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MELCHOR RENOI GONZALEZ,
and all putative class members

BY FAX

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

MELCHOR RENOI GONZALEZ,, an
individual, on behalf of herself and all others
similarly situated,

Plaintiffs,

vs.

AXS OPPORTUNITY FUND, LLC, a limited
liability company, SUN VALLEY
PARTNERSHIP LP, a California Limited
Partnership, TOWN SQUARE M
PROPERTIES, LLC, a California limited
liability company, and DOES 1-50, inclusive,

Defendants.

Case No.: **20STCV20357**

**CLASS AND REPRESENTATIVE
ACTION COMPLAINT FOR:**

1. Failure to Pay Required Minimum Wages, Including Overtime Wages
2. Failure to Timely Provide and/or Authorize Meal Breaks
3. Failure to Provide and/or Authorize Rest Breaks
4. Failure to Pay Wages Twice Per Month
5. Failure to Provide and Maintain Timely, Accurate, Itemized Wage Statements
6. Failure to Comply with California Sick Pay Requirements
7. Failure to Reimburse Required Business Expenses
8. Unlawful Business Practices Bus & Prof. Code §17200
9. Private Attorneys General Act Penalties (Lab. Code §2699)

JURY TRIAL DEMANDED

Plaintiff MELCHOR RENOI GONZALEZ, individually, and on behalf of all others
similarly situated, all aggrieved employees, and as a Private Attorney General for the State of
California (collectively "Plaintiff"), alleges as follows:

NATURE OF THE ACTION

1. This is an employment class and representative action on behalf of dozens of hourly, non-exempt employees against their employers for violations of numerous wage and hour laws. Plaintiff employees bring this employment class action complaint on behalf of themselves, all others similarly situated, all aggrieved employees, and as Private Attorney General for the State of California against AXS OPPORTUNITY FUND, LLC, SUN VALLEY PARTNERSHIP LP, TOWN SQUARE M PROPERTIES, LLC, and the other Defendants DOES 1-50, inclusive, (hereafter collectively “Defendant” or “Defendants”).

2. As described further below, Defendants have misclassified Plaintiff and others similarly situated as independent contractors and, in doing so, have violated the California Labor Code by (1) failing to pay for all hours worked, including overtime hours worked, at the lawful rate of pay (§218, 226.8, 510, 512, 558, 1194, 1197, 1197.1, 1198, 1199, 2750.3); (2) failing to timely provide and/or authorize meal breaks (§226, 226.7, 512, 558, 1198); (3) failing to timely provide and/or authorize rest breaks (§226, 226.7, 512, 558, 1198); (4) failing to pay earned wages twice per calendar month (§204); (5) failing to provide timely, accurate wage statements and payroll records (§226, 1174); (6) failing to comply with California Sick Pay requirements (§246, 247.5, 248.5); (7) failing to reimburse for required business expenses (§§1198, 2802); (8) unlawful and unfair business practices (Bus. & Prof. Cod3 §17200, et. seq.); and (9) penalties under the Private Attorneys General Act (“PAGA”), Labor Code §2698 et seq. Attorney General Act (“PAGA”), Labor Code §2698 et seq.

3. The class claims in this action are brought pursuant to Code of Civil Procedure (“CCP”) §382, seeking recovery for unpaid wages, including overtime wages, missed meal and rest period penalty pay, statutory and waiting time penalties, injunctive and other equitable relief, interest, and reasonable attorneys’ fees and costs. Pursuant to the class and representative action procedures provided for under California law, Plaintiff, on behalf of themselves and proposed Class Members (also referred to as “Class”), also seeks injunctive relief and restitution of all benefits Defendants have received from their unlawful actions as alleged herein. Plaintiff has also provided notice of these claims pursuant to §2698 *et. seq.*, to the Labor and Workforce and Development Agency

1 (“LWDA”) and now brings this First Amended Complaint, including claims for civil penalties
2 under the Private Attorneys General Act (“PAGA”), Labor Code §2698 *et seq.* Attorney General
3 Act (“PAGA”), Labor Code §2698 *et seq.*

4 4. The “Class Period” is designated as the four-year period prior to the filing of this
5 Complaint through the date of final disposition of this action. From the start of the Class Period
6 through the present, Defendants have had a policy and/or practice of misclassifying employees as
7 independent contractors, ignoring and violating California wage and hour laws, and workplace
8 safety laws, in their business as more fully set forth below.

9 5. The “PAGA Period” is defined herein commences one year prior to the date of
10 filing the PAGA Notice letter with the LWDA.

11 6. Defendants have treated all persons employed in California in such a way as to violate
12 California’s laws governing conditions of employment and payment of wages owed. Plaintiff
13 asserts that Defendants have knowingly and with conscious disregard of the law refused to pay
14 Class Members and aggrieved employees all wages owed, including overtime wages and meal and
15 rest break penalty wages. Defendants have violated numerous Labor Code provisions, as set forth
16 herein. Class Members and aggrieved employees are owed their back pay, plus interest and/or
17 premiums and penalties under Business and Professions Code section 17203 to compensate Class
18 Members and aggrieved employees for the delay in receiving wages due.

19 7. Defendants, by and through their actions, have engaged in unfair competition,
20 requiring restitution to persons affected and disgorgement of profits so obtained.

21 **THE PARTIES**

22 8. Plaintiff MELCHOR RENOI GONZALEZ, is an individual who resides in California
23 and is a current employee of Defendants.

24 9. Defendant AXS OPPORTUNITY FUND, LLC, is a limited liability company doing
25 business in California, who exercised control over the wages, hours, and/or working conditions
26 of Plaintiff, aggrieved employees, and members of the proposed class throughout the liability
27 period.
28

10. SUN VALLEY PARTNERSHIP LP is a California limited partnership doing business in California, who exercised control over the wages, hours, and/or working conditions of Plaintiff, aggrieved employees, and members of the proposed class throughout the liability period.

11. TOWN SQUARE M PROPERTIES, LLC is a California limited liability company doing business in California, who exercised control over the wages, hours, and/or working conditions of Plaintiff, aggrieved employees, and members of the proposed class throughout the liability period.

12. Defendants Does 1-50, inclusive, are sued herein under fictitious names. Their true names and capacities are unknown to Plaintiff. When their true names and capacities are ascertained, Plaintiff will amend this complaint by inserting their true names and capacities herein. Plaintiff is informed and believe, and thereon alleges, that each of the fictitiously named Defendants is responsible in some manner for the occurrences herein alleged, and that the damages sustained by Plaintiff, Class Members, and aggrieved employees herein alleged were proximately caused by such Doe Defendants.

13. Plaintiff is informed and believes and thereon alleges that each Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff, aggrieved employees, and other members of the Class, and exercised control over their wages, hours, and working conditions. Plaintiff is informed and believes and thereon alleges that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant is legally attributable to the other Defendants.

JURISDICTION AND VENUE

14. Venue is proper in this judicial district because Defendants conduct business in this County and Defendants have legal obligations to Plaintiff and many of the Class Members and aggrieved employees in this case that arose in this county.

15. The monetary damages, restitution and statutory penalties sought by Plaintiff exceed the minimal jurisdictional limits of the Superior Court and will be established according to proof

1 at trial. Based on information, investigation and analysis, Plaintiff alleges that the amount in
2 controversy, including claims for monetary damages, penalties and attorney's fees is more than
3 twenty-five thousand dollars (\$25,000).

4 16. The California Superior Court has jurisdiction in this matter because Plaintiff is a
5 resident of California and Defendants are incorporated in and/or qualified to do business in
6 California and regularly conduct business in California. Further, there is no federal question at
7 issue as the claims herein are based solely on California law.

8 **CLASS AND REPRESENTATIVE ACTION ALLEGATIONS**

9 17. During the Class Period and PAGA Period, Defendants committed various violations
10 of the California Labor Code, the CCR, the UCL and IWC Wage Order 5, as alleged below in
11 more detail. Defendants enforce multiple policies that violate state law which are intended to
12 increase its own profits to the detriment of its workers.

13 18. Defendants employed, upon information and belief, dozens of current and former
14 non-exempt employees (hereafter "Class Members" or "Class") during the Class Period and
15 PAGA Periods. However, Defendants misclassified these employees as independent contractors
16 and/or otherwise denied them the protections of California wage and hour laws, as more fully set
17 forth below and herein.

18 19. Upon information and belief, all putative Class Members and aggrieved employees
19 should have been classified as non-exempt employees, and all are paid on an hourly basis – not
20 on a salary basis.

21 20. By misclassifying its employees as independent contractors, Defendants failed to (1)
22 pay for all hours worked, including overtime hours worked, at the lawful rate of pay; (2) timely
23 provide and/or authorize meal breaks; (3) timely provide and/or authorize rest breaks; (4) pay
24 earned wages timely, twice per calendar month; (5) provide timely, accurate wage statements and
25 maintain required payroll records; (6) comply with California's sick pay requirements; and (7)
26 reimburse employees for required cell phone usage. These practices also constitute unlawful and
27 unfair business practices. These policies and practices have deprived Plaintiff and Class Members
28 of payment for all hours worked, and further damages, as set forth below.

1 21. Failure to pay for all hours worked. Section 2(K) or Wage Order 5 defines “hours
2 worked” as “the time during which an employee is subject to the control of an employer, and
3 including all the time the employee is suffered or permitted to work, whether or not required to
4 do so.” Defendants have been engaged in many unlawful employment practices which resulted in
5 underpayment for hours worked each pay period as more fully set forth below.

6 A. Misclassification of employees as independent contractors. Plaintiff, Class
7 Members, and aggrieved employees were misclassified as independent
8 contractors although they were treated like employees. Pursuant to *Dynamex*
9 *Operations West, Inc. v. Superior Court*, unless an employer can satisfy the
10 following ABC test, the worker is presumed an employee:

- 11 a. The worker is free from the control and direction of the
12 hiring entity in connection with the performance of the
13 work, both under the contract for the performance of
14 the work and in fact; and
- 15 b. The worker performs work that is outside the usual
16 course of the hiring entity’s business; and
- 17 c. The worker is customarily engaged in an independently
18 established trade, occupation, or business of the same
19 nature as the work performed.

20 B. Defendants cannot satisfy a single element of this test as it relates to its
21 employees for many reasons, including the following:

- 22 i. Employees were scheduled to work regular shifts, were required
23 to show up at the designated workplace at the designated time
24 and were subject to discipline if they were late or did not appear.
 - 25 ii. Defendants direct employees on how to perform every aspect of
26 their job, and even called employees in to work after hours for
27 emergencies.
- 28

- 1 iii. Class Members and aggrieved employees were engaged in the
2 regular business of the Defendants and were trained by
3 Defendants to perform in the manner required by Defendants.
4 iv. Defendants provided all instrumentalities and tools for Class
5 Members and aggrieved employees, who did not invest in any
6 equipment or materials to complete required tasks. Rather, all
7 materials were provided by Defendants.
8 v. No special trade training or skill is required for the completion of
9 the work Class Members and aggrieved employees performed,
10 and Defendants directly supervised the work of Class Members
11 vi. There was no set length of time or project contemplated in the
12 working relationship. Rather, it was at-will employment paid on
13 an hourly basis.

14 C. Failure to pay overtime wages. Plaintiff, Class Members, and aggrieved
15 employees were required to perform work in excess of eight hours in one day
16 and forty in one week but were not paid overtime as required by Labor Code
17 §510. For example, Plaintiff would be paid in two-week intervals (although
18 checks were often given to him late) for 80 hours of work, despite the fact that
19 he regularly worked over 100 hours during that period. Until recently,
20 Defendants did not use time clocks or any mechanism to record employee
21 time. Recently they started using a mobile phone application. As a result,
22 Plaintiff and others have been denied “the unpaid balance of the full amount
23 of this... overtime compensation” as required by Cal. Labor Code. §1194.

24 D. Failure to pay wages- required minimum wage. Defendants failed to pay
25 Plaintiff, Class Members, and aggrieved employees for all hours worked as a
26 result of Defendants’ misclassification of employees. Defendants paid Class
27 Members and aggrieved employees at their hourly rate regardless of the
28 number of hours worked in the day or workweek. Defendants did not pay

overtime wages, nor did they pay meal or rest break penalty wages. Based on the unlawful conduct described above, and because Plaintiff, Class Members, and aggrieved employees were paid at or near minimum wage, Defendants' failure to pay full wages for all hours worked, including overtime, resulted in a payment of less than the minimum wage for all hours worked, in violation of Labor Code §1194-1197.1, 1199 and Wage Order 5-2001 4(B).

22. Meal periods. During the class period, Defendants failed to maintain a compliant meal period policy and practice. Because Plaintiff, Class Members, and aggrieved employees were misclassified as independent contractors, they were denied meal periods altogether. Defendants failed to permit Plaintiff Class Members, and aggrieved employees to take timely, off-duty, meal breaks of "not less than 30 minutes" for each five consecutive hours of work in violation of Labor Code §§226.7 and 512. Pursuant to *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 273 P.3d 513 (2012), a first meal period must begin no later than the start of an employee's sixth hour of work. Defendants failed to permit Plaintiff Class Members, and aggrieved employees to take timely, off-duty, meal breaks of "not less than 30 minutes" for each five consecutive hours of work in violation of Labor Code §§226.7 and 512. Plaintiff Class Members, and aggrieved employees were not paid penalty wages for missed and non-compliant meal periods.

23. Rest periods. Defendants failed to maintain a policy and practice that provides its employees with off-duty rest periods as required by California law. Because Class Members and aggrieved employees were misclassified as independent contractors, they were not provided with any rest periods during the time of their employment. Plaintiff, Class Members, and aggrieved employees were not paid penalty wages for missed and/or non-compliant rest breaks.

24. Failure to timely pay all wages owed. Defendants failed to timely pay all wages owed by failing to pay all wages owed twice per month.

A. Failure to pay all wages owed twice per month. Defendants are required to pay Plaintiff, Class Members, and aggrieved employees all wages earned twice during each calendar month pursuant to Labor Code §204(a).

Defendants failed to pay all wages earned to employees as a result of the unlawful employment policies and practices discussed herein. As a result of these practices, Plaintiff, Class Members, and aggrieved employees were underpaid for hours worked, including overtime and penalty wages, and this underpayment resulted in a failure to pay all wages owed twice per month.

25. Wage statement and record keeping violations. Plaintiff, Class Members, and aggrieved employees were paid by personal check or PayPal transfer issued by Defendant ADAMS for the work they performed for Defendants ADAMS and THE ROSEMARY HOSPITALITY, INC. No wage statements accompanied these checks or transfers, and Class Members were altogether denied the required wage statements under §226, and Defendants failed to maintain required records as required by §1174(d). This failure caused injury to Class Members by, among other wrongs, impeding them from knowing whether their wages were properly recorded and paid, the actual rate of pay, total hours worked, gross wages earned, who to contact in the event they had questions or concerns regarding wages, who was responsible for the preparation of accurate wage statements, or whom to assert allegations against in the event of noncompliance with legal requirements.

26. California Sick Pay Violations. Defendants failed to provide required California paid sick days and further failed to distribute and maintain required documentation concerning how many sick days were available to employees, in violation of Labor Code §§246, 246(a), 246(b)(1), and 247.5. Defendant did not provide employees with wage statements and did not provide any other documentation accompanying employee pay which would indicate how many sick days employees had available.

27. Unlawful business practices. Based upon the above allegations, Defendants engaged in unfair competition.

28. Failure to timely pay all wages owed to aggrieved employees. Defendants failed to timely pay all wages owed by failing to pay all wages due upon separation as well as failing to pay all wages owed twice per month.

1 A. Failure to pay wages due upon separation. Defendants knowingly and
2 willfully failed to pay all compensation due and owing, including payment for
3 all hours worked and penalty pay, to aggrieved employees at the time
4 employment terminated. In addition, Defendants willfully failed to pay
5 aggrieved employees who are no longer employed by it all compensation due
6 upon termination of employment as required by Cal. Lab. Code §§201 and
7 202. Pursuant to §§203, aggrieved employees are now also entitled to recover
8 up to thirty (30) days of wages due to Defendants' "willful" failure to comply
9 with the statutory requirements of §§201 and 202 of the Labor Code.

10 B. Failure to pay all wages owed twice per month. Defendants are required to
11 pay Plaintiff, Class Members, and aggrieved employees all wages earned
12 twice during each calendar month pursuant to Labor Code §204(a).
13 Defendants failed to pay all wages earned to employees as a result of the
14 unlawful employment policies and practices discussed herein. As a result of
15 these practices, employees were underpaid for hours worked, including
16 overtime and penalty wages, and this underpayment resulted in a failure to
17 pay all wages owed twice per month. Although Employer was required to pay
18 employees every two weeks, Plaintiff's checks were often late. For example,
19 the check he should have received on the 15th of the month often came on the
20 20th, 25th, even as late as the 30th.

21 29. Plaintiff brings this action on behalf of himself, and all other persons similarly
22 situated, to recover from Defendants for failure to comply with California wage and hour laws,
23 and for claims under Business and Professions Code § 17200.

24 30. This action has been brought and may properly be maintained as a class action
25 pursuant to the provisions of Code of Civil Procedure § 382 because the proposed class is
26 ascertainable and there is a well-defined community of interest. Plaintiff is among in excess of
27 25 employees who have been similarly injured by Defendants' unlawful employment policies
28 and practices.

1 31. The “Relevant Class Period” or proposed “Class Period” as defined herein
2 commences four years prior to the date of filing this Complaint.

3 32. The “PAGA Period” is defined herein commences one year prior to the date of
4 filing the PAGA Notice letter with the LWDA.

5 33. The PAGA Class, also referred to herein as “aggrieved employees”: “All current and
6 former hourly, non-exempt employees of Defendants in California, at any time from one year
7 prior to the filing of the PAGA Notice letter with the LWDA until the resolution of this matter.”
8 Plaintiff reserves the right to amend or modify the definition of aggrieved employees with
9 respect to the issues or in any other way.

10 34. Plaintiff brings this action on their behalf and as a class action under Cal. Code of
11 Civil Procedure §382 on behalf of the following defined groups:

12 Proposed Class:

13 “All persons who are employed or have been employed by Defendants in the
14 State of California as hourly, non-exempt workers during the period of the
15 relevant statute of limitations.”

16 Proposed Sub-classes are defined as follows:

17 A. All persons who are employed or have been employed by Defendants in the
18 State of California as hourly, non-exempt workers during the period of the
19 relevant statute of limitations, who worked one or more shift in excess of five
20 (5) hours.

21 B. All persons who are employed or have been employed by Defendants in the
22 State of California as hourly, non-exempt workers during the period of the
23 relevant statute of limitations, who worked one or more shifts in excess of six
24 (6) hours.

25 C. All persons who are employed or have been employed by Defendants in the
26 State of California as hourly, non-exempt workers during the period of the
27 relevant statute of limitations, who worked one or more shifts in excess of
28 eight (8) hours.

- 1 D. All persons who are employed or have been employed by Defendants in the
2 State of California as hourly, non-exempt workers during the period of the
3 relevant statute of limitations, who worked one or more shifts in excess of ten
4 (10) hours.
- 5 E. All persons who are employed or have been employed by Defendants in the
6 State of California as hourly, non-exempt workers during the period of the
7 relevant statute of limitations, who worked one or more shifts in excess of
8 twelve (12) hours.
- 9 F. All persons who are employed or have been employed by Defendants in the
10 State of California as hourly, non-exempt workers during the period of the
11 relevant statute of limitations, who worked one or more shifts in excess of
12 three and one-half hours (3 ½), but less than or equal to six (6) hours.
- 13 G. All persons who are employed or have been employed by Defendants in the
14 State of California as hourly, non-exempt workers during the period of the
15 relevant statute of limitations, who worked one or more shifts in excess of six
16 (6) hours, but less than or equal to ten (10) hours.
- 17 H. All persons who are employed or have been employed by Defendants in the
18 State of California as hourly, non-exempt workers during the period of the
19 relevant statute of limitations, who separated their employment from
20 Defendants.
- 21 I. All persons who are employed or have been employed by Defendants in the
22 State of California as hourly, non-exempt workers during the period of the
23 relevant statute of limitations, who received pay for one or more pay periods.
- 24 J. All persons who are employed or have been employed by Defendants in the
25 State of California as hourly, non-exempt workers during the period of the
26 relevant statute of limitations, who received wages without an accompanying
27 wage statement in compliance with Labor Code §226(a).
28

1 K. All persons who are employed or have been employed by Defendants in the
2 State of California as hourly, non-exempt workers during the period of the
3 relevant statute of limitations, who received wages without accompanying
4 disclosures which satisfy California Sick Pay requirements.

5 35. This action is brought, and may properly be maintained, as a class action under CCP
6 §382 and/or a representative action under Business & Professions Code §§17200 et seq. and
7 Labor Code §2699 because there is a well-defined community of interest in the litigation, and the
8 proposed Class and Subclasses (collectively “Class”) are easily ascertainable.

9 A. Numerosity: The Proposed Class is so numerous that joinder of all members is
10 impractical. Plaintiff is informed and believes, and on that basis alleges, that
11 during the relevant time period, Defendants employed over 25 putative Class
12 Members who are geographically dispersed and who satisfy the definition of
13 the proposed Class. As such, a class action is the only available method for the
14 fair and efficient adjudication of this controversy. Membership in the
15 Proposed Class can be easily ascertained by an examination and analysis of
16 employee and payroll records, among other records within Defendants’
17 possession and control.

18 B. Typicality: Plaintiff’s claims are typical of the claims of the Class Members.
19 Plaintiff, like others similarly situated, was subjected to Defendants’ common,
20 unlawful policies, practices, and procedures described above. The Plaintiff’s
21 positions at the company was typical of those of other Class Members.
22 Plaintiff’s claims are typical of the claims of each Class Member because each
23 have sustained damages arising out of and caused by Defendants’ common
24 course of conduct, as alleged herein. As such, Plaintiff has the same interests
25 in this matter as all members of the Class.

26 C. Adequacy: Plaintiff will fairly and adequately protect the interests of the
27 members of the Class. Plaintiff has retained counsel competent and
28

experienced in complex class actions and California labor and employment litigation.

D. Commonality: Common questions of law and fact exist, including but not limited to the following:

- i. Whether Defendant misclassified workers as independent contractors;
- ii. Whether Defendants violated wage and hour laws by failing to pay employees overtime pay;
- iii. Whether Defendants violated wage and hour laws by failing to provide all required meal periods;
- iv. Whether Defendants violated wage and hour laws by failing to provide all required rest periods;
- v. Whether Defendants' policy and practice concerning meal breaks was unlawful;
- vi. Whether Defendants' policy and practice concerning rest breaks was unlawful;
- vii. Whether Defendants unlawfully failed to keep and furnish Class Members with accurate, itemized records of hours worked, in violation of Labor Code §§ 226 and 1174;
- viii. Whether Defendants' policy and practice of failing to pay employees all wages owed twice per month violates Labor Code §204(a);
- ix. Whether Defendants' policy and practice of failing to pay its employees all wages due within the time required by law after their employment ended violates the law and warrants waiting time penalties under Cal. Labor Code §§ 200, 201, 202, 203, and 204;

- x. Whether Defendants unlawfully failed to comply with California's Sick Pay requirements;
- xi. The proper measure of damages sustained and the proper measure of restitution recoverable by Plaintiff, the Class Members, and Subclass Member;
- xii. Whether the Class Members are entitled to injunctive relief to enjoin any further violations of wage and labor laws;
- xiii. Whether Defendants, and each of them, are/were participants in the alleged unlawful and/or tortious conduct;
- xiv. Whether Defendants' conduct was willful and reckless;
- xv. The effect upon and the extent of injuries suffered by Plaintiff and the Plaintiff Class and the appropriate amount of reimbursement, restitution, damages, or other compensation; and
- xvi. What is the extent of liability of each Defendant, including DOE defendants, to each Class and Subclass member?

E. Superiority: A class action is superior to other available methods of the fair and efficient adjudication of the controversy, particularly in the context of wage and hour litigation where the damage suffered by individual plaintiffs, while not inconsequential, makes individual actions impracticable given the expenses and burdens associated with seeking individual relief. Prosecuting over 25 identical, individual lawsuits does not promote judicial efficiency or equity and consistency in judicial results. Moreover, the Class is a group of hourly, low-wage earning employees who have been misclassified and unfairly denied all the benefits of employee status. They rely on their wages and requiring that each individual take time away from work to prosecute individual actions would be inequitable and result in undue hardship for the individual Class members and their families. Public policy favors efficient resolution of their claims and uniform enforcement of California Labor laws

1 against entities skirting their legal obligations at the expense of a vulnerable
2 working population.

3 36. Manageability: Plaintiff is informed and believes that all allegations in this Complaint
4 are capable of being determined on the same evidence and based primarily on review of
5 corporate records and key testimony of Defendants' corporate representatives. To the extent
6 statistical analysis and representative evidence is necessary, Plaintiff and proposed class counsel
7 will employ competent experts and consultants in the field to determine and review evidence for
8 both issues of liability and damages in a scientifically reliable manner.

9 37. Plaintiff requests, pursuant to Rule 1857(a)(1) and Rule 3.766 of the California Rules
10 of Court, that the absent Class and Subclass Members be notified by the best notice practicable
11 under the circumstances, including individual notice to all members who can be identified through
12 reasonable effort. The names and address of the Class and Subclass Members are available from
13 Defendants.

14 **FIRST CAUSE OF ACTION**

15 **FAILURE TO PAY REQUIRED RATE OF PAY FOR ALL WAGES OWED, INCLUDING**
16 **OVERTIME WAGES, AGAINST ALL DEFENDANTS**

17 38. Plaintiff incorporates by reference in this cause of action each allegation of the
18 preceding paragraphs as though fully set forth herein.

19 39. Section 2(K) or Wage Order 5 defines "hours worked" as "the time during which an
20 employee is subject to the control of an employer, and including all the time the employee is
21 suffered or permitted to work, whether or not required to do so."

22 40. Labor Code § 223 prohibits the pay of less than a statutory or contractual wage scale.
23 §1194-1197.1 prohibit the payment of less than the minimum wages. Labor Code §1197.1 states,
24 "[a]ny employer or other person acting individually as an officer, agent, or employee of another
25 person, who pays or causes to be paid to any employee a wages less than the minimum fixed by
26 an applicable state or local law, or by an order of the commission shall be subject to a civil
27 penalty, restitution of wages, liquidated damages payable to the employee, and any applicable
28 penalties pursuant to Section 203."

1 41. When employees like Plaintiff and their coworkers earning at or near minimum wage
2 do not receive the legally required minimum wage for all hours worked, including overtime
3 hours worked, the result is that they are earning less than the statutory minimum wages for all
4 hours worked. Employees like Plaintiff and Class Members who have been misclassified as
5 independent contractors and paid the same hourly rate for all hours worked, even if those hours
6 exceeded 8 hours in one day or 40 hours in one week, have been denied legally required
7 minimum wages, in violation of Labor Code §1197.

8 42. Labor Code § 1194 entitles an employee receiving less than the minimum wage,
9 which is what happens when employees are paid straight wages when they work overtime, to
10 recover in a civil action the unpaid balance of the full amount of this minimum wage, including
11 interest thereon, reasonable attorneys' fees, and costs of suit.

12 43. Labor Code § 1194.2 entitles an employee receiving less than the minimum wage to
13 recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest
14 thereon.

15 44. Labor Code §1197.1 subjects and employer who causes an employee to be paid less
16 than minimum wage to: (1) a civil penalty equal to one hundred dollars (\$100) for each
17 underpaid employee for each pay period in which the employee is underpaid for an initial
18 violation that is intentionally committed; (2) two hundred and fifty dollars (\$250) for a
19 subsequent violation for the same specific offense for each underpaid employee for each pay
20 period regardless of whether the initial violation is intentionally committed; (3) restitution of
21 wages; and (4) liquidated damages, all payable to the employee.

22 45. During the class period, Defendants have refused and failed to pay Plaintiff and the
23 Class for all hours worked. Consequently, Defendants have failed to pay minimum wages to
24 Plaintiff and the Class for all hours worked as alleged above in violation of California Labor
25 Code §§218, 558, 1194, 1194.2, 1197, 1197.1, 1198, and the Wage Order.

26 46. As a result of Defendant's conduct, Plaintiff and Class Members have been deprived
27 of payment for all hours worked and minimum wage for all hours worked in an amount to be
28 determined at trial, and are entitled to recovery of the unpaid balance of the full amount of these

1 wage, including interest thereon, reasonable attorneys' fees, and costs of suit pursuant to Labor
2 Code §1194, 218.5, and Cal. Code of Civ. Pro. §1021.5; liquidated damages and interest thereon
3 pursuant to Labor Code §1194.2; and civil penalties, restitution of wages, and liquidated
4 damages pursuant to Labor Code §1197.1.

5 47. Plaintiff alleges on information and belief that Defendants' failure to pay the Class
6 Members for all hours worked as alleged in this cause of action, was willful, and thus entitles the
7 Class Members to penalties under Labor Code § 203. Specifically, Labor Code § 203 provides
8 that an employee's wages shall continue as a penalty until paid or for a period of up to 30 days
9 from the time they were due, whichever period is shorter.

10 48. In addition, and pursuant to Labor Code § 558, Plaintiff requests that this Court
11 award civil penalties as set forth in § 558 for each pay period during which Defendants failed to
12 pay the Class Members as alleged above.

13 **SECOND CAUSE OF ACTION**

14 **MEAL PERIOD VIOLATIONS AGAINST ALL DEFENDANTS**

15 49. Plaintiff incorporates by reference in this cause of action each allegation of the
16 preceding paragraphs as though fully set forth herein.

17 50. Labor Code §512 provides, “[a]n employer may not employ an employee for a work
18 period of more than five hours per day without providing the employee with a meal period of not
19 less than 30 minutes... An employer shall not employ an employee for a work period of more
20 than 10 hours per day without providing the employee with a second meal period of not less than
21 30 minutes...” Labor Code §226.7(a) provides, “[n]o employer shall require an employee to
22 work during any meal... period mandated by an applicable order of the Industrial Welfare
23 Commission.”

24 51. Section 11 of Wage Order 5 requires employers to authorize and permit employees to
25 take an uninterrupted 30 minute meal period after no more than 5 hours of work. It further
26 provides, “[u]nless an employee is relieved of all duty during a 30 minute meal period, the meal
27 period shall be considered an ‘on duty’ meal period and counted as time worked.” Pursuant to
28

1 Labor Code §1198, “the employment of any employee... under conditions of labor prohibited by
2 the order is unlawful.”

3 52. Pursuant to *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 273 P.3d 513
4 (2012), a first meal period must begin no later than the start of an employee's sixth hour of work.

5 53. Defendants misclassified Plaintiff and Class Members as independent contractors
6 instead of as hourly, non-exempt employees. Defendant failed to provide or make meal periods
7 available to Plaintiff and Class Members. As a result of Defendants’ failure to afford legally
8 compliant meal periods as set forth above, Defendants are liable to the Plaintiff and Class
9 Members for one hour of additional pay at the regular rate of compensation for each workday
10 that the required uninterrupted meal periods were not provided, pursuant to Cal. Labor Code
11 §226.7 and Wage Order No. 1-2001, § 11(b). Upon information and belief, Defendants never
12 paid such premiums to Plaintiff and the Class.

13 54. Plaintiff and the Class are entitled to interest, applicable penalties, and attorneys’ fees
14 and costs.

15 55. Plaintiff also seeks injunctive relief requiring Defendants to comply with the
16 California Labor Code and relevant Wage Orders with respect to meal periods, declaratory relief
17 that Defendants’ policies regarding such are unlawful, and attorneys’ fees and costs, and under
18 Cal. Code of Civ. Pro. §1021.5.

19 56. Defendants’ failure to pay meal period premiums was done willfully, in bad faith, in
20 knowing violation of the California Labor Code and the IWC Wage Orders.

21 **THIRD CAUSE OF ACTION**

22 **REST PERIOD VIOLATIONS AGAINST ALL DEFENDANTS**

23 57. Plaintiff incorporates by reference in this cause of action each allegation of the
24 preceding paragraphs as though fully set forth herein.

25 58. Plaintiff and similarly situated Class Members regularly worked more than three and
26 one-half hours in a day without being authorized and permitted to take a 10-minute duty-free rest
27 period, and regularly worked more than six hours in a day without being authorized and
28

1 permitted to take two, 10-minute duty-free rest periods per four hours or major fraction thereof,
2 as required under Cal. Labor Code § 226.7 and Wage Order No. 5-2001, § 12(a).

3 59. Plaintiff and Class Members did not receive any required rest breaks. Defendant
4 misclassified employee as independent contractors and denied Plaintiff and Class Members their
5 right to required rest breaks.

6 60. As a result of Defendant's failure to afford all proper rest periods, they are liable to
7 the Plaintiff and Class for one hour of additional pay at the regular rate of compensation for each
8 workday that the proper rest periods were not provided, pursuant to Cal. Labor Code §226.7 and
9 Wage Order No. 5-2001, § 12(b). Upon information and belief, Defendants never paid such
10 premiums to Plaintiff and the Class.

11 61. Plaintiff and the Class are entitled to interest, applicable penalties, and attorneys' fees
12 and costs.

13 62. Plaintiff also seeks injunctive relief requiring Defendants to comply with the
14 California Labor Code and Wage Orders with respect to rest periods, declaratory relief that
15 Defendants' policies regarding such are unlawful, and attorneys' fees and costs, and under Cal.
16 Code of Civ. Pro. §1021.5.

17 63. Defendants' failure to pay rest period premiums was done willfully, in bad faith, in
18 knowing violation of the California Labor Code and the IWC Wage Order.

19 **FOURTH CAUSE OF ACTION**

20 **LATE PAY AND WAITING TIME PENALTIES AGAINST ALL DEFENDANTS**

21 64. Plaintiff incorporates by reference in this cause of action each allegation of the
22 preceding paragraphs as though fully set forth herein.

23 65. At all times relevant hereto, Labor Code Section 201 provided that, if an employer
24 such as Defendants discharged an employee such as a member of the Class, the wages earned
25 and unpaid at the time of discharge were due and payable immediately. Furthermore, Labor
26 Code Sections 202 provided that, if an employee such as a member of the Class voluntarily left
27 his or her employment, the wages earned and unpaid must be paid by the employer within
28 seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours

1 previous notice of his or her intention to leave, in which case the employee is entitled to receive
2 his or her wages immediately at the time of quitting.

3 66. Plaintiff is informed and believes and, based thereon, alleges that, during the Class
4 period, Defendants willfully failed to pay former employees in the Class their earned and unpaid
5 wages, either at the time of their discharge or within seventy-two (72) hours of their quitting.
6 Furthermore, Defendants failed to pay Plaintiff on a timely basis all of the wages due her at the
7 time of termination or quitting, including overtime wages. Plaintiff was terminated from
8 employment on October 27, 2018, so her final wages were due immediately. However,
9 Defendants did not pay her final wages until November 1, 2018, when they were transferred to
10 her via PayPal. No wage statement or paystub accompanied this transfer. Defendants therefore
11 violated Labor Code Section 201 and 202.

12 67. As alleged above, by failing to comply with California labor laws governing the
13 payment of all hours worked, meal and rest break violations, and other penalties and damages as
14 set forth above, Defendants underpaid the actual amount of regular hours and overtime hours
15 worked by Plaintiff and the rest of the Class. These unpaid amounts were still owing to former
16 employees in the Class when they ended their employment with Defendants. Consequently,
17 Defendants failed to timely pay all wages due former employees in the Class at the time that
18 their employment ended pursuant to Labor Code §§ 203 and 227.3.

19 68. During the Class Period, Labor Code Section 203 provided that, if employers such as
20 Defendants willfully fail to pay any wages of an employee who is discharged or who quits, the
21 wages of the employee shall continue as a penalty from the due date thereof at the same rate until
22 paid or until an action therefore is commenced, but the wages shall not continue for more than
23 thirty (30) days. Accordingly, Class Members who were discharged or who quit during the Class
24 Period are entitled to receive their wages for each day they were not paid, at their regular rate of
25 pay, up to a maximum of thirty (30) days.

26 69. Moreover, Defendants were required to pay Plaintiff and the Class all wages earned
27 twice during each calendar month pursuant to Labor Code §204(a). Defendants failed to pay all
28 wages earned to employees as a result of the unlawful employment policies and practices

1 discussed herein. As a result of these practices, employees were underpaid for hours worked,
2 including overtime and penalty wages, and this underpayment resulted in a failure to pay all
3 wages owed twice per month.

4 70. Plaintiff will seek both restitution pursuant to Labor Code §558(a)(3) for herself and
5 members of the proposed Subclass for each violation of Labor Code §203 during the Class
6 Period, in an amount according to proof based on Defendants' corporate and payroll records.

7 **FIFTH CAUSE OF ACTION**

8 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS AGAINST**
9 **ALL DEFENDANTS**

10 71. Plaintiff incorporates by reference in this cause of action each allegation of the
11 preceding paragraphs as though fully set forth herein.

12 72. California Labor Code § 226(a) provides that, at the time of each payment of wages,
13 an employer shall provide each employee with a wage statement itemizing, among other things,
14 the total hours worked by the employee in the pay period, and all applicable hourly rates in effect
15 during the pay period, the corresponding number of hours worked at each hourly rate by the
16 employee, and the true legal name of the entity that is the employer.

17 73. California Labor Code § 226(e) provides that an employee suffering injury as a result
18 of a knowing and intentional failure by an employer to comply with Labor Code § 226(a) is
19 entitled to recover the greater of his or her actual damages or a penalty of \$50 for the initial pay
20 period in which a violation occurs and \$100 per employee for each violation in a subsequent pay
21 period (up to a maximum of \$4,000), in addition to attorneys' fees and costs.

22 74. Defendants knowingly and intentionally failed to provide wage statements to Plaintiff
23 and Class Members. Plaintiff was frequently paid with a personal check, with no accompanying
24 accounting of how many hours were worked, applicable rates of pay, overtime, sick pay, or any
25 other requirement. Such failures caused injury to Plaintiff and Class Members, by, among other
26 things, impeding them from knowing the total hours worked and the amount of wages to which
27 they are and were entitled.
28

1 75. Defendants' violations of Labor Code section 226 are ongoing and will continue until
2 and unless this Court enters an injunction barring such violations.

3 76. Plaintiff and the Class Members are therefore entitled to the damages and penalties,
4 plus attorneys' fees and costs, provided for under Labor Code §§ 226(e) and (g). Pursuant to
5 Labor Code § 226(g), Plaintiff and the Class Members are also entitled to and seek injunctive
6 relief requiring Defendants to comply with Labor Code 226(a).

7 77. Labor Code § 1174 provides that "[e]very employer employing labor in this state
8 shall ... (c) [k]eep a record showing the names and addresses of all employees employed and the
9 ages of all minors [and] (d) [k]eep at a central location in the state or at the plants or
10 establishments at which employees are employed, payroll records showing the hours worked
11 daily by and the wages paid to, and the number of piece-rate units earned by and any applicable
12 piece rate paid to, employees employed at the respective plants or establishments. These records
13 shall be kept in accordance with rules established for this purpose by the commission, but in any
14 case shall be kept on file for not less than two years."

15 78. Labor Code § 1174.5 provides that "[a]ny person employing labor who willfully fails
16 to maintain the records required by subdivision (c) of Section 1174 or accurate and complete
17 records maintained by subdivision (d) of Section 1174, or to allow any member of the
18 commission or employees of the division to inspect records pursuant to subdivision (b) of
19 Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500)."

20 79. Plaintiff alleges on information and belief that Defendants knowingly and
21 intentionally failed to furnish the Class Members with accurate itemized statements for each pay
22 period that they worked and failed to maintain accurate payroll records of the Class Members as
23 mandated by Labor Code §§ 226 and 1174. As such, the Class Members are entitled to civil
24 penalties and an award of costs and attorney's fees under § 226(e). In addition, the Class
25 Members are entitled to recover civil penalties under § 1174.5.

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1 **SIXTH CAUSE OF ACTION**

2 VIOLATION OF CALIFORNIA SICK PAY REQUIREMENTS

3 AGAINST ALL DEFENDANTS

4 80. Plaintiff incorporates by reference in this cause of action each allegation of the
5 preceding paragraphs as though fully set forth herein.

6 81. Plaintiff, on behalf of herself and similarly situated Class Members, alleges that
7 Defendants failed to provide required California paid sick days and further failed to distribute
8 and maintain required documentation concerning how many sick dates were available, in violation
9 of Labor Code §§246, 246(a), 246(b)(1), and 247.5.

10 82. Information concerning sick pay and how many sick days remained was not listed on
11 pay stubs, as no paystubs were provided, and no other documentation or disclosure concerning
12 California Sick Pay accompanied the Class Members' wages.

13 83. As a result, Plaintiff, on behalf of herself and the Class now seeks damages pursuant
14 to §§248.5 in addition to reasonable attorneys' fees, and costs of suit pursuant to Labor Code §
15 218.5 and CCP 1021.5.

16 **SEVENTH CAUSE OF ACTION**

17 FAILURE TO REIMBURSE FOR REQUIRED BUSINESS EXPENSES

18 AGAINST ALL DEFENDANTS

19 84. Plaintiff incorporates by reference in this cause of action each allegation of the
20 preceding paragraphs as though fully set forth herein.

21 85. California Labor Code §2802 requires employers to indemnify employees for
22 necessary expenditures or losses incurred by employees in direct consequence of discharge of
23 duties.

24 86. Defendants required Plaintiff and the Class and relevant subclass to utilize their
25 personal cell phones for work purposes but failed to reimburse employees for this use as required
26 under the Labor Code. Because Plaintiff and the Class were forced to pay this expense out of
27 their own pocket, this causes the effective wage earned to fall below the agreed rate of pay, and
28 when combined with other violations, the effective wage fell below the required minimum wage.

1 87. As a result of Defendants' conduct, Plaintiff and the Class will seek reimbursement
2 for required expenses, as well as reasonable attorneys' fees, and costs of suit pursuant to Labor
3 Code § 218.5 and CCP 1021.5.

4 88. In addition, and pursuant to Labor Code § 558, Plaintiff requests that this Court
5 award civil penalties as set forth in § 558 for each pay period during which Defendants failed to
6 pay the Class Members as alleged above.

7 **EIGHTH CAUSE OF ACTION**

8 UNFAIR PRACTICE UNDER THE UNFAIR COMPETITION ACT ("UCL")

9 AGAINST ALL DEFENDANTS

10 89. Plaintiff incorporates by reference in this cause of action each allegation of the
11 preceding paragraphs as though fully set forth herein.

12 90. Defendants knowingly committed, and upon information and belief continue to
13 commit, ongoing unlawful business practices within the meaning of the UCL, including, but not
14 limited to unlawful practices as described in the causes of action articulated above, and hereby
15 incorporated herein.

16 91. Plaintiff lost money and property as a result of Defendants' unlawful business
17 practices described above.

18 92. Pursuant to the UCL, Plaintiff and all Class Members are entitled to restitution of
19 money or property acquired by Defendants by means of such unlawful business practices, in
20 amounts not yet known, but to be ascertained at trial.

21 93. Pursuant to the UCL, Plaintiff and Class Members are entitled to injunctive relief
22 against Defendants' ongoing unlawful business practices. If an injunction does not issue
23 enjoining Defendants from engaging in the unlawful business practices described above, Plaintiff
24 and the general public will be irreparably injured.

25 94. Plaintiff has no plain, speedy, and adequate remedy at law. Defendants, if not
26 enjoined by this Court, will continue to engage in the unlawful business practices described
27 above in violation of the UCL, in derogation of the rights of Plaintiff and Class Members and of
28 the general public.

1 95. Plaintiff's success in this action will result in the enforcement of important rights
2 affecting the public interest by conferring a significant benefit upon the general public.

3 96. Defendants' numerous violations of local and California law, as well as the other
4 statutory and regulatory violations alleged herein, constitute unlawful business actions and
5 practices in violation of Business and Professions Code § 17200, et seq.

6 97. Pursuant to Business and Professions Code § 17200, et seq., Plaintiff and the Class
7 Members are entitled to restitution of unpaid wages and penalty pay, among other relief alleged
8 herein, that were withheld and retained by Defendants during a period that commences four
9 years prior to the filing of this action. Plaintiffs are further entitled to a permanent injunction
10 requiring Defendants to properly classify workers as employees, and to provide them with all
11 benefits and protections to which hourly, non-exempt employees are entitled under California
12 law, including properly paying the lawful rate of pay for all hours worked, providing meal/rest
13 periods to all workers as defined herein, complying with California Sick Pay laws, timely pay
14 wages upon discharge, maintain accurate wages statements and payroll records, in addition to an
15 award of attorneys' fees and costs pursuant to Code of Civil Procedure § 1021.5 and other
16 applicable law, and costs.

17 **NINTH CAUSE OF ACTION**

18 STATUTORY PENALTIES PURSUANT TO PRIVATE ATTORNEYS GENERAL
19 ACT, LABOR CODE §2698 *et seq.* AGAINST ALL DEFENDANTS

20 98. Plaintiff incorporates by reference in this cause of action each allegation of the
21 preceding paragraphs as though fully set forth herein.

22 99. Under the Private Attorneys General Act of 2006, Labor Code §§2698-2699.5, an
23 aggrieved employee, on behalf of himself and other current or former employees, may recover
24 penalties under any provision of the Labor Code that provides for civil penalties. These penalties
25 are in addition to any other relief available under the Labor Code. Plaintiff is an aggrieved
26 employee under PAGA.

27 100. As set forth above, Defendants have committed numerous violations for which the
28 Labor Code provides for penalties, including violations of all applicable Labor Code provisions

1 set forth in the foregoing causes of action. Labor Code §2699.5 identifies the aforementioned
2 Labor Code provisions as statutes to which §2699.3's procedural requirements must be met
3 before a penalty may be assessed under §2699(f). Plaintiff has complied with the procedural
4 requirements specified in §2699.3 by providing written notice to the Defendants and the Labor &
5 Workforce Development Agency ("LWDA"). See Exhibit 1 attached hereto, which is a true and
6 correct copy of the Notice correspondence showing compliance with §2699.3. No notice of
7 intent to investigate the alleged violations was provided within the statutory period.
8 Consequently, Plaintiff has exhausted administrative remedies, and on behalf of themselves and
9 all other aggrieved current and former employees of Defendants. Plaintiff, therefore, now
10 pursues this cause of action as permitted by §2698, *et seq.*

11 101. Enforcement of statutory provisions enacted to protect workers and to ensure proper
12 and prompt payment of wages due to employees is a fundamental public interest in California.
13 Consequently, Plaintiff's success in this action will result in the enforcement of important rights
14 affecting the public interest and will confer a significant benefit upon the general public. Private
15 enforcement of the rights enumerated herein is necessary, as no public agency has pursued
16 enforcement. Plaintiff is incurring a financial burden in pursuing this action and it would be
17 against the interests of justice to require payment of attorneys' fees and costs from any recover
18 that might be obtained herein, pursuant to, *inter alia*, Labor Code §§2698, *et seq.*, and Code of
19 Civil Procedure §1021.5

20 102. In addition, if Plaintiff succeeds in enforcing these rights affecting the public
21 interest, then attorneys' fees may be awarded to Plaintiff and against Defendants under Code of
22 Civil Procedure §1021.5 and other applicable law in part, because:

23 **a.** A successful outcome in this action will result in the enforcement of important
24 rights affecting the public interest by requiring Defendants to comply with the wage and hour
25 laws and California's unfair business practice law;

26 **b.** This action will result in a significant benefit to Plaintiff, the Class, and the
27 general public by bringing to a halt unlawful and/or unfair activity;
28

c. Unless this action is prosecuted, members of the Class and general public will not recover those moneys, and many of Defendants' employees would not be aware that the acts and practices they were subjected to by Defendants were wrongful;

d. Unless this action is prosecuted, Defendants will continue to mislead their employees about the true nature of their rights and remedies under the wage and hour laws; and

103. An award of attorneys' fees and costs is necessary for the prosecution of this action and will result in a benefit to Plaintiff, the Class, aggrieved employees, and to consumers in general, by preventing Defendants from continuing to circumvent the wage and hour statutes and frustrate the long-standing recognition by the California legislature and the courts that such statutes, as pled herein, are not merely a matter of private concern between employer and employee to be eviscerated by considerations of waiver, contributory negligence, good or bad faith, and private agreements. Rather, the wage and hour statutes have been described as a matter of public concern, were designed to provide minimum substantive guarantees to individual workers and are essential to public welfare.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself, Class Members, and aggrieved employees, requests judgment and the following specific relief against Defendants as follows:

- A. That the Court determine that this action may be maintained as a class action under Code of Civil Procedure § 382;
- B. That the Court determine that this action may be maintained as a PAGA representative action under Cal. Labor Code. §2698 *et seq.*
- C. Provision of class notice to all members of the Class;
- D. That Defendant is found to have violated the above-referenced provisions of the Labor Code, CCR and IWC Wage Order 5-2001 as to Plaintiff, relevant Class Members and aggrieved employees;
- E. For compensatory damages, in an amount according to proof at trial, with interest thereon;

- 1 F. For compensation for not being provided paid rest breaks;
- 2 G. For compensation for not being provided meal periods;
- 3 H. That Defendant's actions are found to be willful and/or in bad faith to the
- 4 extent necessary under §§ 201, 202, 203, 558, and 2698 et seq. of the
- 5 California Labor Code for willful failure to pay all compensation owed at the
- 6 time of separation to Plaintiff, Class Members and aggrieved employees no
- 7 longer employed by Defendants, as to §226 and 1174 of the California Labor
- 8 Code for willful failure to provide the required accurate and itemized wage
- 9 statements to Plaintiff and Class Members;
- 10 I. That Plaintiff, Class Members, and aggrieved employees receive an award in
- 11 the amount of unpaid wages owed, including interest thereon, and penalties as
- 12 provided in the Labor Code, CCR and Wage Order, including under Labor
- 13 Code §§ 203, 510, and 558, subject to proof at trial;
- 14 J. That Plaintiff and Class Members receive damages pursuant to §§248.5 in
- 15 addition to reasonable attorneys' fees, and costs of suit pursuant to Labor
- 16 Code § 218.5 and CCP 1021.5;
- 17 K. That Defendants be ordered to pay restitution to Plaintiff and Class Members
- 18 for amounts acquired through Defendants' unlawful activities pursuant to
- 19 Business and Professions Code §§ 17200-05 and enjoined to cease and desist
- 20 from unlawful and unfair activities in violation of California Business and
- 21 Professions Code § 17200 et. seq.;
- 22 L. That Plaintiff and Class Members receive an award of reasonable attorneys'
- 23 fees and costs pursuant to Code of Civil Procedure §1021.5, Labor Code
- 24 §226, 218.5, 1194, 2698 et seq. and/or applicable laws;
- 25 M. That the Court award penalties pursuant to Labor Code §2698 *et seq.*;

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1 N. That the Court issue declaratory relief that Defendant's challenged policies are
2 unlawful; and

3 O. That the Court order further relief, in law and equity, as it deems appropriate
4 and just.
5

6 DATED: May 27, 2020

KOUL LAW FIRM

7 
8 BY: Nazo Koulloukian, Esq.
9 Attorneys for Plaintiff MELCHOR RENOI
GONZALEZ, and putative class members
10

11 ***DEMAND FOR JURY TRIAL***
12

13 Plaintiff, on behalf of herself and the putative class, hereby demands trial by jury to the
14 full extent permitted by law.
15

16 DATED: May 27, 2020

KOUL LAW FIRM

17 
18 BY: Nazo Koulloukian, Esq.
19 Attorneys for Plaintiff MELCHOR RENOI
20 GONZALEZ, and putative class members
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Exhibit 1



Nazo@Koullaw.com

P (213) 761 – 5484

F (818) 561 – 3938

3435 WILSHIRE BLVD

SUITE 1710

LOS ANGELES, CA 90010

www.koullaw.com

February 7, 2020

Via E-filing:

California Labor & Workforce
Development Agency
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Via Certified U.S. Mail:

AXS Opportunity Fund
Sun Valley Partnership, LP
9100 Wilshire Blvd #360e
Beverly Hills, CA 91212

AXS Opportunity Fund
Sun Valley Partnership, LP
830 S. Hill Street #371
Los Angeles, CA 90015

AXS Opportunity Fund
Sun Valley Partnership, LP
c/o Sanford Gage
9454 Wilshire Blvd
Beverly Hills, CA 90212

Town Square M Properties, LLC
1515 Fairplex Drive
Pomona, CA 91768

Re: PAGA Notice Pursuant to California Labor Code §2699
Claimant: Melchor Renoi Gonzalez
Employers: AXS Opportunity Fund, LLC, Sun Valley Partnership LP,
Town Square M Properties, LLC

Dear Sir or Madam:

Melchor Gonzalez has retained Nazo Koulloukian, Esq. of the KOUL LAW FIRM to represent him, and all other aggrieved employees, for wage and hour claims against his employers, AXS Opportunity Fund, LLC, Sun Valley Partnership LP, Town Square M Properties, LLC (hereafter collectively referred to as “Employer.”)

Employers are property management companies that own and manage properties throughout California. Claimant’s proposed PAGA representative action would represent dozens of current and former employees. Claimant began working for Employer as a maintenance worker in November 2015, and he remains currently employed. Claimant and his co-workers were misclassified as independent contractors in violation of Labor

Code §2750.3 and 226.8 and deprived of all wage and hour protections afforded non-exempt employees, including the right to overtime, meal and rest breaks, California sick pay, and accurate wage statements.

Employer has violated, and/or has caused to be violated, several Labor Code provisions and is therefore liable for civil penalties under Cal. Labor Code §2698 *et seq.* We request that your agency investigate the claims alleged below, or permit Claimant to seek civil penalties under the Private Attorney General Act (“PAGA”), Labor Code §2698 *et seq.*, on behalf of the Labor and Workforce and development Agency (“LWDA”) and the State of California in a representative action. This letter will serve as notice of these allegations pursuant to Cal. Lab. Code §2699.3.

Failure to Pay for All Hours Worked, Including Overtime Hours Worked

(Cal. Labor Code §§218, 226.8, 510, 512, 558, 1194, 1197, 1197.1,
1198, 1199, 2750.3, 2699 *et seq.*)

Section 2(K) or Wage Order 5 defines “hours worked” as “the time during which an employee is subject to the control of an employer, and including all the time the employee is suffered or permitted to work, whether or not required to do so.”

Employer engages in numerous practices resulting in failure to pay all hours worked. For example, Employer pays employees with regular business checks that do not state any of the required information, including hours worked, overtime, rate of pay, etc. Claimant explains that he would be paid in two-week intervals (although checks were often given to him late) for 80 hours of work, despite the fact that he regularly worked over 100 hours during that period. Until recently, Employer did not use timeclocks or any mechanism to record employee time. Recently they started using a mobile phone application.

When claimant was called in for emergencies, often late at night, he was not paid for this time and it was not on the clock. Claimant worked approximately 10 hours of overtime every week for which he was not paid properly. Claimant observed that his co-workers experienced the same conditions of employment. They are all aggrieved employees.

Employer has misclassified all of its hourly employees as independent contractors instead of employees, resulting in a failure to pay wages at the applicable lawful rates for all hours worked, including overtime hours worked. Pursuant to *Dynamex Operations West, Inc. v. Superior Court*, codified at Labor Code §2750.3, unless an employer can satisfy the following ABC test, the worker is presumed an employee:

- A. The worker is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact; and

- B. The worker performs work that is outside the usual course of the hiring entity's business; and
- C. The worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed.

Employer cannot satisfy a single element of this test as it relates to its employees. Employees were under the direct control of Employer and were explicitly instructed on when and how to perform their work. The work performed was directly within the usual course of Employer's business, and the workers worked full-time for Employer and were not customarily engaged in any independently established trade.

Because Employer paid employees like independent contractors, when Claimant and aggrieved employees worked overtime, they were not paid at 1.5 times their regular rate of pay. Rather, they were paid straight time for all hours worked.

When employees like Claimant and aggrieved employees earning at or near minimum wage do not receive full payment for all hours worked, the result is that they are earning less than the statutory minimum wages for all hours worked. Employer has been engaged in many unlawful employment practices which resulted in underpayment for hours worked each pay period, including overtime hours worked, as more fully set forth below:

Failure to Pay Overtime Wages

Employer has required Claimant and others to work hours in excess of eight hours in a day and forty in a week but has not paid these employees overtime compensation at one and one-half times the regular rate of pay in violation of Labor Code §510. Further, Claimant and aggrieved employees have been required to work in excess of 12 hours in one day without being compensated at a rate of twice the regular rate of pay. §510. As a result, Claimant and aggrieved employees have been denied "the unpaid balance of the full amount of this... overtime compensation" as required by Cal. Labor Code. §1194. Employer is liable for civil penalties pursuant to Labor Code §§558 and 2699 *et seq.*

Failure to Pay Wages- Required Minimum Wage & Penalty Wages

Employer failed to pay Claimant and aggrieved employees at the lawful rate for all hours worked as a result of Employer's practice of refusing and failing to pay overtime, and refusing to permit Claimant and employees to take required meal and rest breaks, while concurrently failing to pay penalty wages for meal and rest break violations. Based on Employer's unlawful conduct described above, and because Claimant and the aggrieved employees were paid at or near minimum wage, Employer's failure to pay for all hours worked, including overtime, resulted in a payment of less than the minimum wage for all hours worked, in violation of Labor Code §1197, 1197.1, 1199 and Wage Order 5-2001 4(B).

Based on the above violations, Claimant and aggrieved employees have been employed under conditions prohibited by the wage order, and thus Employer has violated §1198. Employer is liable for civil penalties pursuant to Labor Code §§558 and 2699 *et seq.*

Failure to Timely Pay All Wages Owed

(Cal. Lab. Code §§201, 202 and 2698 *et seq.*)

Failure to Pay Wages Due Upon Termination

Pursuant to Cal. Lab. Code § 202 (a), “[i]f an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter.” An employee who is discharged must be paid all of his or her wages immediately at the time of termination. Labor Code §§ 201 and 227.3.) As a result of Employer’s unlawful employment practices as described herein, Employer failed to pay aggrieved employees who are no longer employed by Employer all wages due in a timely manner upon termination.

As set forth above, Employer knowingly and willfully failed to pay all compensation due and owing to aggrieved employees at the time employment terminated, knowing they were clearly misclassified as independent contractors. Further knowing that they were not being paid for all hours worked, overtime pay, or meal or rest break penalty pay. Employer willfully failed to pay employees who are no longer employed by it all compensation due upon termination of employment as required by Cal. Lab. Code §§201 and 202. Pursuant to §203, aggrieved employees are now also entitled to recover up to thirty (30) days of wages due to Employer’s “willful” failure to comply with the statutory requirements of §§201 and 202 of the Labor Code. Moreover, because Employer violated §§201, 202 and 203, Employer is liable for civil penalties pursuant to Cal. Lab. Code § 2698 *et. seq.*

Failure to Pay All Wages Owed Twice Per Month

Employer was required to pay Claimant and aggrieved employees all wages earned twice during each calendar month pursuant to Labor Code §204(a). Employer failed to pay all wages earned to employees as a result of the unlawful employment policies and practices discussed herein. As a result of these practices, aggrieved employees were underpaid for hours worked, including overtime and penalty wages, and this underpayment resulted in a failure to pay all wages owed twice per month. Below is a paycheck recently received by Claimant:



Although Employer was required to pay employees every two weeks, Claimant explains that his checks were often late. For example, the check he should have received on the 15th of the month often came on the 20th, 25th, even as late as the 30th. The check, above, is dated September 20, 2019, five days late.

Failure to Provide Uninterrupted Meal Breaks & Second Meal Breaks

Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2699 *et seq.*

During Claimant's employment, Employer failed to maintain a compliant meal period policy and practice. Because Claimant and aggrieved employees were misclassified as independent contractors, and/or otherwise denied the benefit of protective employee wage and hour laws, they were denied compliant meal periods altogether.

Employees did not clock in and out for lunch. Claimant's meal breaks were interrupted at least twice per month by supervisors asking him to perform work related tasks. Often, the supervisor would state that it was meal time, use a 30 minute timer, and announce when the meal period was over. However, if Claimant or aggrieved employees were required to do any work tasks during that period, they wouldn't get any additional time. These noncompliant meal breaks, when received, were the only breaks in the day for Claimant and aggrieved employees. Employees never received second meal periods.

Employer failed to provide all of its hourly employees with their right to take an off-duty unpaid 30-minute meal period. Labor Code §512 provides, "[a]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes..." Labor Code §226.7(a) provides, "[n]o employer shall require an employee to work during any meal... period mandated by an applicable order of the Industrial Welfare Commission." Paragraph

11(A) of the Wage Orders provides, in pertinent part, “[u]nless an employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an ‘on duty’ meal period and counted as time worked.”

Employer failed to permit claimants and others to take timely, off-duty, meal breaks of “not less than 30 minutes” for each five consecutive hours of work in violation of Labor Code §§226.7 and 512. Moreover, because Employer’s failure to provide meal periods violates a Wage Order, Employer is liable under Labor Code §1198. As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et. seq.*

Failure to Provide Rest Breaks

Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2698 *et seq.*

Employer has failed to maintain a compliant rest period policy and practice that provides its employees with off-duty rest periods as required by California law. Because Claimant and aggrieved employees were misclassified as independent contractors and/or otherwise deprived of the protections of California employee wage and hour laws, they were not provided with any rest periods during the time of their employment. Claimant states that rest breaks are not permitted.

Employer did not authorize or permit all of its hourly employees to take at least a ten minute rest period in which they were relieved of all duties, for every 4 hours of work, or major fraction thereof, as required by Cal. Lab. Code §226.7, §512 and Wage Order 5-2001 12(A). According to Claimant, she never received rest breaks, and this experience is consistent with that of other aggrieved employees.

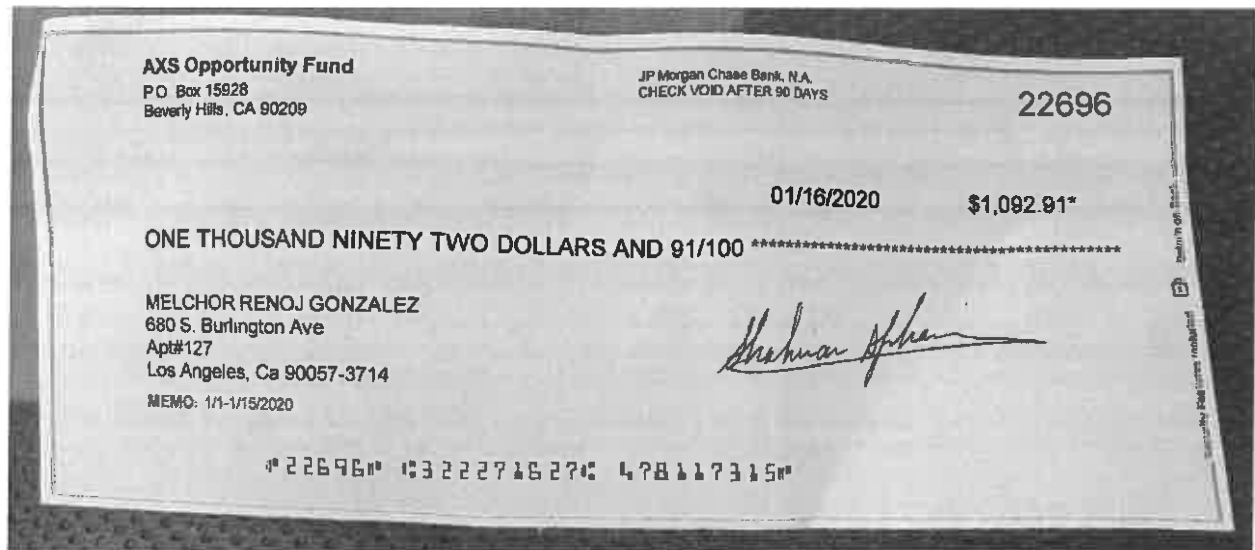
Breaks were not integrated into daily schedules, and Employer failed to pay Claimant and similarly situated employees all premium compensation (one hour of pay at the employee’s regular rate of pay for missed or untimely rest periods) mandated by Labor Code §226.7 (b) for these missed rest periods. Because Employer violated Section 12(A) of Wage Order 5, Employer is liable under Labor Code §1198. As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et. seq.*

Failure to Provide Accurate Itemized Wage Statements and Comply with Record Keeping Requirements

(Cal. Labor Code §§ 226, 1174, 2699 *et seq.*)

Claimant and aggrieved employees were paid by regular business checks. No wage statement accompanied this check, so employees were altogether denied the required wage statements, and employer failed to maintain required records. Below is a copy one

of Claimant's recent paychecks. There was no paystub, record, enclosure, list of hours, anything accompanying this check.



Notably, Employer doesn't list its true name or business address. There is no AXS Opportunity Fund, LLC, listed on the CA Secretary of State website. However, the website (axsopp.com/contact) lists the below information:



Contact

Tel: (213) 614-9999
Fax: (310) 202-0533
Address: P.O. Box 15928
Beverly Hills, CA 90209
Email: info@axsopportunityfund.com

Employers Sun Valley Partnership LP and Town Square M Properties, LLC also paid Claimant and aggrieved employees with business checks similar to the checks pictured above, just with their own business name.

By failing to issue wage statements and keep records, Employer knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Claimant and aggrieved employees in accordance with Labor Code §§ 226 and 1174. This failure caused injury to Claimant and aggrieved employees, by, among other things, impeding them from knowing whether their wages were properly recorded and paid, the accurate

rate of pay, who to contact in the event they had questions or concerns regarding wages, who was responsible for the preparation of accurate wage statements, who to assert allegations against in the event of noncompliance with legal requirements, and the total hours worked and the amount of wages to which they are and were entitled. This failure was knowing and intentional, and in violation of Labor Code §226(a). Employer is liable for civil penalties pursuant to Labor Code § 2699 *et seq.*

Failure to Comply with California Sick Pay Requirements

(Cal. Lab. Code §§ 246, 247.5, 248.5 and 2698 *et seq.*)

Claimant, on behalf of himself and aggrieved employees, alleges that Employer failed to provide required California paid sick days and further failed to distribute and maintain required documentation concerning how many sick dates were available, in violation of Labor Code §§246, 246(a), 246(b)(1), and 247.5. This information was not listed on paystubs (as no paystubs were provided to employees), and no other documentation or disclosure concerning California Sick Pay accompanied the employees' pay. Claimant now seeks damages pursuant to §§248.5 and 2698 *et seq.*

Failure to Reimburse for Required Business Expenses

(Cal. Labor Code §§1198, 2802, 2699 *et seq.*)

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

Although for the majority of his employment, Employer did not record Claimant's time and employees did not clock in and out, recently, Employer instituted a requirement that employees clock in and out on an app on their phones. Claimant and aggrieved employees are required to download and use the app, called Clockeshark, daily, although Employer does not reimburse them in any way for the expense of their personal cell phone use for business purposes.

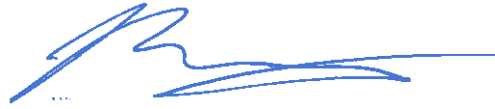
Employers required Claimant and employees to utilize their personal cell phones for work purposes but failed to reimburse Claimant and employees for this use as required by the Labor Code. Accordingly, Employers are liable for civil penalties under PAGA §2699 *et seq.*

Conclusion

Employer has violated a number of California wage and hour laws. Claimant respectfully requests that the agency investigate the above allegations and hereby provides notice of the allegations pursuant to PAGA's provisions. Alternatively, Claimant requests that the

agency inform Claimant if it does not intend to investigate these violations so that Claimant may pursue these claims as a representative action in civil court.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Nazo Koulloukian', with a long horizontal flourish extending to the right.

Nazo Koulloukian, Esq.
Attorney for Claimant