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Case #20CV362508
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA COUNTY

ETHAN BROWN, individually, and on
behalf of other members of the general
public similarly situated,

Plaintiff,

vs.

YOUNG MEN'S CHRISTIAN
ASSOCIATION OF SILICON VALLEY, a
California corporation; and DOES 1
through 10, inclusive,

Defendants.

Case No.: 20CV362508

**FIRST AMENDED CLASS ACTION
COMPLAINT & ENFORCEMENT
ACTION UNDER THE PRIVATE
ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698, ET
SEQ.**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
- (4) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
- (5) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
- (6) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (7) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);
- (8) Violation of Labor Code § 1198 and California Code of Regulations Title 8, Section 11100 Subdivision 5(A) (Failure to Provide Reporting Time Pay);
- (9) Violation of California Labor Code § 2802

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- (Unreimbursed Business Expenses);
- (10) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, *et seq.*;
- (11) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and
- (12) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unfair Business Practices)

Jury Trial Demanded

1 Plaintiff Ethan Brown, individually and on behalf of all other members of the public
2 similarly situated, and as an aggrieved employee and on behalf of all other aggrieved
3 employees, alleges as follows:

4 JURISDICTION AND VENUE

5 1. This class action is brought pursuant to California Code of Civil Procedure
6 section 382 and California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil
7 penalties and any other available relief on behalf of Plaintiff, the State of California, and other
8 current and former employees who worked for Defendants in California as non-exempt,
9 hourly paid employees and received at least one wage statement and against whom one or
10 more violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any
11 provision regulating hours and days of work in the applicable Industrial Welfare Commission
12 (“IWC”) Wage Order were committed, as set forth in this complaint. The monetary damages,
13 penalties, and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the
14 Superior Court and will be established according to proof at trial. This Court has jurisdiction
15 over this action pursuant to the California Constitution, Article VI, section 10. The statutes
16 under which this action is brought do not specify any other basis for jurisdiction. Plaintiff’s
17 share of damages, penalties, and other relief sought in this action does not exceed \$75,000.

18 2. This Court has jurisdiction over Defendants because Defendants are either
19 citizens of California, have sufficient minimum contacts in California, or otherwise
20 intentionally avail themselves of the California market so as to render the exercise of
21 jurisdiction over them by the California courts consistent with traditional notions of fair play
22 and substantial justice. There is no basis for federal diversity jurisdiction in this action
23 because there is no complete diversity, and this case falls within the statutory exceptions to
24 “minimal diversity” jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(4).
25 Upon information and belief, two-thirds or more of the class members and Defendants are
26 citizens of California and/or (a) two-thirds of the class members and Defendants are citizens
27 of California; (b) the alleged wage and hour violations occurred in California; (c) significant
28 relief is being sought against Defendants whose violations of California wage and hour laws

1 form a significant basis for Plaintiff's claims; and (d) no other class action has been filed
2 within the past three (3) years on behalf of the same proposed class against Defendants
3 asserting the same or similar factual allegations.

4 3. Venue is proper in this Court because Defendants employ persons in this county,
5 and employed Plaintiff this county, and thus a substantial portion of the transactions and
6 occurrences related to this action occurred in this county.

7 **THE PARTIES**

8 4. Plaintiff Ethan Brown is a resident of Santa Clara, in Santa Clara County,
9 California. Defendants employed Plaintiff as an hourly paid, non-exempt Lifeguard from
10 approximately 2017 to November 2019. During his employment, Plaintiff worked for
11 Defendants out of two of their locations in San Jose, California, and Cupertino, California.
12 During his employment, Plaintiff typically worked eight (8) hours or more per day, and three
13 (3) to four (4) days per week, from 2:00 p.m. to 10:00 p.m. Plaintiff's primary job duties
14 included, without limitation, checking pool chemicals levels; cleaning the pool; monitoring
15 and ensuring swimmer safety; conducting swim tests; and responding to guest inquiries.

16 5. YOUNG MEN'S CHRISTIAN ASSOCIATION OF SILICON VALLEY was
17 and is, upon information and belief, a California corporation, and at all times hereinafter
18 mentioned, an employer whose employees are engaged throughout this county, the State of
19 California, or the various states of the United States of America.

20 6. Plaintiff is unaware of the true names or capacities of the Defendants sued
21 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to
22 amend the complaint and serve such fictitiously named Defendants once their names and
23 capacities become known.

24 7. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
25 were the partners, agents, owners, or managers of YOUNG MEN'S CHRISTIAN
26 ASSOCIATION OF SILICON VALLEY at all relevant times.

27 8. Plaintiff is informed and believes, and thereon alleges, that each and all of the
28 acts and omissions alleged herein was performed by, or is attributable to, YOUNG MEN'S

1 CHRISTIAN ASSOCIATION OF SILICON VALLEY and/or DOES 1 through 10
2 (collectively, “Defendants” or “YMCA”), each acting as the agent, employee, alter ego, and/or
3 joint venturer of, or working in concert with, each of the other co-Defendants and was acting
4 within the course and scope of such agency, employment, joint venture, or concerted activity
5 with legal authority to act on the others’ behalf. The acts of any and all Defendants were in
6 accordance with, and represent, the official policy of Defendants.

7 9. At all relevant times, Defendants, and each of them, ratified each and every act
8 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
9 and abetted the acts and omissions of each and all the other Defendants in proximately causing
10 the damages herein alleged.

11 10. Plaintiff is informed and believes, and thereon alleges, that each of said
12 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
13 omissions, occurrences, and transactions alleged herein.

14 **GENERAL ALLEGATIONS**

15 11. Founded in 1867, Defendants operate a youth organization in Silicon Valley,
16 with 10 health and wellness facilities throughout Silicon Valley. Upon information and belief,
17 Defendants maintain a single, centralized Human Resources (“HR”) department at their
18 company headquarters in Santa Clara, California, which is responsible for the recruiting and
19 hiring of new employees, and communicating and implementing Defendants’ company-wide
20 policies, including timekeeping policies and meal and rest period policies, to employees at
21 their various facilities.

22 12. In particular, Plaintiff and class members, on information and belief, received
23 the same standardized documents and/or written policies. Upon information and belief, the
24 usage of standardized documents and/or written policies, including new-hire documents,
25 indicate that Defendants dictated policies at the corporate level and implemented them
26 company-wide, regardless of their employees’ assigned locations or positions. Upon
27 information and belief, Defendants set forth uniform policies and procedures in several
28 documents provided at an employee’s time of hire.

1 13. Upon information and belief, Defendants maintain a centralized Payroll
2 department at their company headquarters in Santa Clara, California, which processes payroll
3 for all non-exempt, hourly paid employees working for Defendants at their various locations
4 and jobsites in California, including Plaintiff and class members. Based upon information and
5 belief, Defendants issue the same formatted wage statements to all non-exempt, hourly paid
6 employees in California, irrespective of their work locations. Upon information and belief,
7 Defendants process payroll for departing employees in the same manner throughout the State
8 of California, regardless of the manner in which each employee's employment ends.

9 14. Defendants continue to employ non-exempt or hourly paid employees in
10 California.

11 15. Plaintiff is informed and believes, and thereon alleges, that at all times herein
12 mentioned, Defendants were advised by skilled lawyers and other professionals, employees
13 and advisors knowledgeable about California labor and wage law, employment and personnel
14 practices, and about the requirements of California law.

15 16. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and class
16 members were not paid for all hours worked because all hours worked were not recorded.

17 17. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
18 should have known that Plaintiff and class members were entitled to receive certain wages for
19 overtime compensation and that they were not receiving certain wages for overtime
20 compensation.

21 18. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
22 should have known that Plaintiff and class members were entitled to receive at least minimum
23 wages for compensation and that they were not receiving at least minimum wages for work
24 that was required to be done off-the-clock. In violation of the California Labor Code, Plaintiff
25 and class members were not paid at least minimum wages for work done off-the-clock.

26 19. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
27 should have known that Plaintiff and class members were entitled to meal periods in
28 accordance with the Labor Code or payment of one (1) additional hour of pay at their regular

1 rates of pay when they were not provided with timely, uninterrupted, thirty (30) minute meal
2 periods and that Plaintiff and class members were not provided with all meal periods or
3 payment of one (1) additional hour of pay at their regular rates of pay when they did not
4 receive a timely, uninterrupted, thirty (30) minute meal period.

5 20. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
6 should have known that Plaintiff and class members were entitled to rest periods in
7 accordance with the Labor Code and applicable IWC Wage Order or payment of one (1)
8 additional hour of pay at their regular rates of pay when they were not authorized and
9 permitted to take a compliant rest period. In violation of the California Labor Code, Plaintiff
10 and class members were not authorized and permitted to take compliant rest periods, nor did
11 Defendants provide Plaintiff and class members with payment of one (1) additional hour of
12 pay at their regular rates of pay when they were not authorized and permitted to take a
13 compliant rest period.

14 21. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
15 should have known that Plaintiff and class members were entitled to receive complete and
16 accurate wage statements in accordance with California law. In violation of the California
17 Labor Code, Plaintiff and class members were not provided complete and accurate wage
18 statements.

19 22. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
20 should have known that they had a duty to maintain accurate and complete payroll records in
21 accordance with the Labor Code and applicable IWC Wage Order, but willfully, knowingly,
22 and intentionally failed to do so.

23 23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
24 should have known that Plaintiff and class members were entitled to timely payment of all
25 wages earned upon termination of employment. In violation of the California Labor Code,
26 Plaintiff and class members did not receive payment of all wages due, including, but not
27 limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting
28 time pay, within permissible time periods.

1 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
2 should have known that Plaintiff and class members were entitled to timely payment of wages
3 during their employment. In violation of the California Labor Code, Plaintiff and class
4 members did not receive payment of all wages, including, but not limited to, overtime wages,
5 minimum wages, meal and rest period premiums, and/or reporting time pay, within
6 permissible time periods.

7 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
8 should have known that Plaintiff and class members were entitled to receive all reporting time
9 pay when Defendants required Plaintiff and class members were required to report to work but
10 were put to work for less than half of their regular scheduled shift. In violation of the
11 California Labor Code, Plaintiff and class members were not paid all reporting time pay.

12 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
13 should have known that Plaintiff and class members were entitled to receive full
14 reimbursement for all business-related expenses and costs they incurred during the course and
15 scope of their employment and that they did not receive full reimbursement of applicable
16 business-related expenses and costs incurred.

17 27. Plaintiff is informed and believes, and thereon alleges, that at all times herein
18 mentioned, Defendants knew or should have known that Defendants had a duty to provide
19 Plaintiff and class members with written notice of the material terms of their employment with
20 Defendants as required by the California Wage Theft Prevention Act, but willfully, knowingly,
21 and intentionally failed to do so.

22 28. Plaintiff is informed and believes, and thereon alleges, that at all times herein
23 mentioned, Defendants knew or should have known that they had a duty to compensate
24 Plaintiff and class members for all hours worked, and that Defendants had the financial ability
25 to pay such compensation, but willfully, knowingly, and intentionally failed to do so, and
26 falsely represented to Plaintiff and class members that they were properly denied wages, all in
27 order to increase Defendants' profits.

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PAGA REPRESENTATIVE ALLEGATIONS

29. At all times herein set forth, PAGA provides that any provision of law under the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be assessed and collected by the LWDA for violations of the California Labor Code and applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a civil action brought on behalf of themselves and other current or former employees pursuant to procedures outlined in California Labor Code section 2699.3.

30. PAGA defines an “aggrieved employee” in Labor Code section 2699(c) as “any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed.”

31. Plaintiff and other current and former employees of Defendants are “aggrieved employees” as defined by Labor Code section 2699(c) in that they are all Defendants’ current or former employees and one or more of the alleged violations were committed against them.

32. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved employee, including Plaintiff, may pursue a civil action arising under PAGA after the following requirements have been met:

- (a) The aggrieved employee or representative shall give written notice by online filing with the LWDA and by certified mail to the employer of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violation.
- (b) An aggrieved employee’s notice filed with the LWDA pursuant to 2699.3(a) and any employer response to that notice shall be accompanied by a filing fee of seventy-five dollars (\$75).
- (c) The LWDA shall notify the employer and the aggrieved employee or representative by certified mail that it does not intend to investigate the alleged violation (“LWDA’s Notice”) within sixty (60) calendar days of the postmark date of the aggrieved employee’s notice. Upon receipt of

1 the LWDA Notice, or if no LWDA Notice is provided within sixty-five
2 (65) calendar days of the postmark date of the aggrieved employee's
3 notice, the aggrieved employee may commence a civil action pursuant
4 to California Labor Code section 2699 to recover civil penalties.

5 33. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees,
6 through Plaintiff, may pursue a civil action arising under PAGA for violations of any
7 provision other than those listed in Section 2699.5 after the following requirements have been
8 met:

- 9 (a) The aggrieved employee or representative shall give written notice by
10 online filing with the LWDA and by certified mail to the employer of
11 the specific provisions of the California Labor Code alleged to have
12 been violated (other than those listed in Section 2699.5), including the
13 facts and theories to support the alleged violation.
- 14 (b) An aggrieved employee's notice filed with the LWDA pursuant to
15 2699.3(c) and any employer response to that notice shall be
16 accompanied by a filing fee of seventy-five dollars (\$75).
- 17 (c) The employer may cure the alleged violation within thirty-three (33)
18 calendar days of the postmark date of the notice sent by the aggrieved
19 employee or representative. The employer shall give written notice
20 within that period of time by certified mail to the aggrieved employee or
21 representative and by online filing with the LWDA if the alleged
22 violation is cured, including a description of actions taken, and no civil
23 action pursuant to Section 2699 may commence. If the alleged violation
24 is not cured within the 33-day period, the aggrieved employee may
25 commence a civil action pursuant to Section 2699.

26 34. On February 13, 2020, Plaintiff provided written notice by online filing to the
27 LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor
28 Code alleged to have been violated, including facts and theories to support the alleged

1 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
2 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
3 LWDA PAGA Administrator confirmed receipt of Plaintiff's written notice and assigned
4 Plaintiff PAGA Case Number LWDA-CM-772819-20. A true and correct copy of Plaintiff's
5 written notice to the LWDA and Defendants is attached hereto as "Exhibit 1."

6 35. As of the filing date of this complaint, over 65 days have passed since Plaintiff
7 sent the notice described above to the LWDA, and the LWDA has not responded that it
8 intends to investigate Plaintiff's claims and Defendants have not cured the violations.

9 36. Thus, Plaintiff has satisfied the administrative prerequisites under California
10 Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
11 violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512, 516,
12 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

13 37. Labor Code section 558(a) provides "[a]ny employer or other person acting on
14 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
15 provision regulating hours and days of work in any order of the Industrial Welfare
16 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
17 dollars (\$50) for each underpaid employee for each pay period for which the employee was
18 underpaid (2) For each subsequent violation, one hundred dollars (\$100) for each
19 underpaid employee for each pay period for which the employee was underpaid" Labor
20 Code section 558(c) provides "[t]he civil penalties provided for in this section are in addition
21 to any other civil or criminal penalty provided by law."

22 38. Defendants, at all times relevant to this complaint, were employers or persons
23 acting on behalf of an employer(s) who violated Plaintiff's and other aggrieved employees'
24 rights by violating various sections of the California Labor Code as set forth above.

25 39. As set forth below, Defendants have violated numerous provisions of both the
26 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage
27 Order.

28 40. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),

1 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiff, acting in the public interest as a
2 private attorney general, seeks assessment and collection of civil penalties for himself, all
3 other aggrieved employees, and the State of California against Defendants for violations of
4 California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512, 516, 1174(d),
5 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

6 **CLASS ACTION ALLEGATIONS**

7 41. Plaintiff brings this action on his own behalf, as well as on behalf of each and
8 all other persons similarly situated, and thus seeks class certification under California Code of
9 Civil Procedure section 382.

10 42. All claims alleged herein arise under California law for which Plaintiff seeks
11 relief authorized by California law.

12 43. Plaintiff's proposed class consists of and is defined as follows:

13 All persons who worked for Defendants as non-exempt, hourly
14 paid employees in California, within four years prior to the filing
of the initial complaint until the date of trial ("Class").

15 44. Plaintiff's proposed subclass consists of and is defined as follows:

16 All persons who worked for Defendants as non-exempt, hourly
17 paid employees in California and who received at least one wage
18 statement within one (1) year prior to the filing of the initial
complaint until the date of trial ("Subclass").

19 45. Members of the Class and Subclass are referred to herein as "class members."

20 46. Plaintiff reserves the right to redefine the Class and Subclass and to add
21 additional subclasses as appropriate based on further investigation, discovery, and specific
22 theories of liability.

23 47. There are common questions of law and fact as to class members that
24 predominate over questions affecting only individual members, including, but not limited to:

- 25 (a) Whether Defendants required Plaintiff and class members to work over
26 eight (8) hours per day, over twelve (12) hours per day, or over forty
27 (40) hours per week and failed to pay all legally required overtime
28 compensation to Plaintiff and class members;

- 1 (b) Whether Defendants failed to pay Plaintiff and class members at least
2 minimum wages for all hours worked;
- 3 (c) Whether Defendants failed to provide Plaintiff and class members with
4 meal periods;
- 5 (d) Whether Defendants failed to authorize and permit Plaintiff and class
6 members to take rest periods;
- 7 (e) Whether Defendants provided Plaintiff and class members with
8 complete and accurate wage statements as required by California Labor
9 Code section 226(a);
- 10 (f) Whether Defendants maintained accurate payroll records as required by
11 California Labor Code section 1174(d);
- 12 (g) Whether Defendants failed to pay earned overtime wages, minimum
13 wages, meal and rest period premiums, and reporting time pay due to
14 Plaintiff and class members upon their discharge;
- 15 (h) Whether Defendants failed timely to pay overtime wages, minimum
16 wages, meal and rest period premiums, and reporting time pay to
17 Plaintiff and class members during their employment;
- 18 (i) Whether Defendants required Plaintiff and class members to report to
19 work, but failed to provide them with work or provided them with less
20 than half their scheduled day's work, without properly compensating
21 them as required by California Code of Regulations, Title 8, section
22 11100, subsection 5;
- 23 (j) Whether Defendants failed to reimburse Plaintiff and class members for
24 necessary and required business-related expenditures and/or losses
25 incurred by them in the scope of their employment;
- 26 (k) Whether Defendants failed to provide written notice of information
27 material to Plaintiff's and class members' employment with Defendants;
- 28 (l) Whether Defendants engaged in unlawful and unfair business practices

1 in violation of California Business & Professions Code sections 17200,
2 *et seq.*; and

- 3 (m) The appropriate amount of damages, restitution, or monetary penalties
4 resulting from Defendants' violations of California law.

5 48. There is a well-defined community of interest in the litigation and the class
6 members are readily ascertainable:

- 7 (a) Numerosity: The class members are so numerous that joinder of all
8 members would be unfeasible and impractical. The membership of the
9 entire class is unknown to Plaintiff at this time; however, the class is
10 estimated to be greater than one hundred (100) individuals and the
11 identity of such membership is readily ascertainable by inspection of
12 Defendants' employment records.
- 13 (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately
14 protect the interests of each class member with whom he has a well-
15 defined community of interest, and Plaintiff's claims (or defenses, if
16 any) are typical of all class members as demonstrated herein.
- 17 (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately
18 protect the interests of each class member with whom he has a well-
19 defined community of interest and typicality of claims, as demonstrated
20 herein. Plaintiff acknowledges that he has an obligation to make known
21 to the Court any relationship, conflicts or differences with any class
22 member. Plaintiff's attorneys, the proposed class counsel, are versed in
23 the rules governing class action discovery, certification, and settlement.
24 Plaintiff has incurred, and throughout the duration of this action, will
25 continue to incur costs and attorneys' fees that have been, are, and will
26 be necessarily expended for the prosecution of this action for the
27 substantial benefit of each class member.
- 28 (d) Superiority: The nature of this action makes the use of class action

1 adjudication superior to other methods. A class action will achieve
2 economies of time, effort, and expense as compared with separate
3 lawsuits, and will avoid inconsistent outcomes because the same issues
4 can be adjudicated in the same manner and at the same time for the
5 entire class.

6 (e) Public Policy Considerations: Employers in the State of California
7 violate employment and labor laws every day. Current employees are
8 often afraid to assert their rights out of fear of direct or indirect
9 retaliation. Former employees are fearful of bringing actions because
10 they believe their former employers might damage their future
11 endeavors through negative references and/or other means. Class
12 actions provide the class members who are not named in the complaint
13 with a type of anonymity that allows for the vindication of their rights
14 while simultaneously protecting their privacy.

15 **FIRST CAUSE OF ACTION**

16 **Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime**

17 **(Against all Defendants)**

18 49. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
19 and every allegation set forth above.

20 50. Labor Code section 1198 makes it illegal to employ an employee under
21 conditions of labor that are prohibited by the applicable wage order. California Labor Code
22 section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall
23 be the . . . standard conditions of labor for employees. The employment of any employee . . .
24 under conditions of labor prohibited by the order is unlawful.”

25 51. California Labor Code section 1198 and the applicable IWC Wage Order
26 provide that it is unlawful to employ persons without compensating them at a rate of pay
27 either time-and-one-half or two-times that person’s regular rate of pay, depending on the
28 number of hours worked by the person on a daily or weekly basis.

1 52. Specifically, the applicable IWC Wage Order provides that Defendants are and
2 were required to pay Plaintiff and class members working more than eight (8) hours in a day
3 or more than forty (40) hours in a workweek, at the rate of time and one-half (1½) for all
4 hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a
5 workweek.

6 53. The applicable IWC Wage Order further provides that Defendants are and were
7 required to pay Plaintiff and class members working more than twelve (12) hours in a day,
8 overtime compensation at a rate of two (2) times their regular rate of pay. An employee's
9 regular rate of pay includes all remuneration for employment paid to, or on behalf of, the
10 employee, including shift differential pay, nondiscretionary bonuses, and incentive pay.

11 54. California Labor Code section 510 codifies the right to overtime compensation
12 at one and one-half (1½) times the regular rate of pay for hours worked in excess of eight (8)
13 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
14 seventh (7th) day of work, and to overtime compensation at twice the employee's regular rate
15 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
16 in a day on the seventh (7th) day of work.

17 55. During the relevant time period, Defendants willfully failed to pay all overtime
18 wages owed to Plaintiff and class members. During the relevant time period, Plaintiff and
19 class members were not paid overtime premiums for all of the hours they worked in excess of
20 eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40)
21 hours in a week, because all hours worked were not recorded.

22 56. First, during the relevant time period, Defendants had, and continue to have, a
23 company-wide and systemic policy and/or practice of rounding employees' total hours worked
24 down to the nearest quarter (0.25) of an hour. Defendants' rounding policies resulted in the
25 failure to compensate Plaintiff and class members for all hours worked, causing Plaintiff and
26 class members to not be paid overtime wages for all overtime hours they actually
27 worked. Upon information and belief, Defendants' timekeeping and rounding policies and/or
28 practices are, and continue to be, unfair and have, over time, resulted in the underpayment of

1 wages to Plaintiff and class members. To the extent Defendants' timekeeping and rounding
2 policies have taken away time worked that was eligible for overtime, Plaintiff and class
3 members were denied overtime pay for all hours worked.

4 57. Furthermore, Defendants engaged in a policy and/or practice of altering time
5 records at the discretion of management. For example, Defendants' management would adjust
6 Plaintiff's and class members' time records and delete time recorded past their scheduled
7 shifts to avoid having to pay overtime wages. As a result of Defendants' policy and/or
8 practice, Plaintiff and class members were not paid overtime for all overtime hours incurred.

9 58. Second, Defendants had, and continue to have, a company-wide policy and/or
10 practice of failing to compensate Plaintiff and class members for the time they spend donning
11 or doffing required uniforms. During the relevant time period, Plaintiff and class members
12 were required to wear and change into uniforms at the YMCA facility; however, Defendants
13 did not allow them to report time changing in and out of their uniforms as hours worked,
14 despite Plaintiff and class members being on Defendants' premises and under Defendants'
15 control. Specifically, Plaintiff and class members were instructed by Defendants to report to
16 work in their civilian clothes and to change into their uniforms in locker rooms prior to the
17 start of their shift and before they clocked in for their shift. Similarly, Defendants required
18 Plaintiff and class members to change out of their uniform back to civilian clothes after they
19 had clocked out at the end of their shift. As a result, when Plaintiff and class members arrived
20 to work, they were required to spend approximately five (5) minutes changing into their
21 uniforms before they were allowed to clock in for work. Similarly, when Plaintiff and class
22 members left at the end of their shift, they were required to spend approximately five (5)
23 minutes changing out of their uniforms after they clocked out. As a result, Defendants
24 suffered and/or permitted Plaintiff and class members to perform work for which they were
25 not paid.

26 59. Third, during the relevant time period, Defendants required Plaintiff and class
27 members to complete online training modules from home, but did not compensate them for
28 their actual hours spent completing the online training modules. Instead, Defendants'

1 management came up with arbitrary time limitations for completing the modules and paid
2 Plaintiff and class members for the time they believed it should take to the complete the
3 requisite training, rather than the actual time Plaintiff and class members spent completing the
4 training. For example, Plaintiff spent approximately 18 hours over the course of three (3)
5 days completing Defendants' requisite online training modules, but was not paid for all of this
6 time. Defendants also engaged in a practice of sending text messages to Plaintiff and class
7 members regarding work-related events and tasks on their off-days and/or when they were off-
8 the-clock. Defendants did not compensate Plaintiff and class members for their time spent
9 responding to Defendants' work-related communications while off-the-clock.

10 60. Fourth, during the relevant period, Defendants had, and continue to have, a
11 company-wide policy and/or practice of understaffing their facilities, which resulted in a
12 failure to provide Plaintiff and class members with adequate meal period coverage. As a
13 result of this lack of meal period coverage, Plaintiff and class members were not always
14 afforded uninterrupted 30-minute meal periods during shifts when they were entitled to
15 receive a meal period. For example, Plaintiff and class members were required to perform
16 their duties, such as continuing to monitor swimmers and attending to club members, during
17 unpaid meal periods, or would have their meal periods interrupted to complete such work-
18 related tasks. Thus, Plaintiff and class members missed or had meal periods interrupted in
19 order to complete their assigned workloads. Defendants did not pay Plaintiff and class
20 members for the time they continued to perform tasks during meal periods.

21 61. Fifth, Defendants, on a company-wide basis, had a practice of failing to
22 schedule meal periods, which further caused Plaintiff and class members to not be relieved of
23 their duties for compliant meal periods. As a result of these policies and/or practices, Plaintiff
24 and class members were required to work through part or all of their meal periods, in order to
25 complete their assigned tasks. Thus, Plaintiff and class members performed work during meal
26 periods for which they were not paid.

27 62. Defendants knew or should have known that as a result of these company-wide
28 practices and/or policies, Plaintiff and class members were performing assigned duties during

1 their meal periods and performing work off-the-clock before or after their shifts, and were
2 suffered or permitted to perform work for which they were not paid. Because Plaintiff and
3 class members worked shifts of eight (8) hours a day or more or forty (40) hours a week or
4 more, some of this off-the-clock work qualified for overtime premium pay. Therefore,
5 Plaintiff and class members were not paid overtime wages for all of the overtime hours they
6 actually worked.

7 63. Defendants' failure to pay Plaintiff and class members the balance of overtime
8 compensation as required by California law, violates the provisions of California Labor Code
9 sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiff and class
10 members are entitled to recover their unpaid overtime compensation, as well as interest, costs,
11 and attorneys' fees.

12 **SECOND CAUSE OF ACTION**

13 **Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid** 14 **Minimum Wages** 15 **(Against all Defendants)**

16 64. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
17 and every allegation set forth above.

18 65. At all relevant times, California Labor Code sections 1182.12, 1194, 1197,
19 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the
20 minimum wage to be paid to employees, and the payment of a wage less than the minimum so
21 fixed is unlawful. Compensable work time is defined in Wage Order No. 10 as "the time
22 during which an employee is subject to the control of an employer, and includes all the time
23 the employee is suffered or permitted to work, whether or not required to do so." Cal. Code.
24 Regs. tit. 8, § 11100(2)(H) (defining "Hours Worked").

25 66. As set forth above, Defendants had a policy of rounding employee's hours
26 down to the nearest quarter (0.25) of an hour, resulting in the failure to compensate Plaintiff
27 and class members for all hours worked. As also stated, Defendants engaged in a company-
28 wide practice and/or policy of shaving employee time records to avoid the payment of

1 overtime wages to Plaintiff and class members. Further, as stated above, Defendants had a
2 policy of failing to compensate Plaintiff and class members for their time spent donning and
3 doffing their required uniforms.

4 67. Moreover, Plaintiff and class members were required to perform work off-the-
5 clock before or after their shifts by completing online training modules or responding to work-
6 related calls and text messages from Defendants' management, time for which they were not
7 paid. And, as stated above, due to Defendants' policy and/or practice of understaffing their
8 facilities and failure to schedule meal periods, Plaintiff and class members were forced to
9 forego meal periods, have their meal periods interrupted, and/or were otherwise not relieved
10 of all duties during meal periods.

11 68. Defendants did not pay minimum wages for off-the-clock hours that Plaintiff
12 and class members worked through that qualified for overtime premium payment. To the
13 extent that these off-the-clock hours did not qualify for overtime premium payment,
14 Defendants did not pay at least minimum wages for those hours worked off-the-clock in
15 violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

16 69. Defendants' failure to pay Plaintiff and class members minimum wages violates
17 California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to
18 California Labor Code section 1194.2, Plaintiff and class members are entitled to recover
19 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

20 **THIRD CAUSE OF ACTION**

21 **Violations of California Labor Code, §§ 226.7, 512(a), 516, and 1198—Meal Period**

22 **Violations**

23 **(Against all Defendants)**

24 70. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
25 and every allegation set forth above.

26 71. At all relevant times herein set forth, California Labor Code section 512(a)
27 provides that an employer may not require, cause, or permit an employee to work for a period
28 of more than five (5) hours per day without providing the employee with a meal period of not

1 less than thirty (30) minutes, except that if the total work period per day of the employee is
2 not more than six (6) hours, the meal period may be waived by mutual consent of both the
3 employer and the employee. Under California law, first meal periods must start after no more
4 than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal.
5 2012).

6 72. At all relevant times herein set forth, California Labor Code sections 226.7,
7 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
8 meal period mandated by an applicable order of the IWC.

9 73. At all relevant times herein set forth, Labor Code sections 226.7 and 512(a) and
10 the applicable IWC Wage Order also require employers to provide a second meal period of
11 not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an
12 employee one (1) additional hour of pay at the employee's regular rate, except that if the total
13 hours worked is no more than twelve (12) hours, the second meal period may be waived by
14 mutual consent of the employer and the employee only if the first meal period was not waived.

15 74. During the relevant time period, Defendants had, and continue to have, a
16 company-wide policy and/or practice of understaffing their facilities to save on labor costs.
17 Due to Defendants' understaffing of their facilities, Plaintiff and class members were not
18 provided adequate meal period coverage to take all timely, uninterrupted 30-minute meal
19 periods to which they were entitled. Thus, Plaintiff and class members were required to
20 continue performing their duties during unpaid meal periods, including monitoring swimmer
21 safety and attending to members and visitors. During Plaintiff's employment at both
22 Defendants' Central and Northwest locations, Plaintiff missed his meal periods when the
23 facility was busy with members and visitors because there were no other employees available
24 to relieve him of his duties for a meal period.

25 75. Additionally, as stated, Defendants had a company-wide practice of failing to
26 schedule meal periods, which further caused Plaintiff and class members to not be relieved of
27 their duties for compliant meal periods. During his employment at both Defendants' Central
28 and Northwest locations, Plaintiff was not provided with meal periods until after working

1 more than five (5) hours into his shift. At times, Defendants did not provide Plaintiff with a
2 meal period until after he had worked seven (7) hours into his shift.

3 76. Defendants' understaffing of their facilities, coupled with Defendants' failure
4 to schedule of meal periods, prevented Plaintiff and class members from taking all compliant
5 meal periods to which they were entitled. As a result, Plaintiff and class members were forced
6 to work in excess of five (5) hours before taking a meal period and, at times, had their meal
7 periods interrupted and/or had to forgo their meal periods altogether.

8 77. Moreover, during the relevant time period, Plaintiff and class members worked
9 shifts in excess of ten (10) hours without receiving an uninterrupted second 30-minute meal
10 period. For example, Plaintiff was not provided his second meal period when he worked
11 shifts in excess of ten (10) hours. Plaintiff and class members did not sign valid meal period
12 waivers on days that they were entitled to meal periods and were not relieved of all duties.

13 78. At all times herein mentioned, Defendants knew or should have known that, as
14 a result of these policies, Plaintiff and class members were prevented from being relieved of
15 all duties and required to perform some of their assigned duties during meal periods.
16 Defendants further knew or should have known that Defendants did not pay Plaintiff and class
17 members meal period premium wages when meal periods were late, interrupted, shortened, or
18 missed.

19 79. Moreover, Defendants engaged in a company-wide practice and/or policy of
20 not paying all meal period premiums owed when compliant meal periods are not provided.
21 Because of Defendants' practices and/or policies, Plaintiff and class members have not
22 received premium pay for all missed, late, and interrupted meal periods.

23 80. Defendants' conduct violates the applicable IWC Wage Order, and California
24 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and class members are therefore
25 entitled to recover from Defendants one (1) additional hour of pay at the employee's regular
26 rate of compensation for each work day that the meal period was not provided.

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FOURTH CAUSE OF ACTION
Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations
(Against all Defendants)

81. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

82. At all relevant times herein set forth, the applicable IWC Wage Order and California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff and class members’ employment by Defendants.

83. At all relevant times, the applicable IWC Wage Order provides that “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period” and that the “rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof” unless the total daily work time is less than three and one-half (3½) hours.

84. At all relevant times, California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must “relinquish any control over how employees spend their break time, and relieve their employees of all duties — including the obligation that an employee remain on call. A rest period, in short, must be a period of rest.” *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016). Pursuant to the applicable IWC Wage Order and California Labor Code section 226.7(b), Plaintiff and class members are entitled to recover from Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a required rest period was not authorized and permitted.

85. During the relevant time period, Defendants regularly failed to authorize and permit Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. Similar to meal periods, Defendants had no policy in

1 place for scheduling rest periods for Plaintiff and class members and failed to provide them
2 with adequate rest period coverage. As a result of Defendants' practices and policies, Plaintiff
3 and class members worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess
4 of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were
5 entitled.

6 86. For example, during his employment, Plaintiff was at times only authorized and
7 permitted by Defendants to take one (1) ten-minute rest period in an 8-hour shift. Other times,
8 Plaintiff had his rest periods interrupted, due to Defendants' understaffing and resultant lack
9 of rest period coverage that forced him to continue to perform his duties. Moreover, Plaintiff
10 and class members were assigned company-issued radios and were expected to carry and keep
11 them on while clocked in for their shifts, including during rest periods.

12 87. Furthermore, upon information and belief, during the relevant time period,
13 Defendants maintained implemented a company-wide on-premises rest period policy, which
14 mandated that Plaintiff and class members remain on Defendants' premises during their rest
15 periods. Upon information and belief, Defendants' company-wide on-premises rest period
16 policy prevented Plaintiff and class members from being relieved of all duties for rest periods
17 and caused them to perform work during rest periods.

18 88. Defendants have also engaged in a systematic, company-wide practice and/or
19 policy of not paying rest period premiums owed when rest periods are not authorized and
20 permitted. As a result, Defendants denied Plaintiff and class members rest periods and failed
21 to pay them rest period premium wages due, in violation of Labor Code section 226.7 and the
22 applicable IWC Wage Order.

23 89. Defendants' conduct violates the applicable IWC Wage Order and California
24 Labor Code sections 226.7, 516, and 1198. Plaintiff and class members are therefore entitled
25 to recover from Defendants one (1) additional hour of pay at the employee's regular rate of
26 compensation for each work day that a compliant rest period was not authorized and
27 permitted.

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1 **FIFTH CAUSE OF ACTION**

2 **Violation of California Labor Code §§ 226(a), 1174(d), and 1198—Non-Compliant Wage**
3 **Statements and Failure to Maintain Accurate Payroll Records**
4 **(Against all Defendants)**

5 90. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
6 and every allegation set forth above.

7 91. At all relevant times herein set forth, California Labor Code section 226(a)
8 provides that every employer shall furnish each of his or her employees an accurate and
9 complete itemized wage statement in writing, including, but not limited to, the name and
10 address of the legal entity that is the employer, the inclusive dates of the pay period, total
11 hours worked, and all applicable rates of pay.

12 92. At all relevant times, Defendants have knowingly and intentionally provided
13 Plaintiff and Subclass members with uniform, incomplete, and inaccurate wage statements.
14 For example, Defendants issued uniform wage statements to Plaintiff and Subclass members
15 that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all
16 applicable hourly rates in effect during the pay period, including overtime rates of pay, and
17 the corresponding number of hours worked at each hourly rate. Specifically, Defendants
18 violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

19 93. Because Defendants did not record the time Plaintiff and Subclass members
20 spent working off the clock and improperly rounded Plaintiff's and Subclass members' total
21 hours worked, Defendants did not list the correct amount of gross wages and net wages earned
22 by Plaintiff and Subclass members in compliance with section 226(a)(1) and 226(a)(5). For
23 the same reason, Defendants failed to accurately list the total number of hours worked by
24 Plaintiff and Subclass members in violation of section 226(a)(2), and failed to list the
25 applicable hourly rates of pay in effect during the pay period and corresponding accurate
26 number of work hours worked at each hourly rate in violation of section 226(a)(9).

27 94. The wage statement deficiencies also include, without limitation, failing to list
28 the number of piece-rate units earned and any applicable piece rate if the employee is paid on

1 a piece-rate basis; failing to list all deductions; failing to list the name of the employee and
2 only the last four digits of his or her social security number or an employee identification
3 number other than a social security number; failing to list the name and address of the legal
4 entity that is the employer; failing to list the inclusive dates of the period for which class
5 members were paid; and/or failing to state all hours worked as a result of not recording or
6 stating hours worked off-the-clock.

7 95. California Labor Code section 1198 provides that the maximum hours of work
8 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
9 set forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he
10 employment of any employees for longer hours than those fixed by the order or under
11 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
12 Wage Order, employers are required to keep accurate time records showing when the
13 employee begins and ends each work period and meal period. During the relevant time
14 period, Defendants failed, on a company-wide basis, to keep accurate records of work period
15 and meal period start and stop times for Plaintiff and class members, in violation of section
16 1198. Furthermore, in light of Defendants’ failure to provide Plaintiff and Subclass members
17 with timely, compliant second 30-minute meal periods to which they were entitled,
18 Defendants kept inaccurate and/or incomplete records of start and end times for second meal
19 periods.

20 96. California Labor Code section 1174(d) provides that “[e]very person employing
21 labor in this state shall ... [k]eep a record showing the names and addresses of all employees
22 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
23 plants or establishments at which employees are employed, payroll records showing the hours
24 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
25 applicable piece rate paid to, employees employed at the respective plants or establishments . .
26 . .” At all relevant times, and in violation of Labor Code section 1174(d), Defendants
27 willfully failed to maintain accurate payroll records for Plaintiff and Subclass members
28 showing the daily hours they worked and the wages paid thereto as a result of failing to record

1 the off-the-clock hours that they worked and improperly rounding Plaintiff's and Subclass
2 members' total hours worked.

3 97. Plaintiff and Subclass members are entitled to recover from Defendants the
4 greater of their actual damages caused by Defendants' failure to comply with California Labor
5 Code section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per
6 employee.

7 **SIXTH CAUSE OF ACTION**

8 **Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid**

9 **Upon Termination**

10 **(Against all Defendants)**

11 98. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
12 and every allegation set forth above.

13 99. This cause of action is dependent upon, and wholly derivative of, the overtime
14 wages, minimum wages, meal and rest period premium wages, and/or reporting time pay, that
15 were not timely paid to Plaintiff and those class members no longer employed by Defendants
16 upon their termination.

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

24 101. Defendants willfully failed to pay Plaintiff and class members who are no
25 longer employed by Defendants the earned and unpaid wages set forth above, including but
26 not limited to, overtime wages, minimum wages, meal and rest period premium wages, and/or
27 reporting time pay, either at the time of discharge, or within seventy-two (72) hours of their
28 leaving Defendants' employ.

1 102. Defendants' failure to pay Plaintiff and class members who are no longer
2 employed by Defendants their wages earned and unpaid at the time of discharge, or within
3 seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201
4 and 202. Plaintiff and class members are therefore entitled to recover from Defendants the
5 statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a
6 thirty (30) day maximum pursuant to California Labor Code section 203.

7 **SEVENTH CAUSE OF ACTION**

8 **Violation of California Labor Code § 204—Failure to Timely Pay Wages During**
9 **Employment**

10 **(Against all Defendants)**

11 103. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
12 and every allegation set forth above.

13 104. This cause of action is dependent upon, and wholly derivative of, the overtime
14 wages, minimum wages, meal and rest period premium wages, and/or reporting time pay, that
15 were not timely paid to Plaintiff and those class members by Defendants during their
16 employment.

17 105. At all times relevant herein set forth, Labor Code section 204 provides that all
18 wages earned by any person in any employment between the first (1st) and the fifteenth (15th)
19 days, inclusive, of any calendar month, other than those wages due upon termination of an
20 employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of
21 the month during which the labor was performed.

22 106. At all times relevant herein, Labor Code section 204 provides that all wages
23 earned by any person in any employment between the sixteenth (16th) and the last day,
24 inclusive, of any calendar month, other than those wages due upon termination of an
25 employee, are due and payable between the first (1st) and the tenth (10th) day of the following
26 month.

27 107. At all times relevant herein, Labor Code section 204 provides that all wages
28 earned for labor in excess of the normal work period shall be paid no later than the payday for

1 the next regular payroll period. Alternatively, at all times relevant herein, Labor Code section
2 204 provides that the requirements of this section are deemed satisfied by the payment of
3 wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than
4 seven (7) calendar days following the close of the payroll period.

5 108. During the relevant time period, Defendants willfully failed to pay Plaintiff and
6 class members all wages due including, but not limited to, overtime wages, minimum wages,
7 meal and rest period premium wages, and/or reporting time pay, within the time periods
8 specified by California Labor Code section 204.

9 109. Defendants' failure to pay Plaintiff and class members all wages due violates
10 Labor Code section 204. Plaintiff and class members are therefore entitled to recover from
11 Defendants the statutory penalty wages pursuant to California Labor Code section 210.

12 **EIGHTH CAUSE OF ACTION**

13 **Violation of Labor Code § 1198 and California Code of Regulations Title 8, Section** 14 **11100 Subdivision 5(A)—Failure to Provide Reporting Time Pay** 15 **(Against all Defendants)**

16 110. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
17 and every allegation set forth above.

18 111. California Labor Code section 1198 dictates that no employer may employ an
19 employee under conditions of labor that are prohibited by the applicable IWC wage order.
20 California Labor Code section 1198 further requires that “. . . the standard conditions of labor
21 fixed by the commission shall be the . . . standard conditions of labor for employees. The
22 employment of any employee . . . under conditions of labor prohibited by the order is
23 unlawful.”

24 112. The applicable IWC wage order, California Code of Regulations, Title 8,
25 section 11100(5)(A), provides that “[e]ach workday an employee is required to report for
26 work and does report, but is not put to work or is furnished less than half said employee’s
27 usual or scheduled day’s work, the employee shall be paid for half the usual or scheduled
28 day’s work, but in no event for less than two (2) hours nor more than four (4) hours, at the

1 employee's regular rate of pay, which shall not be less than the minimum wage."

2 113. During the relevant time period, Defendants violated California Labor Code
3 section 1198 and California Code of Regulations, Title 8, section 11100(5)(A), because
4 Defendants failed to pay Plaintiff and class members reporting time pay when they reported to
5 work for their scheduled shift but were put to work for less than half of the regularly
6 scheduled day's work.

7 114. Defendants had a company-wide practice of sending Plaintiff and class
8 members home early from their shifts, including before they had worked at least half of their
9 regular shift, but would not pay Plaintiff and class members for half of their scheduled shift,
10 due to Defendants' labor budget. For example, Plaintiff would report to work, but would be
11 sent home just one (1) hour into his shift by Defendants' management for what Defendants'
12 management stated was "for the better of the YMCA." Although Plaintiff and class members
13 would report to work based on the schedule that Defendants provided to them, Defendants
14 would send them home before they had worked at least half of their scheduled shifts without
15 giving them reporting time pay. During his employment, Plaintiff was sent home early before
16 working at least half of his scheduled shift, at times once per week, and sometimes as often as
17 4-5 times per week. Defendants did not pay Plaintiff and class members reporting time pay
18 when this occurred.

19 115. Accordingly, Plaintiff and class members were not properly compensated with
20 reporting time pay in violation of California Labor Code section 1198.

21 **NINTH CAUSE OF ACTION**

22 **Violation of California Labor Code § 2802—Unpaid Business-Related Expenses** 23 **(Against all Defendants)**

24 116. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
25 and every allegation set forth above.

26 117. At all times herein set forth, California Labor Code section 2802 provides that
27 an employer must reimburse employees for all necessary expenditures and losses incurred by
28 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is

1 to prevent employers from passing off their cost of doing business and operating expenses on
2 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
3 (2014). The applicable wage order, IWC Wage Order 10-2001, provides that: "[w]hen tools
4 or equipment are required by the employer or are necessary to the performance of a job, such
5 tools and equipment shall be provided and maintained by the employer, except that an
6 employee whose wages are at least two (2) times the minimum wage provided herein may be
7 required to provide and maintain hand tools and equipment customarily required by the trade
8 or craft."

9 118. First, during the relevant time period, Defendants had a company-wide policy
10 of requiring Plaintiff and class members to utilize their own personal cellular phones and
11 cellular data to carry out their job duties, but Defendants failed to reimburse them for the costs
12 of their work-related cellular phone expenses. Plaintiff and class members were required to
13 use their personal cellular phones to complete their work-related tasks, such as clocking in and
14 out of their shifts utilizing Defendants' electronic timekeeping system. Plaintiff and class
15 members were instructed by Defendants to download the ADP mobile application in order to
16 clock themselves in and out for their work shifts. Plaintiff and class members followed
17 Defendants' instructions and used their personal cellular phones for clock-in and clock-out
18 purposes. However, Defendants did not reimburse Plaintiff and class members for their data
19 usage associated with using the ADP mobile application to record their time.

20 119. Further, Defendants' management also sent text messages to Plaintiff's and
21 class members' personal cellular phones to discuss work events, training, and other work-
22 related matters. Moreover, Defendants also required Plaintiff and other class members to use
23 their personal cellular phones to document and photograph pool contamination issues and to
24 text these photographs to Defendants' management, who would authorize pool closures.
25 Although Defendants required Plaintiff and class members to utilize their personal cellular
26 phones to carry out their work-related responsibilities, Defendants failed to reimburse them
27 for this cost.

28 120. Second, Defendants, on a company-wide basis, expected Plaintiff and class

1 members wear clean uniforms while at work, and required them to wear uniforms bearing
2 Defendants' logo on a daily basis, but only provided them two (2) red t-shirts bearing the
3 "YMCA" logo at the beginning of their employment. Because Defendants failed to provide
4 Plaintiff and class members with an adequate number of uniforms in relation to their
5 scheduled shifts, Plaintiff and class members had to wash their company shirts more
6 frequently than they would otherwise do laundry and incurred expenses in doing so. For
7 example, because Plaintiff was required to sit in the sun throughout his shift, he would
8 perspire, and his uniform would get dirty each shift. He typically worked 3-4 days per week,
9 and so the two (2) t-shirts provided were insufficient to get him through the week without
10 Plaintiff having to do an extra load of laundry.

11 121. Defendants could have provided Plaintiff and class members with the actual
12 tools for use on the job, such as company phones used for fulfilling work-related tasks and
13 with an adequate number of uniform t-shirts and/or access to a laundry or cleaning service.
14 Or, Defendants could have reimbursed employees for the costs of their cellular phone
15 expenses and laundering their uniforms. Instead, Defendants passed these operating costs off
16 onto Plaintiff and class members. At all relevant times, Plaintiff did not earn at least two (2)
17 times the minimum wage.

18 122. Defendants' company-wide policy and/or practice of passing on their operating
19 costs to Plaintiff and class members violates California Labor Code section 2802. Defendants
20 have intentionally and willfully failed to reimburse Plaintiff and other class members for
21 necessary business-related expenses and costs.

22 123. Plaintiff and class members are entitled to recover from Defendants their
23 business-related expenses incurred during the course and scope of their employment, plus
24 interest.

25 **TENTH CAUSE OF ACTION**

26 **For Civil Penalties Pursuant to California Labor Code §§ 2698, *et seq.***

27 **(Against all Defendants)**

28 124. Plaintiff incorporates by reference and re-alleges as if fully stated herein each

1 and every allegation set forth above.

2 125. California Labor Code §§ 2698, et seq. (“PAGA”) permits Plaintiff to recover
3 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
4 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 226(a),
5 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Labor Code section
6 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil penalties for
7 violations of those Labor Code sections not found in section 2699.5, including sections 516,
8 1182.12, and 2810.5.

9 126. Defendants’ conduct, as alleged herein, violates numerous sections of the
10 California Labor Code, including, but not limited to, the following:

- 11 (a) Violation of Labor Code sections 510, 1198, and the applicable IWC
12 wage order for Defendants’ failure to compensate Plaintiff and other
13 aggrieved employees with all required overtime, as alleged herein;
- 14 (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, 1198,
15 and the applicable IWC wage order for Defendants’ failure to
16 compensate Plaintiff and other aggrieved employees with at least
17 minimum wages for all hours worked, as alleged herein;
- 18 (c) Violation of Labor Code sections 226.7, 512, 516, 1198, and the
19 applicable IWC wage order for Defendants’ failure to provide Plaintiff
20 and other aggrieved employees with meal periods, as alleged herein;
- 21 (d) Violation of Labor Code sections 226.7, 516, 1198, and the applicable
22 IWC wage order for Defendants’ failure to authorize and permit
23 Plaintiff and other aggrieved employees to take rest periods, as alleged
24 herein;
- 25 (e) Violation of Labor Code sections 226(a), 1198, and the applicable IWC
26 wage order for failure to provide accurate and complete wage statements
27 to Plaintiff and other aggrieved employees, as alleged herein;
- 28 (f) Violation of Labor Code sections 1174(d), 1198, and the applicable

IWC wage order for failure to maintain payroll records as alleged herein;

(g) Violation of Labor Code sections 201, 202, and 203 for failure to pay all earned wages upon termination as alleged herein;

(h) Violation of Labor Code section 204 for failure to pay all earned wages during employment, as alleged herein;

(i) Violation of Labor Code section 1198 and the applicable IWC wage order for failure to pay reporting time pay when Plaintiff and other aggrieved employees were put to work for less than half of their regular scheduled shifts, as alleged herein;

(j) Violation of Labor Code section 2802 for failure to reimburse Plaintiff and other aggrieved employees for all business expenses necessarily incurred, as alleged herein; and

(k) Violation of Labor Code section 2810.5(a)(1)(A)-(C) for failure to provide written notice of information material to Plaintiff's and other non-party Aggrieved Employees' employment with Defendants, as set forth below.

127. California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees containing basic and material payroll information, including, among other things, the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Labor Code section 2810.5(a)(1)(A)-(C).

1 128. During the relevant time period, Defendants failed to provide Plaintiff and
2 other aggrieved employees with written notice that lists all the requisite information set forth
3 in Labor Code section 2810.5(a)(1)(A)-(C).

4 129. Defendants' failure to provide Plaintiff and other aggrieved employees with
5 written notice of basic information regarding their employment with Defendants is in violation
6 of Labor Code section 2810.5. Plaintiff and other aggrieved employees are therefore entitled
7 to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

8 **ELEVENTH CAUSE OF ACTION**

9 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

10 **Unlawful Business Practices**

11 **(Against all Defendants)**

12 130. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
13 and every allegation set forth above.

14 131. Defendants are "persons" as defined by California Business & Professions
15 Code sections 17201, as they are corporations, firms, partnerships, joint stock companies,
16 and/or associations.

17 132. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
18 unlawful and harmful to Plaintiff, class members, and to the general public. Plaintiff has
19 suffered injury in fact and has lost money as a result of Defendants' unlawful business
20 practices. Plaintiff seeks to enforce important rights affecting the public interest within the
21 meaning of Code of Civil Procedure section 1021.5.

22 133. Defendants' activities, as alleged herein, are violations of California law, and
23 constitute unlawful business acts and practices in violation of California Business &
24 Professions Code sections 17200, *et seq.*

25 134. A violation of California Business & Professions Code sections 17200, *et seq.*
26 may be predicated on the violation of any state or federal law. In the instant case, Defendants'
27 policies and practices have violated state law in at least the following respects:

28 (a) Requiring non-exempt, hourly paid employees, including Plaintiff and

1 class members, to work overtime without paying them proper
2 compensation in violation of California Labor Code sections 510 and
3 1198 and the applicable IWC Order, as alleged herein;

4 (b) Failing to pay at least minimum wage to Plaintiff and class members in
5 violation of California Labor Code sections 1182.12, 1194, 1197,
6 1197.1, and 1198 and the applicable IWC Order, as alleged herein;

7 (c) Failing to provide uninterrupted meal periods to Plaintiff and class
8 members in violation of California Labor Code sections 226.7, 512(a),
9 516, 1198, and the applicable IWC Order, as alleged herein;

10 (d) Failing to authorize and permit Plaintiff and class members to take
11 uninterrupted rest periods in violation of California Labor Code sections
12 226.7, 516, 1198, and the applicable IWC Order, as alleged herein;

13 (e) Failing to provide Plaintiff and class members with accurate wage
14 statements and failing to maintain accurate payroll records in violation
15 of California Labor Code sections 226(a), 1174(d), 1198, and the
16 applicable IWC Order, as alleged herein;

17 (f) Failing timely to pay all earned wages to Plaintiff and class members in
18 violation of California Labor Code section 204 and the applicable IWC
19 Order, as alleged herein;

20 (g) Failing to pay reporting time pay in violation of California Labor Code
21 section 1198 and the applicable Industrial Welfare Commission Order,
22 as alleged herein;

23 (h) Failing to reimburse Plaintiff and class members for all business
24 expenses necessarily incurred in violation of California Labor Code
25 sections 2802, as alleged herein; and

26 (i) Failing to provide written notice of information material to Plaintiff's
27 and class members' employment with Defendants in violation of Labor
28 Code section 2810.5(a)(1)(A)-(C), as set forth below.

135. California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees containing basic and material payroll information, including, among other things, the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Labor Code section 2810.5(a)(1)(A)-(C).

136. Defendants failed to provide Plaintiff and class members written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). Defendants' failure to provide Plaintiff and class members with written notice of basic information regarding their employment with Defendants is in violation of Labor Code section 2810.5.

137. As a result of the violations of California law herein described, Defendants unlawfully gained an unfair advantage over other businesses. Plaintiff and class members have suffered pecuniary loss by Defendants' unlawful business acts and practices alleged herein.

138. Pursuant to California Business & Professions Code sections 17200 *et seq.*, Plaintiff and class members are entitled to restitution of the wages withheld and retained by Defendants during a period that commences four years prior to the filing of this complaint; a permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and class members; and an award of attorneys' fees pursuant to California Code of Civil Procedure section 1021.5 and other applicable laws; and an award of costs.

TWELFETH CAUSE OF ACTION

Violation of California Business & Professions Code §§ 17200, *et seq.* –

Unfair Business Practices

(Against all Defendants)

139. Plaintiff incorporates by reference and re-alleges as if fully stated herein each

1 and every allegation set forth above.

2 140. Defendants are “persons” as defined by California Business & Professions
3 Code sections 17201, as they are corporations, firms, partnerships, joint stock companies,
4 and/or associations.

5 141. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair,
6 and harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered
7 injury in fact and has lost money as a result of Defendants’ unfair business practices. Plaintiff
8 seeks to enforce important rights affecting the public interest within the meaning of Code of
9 Civil Procedure section 1021.5.

10 142. Defendants’ activities, namely Defendants’ company-wide practice and/or
11 policy of not paying Plaintiff and class members all meal and rest period premium wages due
12 to them under Labor Code section 226.7, deprived Plaintiff and class members of the
13 compensation guarantee and enhanced enforcement implemented by section 226.7. The
14 statutory remedy provided by section 226.7 is a “‘dual-purpose’ remedy intended primarily to
15 compensate employees, and secondarily to shape employer conduct. *Safeway, Inc. v. Superior*
16 *Court*, 238 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7 were
17 guaranteed to Plaintiff and class members as part of their employment with Defendants, and
18 thus Defendants’ practice and/or policy of denying these statutory benefits constitutes an
19 unfair business practice in violation of California Business & Professions Code sections
20 17200, *et seq.* (Id.)

21 143. A violation of California Business & Professions Code sections 17200, *et seq.*
22 may be predicated on any unfair business practice. In the instant case, Defendants’ policies
23 and practices have violated the spirit of California’s meal and rest break laws and constitute
24 acts against the public policy behind these laws.

25 144. Pursuant to California Business & Professions Code sections 17200 *et seq.*,
26 Plaintiff and class members are entitled to restitution for the class-wide loss of the statutory
27 benefits implemented by section 226.7 withheld and retained by Defendants during a period
28 that commences four years prior to the filing of this complaint; a permanent injunction

1 requiring Defendants to pay all statutory benefits implemented by section 226.7 due to
2 Plaintiff and class members; an award of attorneys' fees pursuant to California Code of Civil
3 Procedure section 1021.5 and other applicable laws; and an award of costs.

4 **REQUEST FOR JURY TRIAL**

5 Plaintiff requests a trial by jury.

6 **PRAYER FOR RELIEF**

7 Plaintiff, on behalf of all others similarly situated, prays for relief and judgment
8 against Defendants, jointly and severally, as follows:

9 1. For damages, unpaid wages, penalties, injunctive relief, and attorneys' fees in
10 excess of twenty-five thousand dollars (\$25,000), exclusive of interest and costs. Plaintiff
11 reserves the right to amend his prayer for relief to seek a different amount.

12 **Class Certification**

13 2. That this case be certified as a class action;

14 3. That Plaintiff be appointed as the representative of the Class and Subclass;

15 4. That counsel for Plaintiff be appointed as class counsel.

16 **As to the First Cause of Action**

17 5. That the Court declare, adjudge, and decree that Defendants violated California
18 Labor Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to
19 pay all overtime wages due to Plaintiff and class members;

20 6. For general unpaid wages at overtime wage rates and such general and special
21 damages as may be appropriate;

22 7. For pre-judgment interest on any unpaid overtime compensation commencing
23 from the date such amounts were due, or as otherwise provided by law;

24 8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
25 California Labor Code section 1194(a); and

26 9. For such other and further relief as the Court may deem equitable and
27 appropriate.

28 **As to the Second Cause of Action**

1 10. That the Court declare, adjudge and decree that Defendants violated California
2 Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 by willfully failing to pay
3 minimum wages to Plaintiff and class members;

4 11. For general unpaid wages and such general and special damages as may be
5 appropriate;

6 12. For pre-judgment interest on any unpaid compensation from the date such
7 amounts were due, or as otherwise provided by law;

8 13. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
9 California Labor Code section 1194(a);

10 14. For liquidated damages pursuant to California Labor Code section 1194.2; and

11 15. For such other and further relief as the Court may deem equitable and
12 appropriate.

13 **As to the Third Cause of Action**

14 16. That the Court declare, adjudge, and decree that Defendants violated California
15 Labor Code sections 226.7, 512(a), 516, and 1198 and applicable IWC Wage Order(s) by
16 willfully failing to provide all meal periods to Plaintiff and class members;

17 17. That the Court make an award to the Plaintiff and class members of one (1)
18 hour of pay at each employee's regular rate of pay for each workday that a meal period was
19 not provided;

20 18. For all actual, consequential, and incidental losses and damages, according to
21 proof;

22 19. For premiums pursuant to California Labor Code section 226.7(b);

23 20. For pre-judgment interest on any unpaid meal period premiums from the date
24 such amounts were due, or as otherwise provided by law;

25 21. For attorneys' fees pursuant to California Code of Civil Procedure section
26 1021.5, or as otherwise provided by law; and

27 22. For such other and further relief as the Court may deem equitable and
28 appropriate.

As to the Fourth Cause of Action

23. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7, 516, and 1198 and applicable IWC Wage Orders by willfully failing to authorize and permit Plaintiff and class members to take all rest periods;

24. That the Court make an award to the Plaintiff and class members of one (1) hour of pay at each employee's regular rate of pay for each workday that a rest period was not authorized and permitted;

25. For all actual, consequential, and incidental losses and damages, according to proof;

26. For premiums pursuant to California Labor Code section 226.7(b);

27. For pre-judgment interest on any unpaid rest period premiums from the date such amounts were due, or as otherwise provided by law;

28. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

29. For such other and further relief as the Court may deem equitable and appropriate.

As to the Fifth Cause of Action

30. That the Court declare, adjudge and decree that Defendants violated the recordkeeping provisions of California Labor Code section 226(a) and applicable IWC Wage Orders as to Plaintiff and Subclass members, and willfully failed to provide accurate itemized wage statements thereto;

31. For all actual, consequential, and incidental losses and damages, according to proof;

32. For injunctive relief pursuant to California Labor Code section 226(h);

33. For statutory penalties pursuant to California Labor Code section 226(e);

34. For attorneys' fees and costs pursuant to California Labor Code section 226(e)(1); and

35. For such other and further relief as the Court may deem equitable and

appropriate.

//

As to the Sixth Cause of Action

36. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 201 and 202 by willfully failing to pay overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay owed at the time of termination of the employment of Plaintiff and other terminated class members;

37. For all actual, consequential and incidental losses and damages, according to proof;

38. For waiting time penalties according to proof pursuant to California Labor Code section 203 for all employees who have left Defendants' employ;

39. For pre-judgment interest on any unpaid wages from the date such amounts were due, or as otherwise provided by law;

40. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

41. For such other and further relief as the Court may deem equitable and appropriate.

As to the Seventh Cause of Action

42. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 204 by willfully failing to timely pay Plaintiff and class members overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay during their employment;

43. For all actual, consequential and incidental losses and damages, according to proof;

44. For statutory penalties according to proof pursuant to California Labor Code section 210;

45. For pre-judgment interest on any unpaid wages from the date such amounts were due, or as otherwise provided by law;

1 46. For attorneys' fees pursuant to California Code of Civil Procedure section
2 1021.5, or as otherwise provided by law; and

3 47. For such other and further relief as the Court may deem equitable and
4 appropriate

5 **As to the Eighth Cause of Action**

6 48. That the Court declare, adjudge and decree that Defendants violated California
7 Labor Code section 1198 and California Code of Regulations, Title 8, section 11100(5)(A) by
8 failing to provide Plaintiff and class members with reporting time pay;

9 49. For all actual, consequential and incidental losses and damages, according to
10 proof;

11 50. For pre-judgment interest on any unpaid wages from the date such amounts
12 were due, or as otherwise provided by law; and

13 51. For such other and further relief as the Court may deem equitable and
14 appropriate.

15 **As to the Ninth Cause of Action**

16 52. That the Court declare, adjudge and decree that Defendants violated California
17 Labor Code section 2802 by willfully failing to reimburse and/or indemnify all business-
18 related expenses and costs incurred by Plaintiff and class members;

19 53. For unpaid business-related expenses and such general and special damages as
20 may be appropriate;

21 54. For pre-judgment interest on any unpaid business-related expenses from the
22 date such amounts were due, or as otherwise provided by law;

23 55. For all actual, consequential, and incidental losses and damages, according to
24 proof;

25 56. For attorneys' fees and costs pursuant to California Labor Code
26 section 2802(c), or as otherwise provided by law; and

27 57. For such other and further relief as the Court may deem equitable and
28 appropriate.

As to the Tenth Cause of Action

58. That the Court declare, adjudge and decree that Defendants violated the following California Labor Code provisions as to Plaintiff and/or other aggrieved employees: 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, 1197.1, and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512, 516, and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and permit all rest periods); 226(a), 1174(d) and 1198 (by failing to provide accurate wage statements and maintain accurate payroll records); 201, 202, 203 (by failing timely to pay all earned wages upon termination); 204 (by failing timely to pay all earned wages during employment); 1198 (by failing to pay reporting time pay); 2802 (by failing to reimburse business expenses); and 2810.5 (by failing to provide written notice of information material to employment);

59. For civil penalties pursuant to California Labor Code sections 210, 226.3, 256, 558, 1174.5, 1197.1, and/or 2699(a), (f) and (g), for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5;

60. For attorneys' fees and costs pursuant to California Labor Code section 2699(g)(1), and any and all other relevant statutes, for Defendant's violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5;

61. For pre-judgment and post-judgment interest as provided by law; and

62. For such other and further relief as the Court may deem equitable and appropriate.

As to the Eleventh Cause of Action

63. That the Court declare, adjudge and decree that Defendants' conduct of failing to provide Plaintiff and class members all overtime wages due to them, failing to provide Plaintiff and class members all minimum wages due to them, failing to provide Plaintiff and class members all meal periods, failing to authorize and permit Plaintiff and class members to

1 take all rest periods, failing to provide Plaintiff and class members accurate and complete
2 wage statements, failing to maintain accurate payroll records for Plaintiff and class members,
3 failing timely to pay Plaintiff and class members all earned wages during employment, failing
4 to pay Plaintiff and class members reporting time pay, failing to reimburse Plaintiff and class
5 members for business-related expenses, and failing to provide written notice of material terms
6 of employment, constitutes an unlawful business practice in violation of California Business
7 and Professions Code sections 17200, *et seq.*;

8 64. For restitution of unpaid wages to Plaintiff and all class members and
9 prejudgment interest from the day such amounts were due and payable;

10 65. For the appointment of a receiver to receive, manage and distribute any and all
11 funds disgorged from Defendants and determined to have been wrongfully acquired by
12 Defendants as a result of violations of California Business & Professions Code sections 17200
13 *et seq.*;

14 66. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
15 California Code of Civil Procedure section 1021.5; and

16 67. For such other and further relief as the Court may deem equitable and
17 appropriate.

18 **As to the Twelfth Cause of Action**

19 68. That the Court declare, adjudge and decree that Defendants' conduct of denying
20 Plaintiff and class members the statutory benefits guaranteed under section 226.7 constitutes
21 an unfair business practice in violation of California Business and Professions Code sections
22 17200, *et seq.*;

23 69. For restitution of the statutory benefits under section 226.7 unfairly withheld
24 from Plaintiff and class members and prejudgment interest from the day such amounts were
25 due and payable;

26 70. For the appointment of a receiver to receive, manage and distribute any and all
27 funds disgorged from Defendants and determined to have been wrongfully acquired by
28 Defendants as a result of violations of California Business & Professions Code sections 17200

1 *et seq.*;

2 71. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
3 California Code of Civil Procedure section 1021.5;

4 72. For pre-judgment and post-judgment interest as provided by law; and

5 73. For such other and further relief as the Court may deem equitable and
6 appropriate.

7
8 Dated: April 20, 2020

Respectfully submitted,

9 Capstone Law APC

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11 By: 
12 Robert Drexler
13 Molly DeSario
14 Jonathan Lee

15 Attorneys for Plaintiff Ethan Brown
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Exhibit 1

MAO SHIOKURA
310.712.8030 Direct
Mao.Shiokura@capstonelawyers.com

February 13, 2020

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/260>)

Subject: *Ethan Brown v. Young Men's Christian Association of Silicon Valley*

Dear PAGA Administrator:

This office represents Ethan Brown in connection with his claims under the California Labor Code. Mr. Brown was an employee of YOUNG MEN'S CHRISTIAN ASSOCIATION OF SILICON VALLEY ("YMCA").

The employer may be contacted directly at the address below:

YOUNG MEN'S CHRISTIAN ASSOCIATION OF SILICON VALLEY
80 SARATOGA AVE.
SANTA CLARA CA 95051

Mr. Brown intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Brown seeks relief on behalf of himself, the State of California, and other persons who are or were employed by YMCA in California as a non-exempt, hourly paid employee and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

YMCA employed Mr. Brown as a non-exempt, hourly paid Lifeguard from approximately 2017 to November 2019. Mr. Brown worked for YMCA out of two of its locations in San Jose and Cupertino, California. During his employment, Mr. Brown typically worked eight (8) hours or more per day, three (3) to four (4) days per week, from 2:00 p.m. to 10:00 p.m. Mr. Brown's primary job duties included, without limitation, checking pool chemicals levels; cleaning the pool; monitoring and ensuring swimmer safety; conducting swim tests; and responding to guest inquiries.

YMCA has committed one or more of the following Labor Code violations against Mr. Brown, the facts and theories of which follow, making him an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

YMCA’s Company-Wide and Uniform Payroll and HR Practices

YOUNG MEN’S CHRISTIAN ASSOCIATION OF SILICON VALLEY is a California corporation. Founded in 1867, YMCA operates a youth organization in Silicon Valley, with 10 health and wellness facilities throughout Silicon Valley. Upon information and belief, YMCA maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Santa Clara, California, for all non-exempt, hourly paid employees working for YMCA in California, including Mr. Brown and other aggrieved employees. At all relevant times, YMCA issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Brown and other aggrieved employees, regardless of their location or position.

Upon information and belief, YMCA maintains a centralized Payroll department at its corporate headquarters in Santa Clara, California, which processes payroll for all non-exempt, hourly paid employees working for YMCA in California, including Mr. Brown and other aggrieved employees. Further, YMCA issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Mr. Brown and other aggrieved employees, irrespective of their location, position, or manner in which each employee’s employment ended. In other words, YMCA utilized the same methods and formulas when calculating wages due to Mr. Brown and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

YMCA willfully failed to pay all overtime wages owed to Mr. Brown and other aggrieved employees. During the relevant time period, Mr. Brown and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in

¹ These facts, theories, and claims are based on Mr. Brown’s experience and counsel’s review of those records currently available relating to Mr. Brown’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Mr. Brown reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, during the relevant period, YMCA had a company-wide and systemic policy and/or practice of rounding employees' total hours worked down to the nearest quarter (0.25) of an hour. YMCA's rounding policies resulted in the failure to compensate Mr. Brown and other aggrieved employees for all hours worked, causing Mr. Brown and other aggrieved employees to not be paid overtime wages for all overtime hours they actually worked. Upon information and belief, YMCA's timekeeping and rounding policies and/or practices are, and continue to be, unfair and have, over time, resulted in the underpayment of wages to Mr. Brown and other aggrieved employees. To the extent YMCA's timekeeping and rounding policies have taken away time worked that was eligible for overtime, Mr. Brown and other aggrieved employees were denied overtime pay for all hours worked.

Furthermore, YMCA engaged in a policy and/or practice of altering time records at the discretion of management. For example, YMCA's management would adjust Mr. Brown's and other aggrieved employees' time records and delete time recorded past their scheduled shifts to avoid having to pay overtime wages. As a result of YMCA's policy and/or practice, Mr. Brown and other aggrieved employees were not paid overtime for all overtime hours incurred.

Second, during the relevant period, YMCA had, and continues to have, a company-wide policy and/or practice of failing to compensate Mr. Brown and other aggrieved employees for the time they spend donning or doffing required uniforms. During the relevant time period, Mr. Brown and other aggrieved employees were required to wear and change into uniforms at the YMCA facility; however, YMCA did not allow them to report time changing in and out of their uniforms as hours worked, despite Mr. Brown and other aggrieved employees being on YMCA's premises and under YMCA's control. Specifically, Mr. Brown and other aggrieved employees were instructed by YMCA to report to work in their civilian clothes and to change into their uniforms in locker rooms prior to the start of their shift and before they clocked in for their shift. Similarly, YMCA required Mr. Brown and other aggrieved employees to change out of their uniform back to civilian clothes after they had clocked out at the end of their shift. As a result, when Mr. Brown and other aggrieved employees arrived to work, they were required to spend approximately five (5) minutes changing into their uniforms before they were allowed to clock in for work. Similarly, when Mr. Brown and other aggrieved employees left at the end of their shift, they were required to spend approximately five (5) minutes changing out of their uniforms after they clocked out. As a result, YMCA suffered and/or permitted Mr. Brown and other aggrieved employees to perform work for which they were not paid.

Third, during the relevant time period, YMCA required Mr. Brown and other aggrieved employees to complete online training modules from home but did not compensate them for their actual hours spent completing the online training. Instead, YMCA's management came up with arbitrary time limitations for completing the modules and paid Mr. Brown and other aggrieved employees for the time they believed it should take to complete the requisite training, rather than the actual time Mr. Brown and other aggrieved employees spent completing the training. For example, Mr. Brown spent approximately 18 hours over the course of three (3) days completing YMCA's requisite online training modules, but was not paid for all of this time. YMCA also engaged in a practice of sending text messages to Mr. Brown and other aggrieved employees regarding work-related events and tasks on their off-days and/or when they were off-the-clock. YMCA did not compensate Mr. Brown and other aggrieved employees for their time spent responding to YMCA's work-related communications while off-the-clock.

Fourth, during the relevant period, YMCA had, and continues to have, a company-wide policy and/or practice of understaffing its facilities, which resulted in a failure to provide Mr. Brown and other aggrieved employees with adequate meal period coverage. As a result of this lack of meal period coverage, Mr. Brown and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. For example, Mr. Brown and other aggrieved employees were required to perform their duties, such as continuing to monitor swimmers and attending to club members, during unpaid meal periods, or would have their meal periods interrupted to complete such work-related tasks. Thus, Mr. Brown and other aggrieved employees missed or had meal periods interrupted in order to complete their assigned workloads. YMCA did not pay Mr. Brown and other aggrieved employees for the time they continued to perform tasks during meal periods.

Fifth, YMCA, on a company-wide basis, had a practice of failing to schedule meal periods, which further caused Mr. Brown and other aggrieved employees to not be relieved of their duties for compliant meal periods. As a result of these policies and/or practices, Mr. Brown and other aggrieved employees were required to work through part or all of their meal periods, in order to complete their assigned tasks.

YMCA knew or should have known that, as a result of these company-wide practices and/or policies, Mr. Brown and other aggrieved employees were performing their assigned duties during their meal periods and performing work off-the-clock before or after their shifts, and were suffered or permitted to perform work for which they were not paid. YMCA also knew, or should have known, that it did not compensate Mr. Brown and other aggrieved employees applicable overtime rates of pay for overtime hours that they worked.

Because Mr. Brown and other aggrieved employees regularly worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Mr. Brown and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked. YMCA's failure to pay Mr. Brown and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198.

Furthermore, YMCA did not pay Mr. Brown and/or other aggrieved employees the correct overtime rates for the recorded overtime hours that they generated. In addition to an hourly wage, YMCA paid Mr. Brown and/or other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. For example, YMCA paid Mr. Brown and/or other aggrieved employees nondiscretionary bonuses listed on their wage statements as "Referral Bonus." However, in violation of the California Labor Code, YMCA failed to incorporate all remunerations, including incentive pay and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when Mr. Brown and/or other aggrieved employees worked overtime and received these other forms of pay, YMCA failed to pay all overtime wages by paying a lower overtime rate than required.

Mr. Brown and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 10 as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code. Regs. tit. 8, § 11100(2)(H) (defining “Hours Worked”).

As set forth above, YMCA had a policy of rounding employee’s hours down to the nearest quarter (0.25) of an hour, resulting in the failure to compensate Mr. Brown and other aggrieved employees for all hours worked. As also stated, YMCA engaged in a company-wide practice and/or policy of shaving employee time records to avoid the payment of overtime wages to Mr. Brown and other aggrieved employees. Further, as stated above, YMCA had a policy of failing to compensate Mr. Brown and other aggrieved employees for their time spent donning and doffing their required uniforms.

Moreover, during the relevant time period, Mr. Brown and other aggrieved employees were required to perform work off-the-clock before and after their shifts by completing online training modules or responding to work-related calls and text messages from YMCA’s management, time for which they were not paid. And, as stated above, due to YMCA’s policy and/or practice of understaffing its facilities and failure to schedule meal periods, Mr. Brown and other aggrieved employees were forced to forego meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during meal periods.

Thus, YMCA did not pay minimum wages for all hours worked by Mr. Brown and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, YMCA did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Accordingly, YMCA regularly failed to pay at least minimum wages to Mr. Brown and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Mr. Brown and other aggrieved employees are therefore entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, and 1198 and the applicable IWC Wage Order require employers to provide meal and rest periods and to pay an employee one (1) additional hour of pay at the employee’s regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, 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 the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v.*

Superior Court, 53 Cal. 4th 1004, 1041-1042 (Cal. 2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal break of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

First, during the relevant time period, YMCA had, and continues to have, a company-wide policy and/or practice of understaffing its facilities to save on labor costs. Due to YMCA's understaffing of its facilities, Mr. Brown and other aggrieved employees were not provided adequate meal period coverage to take all timely, uninterrupted 30-minute meal periods to which they were entitled. Thus, Mr. Brown and other aggrieved employees were required to continue performing their duties during unpaid meal periods, including monitoring swimmer safety and attending to members and visitors. During Mr. Brown's employment at both YMCA's Central and Northwest locations, Mr. Brown missed his meal periods when the facility was busy with members and visitors because there were no other employees available to relieve him of his duties for a meal period.

Second, as stated, YMCA had a company-wide practice of failing to schedule meal periods, which further caused Mr. Brown and other aggrieved employees to not be relieved of their duties for compliant meal periods. During his employment at both YMCA's Central and Northwest locations, Mr. Brown was not provided with meal periods until after working more than five (5) hours into his shift. At times, YMCA did not provide Mr. Brown with a meal period until after he had worked seven (7) hours into his shift.

YMCA's understaffing of its facilities, coupled with YMCA's failure to schedule meal periods, prevented Mr. Brown and other aggrieved employees from taking all compliant meal periods to which they were entitled. As a result, Mr. Brown and other aggrieved employees were forced to work in excess of five (5) hours before taking a meal period and, at times, had their meal periods interrupted and/or had to forgo their meal periods altogether.

Third, YMCA did not provide Mr. Brown and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. For example, Mr. Brown was not provided his second meal period when he worked shifts in excess of ten (10) hours. Mr. Brown and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

YMCA knew or should have known that as a result of its policies, Mr. Brown and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. YMCA further knew or should have known that it did not pay Mr. Brown and other aggrieved employees meal period premium wages when meal periods were missed, late, short, and/or interrupted.

YMCA also has engaged in a company-wide practice and/or policy of not paying meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Brown and other aggrieved employees have not received premium pay for missed, late, and interrupted meal periods. Alternatively, to the extent that YMCA did pay meal period premium wages to Mr. Brown and/or other aggrieved employees, it did so at the incorrect rates. Because YMCA did not properly calculate Mr. Brown's and/or other aggrieved employees' regular rates of pay by including all remunerations, such as incentive pay and/or nondiscretionary bonuses, any

premiums paid for meal period violations were also paid at an incorrect rate and resulted in an underpayment of meal period premium wages.

Accordingly, YMCA failed to provide all meal periods in violation of California Labor Code sections 226.7, 512, 516, and 1198. Mr. Brown and other aggrieved employees are therefore entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period” and that the “rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof” unless the total daily work time is less than three and one-half (3½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must “relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest.” *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

During the relevant time period, YMCA regularly failed to authorize and permit Mr. Brown and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, YMCA had no policy in place for scheduling rest periods for Mr. Brown and other aggrieved employees and failed to provide them with adequate rest period coverage. Moreover, Mr. Brown and other aggrieved employees were assigned company-issued radios and were expected to carry and keep them on while clocked in for their shifts, including during rest periods.

Furthermore, on information and belief, YMCA maintained and implemented a company-wide practice and/or policy requiring that Mr. Brown and other aggrieved employees remain on YMCA's premises during their rest periods. Because Mr. Brown and other aggrieved employees were restricted from leaving YMCA's premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes. Thus, YMCA effectively maintained control over Mr. Brown and other aggrieved employees during rest periods, and, as a result of this rest period policy, YMCA did not relinquish control over Mr. Brown and other aggrieved employees during rest periods.

As a result of YMCA's practices and policies, Mr. Brown and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, throughout his employment, Mr. Brown was at times only authorized and permitted by YMCA to take one (1) ten-minute rest period in an 8-hour shift. Other times, Mr. Brown had his rest periods interrupted, due to YMCA's understaffing and resultant lack of rest period coverage that forced him to continue to perform his duties.

YMCA also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Mr. Brown and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that YMCA did pay rest period premium wages to Mr. Brown and/or other aggrieved employees, it did so at the incorrect rates. Because YMCA did not properly calculate Mr. Brown's and/or other aggrieved employees' regular rates of pay by including all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, any premiums paid for rest period violations were also paid at an incorrect rate and resulted in an underpayment of rest period premium wages.

Accordingly, YMCA failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Brown and other aggrieved employees are therefore entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. YMCA has not provided Mr. Brown and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wages statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50.00 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, YMCA has knowingly and intentionally provided Mr. Brown and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, YMCA issued uniform wage statements to Mr. Brown and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including overtime rates of pay, and the corresponding number of hours worked at each hourly rate. Specifically, YMCA violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because YMCA did not record the time Mr. Brown and other aggrieved employees spent working off-the-clock and improperly rounded Mr. Brown's and other aggrieved employees' total hours worked, YMCA did not list the correct amount of gross wages and net wages earned by Mr. Brown and other aggrieved employees, in compliance with section 226(a)(1) and 226(a)(5), respectively. For the same reason, YMCA failed to accurately list the total number of the hours worked by Mr. Brown and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Further, because YMCA did not calculate Mr. Brown's and/or other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages, YMCA did not list the correct amount of gross wages earned by Mr. Brown and/or other aggrieved employees in compliance with section 226(a)(1) and did not list the correct amount of net wages earned by Mr. Brown and/or other aggrieved employees in violation of section 226(a)(5). YMCA also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct overtime rates of pay and correct rates of pay for premium wages, in violation of section 226(a)(9).

The wage statement deficiencies also include, without limitation, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name and address of the legal entity that is the employer; failing to list the inclusive dates of the period for which aggrieved employees were paid; and/or failing to state all hours worked as a result of not recording or stating hours worked off-the-clock.

California Labor Code section 1174(d) provides that "[e]very person employing labor in this state shall ... [k]eep a record showing the names and addresses of all employees employed and the ages of all minors" and "[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments..." Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), YMCA willfully failed to maintain accurate payroll records for Mr. Brown and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked and improperly rounding Mr. Brown's and other aggrieved employees' total hours worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Orders. Section 1198 further provides that "[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful." Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. At all relevant times, as stated, YMCA engaged in company-wide practices and/or policies of failing to record actual hours worked, and thereby failed to keep accurate records of work period and meal period start and end times for Mr. Brown and other aggrieved employees. Furthermore, in light of YMCA's failure to provide Mr. Brown and other aggrieved employees with second 30-minute meal periods to which they were entitled, YMCA kept inaccurate or incomplete records of meal start and end times for second meal periods.

Because YMCA failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Brown and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mr. Brown and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. Brown and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, YMCA failed to pay Mr. Brown and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, reporting time pay, and/or meal and rest period premium wages, within any time period specified by California Labor Code section 204.

Mr. Brown and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201, 202, and 203 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201, 202, and 203 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

YMCA willfully failed to pay Mr. Brown and other aggrieved employees who are no longer employed by YMCA all their earned wages, including, but not limited to, overtime wages, minimum wages, reporting time pay, and/or meal and rest period premium wages, either at the time of discharge, or within seventy-two (72) hours of their leaving YMCA's employ in violation of California Labor Code sections 201, 202, and 203.

Mr. Brown and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11100 Subdivision 5(A) – Failure to Pay Reporting Time Pay

California Labor Code section 1198 dictates that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC wage order. California Labor Code section 1198 further requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

California Code of Regulations, Title 8, section 11100(5)(A) provides that “[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee’s usual or scheduled day’s work, the employee shall be paid for half the usual or scheduled day’s work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee’s regular rate of pay, which shall not be less than the minimum wage.” The “primary purpose of the reporting time regulation” is “to guarantee at least partial compensation for employees who report to work expecting to work a specified number of hours, and who are deprived of that amount because of inadequate scheduling or lack of proper notice by the employer.” *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012).

YMCA violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11100(5), because YMCA failed to pay Mr. Brown and other aggrieved employees reporting time pay when they reported to work for their scheduled shift but were put to work for less than half of the regular schedule. YMCA had a company-wide practice of sending Mr. Brown and other aggrieved employees home early from their shifts, including before they had worked at least half of their regular shift, but would not pay Mr. Brown and other aggrieved employees for half of their scheduled shift, due to YMCA’s labor budget. For example, Mr. Brown would report to work, but would be sent home just one (1) hour into his shift by YMCA’s management for what they stated was “for the better of the YMCA.”

Although Mr. Brown and other aggrieved employees would report to work based on the schedule that YMCA provided to them, YMCA would send them home before they had worked at least half of their scheduled shifts without giving them reporting time pay. During his employment, Mr. Brown was sent home early before working at least half of his scheduled shift, at times once per week, and sometimes as often as 4-5 times per week. Accordingly, Mr. Brown and other aggrieved employees were not properly compensated with reporting time pay in violation of California Labor Code section 1198.

Mr. Brown and other aggrieved employees are therefore entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan’s Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order provides that: “[w]hen 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, except that an employee whose wages are at least two (2)

times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.”

First, during the relevant time period, YMCA had a company-wide policy of requiring Mr. Brown and other aggrieved employees to utilize their own personal cellular phones and cellular data to carry out their job duties, but YMCA failed to reimburse them for the costs of their work-related cellular phone expenses. Mr. Brown and other aggrieved employees were required to use their personal cellular phones to complete their work-related tasks, such as clocking in and out of their shifts utilizing YMCA’s electronic timekeeping system. Mr. Brown and other aggrieved employees were instructed by YMCA to download the ADP mobile application in order to clock themselves in and out for their work shifts. Mr. Brown and other aggrieved employees followed YMCA’s instructions and used their personal cellular phones for clock-in and clock-out purposes. However, YMCA did not reimburse Mr. Brown and other aggrieved employees for their data usage associated with using the ADP mobile application to record their time.

Further, YMCA’s management also sent text messages to Mr. Brown’s and other aggrieved employees’ personal cellular phones to discuss work events, training, and other work-related matters. Moreover, YMCA also required Mr. Brown and other aggrieved employees to use their personal cellular phones to document and photograph pool contamination issues and to text these photographs to YMCA’s management, who would authorize pool closures. Although YMCA required Mr. Brown and other aggrieved employees to utilize their personal cellular phones to carry out their work-related responsibilities, YMCA failed to fully reimburse them for this cost.

Second, YMCA, on a company-wide basis, expected Mr. Brown and other aggrieved employees to wear clean uniforms while at work, and required them to wear uniforms bearing YMCA’s logo on a daily basis, but only provided them two (2) red t-shirts bearing the “YMCA” logo at the beginning of their employment. Because YMCA failed to provide Mr. Brown and other aggrieved employees with an adequate number of uniforms in relation to their scheduled shifts, Mr. Brown and other aggrieved employees had to wash their company shirts more frequently than they would otherwise do laundry and incurred expenses in doing so. For example, because Mr. Brown was required to sit in the sun throughout his shift, he would perspire, and his uniform would get dirty each shift. He typically worked 3-4 days per week, and so the two (2) t-shirts provided were insufficient to get him through the week without Mr. Brown having to do an extra load of laundry.

YMCA could have provided Mr. Brown and other aggrieved employees with the actual tools for use on the job, such as company phones to be used for fulfilling work-related tasks, and with an adequate number of uniform t-shirts and/or access to a laundry or cleaning service. Or, YMCA could have reimbursed employees for their cellular phone and laundry expenses. Instead, YMCA passed these operating costs off onto Mr. Brown and other aggrieved employees. At all relevant times, Mr. Brown did not earn at least two (2) times the minimum wage.

Thus, YMCA had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Mr. Brown and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

YMCA failed to provide Mr. Brown and other aggrieved employees written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). YMCA's failure to provide Mr. Brown and other aggrieved employees with written notice of basic information regarding their employment with YMCA is in violation of Labor Code section 2810.5.

Mr. Brown and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid . . ." Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." YMCA, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Brown's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Brown seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Brown, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against YMCA for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512, 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

Therefore, on behalf of all aggrieved employees, Mr. Brown seeks all applicable penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Mao Shiokura
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,

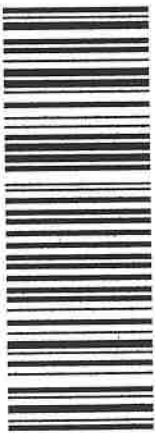
A handwritten signature in black ink, appearing to read "Mao Shiokura", with a stylized flourish at the end.

Mao Shiokura

Copy: YOUNG MEN'S CHRISTIAN ASSOCIATION OF SILICON VALLEY (via U.S. Certified Mail)

ine
AW APC
Park East, Ste 1000
CA 90067

CERTIFIED MAIL



7019 0700 0001 7653 0950

YOUNG MEN'S CHRISTIAN ASSOCIATION OF
SILICON VALLEY
80 SARATOGA AVE.
SANTA CLARA CA 95051



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

YOUNG MEN'S CHRISTIAN ASSOCIATION
OF SILICON VALLEY
80 SARATOGA AVE.
SANTA CLARA CA 95051



9590 9403 0424 5163 3656 55

2. Article Number (Transfer from service label)

7019 0700 0001 7653 0950

PS Form 3811, April 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

- ☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
☐ Adult Signature Restricted Delivery
☒ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Insured Mail
☐ Insured Mail Restricted Delivery (over \$500)

- ☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☐ Return Receipt for Merchandise
☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

**U.S. Postal Service™
CERTIFIED MAIL® RECEIPT**
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee

\$ 3.50 1

Extra Services & Fees (check box, add fees as appropriate)

- ☒ Return Receipt (hardcopy) \$ 2.80
☐ Return Receipt (electronic) \$
☐ Certified Mail Restricted Delivery \$
☐ Adult Signature Required \$
☐ Adult Signature Restricted Delivery \$

Postage

\$ 1.42

Total Postage and Fees

\$ 7.72

Sent To

YOUNG MEN'S CHRISTIAN ASSOCIATION
OF SILICON VALLEY
80 SARATOGA AVE.
SANTA CLARA CA 95051

City, State, ZIP+4®

SANTA CLARA CA 95051

PS Form 3800, April 2015 PSN 7530-02-000-8047

See Reverse for Instructions

Postmark
Here

Brown v. YMCA
of Silicon Valley

7019 0700 0001 7653 0950

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

YOUNG MEN'S CHRISTIAN ASSOCIATION
OF SILICON VALLEY
80 SARATOGA AVE.
SANTA CLARA CA 95051



9590 9403 0424 5163 3656 55

2. Article Number (Transfer from service label)

7019 0700 0001 7653 0950

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *Luis C Saavedra*

☒ Agent

☒ Addressee

B. Received by (Printed Name)

LCSAAVEDRA

C. Date of Delivery

D. Is delivery address different from Item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over \$500)

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

PS Form 3811, April 2015 PSN 7530-02-000-9053

Domestic Return Receipt

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I am employed in the County of Los Angeles. I declare that I am over the age of eighteen (18) and not a party to this action. My business address is: Capstone Law APC, 1875 Century Park East, Suite 1000, Los Angeles, California 90067.

**FIRST AMENDED CLASS ACTION COMPLAINT & ENFORCEMENT
ACTION UNDER THE PRIVATE ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698, *ET SEQ.***

Karin M Cogbill
Shirley E. Jackson
Hopkins & Carley
70 South First St
San Jose, CA 95113
kcogbill@hopkinscarley.com
sjackson@hopkinscarley.com

- (X) **ELECTRONIC SERVICE:** I caused the document(s) to be transmitted electronically via One Legal eService to the individuals listed above, as they exist on that database. This will constitute service of the document(s).
- () **MESSENGER:** I caused such envelope to be delivered by hand to the individuals at the address listed above via a messenger service (Prolegal).
- () **PERSONAL:** I personally delivered by hand the envelope to the individuals at the address listed above.
- () **OVERNIGHT COURIER:** I caused the above-referenced document(s) to be delivered via overnight courier service (FedEx) to the individuals at the address listed above.
- (X) **(STATE)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.


Sandy S. Acevedo