants knew or should have known that the Waiting Time Subclass was
21 entitled to timely payment of wages due upon separation of employment. In violation of the
22 Labor Code, the Waiting Time Subclass did not receive payment of all wages within the
23 permissible time periods.

24 37. Plaintiffs are informed and believes, and thereon alleges, that Defendants knew
25 or should have known they had a duty to compensate Plaintiffs and Class Members, and
26 Defendants had the financial ability to pay such compensation but willfully, knowingly, and
27 intentionally failed to do so in order to increase Defendants' profits.

38. Therefore, Plaintiffs bring this lawsuit seeking monetary relief against Defendants on behalf of themselves and all Class Members to recover, among other things, unpaid wages (including minimum wages and overtime wages), unpaid meal period premium payments, unpaid rest period premium payments, interest, attorneys' fees, penalties, costs, and expenses.

FIRST CAUSE OF ACTION

IMPROPER DEDUCTIONS FROM WAGES

(Violation of Labor Code § 221)

1. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as though fully set forth herein.

2. Pursuant to Labor Code section 221, Defendants are prohibited from deducting from employee wages sums paid toward the performance of their job related duties. In violation of the Labor Code and other provisions of law, Defendants improperly forfeited portions of commissions and deducted a portion of wages from Plaintiff and Class Members' pay, which they used to defray the costs of doing business. Plaintiffs and Class Members seek payment of such sums deducted in violation of California law.

3. As a direct and proximate result of Defendants' failure to pay Plaintiffs and Class Members the required wages, Plaintiffs and Class Members are entitled to recover the unpaid balance of their wages, including minimum wage and overtime compensation, as well as interest, costs and attorneys' fees.

4. Pursuant to Labor Code § 1194.2, Plaintiffs and Class Members are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

FAILURE TO PAY WAGES

(Violation of Labor Code §§ 510, 1194, 1194.2, 1197, and 1198; IWC Wage Order §§ 3 and 5)

5. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as though fully set forth herein.

1 6. During the relevant time period, Defendants were required to compensate Plaintiffs
2 and Class Members for all hours worked, pursuant to Labor Code §§ 200 *et seq.*, 510, 1194, 1197,
3 1198, and the applicable IWC Wage Order.

4 7. Labor Code § 510 codifies the right to overtime compensation at one and one-half
5 times the regular hourly rate for hours worked in excess of eight (8) hours in a day or forty (40)
6 hours in a week or for the first eight (8) hours worked on the seventh day of work.

7 8. Labor Code §§ 1194 and 1197 provide that the minimum wage for employees
8 fixed by the IWC is the minimum wage to be paid to employees, and the payment of a lesser
9 wage than the minimum so fixed is unlawful.

10 9. Labor Code § 1198 and the applicable IWC Wage Order provide that it is unlawful
11 to employ persons without compensating them at a rate of pay either one and one-half or two
12 times the person's regular rate of pay, depending on the number of hours worked by the person on
13 a daily or weekly basis.

14 10. Pursuant to California Labor Code §§ 510 and 1194, during the relevant time
15 period, Defendants were required to compensate Plaintiff and class members for all overtime
16 hours worked, calculated at one and one-half (1½) times the regular rate of pay for hours worked
17 in excess of eight (8) hours per day and/or forty (40) hours per week and for the first eight (8)
18 hours of the seventh consecutive work day, with double time after eight (8) hours on the seventh
19 day of any work week, or after twelve (12) hours in any work day.

20 11. Plaintiffs and class members were non-exempt employees entitled to the
21 protections of California Labor Code §§ 510 and 1194.

22 12. During the relevant time period, Defendants failed to pay Plaintiffs and Class
23 Members all wages owed when Defendants did not pay for all hours worked, among other
24 reasons.

25 13. In violation of state law, Defendants have knowingly and willfully refused to
26 perform their obligations and compensate Plaintiffs and class members for all wages earned and
27 all hours worked, including work performed in pay periods or weeks in which they did not qualify
28 for any overtime exemption.

14. During the relevant time period, Defendants regularly failed to pay all wages to Plaintiffs and Class Members for all hours worked in violation of the Labor Code and the applicable IWC Wage Order.

15. Defendants' failure to pay Plaintiffs and class members overtime and double time compensation, as required by California law, violates the provisions of Labor Code §§ 510 and 1198, and is therefore unlawful.

16. As a direct and proximate result of Defendants' failure to pay Plaintiffs and Class Members the required wages, Plaintiffs and Class Members are entitled to recover the unpaid balance of their wages, including minimum wage and overtime compensation, as well as interest, costs and attorneys' fees.

17. Pursuant to Labor Code § 1194.2, Plaintiffs and Class Members are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

SECOND CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

(Violation of Labor Code §§ 226.7 and 512; Violation of IWC Wage Order § 11)

18. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as though fully set forth herein

19. Labor Code § 226.7 provides that no employer shall require an employee to work during any meal period mandated by the IWC Wage Orders.

20. Section 11 of the applicable IWC Wage Order states, “[n]o employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee.”

21. Labor Code § 512(a) provides that an employer may not require, cause, or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if

1 the total work period per day of the employee is not more than six (6) hours, the meal period
2 may be waived by mutual consent of both the employer and the employee.

3 22. Labor Code § 512(a) also provides that an employer may not employ an
4 employee for a work period of more than ten (10) hours per day without providing the employee
5 with a second meal period of not less than thirty (30) minutes, except that if the total hours
6 worked is no more than twelve (12) hours, the second meal period may be waived by mutual
7 consent of the employer and the employee only if the first meal period was not waived.

8 23. During the relevant time period, Plaintiffs and Class Members did not receive
9 compliant meal periods for working more than five (5) and/or ten (10) hours per day because
10 their meal periods were missed, late, and/or short.

11 24. Labor Code § 226.7(b) and section 11 of the applicable IWC Wage Order require
12 an employer to pay an employee one (1) additional hour of pay at the employee's regular rate of
13 compensation for each work day that a compliant meal period is not provided.

14 25. At all relevant times, Defendants failed to pay Plaintiffs and Class Members
15 meal period premiums for missed, late, and/or short meal periods pursuant to Labor Code §
16 226.7(b) and section 11 of the applicable IWC Wage Order.

17 26. As a result of Defendants' failure to pay Plaintiffs and Class Members an
18 additional hour of pay for each day a compliant meal period was not provided, Plaintiffs and
19 Class Members suffered and continue to suffer a loss of wages and compensation.

20 **THIRD CAUSE OF ACTION**

21 **FAILURE TO PERMIT REST BREAKS**

22 (Violation of Labor Code §§ 226.7; Violation of IWC Wage Order § 12)

23 27. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
24 though fully set forth herein.

25 28. Labor Code § 226.7(a) provides that no employer shall require an employee to
26 work during any rest period mandated by the IWC Wage Orders.

27 29. Section 12 of the applicable IWC Wage Order states "[e]very employer shall
28 authorize and permit all employees to take rest periods, which insofar as practicable shall be in

1 the middle of each work period[,]” and the “[a]uthorized rest period time shall be based on the
2 total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major
3 fraction thereof[,]” unless the total daily work time is less than three and one-half (3½) hours.

4 30. During the relevant time period, Plaintiffs and Class Members did not receive a
5 ten (10) minute rest period for every four (4) hours or major fraction thereof worked because
6 they were required to work through their daily rest periods and/or were not authorized to take
7 their rest periods.

8 31. Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order
9 requires an employer to pay an employee one (1) additional hour of pay at the employee’s
10 regular rate of compensation for each work day that a compliant rest period is not provided.

11 32. At all relevant times, Defendants failed to pay Plaintiffs and Class Members rest
12 period premiums for missed, late, and/or interrupted rest periods pursuant to Labor Code §
13 226.7(b) and section 12 of the applicable IWC Wage Order.

14 33. As a result of Defendants’ failure to pay Plaintiffs and Class Members an
15 additional hour of pay for each day a compliant rest period was not provided, Plaintiff and Class
16 Members suffered and continue to suffer a loss of wages and compensation.

17 **FOURTH CAUSE OF ACTION**

18 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

19 (Violation of Labor Code § 226)

20 34. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
21 though fully set forth herein.

22 35. Labor Code § 226(a) requires Defendants to provide each employee with an
23 accurate wage statement in writing showing nine pieces of information, including, the
24 following: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of
25 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate
26 basis, (4) all deductions, provided that all deductions made on written orders of the employee
27 may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the
28 period for which the employee is paid, (7) the name of the employee and the last four digits of

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

5 36. During the relevant time period, Defendants have knowingly and intentionally
6 failed to comply with Labor Code § 226(a) on wage statements that were provided to Plaintiffs
7 and Class Members. The deficiencies include, among other things, the failure to correctly state
8 the gross and net wages earned, total hours worked, all applicable hourly rates in effect, and the
9 number of hours worked at each hourly rate by Plaintiffs and Class Members.

10 37. As a result of Defendants' knowing and intentional failure to comply with Labor
11 Code § 226(a), Plaintiff and Class Members have suffered injury and damage to their
12 statutorily-protected rights. Specifically, Plaintiffs and Class Members are deemed to suffer an
13 injury pursuant to Labor Code § 226(e) where, as here, Defendants intentionally violated Labor
14 Code § 226(a). Plaintiffs and Class Members were denied both their legal right to receive, and
15 their protected interest in receiving, accurate itemized wage statements under Labor Code
16 § 226(a). In addition, because Defendants failed to provide the accurate rates of pay on wage
17 statements, Defendants prevented Plaintiffs and Class Members from determining if all hours
18 worked were paid at the appropriate rate and the extent of the underpayment. Plaintiffs have
19 had to file this lawsuit in order to analyze the extent of the underpayment, thereby causing
20 Plaintiffs to incur expenses and lost time. Plaintiffs would not have had to engage in these
21 efforts and incur these costs had Defendants provided the accurate hours worked, wages
22 earned, and rates of pay. This has also delayed Plaintiffs' ability to demand and recover the
23 underpayment of wages from Defendants.

24 38. Plaintiffs and Class Members are entitled to recover from Defendants all actual
25 damages caused by Defendants' failure to comply with Labor Code § 226(a), plus attorneys'
26 fees and costs.

27 39. Defendants' violations of California Labor Code § 226(a) prevented Plaintiffs
28 and Class Members from knowing, understanding, and disputing the wages paid to them and

1 resulted in an unjustified economic enrichment to Defendants. As a result of Defendants'
2 knowing and intentional failure to comply with California Labor Code § 226(a), Plaintiffs and
3 Class Members have suffered an injury, in the exact amount of damages to be shown according
4 to proof at trial.

5 **FIFTH CAUSE OF ACTION**

6 **FAILURE TO PAY ALL WAGES DUE UPON SEPARATION OF EMPLOYMENT**

7 (Violation of Labor Code §§ 201, 202, and 203)

8 40. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
9 though fully set forth herein.

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

16 42. During the relevant time period, Defendants willfully failed to pay the Waiting
17 Time Subclass all their earned wages upon termination, including, but not limited to, meal
18 period premiums, and rest period premiums either at the time of discharge or within seventy-
19 two (72) hours of their leaving Defendants' employ.

20 43. Defendants' failure to pay the Waiting Time Subclass all their earned wages at
21 the time of discharge or within seventy-two (72) hours of their leaving Defendants' employ is
22 in violation of Labor Code §§ 201 and 202.

23 44. Labor Code § 203 provides that if an employer willfully fails to pay wages owed
24 immediately upon discharge or resignation in accordance with Labor Code §§ 201 and 202,
25 then the wages of the employee shall continue as a penalty from the due date at the same rate
26 until paid or until an action is commenced; but the wages shall not continue for more than thirty
27 (30) days.
28

45. Pursuant to Labor Code § 203, the Waiting Time Subclass is entitled to recover from Defendants the statutory penalty, which is defined as the Waiting Time Subclass members' regular daily wages at their regular hourly rate of pay for each day they were not paid, up to a maximum of thirty (30) days.

SIXTH CAUSE OF ACTION

FAILURE TO REIMBURSE ALL BUSINESS EXPENSES

(Violation of Labor Code §§ 2800, 2802; Wage Order § 9)

46. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as though fully set forth herein.

47. Labor Code § 2800 states that an employer shall in all cases indemnify his employee for losses.

48. Labor Code § 2802 requires employers to indemnify their employees for all necessary expenditures or losses incurred by employees in direct consequence of the discharge of their duties.

49. Section 9 of the applicable IWC Wage Order states that when tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer.

50. During the relevant time period, Defendants required Plaintiffs and Class Members to use their personal cellular devices and home internet in order to communicate with clients, and further communicated with Plaintiffs and Class Members throughout the day on their cellular devices, without paying Plaintiffs and Class Members for a reasonable percentage of their cell phone bills.

51. During the relevant time period, Defendants required Plaintiffs and Class Members to use their own automobiles to drive to appointments without properly compensating them for gas mileage and wear and tear on their vehicles.

52. In violation of Labor Code §§ 2800 and 2802, Defendants failed to indemnify Plaintiffs and Class Members for these expenses.

53. In committing the violations as herein alleged, Defendants have intentionally and willfully failed to fully reimburse Plaintiffs and Class Members for necessary business-related costs and expenses. As a direct result, Plaintiffs and Class Members have suffered and continue to suffer substantial losses relating to the use and enjoyment of such compensation, wages, expenses, and attorneys' fees.

SEVENTH CAUSE OF ACTION

VIOLATION OF BUSINESS AND PROFESSIONS CODE §§ 17200, ET SEQ.

(Violation of Business and Professions Code §§ 17200, *et seq.*)

54. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as though fully set forth herein.

55. California Business and Professions Code §§ 17200, *et seq.*, prohibits acts of unfair competition, which includes any “unlawful, unfair or fraudulent business act or practice”

56. A violation of California Business and Professions Code §§ 17200, *et seq.*, may be predicated on a violation of any state or federal law. In the instant case, Defendants' policies and practices violated state law, causing Plaintiffs and Class Members to suffer and continue to suffer injuries-in-fact.

57. Defendants' policies and practices violated state law in at least the following respects:

- (a) Labor Code §§ 510, 1194, 1197, and 1198 for failure to pay all wages earned (including minimum wages and overtime wages) to Plaintiffs and other class members as herein alleged.
- (b) Labor Code §§ 226.7, 512 for failure to provide meal periods to Plaintiffs and other class members and failure to pay premium wages for late, missed, or interrupted meal periods as herein alleged.
- (c) Labor Code § 226.7 for failure to authorize or permit Plaintiffs' and other class members' rest breaks and failure to pay premium wages for late, missed, or interrupted rest periods as herein alleged.

1 (d) Labor Code §§ 201-204 for failure to timely pay all wages owed to
2 Plaintiffs and other class members upon separation of employment as
3 herein alleged.

4 (e) Labor Code §§ 2800, 2802 for failure to reimburse Plaintiffs and other
5 class members for all necessarily incurred business expenses as herein
6 alleged.

7 58. As alleged herein, Defendants systematically engaged in unlawful conduct in
8 violation of the California Labor Code and IWC Wage Orders, such as failing to pay all wages
9 earned, failing to provide meal periods and rest breaks or compensation in lieu thereof, failing
10 to furnish accurate wage statements, failing to pay all wages due and owing upon separation of
11 employment in a timely manner, and failing to reimburse business expenses to the Class
12 Members, all in order to decrease their costs of doing business and increase their profits.

13 59. At all relevant times herein, Defendants held themselves out to Plaintiffs and
14 Class Members as being knowledgeable concerning the labor and employment laws of
15 California.

16 60. At all times relevant herein, Defendants intentionally avoided paying Plaintiffs
17 and Class Members wages and monies, thereby creating for Defendants an artificially lower
18 cost of doing business in order to undercut their competitors and establish and/or gain a greater
19 foothold in the marketplace.

20 61. By violating the foregoing statutes and regulations as herein alleged,
21 Defendants' acts constitute unfair and unlawful business practices under California Business
22 and Professions Code §§ 17200, *et seq.*

23 62. As a result of the unfair and unlawful business practices of Defendants as
24 alleged herein, Plaintiffs and Class Members are entitled to disgorgement and restitution in an
25 amount to be shown according to proof at trial.

26 63. Plaintiffs seek to enforce important rights affecting the public interest within the
27 meaning of California Code of Civil Procedure § 1021.5. Defendants' conduct, as alleged
28 herein, has been and continues to be unfair, unlawful, and harmful to Plaintiffs, Class

1 Members, and the general public. Based on Defendants' conduct as alleged herein, Plaintiffs
2 and Class Members are entitled to an award of attorneys' fees pursuant to California Code of
3 Civil Procedure § 1021.5.

4 **EIGHTH CAUSE OF ACTION**

5 **ENFORCEMENT OF LABOR CODE §§ 2698 ET SEQ. ("PAGA")**

6 (Enforcement of Labor Code §§ 2698, *et seq.*)

7 64. Plaintiff Julia Pettis hereby re-alleges and incorporates by reference all
8 paragraphs above as though fully set forth herein.

9 65. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that
10 provides for a civil penalty to be assessed and collected by the Labor and Workforce
11 Development Agency ("LWDA") or any of its departments, divisions, commissions, boards,
12 agencies, or employees for violation of the code may, as an alternative, be recovered through a
13 civil action brought by an aggrieved employee on behalf of himself or herself and other current
14 or former employees pursuant to the procedures specified in Labor Code § 2699. 3.

15 66. For all provisions of the Labor Code except those for which a civil penalty is
16 specifically provided, Labor Code § 2699(f) imposes upon Defendant a penalty of one hundred
17 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two
18 hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent pay
19 period in which Defendant violated these provisions of the Labor Code.

20 67. Defendants' conduct violates numerous Labor Code section including, but not
21 limited to, the following:

22 (a) Violation of Labor Code §§ 201-203, 204, 510, 1194, 1197 and 1198 for failure
23 to timely pay all earned wages (including minimum wages and overtime wages)
24 owed to Plaintiff Julia Pettis and other aggrieved employees during employment
25 and upon separation of employment as herein alleged;

26 (b) Violation of Labor Code §§ 226.7 and 512 for failure to provide meal periods to
27 Plaintiff and other aggrieved employees and failure to pay premium wages for
28 missed meal periods as herein alleged;

- 1 (c) Violation of Labor Code §§ 2800 and 2802 for failure to reimburse necessary
2 business expenses;
- 3 (d) Violation of Labor Code § 226 for failure to provide accurate itemized wage
4 statements to Plaintiff and other aggrieved employees as herein alleged; and
- 5 (e) Violation of Labor Code §§ 1174 and 1174.5 for failure to maintain accurate
6 records.

7 68. As set forth above, Defendants have violated numerous provisions of the Labor
8 Code regulating hours and days of work as well as the IWC Wage Orders. Accordingly,
9 Plaintiff Julia Pettis seeks the remedies set forth in Labor Code § 558 for herself, the underpaid
10 employees, and the State of California.

11 69. Plaintiff Julia Pettis is an “aggrieved employee” because she was employed by
12 the alleged violator and had one or more of the alleged violations committed against her, and
13 therefore is properly suited to represent the interests of all other aggrieved employees.

14 70. Plaintiff Julia Pettis has exhausted the procedural requirements under Labor
15 Code § 2699.3 as to Defendants and is therefore able to pursue a claim for penalties on behalf
16 of herself and all other aggrieved employees under PAGA.

17 71. Pursuant to Labor Code § 2699(a), 2699.2, and 2699.5, Plaintiff Julia Pettis is
18 entitled to recover civil penalties, in addition to other remedies, for violations of the Labor
19 Code sections cited above.

20 72. For bringing this action, Plaintiff Julia Pettis is entitled to attorneys’ fees and
21 costs incurred herein.

22 **PRAYER FOR RELIEF**

23 Plaintiffs, on their own behalf and on behalf of all others similarly situated, pray for
24 relief and judgment against Defendants, jointly and severally, as follows:

- 25 1. For certification under California Code of Civil Procedure § 382 of the proposed
26 Class, Waiting Time Subclass, and any other appropriate subclasses;
- 27 2. For appointment of Barry Willner and Julia Pettis as the class representatives;
- 28 3. For appointment of Aegis Law Firm, PC, as class counsel for all purposes;

4. For compensatory damages in an amount according to proof at trial;
5. For an award of damages in the amount of unpaid compensation including, but not limited to, unpaid wages, benefits, and penalties;
6. For economic and/or special damages in an amount according to proof at trial;
7. For statutory penalties to the extent permitted by law, including those pursuant to the Labor Code and IWC Wage Orders;
8. For restitution as provided by Business and Professions Code §§ 17200, *et seq.*;
9. For an order requiring Defendants to restore and disgorge all funds to each employee acquired by means of any act or practice declared by this Court to be unlawful, unfair, or fraudulent and, therefore, constituting unfair competition under Business and Professions Code §§ 17200, *et seq.*;
10. For pre-judgment interest;
11. For penalties pursuant to PAGA;
12. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted by law, including, but not limited to, PAGA, Code of Civil Procedure § 1021.5 and Labor Code §§ 226(e), 1194, and 2802(c); and
13. For such other relief as the Court deems just and proper.

Dated: August 13, 2020

AEGIS LAW FIRM, PC

By: 

Fawn Bekam

Attorneys for Plaintiffs Barry Willner and Julia Pettis

1 **CERTIFICATE OF SERVICE**

2 I, the undersigned, am employed in the County of Orange, State of California. I am over
3 the age of 18 and not a party to the within action; am employed with Aegis Law Firm PC and
my business address is 9811 Irvine Center Drive, Suite 100, Irvine, California 92618.

4 On August 13, 2020, I served the foregoing document entitled:

5 • **THIRD AMENDED CLASS ACTION COMPLAINT**

6 on all the appearing and/or interested parties in this action by delivering ☐ the original ☒ a true
copy thereof on the party(ies) addressed below as follows:

7 Michael S. Kun (SBN 208684)
8 Kevin D. Sullivan (SBN 270343)
9 Brock J. Seraphin (SNB 307041)
10 EPSTEIN BECKER & GREEN, P.C.
11 1925 Century Park East, Suite 500
12 Los Angeles, CA 90067
13 Telephone: 310.556.8861
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Co-Counsel for Plaintiff

15 ☐ **(BY MAIL)** I am readily familiar with the firm's practice of collection and processing
16 correspondence for mailing. Under that practice it would be deposited with the U.S.
17 Postal Service on that same day with postage thereon fully prepaid at Irvine, California
18 in the ordinary course of business. I am aware that on motion of the party served, service
is presumed invalid if postage cancellation date or postage meter date is more than one
day after date of deposit for mailing this affidavit. (*Cal Code Civ. Proc. § 1013(a); Fed.*
R. Civ. Proc. 5(a); Fed. R. Civ. Proc. 5(c).)

19 ☒ **(BY ELECTRONIC TRANSMISSION)** I caused said document(s) to be served via
20 electronic transmission via Case Anywhere to the above listed email addresses on the
21 date below. (*Cal. Code Civ. Proc. § 1010.6(6); Fed. R. Civ. Proc. 5(b)(2)(E); Fed. R.*
Civ. Proc. 5(b)(3).)

22 ☐ **(BY OVERNIGHT MAIL)** I am personally and readily familiar with the business
23 practice of Aegis Law Firm PC for collection and processing correspondence for
24 overnight delivery, and I caused such document(s) described herein to be deposited for
delivery to a facility regularly maintained Federal Express for overnight delivery. (*Cal*
Code Civ. Proc. § 1013(c); Fed. R. Civ. Proc. 5(c).)

25 I declare under penalty of perjury under the laws of the State of California that the foregoing is
26 true and correct.

27 Executed on August 13, 2020, at Irvine, California.

28 
Andrea Drocco