

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: 232943 NAME: Edwin Aiwarzian FIRM NAME: Lawyers for Justice, PC STREET ADDRESS: 410 West Arden Avenue, Suite 203 CITY: Glendale STATE: CA ZIP CODE: 91203 TELEPHONE NO.: (818) 265-1020 FAX NO.: (818) 265-1021 E-MAIL ADDRESS: edwin@lfjpc.com ATTORNEY FOR (name): Plaintiff Jeffrey Cesario		FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Orange STREET ADDRESS: 752 West Santa Ana Boulevard MAILING ADDRESS: CITY AND ZIP CODE: Santa Ana, CA 92701 BRANCH NAME: Civil Complex Center		
PLAINTIFF/PETITIONER: Jeffrey Cesario DEFENDANT/RESPONDENT: Hartwell Corporation OTHER:		CASE NUMBER: 30-2018-00976928-CU-OE-CXC
		JUDICIAL OFFICER: Hon. Peter J. Wilson
PROPOSED ORDER (COVER SHEET)		DEPT: CX102

NOTE: This cover sheet is to be used to electronically file and submit to the court a proposed order. The proposed order sent electronically to the court must be in PDF format and must be attached to this cover sheet. In addition, a version of the proposed order in an editable word-processing format must be sent to the court at the same time as this cover sheet and the attached proposed order in PDF format are filed.

1. Name of the party submitting the proposed order:
Plaintiff Jeffrey Cesario
2. Title of the proposed order:
[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT
3. The proceeding to which the proposed order relates is:
 - a. Description of proceeding: MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT
 - b. Date and time: June 11, 2020 at 2:00 p.m.
 - c. Place: Orange County Superior Court, Dept. CX102
4. The proposed order was served on the other parties in the case.

Edwin Aiwarzian

(TYPE OR PRINT NAME)

► 
(SIGNATURE OF PARTY OR ATTORNEY)

Edwin Aiwazian (SBN 232943)
Arby Aiwazian (SBN 269827)
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Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

JEFFREY CESARIO, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

vs.

HARTWELL CORPORATION, a California
corporation; and DOES 1 through 100,
inclusive,

Defendants.

Case No.: 30-2018-00976928-CU-OE-CXC

Honorable Peter J. Wilson
Department CX102

CLASS ACTION

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Hearing Date: June 11, 2020
Hearing Time: 2:00 p.m.
Department: CX102

Complaint Filed: March 1, 2018
Trial Date: None Set

1 This matter has come before the Honorable Peter J. Wilson in Department CX102 of the
2 Superior Court of California for the County of Orange, on June 11, 2020 at 2:00 p.m., for Plaintiff's
3 Motion for Preliminary Approval of Class Action Settlement. Lawyers *for* Justice, PC appearing as
4 counsel for Plaintiff Jeffrey Cesario ("Class Representative" and/or "Plaintiff"), individually and on
5 behalf of all others similarly situated and other aggrieved employees, and Baker & Hostetler LLP
6 appearing as counsel for Defendant Hartwell Corporation ("Defendant").

7 The Court, having carefully considered the papers, argument of counsel, and all matters
8 presented to the Court, and good cause appearing, hereby GRANTS Plaintiff's Motion for
9 Preliminary Approval of Class Action Settlement. The First Amended Complaint shall be deemed
10 filed as of the later of the date of this Order or June 1, 2020 (i.e., the date on which the expiration of
11 the 65-day PAGA waiting period will conclude), and shall be the operative complaint in the action
12 for purposes of the Settlement, including the release of claims.

13 **IT IS HEREBY ORDERED THAT:**

14 1. The Court preliminarily approves the Joint Stipulation of Class Action and PAGA
15 Settlement ("Settlement," "Agreement," or "Settlement Agreement"), attached as "Exhibit A" to the
16 Declaration of Edwin Aiwarzian in Support of Plaintiff's Motion for Preliminary Approval of Class
17 Action Settlement. This is based on the Court's determination that the Settlement falls within the
18 range of possible approval as fair, adequate, and reasonable.

19 2. This Order incorporates by reference the definitions in the Settlement Agreement,
20 and all terms defined therein shall have the same meaning in this Order as set forth in the Settlement
21 Agreement.

22 3. The Court hereby grants Plaintiff Jeffrey Cesario leave to file the [Proposed] First
23 Amended Class Action Complaint for Damages and Enforcement under the Private Attorneys
24 General Act, Cal. Labor Code § 2698, Et. Seq. ("First Amended Complaint"), which is attached
25 hereto as "**EXHIBIT A.**" The First Amended Complaint shall be deemed filed as of the later of the
26 date of the entry of this Order or June 1, 2020, and shall be the operative complaint in the Action for
27 purpose of Settlement, including the release of claims. The First Amended Complaint and all
28 allegations and causes pleaded therein shall be deemed denied by Defendant, and each of them,

1 without the necessity of Defendant filing an answer to the First Amended Complaint or any other
2 pleading in the action. In the event that the Settlement does not become final for any reason, the
3 First Amended Complaint shall be *void ab initio* and the Class Action Complaint for Damages shall
4 be the operative complaint for all purposes unless otherwise ordered by the Court.

5 4. It appears to the Court on a preliminary basis that the Settlement is fair, adequate,
6 and reasonable. It appears to the Court that significant investigation and research have been
7 conducted such that counsel for the parties at this time are able to reasonably evaluate their respective
8 positions. It further appears to the Court that the Settlement, at this time, will avoid substantial
9 additional costs by all parties, as well as avoid the delay and risks that would be presented by the
10 further prosecution of this action. It further appears that the Settlement has been reached as the
11 result of intensive, serious and non-collusive, arms-length negotiations, and was entered into in good
12 faith.

13 5. The Court preliminarily finds that the Settlement, including the allocations for
14 Attorneys' Fees, Litigation Expenses, Service Payment, PAGA Payment, Settlement Administration
15 Costs, and payments to Settlement Class Members provided thereby, appear to be within the range
16 of reasonableness of a settlement that could ultimately be given final approval by this Court. Indeed,
17 the Court has reviewed the monetary recovery that is being granted as part of the Settlement and
18 preliminarily finds that the monetary settlement awards made available to the Settlement Class
19 Members are fair, adequate, and reasonable when balanced against the probable outcome of further
20 litigation relating to certification, liability, and damages issues.

21 6. The Court concludes that, for settlement purposes only, the Class meets the
22 requirements for certification under section 382 of the California Code of Civil Procedure in that:
23 (a) the Class is ascertainable and so numerous that joinder of all members of the Class is
24 impracticable; (b) common questions of law and fact predominate, and there is a well-defined
25 community of interest amongst the members of the Class with respect to the subject matter of the
26 litigation; (c) Plaintiff's claims are typical of the claims of the members of the Class; (d) Plaintiff
27 will fairly and adequately protect the interests of the members of the Class; (e) a class action is
28 superior to other available methods for the efficient adjudication of the controversy; and (f) Class

Counsel are qualified to act as counsel for Plaintiff in his individual capacity and as the representative of the Class.

7. The Court conditionally certifies, for settlement purposes only, the Class, defined as follows:

All individuals employed by Defendant within the State of California in an hourly, non-exempt position at any time during the period from March 1, 2014 through the Court enters this Order (“Class” or “Class Members”).

8. The Court preliminarily appoints Edwin Aiwazian, Arby Aiwazian, and Joanna Ghosh of Lawyers *for* Justice, PC as Class Counsel.

9. The Court preliminarily appoints Plaintiff Jeffrey Cesario as Class Representative.

10. The Court appoints Phoenix Class Action Administration Solutions (“Phoenix”) as Settlement Administrator.

11. Within thirty (30) calendar days of the date of this Order, Defendant shall provide the Settlement Administrator with the Class Information, in conformity with the Settlement Agreement.

12. The Court approves, both as to form and content, the Notice of Class Action and PAGA Settlement (“Notice”) attached hereto as “**EXHIBIT A.**” Counsel for both Parties, subject to mutual agreement, may make changes to the Notice as necessary to administer the Settlement. The Notice shall be provided to Class Members in the manner set forth in the Settlement Agreement. The Court finds that the Notice appears to fully and accurately inform the Class Members of all material elements of the Settlement, of the Class Members’ right and opportunity to Opt Out of the Settlement by submitting a Request for Exclusion, right and opportunity to submit a Dispute to the Gross Earned Wages attributed to them, and right and opportunity to object to the Settlement by submitting a written Objection. The Court further finds that distribution of the Notice substantially in the manner and form set forth in the Settlement and this Order, and that all other dates set forth in the Settlement and this Order, meet the requirements of due process and shall constitute due and sufficient notice to all persons entitled thereto. The Court further orders the Settlement Administrator to mail the Notice by First Class U.S. mail to all Class Members within fifteen (15)

1 calendar days of receipt of the Class Information, pursuant to the terms set forth in the Settlement
2 Agreement.

3 13. The Court hereby preliminarily approves the proposed procedure, set forth in the
4 Settlement Agreement, for seeking exclusion from the Settlement. Any Class Member may choose
5 to Opt Out of the Settlement by submitting a timely and valid written Request for Exclusion in
6 conformity with the requirements set forth in the Notice, to the Settlement Administrator postmarked
7 no later than thirty (30) calendar days after the date on which the Settlement Administrator initially
8 mails the Notice to Class Members (“Response Deadline”). In the case of a re-mailed Notice, the
9 Response Deadline will be extended by twenty (20) calendar days. Any Class Member who is
10 properly excluded from the Settlement will not participate in the Settlement, will not be a Settlement
11 Class Member, will not receive any benefits under the Settlement, and will not have any right to
12 object or appeal. Class Members who have not submitted a timely and valid Request for Exclusion
13 to the Settlement (i.e., Settlement Class Members) shall be bound by the Settlement Agreement and
14 any final judgment based thereon.

15 14. A Final Approval Hearing shall be held before this Court on
16 _____ at _____ a.m./ p.m. in
17 Department CX102 of the Superior Court of California for the County of Orange, 751 West Santa
18 Ana Blvd., Santa Ana, CA 92701, to determine all necessary matters concerning the Settlement,
19 including: whether the proposed settlement of the action on the terms and conditions provided for in
20 the Settlement is fair, adequate, and reasonable and should be finally approved by the Court; whether
21 a judgment, as provided in the Settlement, should be entered herein; whether the plan of allocation
22 contained in the Settlement should be approved as fair, adequate, and reasonable to the Settlement
23 Class Members; and determine whether to finally approve the requests for Attorneys’ Fees,
24 Litigation Expenses, Service Payment, and Settlement Administration Costs.

25 15. Class Counsel shall file a motion for final approval of the Settlement and for
26 Attorneys’ Fees, Litigation Expenses, Service Payment, and Settlement Administration Costs, along
27 with the appropriate declarations and supporting evidence, including the Settlement Administrator’s
28 declaration, by _____, to be heard at the Final Approval

Hearing.

16. To object to the Settlement, a Class Member may submit a written Objection to the Settlement Administrator no later than the Response Deadline, or in the case of a re-mailed Notice, within twenty (20) calendar days from the Response Deadline. The written Objection must contain the information that is required, as set forth in the Notice, including and not limited to the grounds for the objection.

17. The Settlement is not a concession or admission and shall not be used against Defendant as an admission or indication with respect to any claim of any fault or omission by Defendant. Whether or not the Settlement is finally approved, and except as necessary to enforce the terms of this Agreement, neither the Settlement, nor any document, statement, proceeding or conduct related to the Settlement, nor any reports or accounts thereof, shall in any event be construed as, offered or admitted into evidence as, received as or deemed to be in evidence for any purpose adverse to the Defendant, including, but not limited to, evidence of a presumption, concession, indication or admission by Defendant of any liability, fault, wrongdoing, omission, concession, or damage, except for legal proceedings concerning the implementation, interpretation, or enforcement of the Settlement.

18. In the event the Settlement does not become effective in accordance with the terms of the Settlement Agreement, or the Settlement is not finally approved, or is terminated, cancelled or fails to become effective for any reason, this Order shall be rendered null and void, shall be vacated, and the Parties shall revert back to their respective positions before entering into the Settlement Agreement.

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1 19. The Court reserves the right to adjourn or continue the date of the Final Approval
2 Hearing and any dates provided for in the Settlement Agreement without further notice to the Class
3 Members and retains jurisdiction to consider all further applications arising out of or connected with
4 the Settlement.

5 **IT IS SO ORDERED.**

6
7 Dated: _____

By: _____

The Honorable Peter J. Wilson
Judge of the Superior Court

Exhibit A

Edwin Aiwazian (SBN 232943)
Arby Aiwazian (SBN 269827)
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Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

JEFFREY CESARIO, individually, and on
behalf of other members of the general public
similarly situated and on behalf of other
aggrieved employees pursuant to the
California Private Attorneys General Act;

Plaintiff,

vs.

HARTWELL CORPORATION, a California
corporation; and DOES 1 through 100,
inclusive,

Defendants.

Case No.: 30-2018-00976928-CU-OE-CXC

**[PROPOSED] FIRST AMENDED CLASS
ACTION COMPLAINT FOR DAMAGES
AND ENFORCEMENT UNDER THE
PRIVATE ATTORNEYS GENERAL ACT,
CAL. LABOR CODE § 2698 ET SEQ.**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums);
- (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums);
- (4) Violation of California Labor Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages);
- (5) Violation of California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid);
- (6) Violation of California Labor Code § 204 (Wages Not Timely Paid During Employment);
- (7) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements);
- (8) Violation of California Labor Code § 1174(d) (Failure To Keep Requisite Payroll Records);
- (9) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses);
- (10) Violation of California Business &

Professions Code §§ 17200, et seq.
(11) Violation of California Labor Code
§ 2698, et. Seq. (Private Attorneys
General Act of 2004)

DEMAND FOR JURY TRIAL

COMES NOW, Plaintiff JEFFREY CESARIO (“Plaintiff”), individually, and on behalf of other members of the general public similarly situated, and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act (“PAGA”), and alleges as follows:

JURISDICTION AND VENUE

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

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

3. This Court has jurisdiction over Defendant because, upon information and belief, Defendant is a citizen of California, has sufficient minimum contacts in California, or otherwise intentionally avails itself of the California market so as to render the exercise of jurisdiction over it by California courts consistent with traditional notions of fair play and substantial justice.

4. Venue is proper in this Court because, upon information and belief, Defendant maintains offices, has agents, employs individuals, and/or transacts business in the State of California, County of Orange. The majority of acts and omissions alleged herein relating to Plaintiff and the other class members took place in the State of California, including the County of Orange. At all relevant times, Defendant maintained its headquarters/“nerve center” within the State of California, County of Orange.

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PARTIES

5. Plaintiff JEFFREY CESARIO is an individual residing in the State of California, County of Orange.

6. Defendant HARTWELL CORPORATION, at all times herein mentioned, was and is, upon information and belief, a California corporation and, at all times herein mentioned, an employer whose employees are engaged throughout the State of California, including the County of Orange.

7. At all relevant times, Defendant HARTWELL CORPORATION was the “employer” of Plaintiff within the meaning of all applicable California laws and statutes.

8. At all times herein relevant, Defendants HARTWELL CORPORATION, and DOES 1 through 100, and each of them, were the agents, partners, joint venturers, joint employers, representatives, servants, employees, successors-in-interest, co-conspirators and/or assigns, each of the other, and at all times relevant hereto were acting within the course and scope of their authority as such agents, partners, joint venturers, joint employers, representatives, servants, employees, successors, co-conspirators and/or assigns, and all acts or omissions alleged herein were duly committed with the ratification, knowledge, permission, encouragement, authorization and/or consent of each defendant designated as a DOE herein.

9. The true names and capacities, whether corporate, associate, individual or otherwise, of defendants DOES 1 through 100, inclusive, are unknown to Plaintiff who sue said defendants by such fictitious names. Plaintiff is informed and believes, and based on that information and belief alleges, that each of the defendants designated as a DOE is legally responsible for the events and happenings referred to in this Complaint, and unlawfully caused the injuries and damages to Plaintiff and the other class members as alleged in this Complaint. Plaintiff will seek leave of court to amend this Complaint to show the true names and capacities when the same have been ascertained.

10. Defendant HARTWELL CORPORATION and DOES 1 through 100 will hereinafter collectively be referred to as “Defendants.”

11. Plaintiff further alleges that Defendants directly or indirectly controlled or

1 affected the working conditions, wages, working hours, and conditions of employment of
2 Plaintiff and the other class members so as to make each of said Defendants employers liable
3 under the statutory provisions set forth herein.

4 **CLASS ACTION ALLEGATIONS**

5 12. Plaintiff bring this action on his own behalf and on behalf of all other members
6 of the general public similarly situated, and, thus, seeks class certification under California
7 Code of Civil Procedure section 382.

8 13. The proposed class is defined as follows:

9 CLASS. All current and former hourly-paid or non-exempt employees who
10 worked for any of the Defendants within the State of California at any time
11 during the period from March 1, 2014 to final judgment.

12 SUBCLASS A. All current and former hourly-paid or non-exempt employees
13 who worked for any of the Defendants within the State of California at any time
14 during the period from four years preceding the filing of this Complaint to final
15 judgment who earned shift differential pay/commissions/non-discretionary
16 bonuses/non-discretionary performance pay which was not used to calculate the
17 regular rate of pay used to calculate the overtime rate for the payment of
18 overtime wages.

19 14. Plaintiff reserves the right to establish additional subclasses as appropriate.

20 15. The class is ascertainable and there is a well-defined community of interest in
21 the litigation:

22 a. Numerosity: The class members are so numerous that joinder of all class
23 members is impracticable. The membership of the entire class is
24 unknown to Plaintiff at this time; however, the class is estimated to be
25 greater than fifty (50) individuals and the identity of such membership is
26 readily ascertainable by inspection of Defendants' employment records.

27 b. Typicality: Plaintiff's claims are typical of all other class members' as
28 demonstrated herein. Plaintiff will fairly and adequately protect the

interests of the other class members with whom he has a well-defined community of interest.

- c. Adequacy: Plaintiff will fairly and adequately protect the interests of each class member, with whom he has a well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiff has no interest that is antagonistic to the other class members. Plaintiff's attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement. Plaintiff has incurred, and during the pendency of this action will continue to incur, costs and attorneys' fees, that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.
- d. Superiority: A class action is superior to other available methods for the fair and efficient adjudication of this litigation because individual joinder of all class members is impractical.
- e. Public Policy Considerations: Certification of this lawsuit as a class action will advance public policy objectives. Employers of this great state violate employment and labor laws every day. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. However, class actions provide the class members who are not named in the complaint anonymity that allows for the vindication of their rights.

16. There are common questions of law and fact as to the class members that predominate over questions affecting only individual members. The following common questions of law or fact, among others, exist as to the members of the class:

- a. Whether Defendants' failure to pay wages, without abatement or reduction, in accordance with the California Labor Code, was willful;
- b. Whether Defendants' had a corporate policy and practice of failing to

1 pay their hourly-paid or non-exempt employees within the State of
2 California for all hours worked and missed (short, late, interrupted,
3 and/or missed altogether) meal periods and rest breaks in violation of
4 California law;

- 5 c. Whether Defendants required Plaintiff and the other class members to
6 work over eight (8) hours per day, over forty (40) hours per week and/or
7 over six (6) consecutive days per workweek and failed to pay the legally
8 required overtime compensation to Plaintiff and the other class members;
- 9 d. Whether Defendant engaged in an improper rounding policy during thw
10 relevant time period;
- 11 e. Whether Defendants failed to use the shift differential
12 pay/commissions/non-discretionary bonuses/non-discretionary
13 performance pay to calculate the regular rate of pay used to calculate the
14 overtime rate for the payment of overtime wages where Plaintiff and the
15 other class members earned shift differential pay/commissions/non-
16 discretionary bonuses/non-discretionary performance pay and overtime
17 wages in the same workweek;
- 18 f. Whether Defendants deprived Plaintiff and the other class members of
19 meal and/or rest periods or required Plaintiff and the other class
20 members to work during meal and/or rest periods without compensation;
- 21 g. Whether Defendants failed to pay minimum wages to Plaintiff and the
22 other class members for all hours worked;
- 23 h. Whether Defendants failed to pay all wages due to Plaintiff and the other
24 class members within the required time upon their discharge or
25 resignation;
- 26 i. Whether Defendants failed to timely pay all wages due to Plaintiff and
27 the other class members during their employment;
- 28 j. Whether Defendants complied with wage reporting as required by the

California Labor Code; including, *inter alia*, section 226;

- k. Whether Defendants kept complete and accurate payroll records as required by the California Labor Code, including, *inter alia*, section 1174(d);
- l. Whether Defendants failed to reimburse Plaintiff and the other class members for necessary business-related expenses and costs;
- m. Whether Defendants' conduct was willful or reckless;
- n. Whether Defendants engaged in unfair business practices in violation of California Business & Professions Code section 17200, et seq.;
- o. The appropriate amount of damages, restitution, and/or monetary penalties resulting from Defendants' violation of California law; and
- p. Whether Plaintiff and the other class members are entitled to compensatory damages pursuant to the California Labor Code.

PAGA ALLEGATIONS

17. At all times herein set forth, PAGA was applicable to Plaintiff's employment by Defendants.

18. At all times herein set forth, PAGA provides that any provision of law under the California Labor Code that provides for a civil penalty, including unpaid wages and premium wages, to be assessed and collected by the LWDA for violations of the California Labor Code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself and other current or former employees pursuant to procedures outlined in California Labor Code section 2699.3.

19. Pursuant to PAGA, a civil action under PAGA may be brought by an "aggrieved employee," who is any person that was employed by Defendants and the alleged violator and against whom one or more of the alleged violations was committed.

20. Plaintiff was employed by Defendants and the alleged violations were committed against him during his time of employment and he is, therefore, an aggrieved employee. Plaintiff and the other employees are "aggrieved employees" as defined by

California Labor Code section 2699(c) in that they are current or former employees of Defendants, and one or more of the alleged violations were committed against them.

21. 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:

22. The aggrieved employee shall give written notice by certified mail (hereinafter “Employee's Notice”) to the LWDA and 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 violations.

23. The LWDA shall provide notice (hereinafter “LWDA Notice”) to the employer and the aggrieved employer by certified mail that it does not intend to investigate the alleged violation within sixty (60) calendar days of the postmark date of the Employee’s Notice. Upon receipt of the LWDA Notice, or if the LWDA Notice is not provided within sixty-five (65) calendar days of the postmark date of the Employee’s Notice, the aggrieved employee may commence a civil action pursuant to California Labor Code section 2699 to recover civil penalties in addition to any other penalties to which the employee may be entitled.

24. On March 31, 2020, Plaintiff provided written notice by certified mail to the LWDA and to Defendant of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. Therefore, the administrative prerequisites under California Labor Code section 2699.3(a) to recover civil penalties against Defendant, in addition to other remedies, for violations of California Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1197.1, 1198, 2800, and 2802, have been satisfied.

GENERAL ALLEGATIONS

25. At all relevant times set forth herein, Defendants employed Plaintiff and other persons as hourly-paid or non-exempt employees within the State of California, including the County of Orange.

26. Defendants, jointly and severally, employed Plaintiff as an hourly-paid, non-

1 exempt employee, from approximately July 2013 to approximately August 2015, in the State
2 of California, County of Orange.

3 27. Defendants hired Plaintiff and the other class members, classified them as
4 hourly-paid or non-exempt employees, and failed to compensate them for all hours worked and
5 missed, short, late, or interrupted meal periods and/or rest breaks.

6 28. Defendants had the authority to hire and terminate Plaintiff and the other class
7 members, to set work rules and conditions governing Plaintiff's and the other class members'
8 employment, and to supervise their daily employment activities.

9 29. Defendants exercised sufficient authority over the terms and conditions of
10 Plaintiff's and the other class members' employment for them to be joint employers of Plaintiff
11 and the other class members.

12 30. Defendants directly hired and paid wages and benefits to Plaintiff and the other
13 class members.

14 31. Defendants continue to employ hourly-paid or non-exempt employees within the
15 State of California.

16 32. Plaintiff and the other class members worked over eight (8) hours in a day,
17 and/or forty (40) hours in a week, and/or over six (6) consecutive days in a workweek during
18 their employment with Defendants.

19 33. Plaintiff is informed and believes, and based thereon alleges, that Defendants
20 engaged in a uniform policy and systematic scheme of wage abuse against their hourly-paid or
21 non-exempt employees within the State of California. This pattern and practice involved, *inter*
22 *alia*, failing to pay them for all hours worked and for missed, short, late, and/or interrupted
23 meal periods and rest breaks in violation of California law.

24 34. Plaintiff is informed and believes, and based thereon alleges, that Defendants
25 knew or should have known that Plaintiff and the other class members were entitled to receive
26 certain wages for overtime compensation and that they were not receiving accurate overtime
27 compensation for all overtime hours worked as a result of, *inter alia*, Defendants' requiring
28 Plaintiff and the other class members to perform work off-the-clock and engaging in an

1 improper rounding policy.

2 35. Plaintiff is informed and believes, and based thereon alleges, that Defendants
3 failed to use the shift differential pay/commissions/non-discretionary bonuses/non- discretionary
4 performance pay to calculate the regular rate of pay used to calculate the overtime rate for the
5 payment of overtime wages where Plaintiff and the other class members earned shift differential
6 pay/commissions/non-discretionary bonuses/non-discretionary performance pay and overtime
7 wages in the same workweek.

8 36. Plaintiff is informed and believes, and based thereon alleges, that Defendants
9 failed to provide Plaintiff and the other class members all required rest and meal periods during
10 the relevant time period as required under the Industrial Welfare Commission Wage Orders
11 and thus they are entitled to any and all applicable premium wages. Defendants' failure
12 included, *inter alia*, failing to provide uninterrupted ten (10) minute rest periods and timely,
13 uninterrupted thirty (30) minute meal periods to Plaintiff and the other class members. Plaintiff
14 and the other class members were required to perform work during meal periods and rest
15 periods. Plaintiff and the other class members were also required to remain on premises during
16 rest periods.

17 37. Plaintiff is informed and believes, and based thereon alleges, that Defendants
18 failed to relieve Plaintiff and the other class members of all duties, failed to relinquish control
19 over Plaintiff and the other class members' activities, failed to permit Plaintiff and the other
20 class members a reasonable opportunity to take, and impeded or discouraged them from taking
21 thirty (30) minute uninterrupted meal breaks no later than the end of their fifth hour of work
22 for shifts lasting at least six (6) hours, and/or to take second thirty (30) minute uninterrupted
23 meal breaks no later than their tenth hour of work for shifts lasting more than ten (10) hours.

24 38. Plaintiff is informed and believes, and based thereon alleges, that Defendants
25 knew or should have known that Plaintiff and the other class members were entitled to receive
26 all meal periods or payment of one additional hour of pay at Plaintiff's and the other class
27 member's regular rate of pay when a meal period was missed, short, late, or interrupted, and
28 they did not receive all meal periods or payment of one additional hour of pay at Plaintiff's and

1 the other class member's regular rate of pay when a meal period was missed, short, late, or
2 interrupted.

3 39. Plaintiff is informed and believes, and based thereon alleges, that Defendants
4 failed to provide, authorize, and permit Plaintiff and the other class members to take full,
5 uninterrupted, off-duty rest periods for every shift lasting three and one-half (3.5) to six (6)
6 hour and/or two full, uninterrupted, off-duty rest periods for every shift lasting six (6) to ten
7 (10) hours, and failed to make a good faith effort to authorize, permit, and provide such rest
8 breaks in the middle of each work period. Defendant also required Plaintiff and other putative
9 class members to remain on the premises during rest periods.

10 40. Plaintiff is informed and believes, and based thereon alleges, that Defendants
11 knew or should have known that Plaintiff and the other class members were entitled to receive
12 all rest periods or payment of one additional hour of pay at Plaintiff's and the other class
13 member's regular rate of pay when a rest period was missed, short, late, or interrupted, and
14 they did not receive all rest periods or payment of one additional hour of pay at Plaintiff's and
15 the other class members' regular rate of pay when a rest period was missed, short, late, or
16 interrupted.

17 41. Plaintiff is informed and believes, and based thereon alleges, that Defendants
18 knew or should have known that Plaintiff and the other class members were entitled to receive
19 at least minimum wages for compensation and that they were not receiving at least minimum
20 wages for all hours worked. Defendants' failure to pay minimum wages included, *inter alia*,
21 Defendants' effective payment of zero dollars per hour for hours Plaintiff and the other class
22 members worked off-the-clock performing work duties and Defendants' implementation of an
23 improper rounding procedure.

24 42. Plaintiff is informed and believes, and based thereon alleges, that Plaintiff and
25 other class members worked more minutes per shift than Defendants credited them with having
26 worked. Plaintiff alleges that Defendants policy, practices, and/or procedure of "rounding"
27 resulted in time during which Plaintiff and the other class members were under control of
28 Defendants but were not compensated.

1 43. Plaintiff is informed and believes, and based thereon alleges, that Defendants
2 knew or should have known that Plaintiff and the other class members were entitled to receive
3 all wages owed to them upon discharge or resignation, including earned but unpaid overtime
4 and minimum wages and meal and rest period premiums, and they did not, in fact, receive all
5 such wages owed to them at the time of their discharge or resignation.

6 44. Plaintiff is informed and believes, and based thereon alleges, that Defendants
7 knew or should have known that Plaintiff and the other class members were entitled to receive
8 all wages owed to them during their employment. Plaintiff and the other class members did
9 not receive payment of all wages, including overtime and minimum wages and meal and rest
10 period premiums, within any time permissible under California Labor Code section 204.

11 45. Plaintiff is informed and believes, and based thereon alleges, that Defendants
12 knew or should have known that Plaintiff and the other class members were entitled to receive
13 complete and accurate wage statements in accordance with California law, but, in fact, they did
14 not receive complete and accurate wage statements from Defendants. The deficiencies
15 included, *inter alia*, the failure to include the actual number of hours worked by Plaintiff and
16 the other class members including work to be performed off-the-clock.

17 46. Plaintiff is informed and believes, and based thereon alleges, that Defendants
18 knew or should have known that Defendants had to keep complete and accurate payroll records
19 for Plaintiff and the other class members in accordance with California law, but, in fact, did
20 not keep complete and accurate payroll records.

21 47. Plaintiff is informed and believes, and based thereon alleges, that Defendants
22 knew or should have known that Plaintiff and the other class members were entitled to
23 reimbursement for necessary business-related expenses.

24 48. Plaintiff is informed and believes, and based thereon alleges, that Defendants
25 knew or should have known that they had a duty to compensate Plaintiff and the other class
26 members pursuant to California law, and that Defendants had the financial ability to pay such
27 compensation, but willfully, knowingly, and intentionally failed to do so, and falsely
28 represented to Plaintiff and the other class members that they were properly denied wages, all

1 in order to increase Defendants' profits.

2 49. During the relevant time period, Defendants failed to pay overtime wages to
3 Plaintiff and the other class members for all overtime hours worked. Plaintiff and the other
4 class members did not receive overtime compensation at one-and-one-half times the regular
5 rate of pay for all hours spent performed job duties in excess of eight (8) hours per day forty
6 (40) hours per week, and/or for the first eight (8) hours worked on the seventh day of work in a
7 workweek, without overtime compensation for all overtime hours worked.

8 50. During the relevant time period, Defendants failed to use the shift differential
9 pay/commissions/non-discretionary bonuses/non-discretionary performance pay to calculate the
10 regular rate of pay used to calculate the overtime rate for the payment of overtime wages where
11 Plaintiff and the other class members earned shift differential pay/commissions/non-
12 discretionary bonuses/non-discretionary performance pay and overtime wages in the same
13 workweek.

14 51. During the relevant time period, Defendants failed to provide all requisite
15 uninterrupted meal and rest periods to Plaintiff and the other class members.

16 52. During the relevant time period, Defendants failed to pay Plaintiff and the other
17 class members at least minimum wages for all hours worked.

18 53. During the relevant time period, Defendants failed to pay Plaintiff and the other
19 class members all wages owed to them upon discharge or resignation.

20 54. During the relevant time period, Defendants failed to pay Plaintiff and the other
21 class members all wages within any time permissible under California law, including, *inter*
22 *alia*, California Labor Code section 204.

23 55. During the relevant time period, Defendants failed to provide complete or
24 accurate wage statements to Plaintiff and the other class members.

25 56. During the relevant time period, Defendants failed to keep complete or accurate
26 payroll records for Plaintiff and the other class members.

27 57. During the relevant time period, Defendants failed to reimburse Plaintiff and the
28 other class members for all necessary business-related expenses and costs.

58. During the relevant time period, Defendants failed to properly compensate Plaintiff and the other class members pursuant to California law in order to increase Defendants' profits.

59. California Labor Code section 218 states that nothing in Article 1 of the Labor Code shall limit the right of any wage claimant to "sue directly . . . for any wages or penalty due to him [or her] under this article."

FIRST CAUSE OF ACTION

(Violation of California Labor Code §§ 510 and 1198)

(Against HARTWELL CORPORATION and DOES 1 through 100)

60. Plaintiff incorporates by reference the allegations contained in Paragraphs 1 through 59, and each and every part thereof with the same force and effect as though fully set forth herein.

61. California Labor Code section 1198 and the applicable Industrial Welfare Commission ("IWC") Wage Order provide that it is unlawful to employ persons without compensating them at a rate of pay either time-and-one-half or two-times that person's regular rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

62. Specifically, the applicable IWC Wage Order provides that Defendants are and were required to pay Plaintiff and the other class members employed by Defendants, and working more than eight (8) hours in a day, more than forty (40) hours in a week, and/or more than six (6) consecutive days in a workweek at the rate of time-and-one-half for all hours worked in excess of eight (8) hours in a day and up to and including twelve (12) hours, more than forty (40) hours in a week or the first eight (8) hours worked on the seventh day in a workweek

63. The applicable IWC Wage Order further provides that Defendants are and were required to pay Plaintiff and the other class members overtime compensation at a rate of two times their regular rate of pay for all hours worked in excess of twelve (12) hours in a day.

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64. California Labor Code section 510 codifies the right to overtime compensation at one-and-one-half times the regular hourly rate for hours worked in excess of eight (8) hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh day of work, and to overtime compensation at twice the regular hourly rate for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day of work.

65. During the relevant time period, Plaintiff and the other class members worked in excess of eight (8) hours in a day, and/or in excess of forty (40) hours in a week , and/or in excess of six (6) consecutive days in a workweek

66. During the relevant time period, Defendants intentionally and willfully failed to pay overtime wages owed to Plaintiff and the other class members, including failing to properly calculate the regular rate of pay and overtime rate of pay, and by implementing an improper rounding procedure that failed to credit Plaintiff and other class members for all time worked. Plaintiff and the other class members did not receive overtime compensation at one-and-one-half times the regular rate of pay for all hours spent performing job duties in excess of eight (8) hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh day.

67. Defendants' failure to pay Plaintiff and the other class members the unpaid balance of overtime compensation, as required by California laws, violates the provisions of California Labor Code sections 510 and 1198, and is therefore unlawful.

68. Pursuant to California Labor Code section 1194, Plaintiff and the other class members are entitled to recover unpaid overtime compensation, as well as interest, costs, and attorneys' fees.

SECOND CAUSE OF ACTION

(Violation of California Labor Code §§ 226.7 and 512(a))

(Against HARTWELL CORPORATION and DOES 1 through 100)

69. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 68, and each and every part thereof with the same force and effect as though fully set

1 forth herein.

2 70. At all relevant times, the IWC Order and California Labor Code sections 226.7
3 and 512(a) were applicable to Plaintiff's and the other class members' employment by
4 Defendants.

5 71. At all relevant times, California Labor Code section 226.7 provides that no
6 employer shall require an employee to work during any meal or rest period mandated by an
7 applicable order of the California IWC.

8 72. At all relevant times, the applicable IWC Wage Order and California Labor
9 Code section 512(a) provide that an employer may not require, cause or permit an employee to
10 work for a work period of more than five (5) hours per day without providing the employee
11 with a meal period of not less than thirty (30) minutes, except that if the total work period per
12 day of the employee is no more than six (6) hours, the meal period may be waived by mutual
13 consent of both the employer and employee.

14 73. At all relevant times, the applicable IWC Wage Order and California Labor
15 Code section 512(a) further provide that an employer may not require, cause or permit an
16 employee to work for a work period of more than ten (10) hours per day without providing the
17 employee with a second uninterrupted meal period of not less than thirty (30) minutes, except
18 that if the total hours worked is no more than twelve (12) hours, the second meal period may
19 be waived by mutual consent of the employer and the employee only if the first meal period
20 was not waived.

21 74. During the relevant time period, Plaintiff and the other class members who were
22 scheduled to work for a period of time no longer than six (6) hours, and who did not waive
23 their legally-mandated meal periods by mutual consent, were required to work for periods
24 longer than five (5) hours without an uninterrupted meal period of not less than thirty (30)
25 minutes and/or rest period.

26 75. During the relevant time period, Plaintiff and the other class members who were
27 scheduled to work for a period of time in excess of six (6) hours were required to work for
28 periods longer than five (5) hours without an uninterrupted meal period of not less than thirty

1 (30) minutes and/or rest period.

2 76. During the relevant time period, Plaintiff and other class members' meal periods
3 were missed, shortened, late, and/or were interrupted because Defendants required them to
4 perform and complete work duties, even when it resulted in missed, shortened, late, or
5 interrupted meal periods. Defendants interrupted Plaintiff and the other class members during
6 purported meal periods with business-related inquiries, instructions for tasks, and/or to require
7 them to return to work before a full thirty (30) minutes elapsed to complete or begin tasks.
8 Defendants also automatically deducted meal periods from Plaintiff and putative class
9 members' time records regardless of whether a compliant meal period was taken.

10 77. As a result, Defendants failed to relieve Plaintiff and the other class members of
11 all duties, failed to relinquish control over Plaintiff and the other class members' activities, failed
12 to permit Plaintiff and the other class members a reasonable opportunity to take, and impeded or
13 discouraged them from taking thirty (30) minute uninterrupted meal periods no later than the end
14 of their fifth hour of work for shifts lasting at least six (6) hours, and/or to take second thirty (30)
15 minute uninterrupted meal periods no later than their tenth hour of work for shifts lasting more
16 than ten (10) hours.

17 78. During the relevant time period, Defendants intentionally and willfully required
18 Plaintiff and the other class members to work during meal periods and failed to compensate
19 Plaintiff and the other class members the full meal period premium for work performed during
20 meal periods.

21 79. During the relevant time period, Defendants failed to pay Plaintiff and the other
22 class members the full meal period premium due pursuant to California Labor Code section
23 226.7.

24 80. Defendants' conduct violates applicable IWC Wage Order and California Labor
25 Code sections 226.7 and 512(a).

26 81. Pursuant to applicable IWC Wage Order and California Labor Code section
27 226.7(b), Plaintiff and the other class members are entitled to recover from Defendants one
28 additional hour of pay at the employee's regular rate of compensation for each work day that

the meal or rest period is not provided.

THIRD CAUSE OF ACTION

(Violation of California Labor Code § 226.7)

(Against HARTWELL CORPORATION and DOES 1 through 100)

82. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 81, and each and every part thereof with the same force and effect as though fully set forth herein.

83. At all times herein set forth, the applicable IWC Wage Order and California Labor Code section 226.7 were applicable to Plaintiff's and the other class members' employment by Defendants.

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.

85. 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 (3 ½) hours.

86. During the relevant time period, Defendants required Plaintiff and other class members to work four (4) or more hours without authorizing or permitting a ten (10) minute rest period per each four (4) hour period worked.

87. During the relevant time period, Defendants willfully required Plaintiff and the other class members to work during rest periods and failed to pay Plaintiff and the other class members the full rest period premium for work performed during rest periods.

88. During the relevant time period, Defendants failed to pay Plaintiff and the other class members the full rest period premium due pursuant to California Labor Code section 226.7

89. Defendants' conduct violates applicable IWC Wage Orders and California Labor Code section 226.7.

90. Pursuant to the applicable IWC Wage Orders and California Labor Code section 226.7(b), Plaintiff and the other class members are entitled to recover from Defendants one additional hour of pay at the employees' regular hourly rate of compensation for each work day that the rest period was not provided.

FOURTH CAUSE OF ACTION

(Violation of California Labor Code §§ 1194, 1197, and 1197.1)

(Against HARTWELL CORPORATION and DOES 1 through 100)

91. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 90, and each and every part thereof with the same force and effect as though fully set forth herein.

92. At all relevant times, California Labor Code sections 1194, 1197, and 1197.1 provide that the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful.

93. During the relevant time period, Defendants failed to pay minimum wage to Plaintiff and the other class members as required, pursuant to California Labor Code sections 1194, 1197, and 1197.1. Defendants' failure to pay minimum wages included, *inter alia*, Defendants' effective payment of zero dollars per hour for hours Plaintiff and the other class members worked off-the-clock performing work duties and also implementing an improper rounding procedure and automatically deducting meal periods from Plaintiff's and other class members' time records regardless of whether a compliant meal period was taken.

94. Defendants' failure to pay Plaintiff and the other class members the minimum wage as required violates California Labor Code sections 1194, 1197, and 1197.1. Pursuant to those sections Plaintiff and the other class members are entitled to recover the unpaid balance of their minimum wage compensation as well as interest, costs, and attorney's fees, and liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

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95. Pursuant to California Labor Code section 1197.1, Plaintiff and the other class members are entitled to recover a penalty of \$100.00 for the initial failure to timely pay each employee minimum wages, and \$250.00 for each subsequent failure to pay each employee minimum wages.

96. Pursuant to California Labor Code section 1194.2, Plaintiff and the other class members are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

FIFTH CAUSE OF ACTION

(Violation of California Labor Code §§ 201 and 202)

(Against HARTWELL CORPORATION and DOES 1 through 100)

97. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 96, and each and every part thereof with the same force and effect as though fully set forth herein.

98. At all relevant times herein set forth, California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits 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' 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.

99. During the relevant time period, Defendants intentionally and willfully failed to pay Plaintiff and the other class members who are no longer employed by Defendants their wages, earned and unpaid, within seventy-two (72) hours of their leaving Defendants' employ.

100. Defendants' failure to pay Plaintiff and the other class members who are no longer employed by Defendants' their wages, earned and unpaid, within seventy-two (72) hours of their leaving Defendants' employ, is in violation of California Labor Code sections 201 and 202.

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102. Plaintiff and the other class members are entitled to recover from Defendants the statutory penalty wages for each day they were not paid, up to a thirty (30) day maximum pursuant to California Labor Code section 203.

(Violation of California Labor Code § 204)

(Against HARTWELL CORPORATION and DOES 1 through 100)

103. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 102, and each and every part thereof with the same force and effect as though fully set forth herein.

104. At all times herein set forth, California Labor Code section 204 provides that all wages earned by any person in any employment between the 1st and 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.

105. At all times herein set forth, California Labor Code section 204 provides 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.

106. At all times herein set forth, California Labor Code section 204 provides 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.

107. During the relevant time period, Defendants intentionally and willfully failed to pay Plaintiff and the other class members all wages due to them, within any time period permissible under California Labor Code section 204.

1 108. Plaintiff and the other class members are entitled to recover all remedies
2 available for violations of California Labor Code section 204.

3 **SEVENTH CAUSE OF ACTION**

4 **(Violation of California Labor Code § 226(a))**

5 **(Against HARTWELL CORPORATION and DOES 1 through 100)**

6 109. Plaintiff incorporates by reference the allegations contained in paragraphs 1
7 through 108, and each and every part thereof with the same force and effect as though fully set
8 forth herein.

9 110. At all material times set forth herein, California Labor Code section 226(a)
10 provides that every employer shall furnish each of his or her employees an accurate itemized
11 statement in writing showing (1) gross wages earned, (2) total hours worked by the employee,
12 (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid
13 on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of
14 the employee may be aggregated and shown as one item, (5) net wages earned, (6) the
15 inclusive dates of the period for which the employee is paid, (7) the name of the employee and
16 his or her social security number, (8) the name and address of the legal entity that is the
17 employer, and (9) all applicable hourly rates in effect during the pay period and the
18 corresponding number of hours worked at each hourly rate by the employee. The deductions
19 made from payments of wages shall be recorded in ink or other indelible form, properly dated,
20 showing the month, day, and year, and a copy of the statement or a record of the deductions
21 shall be kept on file by the employer for at least three years at the place of employment or at a
22 central location within the State of California.

23 111. Defendants have intentionally and willfully failed to provide Plaintiff and the
24 other class members with complete and accurate wage statements. The deficiencies include,
25 but are not limited to: the failure to include the total number of hours worked by Plaintiff and
26 the other class members.

27 112. As a result of Defendants' violation of California Labor Code section 226(a),
28 Plaintiff and the other class members have suffered injury and damage to their statutorily-

protected rights.

113. More specifically, Plaintiff and the other class members have been injured by Defendants' intentional and willful violation of California Labor Code section 226(a) because they were denied both their legal right to receive, and their protected interest in receiving, accurate and itemized wage statements pursuant to California Labor Code section 226(a).

114. Plaintiff and the other class members are entitled to recover from Defendants the greater of their actual damages caused by Defendants' failure to comply with California Labor Code section 226(a), or an aggregate penalty not exceeding four thousand dollars per employee.

115. Plaintiff and the other class members are also entitled to injunctive relief to ensure compliance with this section, pursuant to California Labor Code section 226(h).

EIGHTH CAUSE OF ACTION

(Violation of California Labor Code § 1174(d))

(Against HARTWELL CORPORATION and DOES 1 through 100)

116. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 115, and each and every part thereof with the same force and effect as though fully set forth herein.

117. Pursuant to California Labor Code section 1174(d), an employer shall keep, 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. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than two years.

118. Defendants have intentionally and willfully failed to keep accurate and complete payroll records showing the hours worked daily and the wages paid, to Plaintiff and the other class members.

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119. As a result of Defendants' violation of California Labor Code section 1174(d), Plaintiff and the other class members have suffered injury and damage to their statutorily-protected rights.

120. More specifically, Plaintiff and the other class members have been injured by Defendants' intentional and willful violation of California Labor Code section 1174(d) because they were denied both their legal right and protected interest, in having available, accurate and complete payroll records pursuant to California Labor Code section 1174(d).

NINTH CAUSE OF ACTION

(Violation of California Labor Code §§ 2800 and 2802)

(Against HARTWELL CORPORATION and DOES 1 through 100)

121. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 120, and each and every part thereof with the same force and effect as though fully set forth herein.

122. Pursuant to California Labor Code sections 2800 and 2802, an employer must reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her job duties or in direct consequence of his or her obedience to the directions of the employer.

123. Plaintiff and the other class members incurred necessary business-related expenses and costs that were not fully reimbursed by Defendants.

124. Defendants have intentionally and willfully failed to reimburse Plaintiff and the other class members for all necessary business-related expenses and costs.

125. Plaintiff and the other class members are entitled to recover from Defendants their business-related expenses and costs incurred during the course and scope of their employment, plus interest accrued from the date on which the employee incurred the necessary expenditures at the same rate as judgments in civil actions in the State of California.

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TENTH CAUSE OF ACTION

(Violation of California Business & Professions Code §§ 17200, et seq.)

(Against HARTWELL CORPORATION and DOES 1 through 100)

126. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 125, and each and every part thereof with the same force and effect as though fully set forth herein.

127. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, unlawful and harmful to Plaintiff, other class members, to the general public, and Defendants' competitors. Accordingly, Plaintiff seek to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

128. Defendants' activities as alleged herein are violations of California law, and constitute unlawful business acts and practices in violation of California Business & Professions Code section 17200, et seq.

129. A violation of California Business & Professions Code section 17200, et seq. may be predicated on the violation of any state or federal law. In this instant case, Defendants' policies and practices of requiring employees, including Plaintiff and the other class members, to work overtime without paying them proper compensation violate California Labor Code sections 510 and 1198. Additionally, Defendants' policies and practices of requiring employees, including Plaintiff and the other class members, to work through their meal and rest periods without paying them proper compensation violate California Labor Code sections 226.7 and 512(a). Defendants' policies and practices of failing to pay minimum wages violate California Labor Code sections 1194, 1197, and 1197.1. Moreover, Defendants' policies and practices of failing to timely pay wages to Plaintiff and the other class members violate California Labor Code sections 201, 202 and 204. Defendants also violated California Labor Code sections 226(a), 1174(d), 2800 and 2802.

130. As a result of the herein described violations of California law, Defendants unlawfully gained an unfair advantage over other businesses.

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131. Plaintiff and the other class members have been personally injured by Defendants' unlawful business acts and practices as alleged herein, including but not necessarily limited to the loss of money and/or property.

132. Pursuant to California Business & Professions Code sections 17200, et seq., Plaintiff and the other class members are entitled to restitution of the wages withheld and retained by Defendants during a period that commences four years preceding the filing of this Complaint; an award of attorneys' fees pursuant to California Code of Civil procedure section 1021.5 and other applicable laws; and an award of costs.

ELEVENTH CAUSE OF ACTION

(Violation of California Labor Code § 2698, et seq.)

(Against HARTWELL CORPORATION and DOES 1 through 100)

133. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 132, and each and every part thereof with the same force and effect as though fully set forth herein.

134. PAGA expressly establishes that any provision of the California Labor Code which provides for a civil penalty to be assessed and collected by the LWDA, or any of its departments, divisions, commissions, boards, agencies or employees for a violation of the California Labor Code, may be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself, and other current or former employees.

135. Whenever the LWDA, or any of its departments, divisions, commissions, boards, agencies, or employees has discretion to assess a civil penalty, a court in a civil action is authorized to exercise the same discretion, subject to the same limitations and conditions, to assess a civil penalty.

136. Plaintiff and the other hourly-paid or non-exempt employees, are "aggrieved employees" as defined by California Labor Code section 2699(c) in that they are all current or former employees of Defendants, and one or more of the alleged violations was committed against them.

Failure to Pay Overtime

137. Defendants' failure to pay overtime in violation of the Wage Orders and California Labor Code sections 510 and 1198, as alleged above, constitutes unlawful and/or unfair activity prohibited by California Labor Code sections 510 and 1198.

Failing to Provide Meal Periods

138. Defendants' failure to provide legally required meal periods in violation of the Wage Orders and California Labor Code sections 226.7 and 512(a), as alleged above, constitutes unlawful and/or unfair activity prohibited by California Labor Code sections 226.7 and 512(a).

Failure to Provide Rest Periods

139. Defendants' failure to provide legally required rest periods in violation of the Wage Orders and California Labor Code section 226.7, as alleged above, constitutes unlawful and/or unfair activity prohibited by California Labor Code section 226.7.

Failure to Pay Minimum Wages

140. Defendants' failure to pay minimum wages in violation of the Wage Orders and California Labor Code sections 1194, 1197 and 1197.1, as alleged above, constitutes unlawful and/or unfair activity prohibited by California Labor Code sections 1194, 1197, and 1197.1.

Failure to Timely Pay Wages Upon Termination

141. Defendants' failure to timely pay wages upon termination in violation of California Labor Code sections 201 and 202, as alleged above, constitutes unlawful and/or unfair activity prohibited by California Labor Code sections 201 and 202.

Failure to Timely Pay Wages During Employment

142. Defendants' failure to timely pay wages during employment in violation of California Labor Code section 204, as alleged above, constitutes unlawful and/or unfair activity prohibited by California Labor Code section 204.

Failure to Provide Compliant Wage Statements

143. Defendants' failure to provide compliant wage statements in violation of California Labor Code section 226(a), as alleged above, constitutes unlawful and/or unfair

activity prohibited by California Labor Code section 226(a).

Failure to Keep Complete or Accurate Payroll Records

144. Defendants' failure to keep complete or accurate payroll records in violation of California Labor Code section 1174(d), as alleged above, constitutes unlawful and/or unfair activity prohibited by California Labor Code section 1174(d).

Failure to Reimburse Necessary Business Expenses

145. Defendants' failure to reimburse all necessary business-related expenses and costs in violation of California Labor Code sections 2800 and 2802, as alleged above, constitutes unlawful and/or unfair activity prohibited by California Labor Code section 2800 and 2802.

146. Defendants' failure to reimburse all necessary business-related expenses and costs in violation of California Labor Code sections 2800 and 2802, as alleged above, constitutes unlawful and/or unfair activity prohibited by California Labor Code sections 2800 and 2802.

147. Pursuant to California Labor Code section 2699, Plaintiff, individually, and on behalf of all aggrieved employees, requests and is entitled to recover from Defendants and each of them, business expenses, unpaid wages, and/or untimely wages according to proof, interest, attorneys' fees and costs pursuant to California Labor Code section 218.5, as well as all penalties against Defendants, and each of them, including but not limited to:

- a. Penalties under California Labor Code section 2699 in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation;
- b. Penalties under California Code of Regulations Title 8 section 11010, *et seq.* in the amount of fifty dollars (\$50) for each aggrieved employee per pay period for the initial violation, and one hundred dollars (\$100) for each aggrieved employee per pay period for each subsequent violation;
- c. Penalties under California Labor Code section 210 in addition to, and entirely independent and apart from, any other penalty provided in the

California Labor Code in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation; and

d. Any and all additional penalties and sums as provided by the California Labor Code and/or other statutes.

148. Pursuant to California Labor Code section 2699(i), civil penalties recovered by aggrieved employees shall be distributed as follows: seventy-five percent (75%) to the Labor and Workforce Development Agency for the enforcement of labor laws and education of employers and employees about their rights and responsibilities and twenty-five percent (25%) to the aggrieved employees.

149. Further, Plaintiff is entitled to seek and recover reasonable attorneys' fees and costs pursuant to California Labor Code sections 210, 218.5 and 2699 and any other applicable statute.

DEMAND FOR JURY TRIAL

Plaintiff, individually, and on behalf of other members of the general public similarly situated, and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act, requests a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually, and on behalf of other members of the general public similarly situated, and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act, prays for relief and judgment against Defendants, jointly and severally, as follows:

Class Certification

1. That this action be certified as a class action as to the first ten causes of action;
2. That Plaintiff be appointed as the representative of the Class as to the first ten causes of action;
3. That counsel for Plaintiff be appointed as Class Counsel; and

4. That Defendants provide to Class Counsel immediately the names and most current/last known contact information (address, e-mail and telephone numbers) of all class members.

As to the First Cause of Action

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

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

7. For pre-judgment interest on any unpaid overtime compensation commencing from the date such amounts were due;

8. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Labor Code section 1194; and

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

As to the Second Cause of Action

10. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7 and 512 and applicable IWC Wage Orders by willfully failing to provide all meal periods (including second meal periods) to Plaintiff and the other class members;

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

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

13. For premium wages pursuant to California Labor Code section 226.7(b);

14. For pre-judgment interest on any unpaid wages from the date such amounts were due;

15. For reasonable attorneys' fees and costs of suit incurred herein; and

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

As to the Third Cause of Action

17. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 226.7 and applicable IWC Wage Orders by willfully failing to provide all rest periods to Plaintiff and the other class members;

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

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

20. For premium wages pursuant to California Labor Code section 226.7(b);

21. For pre-judgment interest on any unpaid wages from the date such amounts were due; and

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

As to the Fourth Cause of Action

23. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 1194, 1197, and 1197.1 by willfully failing to pay minimum wages to Plaintiff and the other class members;

24. For general unpaid wages and such general and special damages as may be appropriate;

25. For statutory wage penalties pursuant to California Labor Code section 1197.1 for Plaintiff and the other class members in the amount as may be established according to proof at trial;

26. For pre-judgment interest on any unpaid compensation from the date such amounts were due;

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

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

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

As to the Fifth Cause of Action

30. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 201, 202, and 203 by willfully failing to pay all compensation owed at the time of termination of the employment of Plaintiff and the other class members no longer employed by Defendants;

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

32. For statutory wage penalties pursuant to California Labor Code section 203 for Plaintiff and the other class members who have left Defendants' employ;

33. For pre-judgment interest on any unpaid compensation from the date such amounts were due; and

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

As to the Sixth Cause of Action

35. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 204 by willfully failing to pay all compensation owed at the time required by California Labor Code section 204 to Plaintiff and the other class members;

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

37. For pre-judgment interest on any unpaid compensation from the date such amounts were due; and

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

As to the Seventh Cause of Action

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

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

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

2 42. For injunctive relief to ensure compliance with this section, pursuant to
3 California Labor Code section 226(h); and

4 43. For such other and further relief as the Court may deem just and proper.

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

6 44. That the Court declare, adjudge and decree that Defendants violated California
7 Labor Code section 1174(d) by willfully failing to keep accurate and complete payroll records
8 for Plaintiff and the other class members as required by California Labor Code section
9 1174(d);

10 45. For actual, consequential and incidental losses and damages, according to proof;

11 46. For statutory penalties pursuant to California Labor Code section 1174.5; and

12 47. For such other and further relief as the Court may deem just and proper.

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

14 48. That the Court declare, adjudge and decree that Defendants violated California
15 Labor Code sections 2800 and 2802 by willfully failing to reimburse Plaintiff and the other
16 class members for all necessary business-related expenses as required by California Labor
17 Code sections 2800 and 2802;

18 49. For actual, consequential and incidental losses and damages, according to proof;

19 50. For the imposition of civil penalties and/or statutory penalties;

20 51. For reasonable attorneys' fees and costs of suit incurred herein; and

21 52. For such other and further relief as the Court may deem just and proper.

22 **As to the Tenth Cause of Action**

23 53. That the Court decree, adjudge and decree that Defendants violated California
24 Business and Professions Code sections 17200, et seq. by failing to provide Plaintiff and the
25 other class members all overtime compensation due to them, failing to provide all meal and
26 rest periods to Plaintiff and the other class members, failing to pay at least minimum wages to
27 Plaintiff and the other class members, failing to pay Plaintiff's and the other class members'
28 wages timely as required by California Labor Code section 201, 202 and 204 and by violating

California Labor Code sections 226(a), 1174(d), 2800 and 2802.

54. For restitution of unpaid wages to Plaintiff and all the other class members and all pre-judgment interest from the day such amounts were due and payable;

55. For the appointment of a receiver to receive, manage and distribute any and all funds disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result of violation of California Business and Professions Code sections 17200, et seq.;

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

57. For injunctive relief to ensure compliance with this section, pursuant to California Business and Professions Code sections 17200, et seq.; and

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

As to the Eleventh Cause of Action

59. For civil penalties and wages pursuant to California Labor Code sections 2699(a), (f), and (g) plus costs and attorneys' fees for violation of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802; and

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

Dated: April ___, 2020

LAWYERS for JUSTICE, PC

By: _____
Edwin Aiwarzian
Attorneys for Plaintiff