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8 on their own behalf and on behalf of all others similarly situated

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF LOS ANGELES- SPRING STREET COURTHOUSE**

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12 **ROBERT MARTINEZ, MAIKU**
13 **BRAXTON,**
14 on their own behalf and on behalf of all
others similarly situated

15 Plaintiffs,

16 vs.

17 **ALFRED CLUB, INC. and DOES 1 through**
18 **100, inclusive,**

19 Defendants.

Case No. 19STCV44314

*[Assigned for all purposes to Honorable Ann I.
Jones, Dept. 11]*

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES AND
PENALTIES**

1. **FAILURE TO PAY STRAIGHT AND OVERTIME COMPENSATION IN VIOLATION OF LABOR CODE §§ 223, 510, 1194, 1198, 1199;**
2. **FAILURE TO PROVIDE MEAL PERIODS IN VIOLATION OF LABOR CODE §§ 226.7, 512 ;**
3. **FAILURE TO PROVIDE ITEMIZED WAGE STATEMENTS IN VIOLATION OF LABOR CODE § 226;**
4. **FAILURE TO KEEP ACCURATE PAYROLL RECORDS IN VIOLATION OF LABOR CODE §§ 226, 1198 AND THE I.W.C. WAGE ORDERS;**
5. **UNLAWFUL BUSINESS PRACTICES IN VIOLATION OF BUS. & PROF. CODE § 17200, ET SEQ.;**
6. **FAILURE TO PAY WAITING TIME PENALTIES IN VIOLATION OF LABOR CODE §§ 203;**
7. **FAILURE TO PAY WAGES UPON TERMINATION IN VIOLATION OF**

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- LABOR CODE §§ 201 and 202
 - 8. FAILURE TO PAY WAGES UPON TERMINATION IN VIOLATION OF LABOR CODE §1174(d);
 - 9. FAILURE TO REIMBURSE BUSINESS EXPENSES IN VIOLATION OF LABOR CODE §§ 2800 and 2802;
 - 10. FAILURE TO PROVIDE REST BREAKS IN VIOLATION OF LABOR CODE 226.7 & IWC WAGE ORDERS;
 - 11. PENALTIES PURSUANT TO CALIFORNIA PRIVATE ATTORNEYS GENERAL ACT ("PAGA") LABOR CODE §2698, et seq.

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DEMAND FOR JURY TRIAL

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Plaintiffs Robert Martinez and Maiku Braxton ("Representative Plaintiffs" or "Plaintiffs"), individually, and on behalf of other members of the general public similarly situated and on behalf of other aggrieved employees alleges as follows:

PARTIES

1. Representative Plaintiff Robert Martinez is an individual who resides in California and was employed by defendant Alfred Club Inc. ("Alfred" or "Defendants") from on or about June 2018 until on or about May 2019.

2. Representative Plaintiff Maiku Braxton is an individual who resides in California and was employed by defendant Alfred Club Inc. ("Alfred" or "Defendants") from on or about December, 2017 until on or about October, 2018.

3. Representative Plaintiffs are informed and believe, and based on such information and belief, alleges that at all times mentioned herein, Defendants were and are a corporation existing under the laws of the State of California, authorized to do business and doing business in the State of California.

4. At all relevant times, Defendants were employers whose employees are engaged throughout the State of California and were the employer of Plaintiff within the meaning of all applicable California state laws and statutes.

1 5. Representative Plaintiffs are unaware of the true names and capacities, whether
2 corporate or individual, or otherwise, of defendants named as DOES 1 through 100, inclusive.
3 Pursuant to California Code of Civil Procedure section 474, Representative Plaintiffs will seek
4 leave of court to amend this complaint to state said defendants' true names and capacities when the
5 same have been ascertained. Representative Plaintiffs are informed and believe and based on such
6 information and belief allege that said fictitiously-named defendants are responsible in some
7 manner for the injuries and damages to Representative Plaintiffs as further alleged herein.

8 6. On information and belief at all times herein mentioned, Defendants ratified each
9 and every act or omission complained of herein.

10 VENUE AND JURISDICTION

11 7. Venue is proper under California Code of Civil Procedure section 395 and under
12 California Government Code section 12965(b), in that Representative Plaintiffs' injuries were
13 incurred within the County of Los Angeles, the actions giving rise to Representative Plaintiffs
14 complaint arose within the County of Los Angeles, and Defendant is located in the County of Los
15 Angeles.

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

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

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

1 11. Venue is proper in this Court because, upon information and belief, Defendants
2 maintain offices, have agents, and/or transact business in the State of California, County of Los
3 Angeles. Defendants' agent for service of process is located in the State of California, County of
4 Los Angeles. The majority of the acts and omissions alleged herein relating to the other class
5 members took place in the State of California, including the County of Los Angeles, which has the
6 highest concentration of Defendants' offices, and therefore percipient witnesses, in the State of
7 California
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9 **GENERAL ALLEGATIONS:**

10 12. This is a Class Action Complaint, on behalf of Robert Martinez, Maiku Braxton and
11 all other persons similarly situated who worked for Alfred Club, Inc. in California as non-exempt
12 hourly employees for: (i) failure to pay straight and overtime compensation in violation of Labor
13 Code sections 223, 510, 558, 1194, 1198 and 1199; (ii) failure to provide meal periods in violation
14 of Labor Code sections 226.7, and 512 558; (iii) failure to provide itemized wage statements in
15 violation of Labor Code section 226; (iv) failure to keep accurate payroll records in violation of
16 Labor Code sections 226, 1198 and the IWC Wage Orders; (v) failure to pay waiting time penalties
17 in violation of Labor Code section 203; (vi) failure to provide rest periods; (vii) failure to
18 reimburse business expenses; and (viii) unlawful business practices in violation of Bus. & Prof.
19 Code section 17200 *et seq.* Representative Plaintiff Robert Martinez also seeks penalties pursuant
20 to the California Private Attorneys General Act ("PAGA") Labor Code §2698, *et seq.* for violations
21 of the labor code.

22 13. For at least four (4) years prior to the filing of this action and through to the present,
23 Defendants have had a consistent policy of failing to pay for straight and overtime hours worked by
24 the Defendants' non-exempt hourly California employees in violation of California law.
25 Defendants have also automatically deducted time each day from Representative Plaintiffs and the
26 putative class members pay each day. Additionally, Defendant did not pay minimum wage to
27 Representative Plaintiffs and the putative class members.
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1 14. For at least four (4) years prior to the filing of this action and through to the present,
2 Defendants have had a consistent policy of failing to provide to its non-exempt hourly employees
3 with itemized wage statements that included the correct total hours worked by the employee, the
4 correct net wages earned, the complete name and address of the correct legal entity that is the
5 employer and all applicable hourly rates in effect during the pay period and the corresponding
6 number of hours worked at each hourly rate.

7 15. Representative Plaintiffs, on behalf of themselves and all class members, bring this
8 action pursuant to California Labor Code sections 203, 223, 226, 226.7, 510, 1194, 1198 and 1199
9 seeking unpaid straight and overtime wages, compensation for unprovided and/or legally
10 inadequate meal periods, penalties, injunctive and other equitable relief, interest, and reasonable
11 attorneys' fees and costs pursuant to Labor Code sections 218.5, 218.6 and 1194.

12 16. Representative Plaintiffs, on behalf of themselves and all class members, pursuant
13 to Business and Professions Code sections 17200-17208, also seeks injunctive relief, restitution,
14 and disgorgement of all benefits Defendants enjoyed from their failure to correctly pay straight and
15 overtime wages for all hours worked, unprovided meal periods, and injuries suffered as a result of
16 the Defendants' failure to timely pay all wages due.

17 **STATEMENT OF FACTS**

18 17. Defendant did not pay Representative Plaintiffs, the putative class members and
19 other aggrieved employees for minimum wage. Defendant employed Plaintiffs and other persons
20 as hourly-paid on non-exempt employees within the State of California, including the County of
21 Los Angeles.

22 18. Defendant did not pay Representative Plaintiffs, the putative class members and the
23 other aggrieved employees the correct compensation for their hours worked overtime.

24 19. Defendant did not provide Representative Plaintiffs, the putative class members, and
25 other aggrieved employees with an itemized wage statement that listed the correct number of hours
26 worked by them, and the correct and full name and address of the legal entity that is the employer.
27 Representative Plaintiffs', the putative class members', and other aggrieved employees' wage
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1 statements also did not list the correct number of hours worked by them due to the auto-deductions
2 and uncompensated time that employees spent working during their meal periods and unpaid time
3 due to the company's rounding practices and policies. Representative Plaintiffs', the putative class
4 members', and other aggrieved employees' wage statements also failed to list all applicable hourly
5 rates in effect during the pay period and the corresponding number of hours worked at each hourly
6 rate by these employees because of the company's failure to pay overtime.

7 20. Defendants had the authority to hire and terminate Plaintiffs and other class
8 members, to set work rules and conditions governing Plaintiffs and the other class members'
9 employment and to supervise their daily employment activities.

10 21. Defendant failed to compensate Plaintiffs and other class members for all hours
11 worked, missed, short, late and/or interrupted meal periods and/or rest breaks.

12 22. Defendants directly hired and paid wages and benefits to Plaintiffs and the other
13 class members.

14 23. Defendants continue to employ hourly-paid or non-exempt employees at its location
15 within the State of California.

16 24. Plaintiffs and the other class members worked over eight (8) hours in a day, and/or
17 forty (40) hours in a week during their employment with Defendant.

18 25. Plaintiffs are informed and believe, and based thereon allege, that at all material
19 times set forth herein, Defendant were advised by skilled lawyers and other professionals,
20 employees, and advisors knowledgeable about California and federal labor and wage law and
21 employment and personnel practices, and about the requirements of California and federal law.

22 26. Plaintiffs are informed and believe, and based thereon allege, that Defendant knew
23 or should have known that Plaintiffs and the other class members were entitled to receive certain
24 wages for overtime compensation and that they were not receiving wages for overtime
25 compensation.

26 27. Plaintiffs are informed and believe, and based thereon allege, that Defendant failed
27 to provide to Plaintiffs and the other class members the required rest and meal periods during the
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1 relevant time period as required under the Industrial Welfare Commission Wage Orders and thus
2 they are entitled to any and all applicable penalties.

3 28. Plaintiffs are informed and believe, and based thereon allege, that Defendant knew
4 or should have known the Plaintiffs and the other class members were entitled to receive all meal
5 periods or payments of one additional hour of pay at Plaintiffs' and other class members' regular
6 rate of pay when a meal period was missed, and they did not receive all meal periods of payment of
7 one additional hour of pay at Plaintiffs and the other class members' regular rate of pay when a
8 meal period was missed.

9 29. Plaintiffs are informed and believe, and based thereon allege, that Defendant knew
10 or should have known that Plaintiffs and the other class members were entitled to receive all rest
11 periods or payment of one additional hour of pay at Plaintiffs and the other class members' regular
12 rate of pay when a rest period was missed, and they did not receive all rest periods or payment of
13 one additional hour of pay at Plaintiffs and the other class members' regular rate of pay when a rest
14 period was missed.

15 30. Plaintiffs are informed and believe, and based thereon allege, that Defendant knew
16 or should have known that Plaintiffs and the other class members were entitled to receive all wages
17 owed to them upon discharge or resignation, including overtime, minimum wages, meal and rest
18 period premiums, and they did not, in fact, receive all such wages owed to them at the time of their
19 discharge or resignation.

20 31. Plaintiffs are informed and believe, and based thereon allege, that Defendant knew
21 or should have known that Plaintiffs and the other class members were entitled to receive all wages
22 owed to them during their employment. Plaintiffs and the other class members did not receive
23 payment of all wages, including overtime and minimum wages and meal and rest period premiums,
24 within any time permissible under California Labor Code section 204.

25 32. Plaintiffs are informed and believe, and based thereon allege, that Defendant knew
26 or should have known that Plaintiffs and the other class members were entitled to receive complete
27 and accurate wage statements in accordance with California law, however they did not receive
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1 complete and accurate wage statements from Defendant. The deficiencies included, *inter alia*, the
2 failure to include the total number of hours worked by Plaintiffs and the other class members.

3 33. Plaintiffs are informed and believe, and based thereon allege, that Defendant knew
4 or should have known that Defendant had to keep complete and accurate payroll records for
5 Plaintiffs and the other class members in accordance with California law, but, in fact, did not keep
6 complete and accurate payroll records.

7 34. Plaintiffs are informed and believe, and based thereon allege, that Defendant knew
8 or should have known that Plaintiffs and the other class members were entitled to reimbursement
9 for necessary business-related expenses.

10 35. Plaintiffs are informed and believe, and based thereon allege, that Defendant knew
11 or should have known that they had a duty to compensate Plaintiffs and the other class members
12 pursuant to California law, and that Defendant had the financial ability to pay such compensation,
13 but willfully, knowingly and intentionally failed to do so, and falsely represented to Plaintiffs and
14 the other class members that they were properly denied wages, all in order to increase Defendant's
15 profits.

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

19 CLASS ACTION ALLEGATIONS

20 37. Representative Plaintiffs brings this action on behalf of themselves and all others
21 similarly situated as a class action pursuant to Section 382 of the Code of Civil Procedure.

22 38. Representative Plaintiffs also seek to represent a Class composed of and defined as
23 follows:

24 39. **Meal Period Class.** All persons who are employed or have been employed by
25 Defendants in California in a non-exempt position within four (4) years of the filing of the
26 Complaint that were not provided a legally adequate meal period for each day in which such
27 employees worked five (5) hours or more and were not provided compensation by Defendants of
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1 one (1) hour of pay at their regular rate of compensation for each workday that a meal period was
2 not provided.

3 40. Representative Plaintiffs also seek to represent a Class composed of and defined as
4 follows:

5 41. **Rest Period Class.** All persons who are employed or have been employed by
6 Defendants in California in a non-exempt position within three (3) years of the filing of the
7 Complaint that were not provided a legally adequate rest period for each day in which such
8 employees was not provided a 10 minute rest break for every four hours of work, or every major
9 fraction thereof as employees were not provided compensation by Defendants of one (1) hour of
10 pay at their regular rate of compensation for each workday that rest breaks were not provided.

11 42. Representative Plaintiffs seek to represent a Class composed of and defined as
12 follows:

13 43. **Auto-Deduct Class.** All persons who are employed or have been employed by
14 Defendants in California in a non-exempt position who, within four (4) years of the filing of the
15 Complaint, worked time that was automatically deducted from their pay.

16 44. Representative Plaintiffs seek to represent a Class composed of and defined as
17 follows:

18 45. **Waiting Time Penalties Class.** All persons who are employed or have been
19 employed by Defendants in California who, within three (3) years of the filing of the Complaint
20 that did not receive all wages owed to them at the time of termination.

21 46. Representative Plaintiffs seek to represent a Class composed of and defined as
22 follows:

23 47. **Failure to Keep Accurate Pay Records Class.** All persons who are employed or
24 have been employed by Defendants in California who, within three (3) years of the filing of the
25 Complaint were not provided with accurate and complete time keeping records that recorded all
26 work periods, the total numbers of hours worked, and correct wages owed.

1 48. Representative Plaintiffs seek to represent a Class composed of and defined as
2 follows:

3 49. **Itemized Wage Statement Class.** All persons who are employed or have been
4 employed by Defendants in California who, within one (1) year of the filing of the Complaint that
5 did not receive an itemized wage statement that listed the correct straight and/ or overtime number
6 of hours that the employee worked in the pay period, the correct corresponding rates of pay, the
7 correct gross and net wages earned and/or correct name and address of the legal entity that is their
8 employer.

9 50. Representative Plaintiffs reserve the right under Rule 1855(b) of the California
10 Rules of Court to amend or modify the class descriptions with greater specificity or further division
11 into subclasses or limitation to particular issues.

12 51. This action has been brought and may properly be maintained as a class action
13 under the provisions of Section 382 of the California Code of Civil Procedure because there is a
14 well-defined community of interest in the litigation and the proposed Classes are easily
15 ascertainable.

16 A. **Numerosity**

17 52. The potential members of the Classes as defined are so numerous that joinder of all
18 the members of the Classes is impracticable. While the precise number of class members for each
19 Class has not been determined at this time, Representative Plaintiffs are informed and believe that
20 Defendants currently employ, and during the relevant time periods employed, at least 30
21 employees in the State of California, in non-exempt positions, including but not limited to printers,
22 pre-press collector, product specialists, customer service representatives/agents and receptionists in
23 Los Angeles County and throughout California, who are or have been affected by Defendants'
24 policy of: (1) failing to pay overtime and for all time worked; (2) failing to provide employees with
25 legally adequate meal and rest periods; (3) failing to pay all wages at termination; and (4) failure to
26 provide accurate itemized wage statements.

1 53. Upon information and belief, Representative Plaintiffs allege that the Defendants'
2 employment records will provide information as to the number and location of all members of the
3 Classes. Joinder of all members of the proposed Classes is not practicable.

4 **B. Commonality**

5 54. There are questions of law and fact common to the Classes that predominate over
6 any questions affecting only individual Class members. These common questions of law and fact
7 include, without limitation:

8 (a) Whether Defendants properly paid its employees for all straight and overtime hours
9 worked in accordance with Labor Code sections 510, 558 and 1198, and the IWC Wage
10 Orders, Section 3;

11 (b) Whether Defendants violated Labor Code Sections 512 and 226.7, and the IWC
12 Wage Orders, Section 11 by failing to properly provide meal periods of at least 30 off-duty
13 minutes within the first 5 hours of their shift for employees working more than 5 hours in a
14 day, and a second meal period to employees that worked over 10 hours in a day; and if so,
15 whether Defendants failed to timely compensate said employees for one (1) hour of pay at
16 each employee's regular rate of compensation for each workday that a meal period was not
17 provided;

18 (c) Whether Defendants violated Labor Code Sections 512 and 226.7, and the IWC
19 Wage Orders by failing to authorize or permit rest periods of at least 10 off-duty minutes
20 for every 4 hours of their employees shift/s; and if so, whether Defendants failed to timely
21 compensate said employees for one (1) hour of pay at each employee's regular rate of
22 compensation for each workday that a meal period was not provided;

23 (d) Whether Defendants violated Labor Code Sections 201-204 by failing to pay
24 straight and/or overtime wages, and compensation for denied and/or unprovided meal
25 periods due and owing at the time that any class member's employment with Defendants
26 terminated;

27 (e) Whether Defendants' time rounding policy and practices ensured that Defendants
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1 paid the legal straight time pay, minimum wage pay and/or overtime pay for all hours
2 worked by Representative Plaintiff and the putative class members;

3 (f) Whether Defendants violated Labor Code section 226 for their failure to furnish
4 their employees with an accurate and legally adequate itemized wage statement; and

5 (g) Whether Defendants violated Labor Code sections 226, 1174(d), 1198, and the IWC
6 Wage Orders, Section 7 by failing to keep accurate time records.

7 **C. Typicality**

8 55. The claims of the Representative Plaintiffs are typical of the claims of the Classes.
9 Representative Plaintiffs and all members of the Classes sustained injuries and damages arising out
10 of and caused by Defendants' common course of conduct in violation of laws and regulations that
11 have the force and effect of law and statutes as alleged therein.

12 **D. Adequacy of Representation**

13 56. The Representative Plaintiffs will fairly and adequately represent and protect the
14 interests of the members of the Classes. Counsel who represents the Representative Plaintiffs is
15 competent and experienced.

16 **E. Superiority of Class Action**

17 57. A class action is superior to other available means for the fair and efficient
18 adjudication of this controversy. Individual joinder of all class members is not practicable, and
19 questions of law and fact common to the Classes predominate over any questions affecting only
20 individual members of the Classes. Each member of each Class has been damaged and is entitled
21 to recovery by reason of Defendants' illegal policy and/ or practice of failing to legally compensate
22 class members as alleged above.

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

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PAGA ALLEGATIONS

59. At all relevant times set forth herein, PAGA was applicable to Plaintiffs employment by Defendants.

60. At all times set forth herein, PAGA provides for a civil penalty, including unpaid wages and premium wages, to be assessed and collected by the Labor and Workforce Development Agency ("LWDA") for violations of the California Labor Code, which may be alternatively recovered through a civil action brought by an aggrieved employee on behalf of himself and other current or former employees pursuant to procedures set forth under California Labor Code section 2699.3.

61. Plaintiff Martinez was employed by Defendants and the alleged violations were committed against him during his time of employment and he is, therefore, an aggrieved employee, as defined by California Labor Code section 2699(c). Specifically, he is a former employee of Defendants, and one or more of the alleged violations were committed against him.

62. Pursuant to Labor Code sections 2699.3 and 2699.5, on March 25, 2020, Plaintiff Martinez, served, via Certified Mail, Defendant Alfred Club, Inc. with written notice of the specific provisions of the California Labor Code that Defendants violated, including facts and theories supporting the alleged violations. The Defendant neither provided notice to the employer and Plaintiff Martinez of its intention to investigate Defendants' alleged violations, nor did the Defendant provide such a notice within the requisite sixty-five (65) calendar days of the postmark date of Plaintiff Martinez's Notice. The administrative prerequisites under California Labor Code section 2699.3(a) to recover civil penalties, including unpaid wages and premium wages per California Labor Code section 558 against Defendants, in addition to other remedies, for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802 have been satisfied. As such, Plaintiff may commence a civil action pursuant to California Labor Code section 2699 to recover civil penalties.

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FIRST CAUSE OF ACTION

**(FAILURE TO PAY STRAIGHT AND OVERTIME COMPENSATION IN
VIOLATION OF LABOR CODE §§ 223, 510, 1194, 1198, and 1199)**

(Against All Defendants)

63. Representative Plaintiffs hereby re-allege and incorporate all preceding paragraphs as though fully set forth herein.

64. Defendants have had a consistent policy of failing to pay straight and overtime wages to its hourly non-exempt employees in violation of California state wage and hour laws by not paying overtime to Representative Plaintiffs and the putative members when they work over 8 hours in a day and/or 40 hours in a workweek, as well as for the first 8 hours of work on the seventh consecutive day of work within a workweek.

65. As a result of the unlawful acts of Defendants, Representative Plaintiffs and the class have been deprived of their full straight and/or overtime wages in amounts to be determined at trial, and are entitled to the recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs, pursuant to Labor Code sections 218.5, 510, 1194, 1198 and 1199.

SECOND CAUSE OF ACTION

**(FAILURE TO PROVIDE MEAL PERIODS IN VIOLATION OF LABOR CODE §§
226.7, 512; and IWC Wage Orders)**

(Against All Defendants)

66. Representative Plaintiffs hereby re-allege and incorporate all preceding paragraphs as though fully set forth herein.

67. Defendant does not have a written meal period policy, and does not provide its employees with meal periods consistent with the requirements of Labor Code section 512. By employing these individuals for work periods of more than five (5) hours and ten (10) hours per day without providing legally adequate meal periods (such as short, on-duty, late or interrupted meal periods), and failing to provide compensation for unprovided and/or legally inadequate meal periods, as alleged above, Defendants violated the provisions of Labor Code sections 512 and

1 226.7. As a result of the unlawful acts of Defendants, Representative Plaintiffs and the putative
2 class members have been deprived of premium wages in amounts to be determined at trial, and are
3 entitled to the recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and
4 costs, under Labor Code sections 226.7, and 512, as well as the I.W.C. Wage Orders.

5 **THIRD CAUSE OF ACTION**

6 **FAILURE TO PROVIDE ITEMIZED WAGE STATEMENTS IN VIOLATION OF**

7 **LABOR CODE § 226**

8 **(Against All Defendants)**

9 68. Representative Plaintiffs hereby re-allege and incorporate all preceding paragraphs
10 as though fully set forth herein.

11 69. Section 226(a) of the California Labor Code requires Defendants to provide
12 itemized wage statements at the time of payment of wages which include but are not limited to the
13 following: gross wages earned; the correct total hours worked by the employee; the correct net
14 wages earned; the inclusive dates of the period for which the employee is paid; the name and
15 address of the correct legal entity that is the employer; and all applicable hourly rates in effect
16 during the pay period and the corresponding number of hours worked at each hourly rate by the
17 employee.

18 70. Representative Plaintiffs contend that they and the putative class members have
19 been injured by Defendants' failure to provide all of the requisite information on its itemized wage
20 statements in that such failure, *inter alia*: (1) masks possible and actual underpayments to
21 Defendants' employees; (2) make it difficult for Defendants' employees to verify that they have in
22 fact been paid the proper amounts owing for all hours worked; and (3) makes it difficult for
23 Representative Plaintiff to identify his true employer for purposes of this litigation. Said conduct
24 was done knowingly and intentionally since Defendants are aware of California law, and with the
25 design to harm Representative Plaintiff and the putative class members.

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FOURTH CAUSE OF ACTION
(FAILURE TO KEEP ACCURATE PAYROLL RECORDS IN VIOLATION OF
LABOR CODE §§ 226, 1198, the Wage Orders)
(Against All Defendants)

71. Representative Plaintiffs hereby re-allege and incorporate all preceding paragraphs as though fully set forth herein.

72. At all times relevant during the liability period, Representative Plaintiffs were employees of Defendants covered by Labor Code sections 226 and 1198, and the Wage Orders.

73. Pursuant to Labor Code section 226, Defendants were required to furnish each of its employees with an accurate itemized statement reflecting, *inter alia*, total number of hours worked and wages earned. Defendants were also required to keep an accurate record of the beginning and end of all work periods for its employees, including off-duty meal periods.

74. Representative Plaintiffs are informed, believe, and thereon allege, that at all times relevant during the liability period, Defendants maintained a policy or practice of utilizing an "auto-deduct" system whereby thirty (30) minutes were automatically deducted from the hours worked by Representative Plaintiff and the putative class members on a daily basis, whether or not a 30 minute off-duty meal period was actually provided or taken. Defendants also did not record and pay the time that its employees spent under its control as the company utilized improper rounding policies and practices which resulted in the under payment of wages to Representative Plaintiffs and the putative class members.

75. As a result of Defendants' unlawful conduct, Representative Plaintiffs and the putative class members have suffered damages in an amount subject to proof. The precise amount of unpaid wages is not presently known to Representative Plaintiffs but can be determined directly from Defendants' records or indirectly based on information from Defendants' records.

76. Pursuant to Labor Code sections 218.5 and 218.6, Representative Plaintiffs and the putative class members are entitled to recover the full amount of their unpaid wages, interest thereon, reasonable attorneys' fees and costs of suit.

FIFTH CAUSE OF ACTION
(UNLAWFUL BUSINESS PRACTICES IN VIOLATION OF
BUS. & PROF. CODE § 17200, *ET SEQ.*)
(Against All Defendants)

77. Representative Plaintiffs hereby re-allege and incorporate all preceding paragraphs as though fully set forth herein.

78. Defendants' failure to correctly pay wages as alleged herein, failure to keep accurate time records, and failure to compensate for overtime and unprovided meal periods, constitute unlawful activity prohibited by Business and Professions Code section 17200, *et seq.*, including but not limited to Sections 17200, 17202, and 17203.

79. The actions of Defendants in failing to pay Representative Plaintiffs and the putative class members in a lawful manner as alleged herein constitute false, unfair, fraudulent and/or deceptive business practices, within the meaning of Business and Professions Code section 17200, *et seq.*

80. As a result of its unlawful acts, Defendants have reaped and continue to reap unfair benefits at the expense of Representative Plaintiffs and the putative class members. Defendants should be enjoined from this activity and made to disgorge these ill-gotten gains and restore to Representative Plaintiffs and the putative class members the wrongfully withheld wages pursuant to Business and Professions Code section 17203. Representative Plaintiffs are informed and believe, and thereon allege that Defendants are unjustly enriched through its failure to pay all earned wages, and compensation for unprovided meal periods to Representative Plaintiffs and the putative class members.

81. Representative Plaintiffs are informed and believe, and thereon allege, that they and the putative class members are prejudiced by Defendants' unfair practices.

82. As a direct and proximate result of the unfair business practices of Defendants, Representative Plaintiffs are entitled to equitable and injunctive relief, including full restitution and/or disgorgement of all wages, which have been unlawfully withheld from Representative

1 Plaintiffs and the putative class members, as a result of the business acts and practices described
2 therein and enjoin Defendants to cease and desist from engaging in the practices described therein.

3 83. The illegal conduct alleged herein is believed to be continuing, and there is no
4 indication that Defendants will not continue such activity into the future. Representative Plaintiffs
5 allege that if Defendants are not enjoined from the conduct set forth in this complaint, they will
6 continue to fail to pay the correct wages, will continue to require employees to work during meal
7 periods, not get paid the correct rate of pay and for all hours worked, not provide legally adequate
8 meal periods, and will continue to fail to provide appropriate compensation as described herein.

9 **SIXTH CAUSE OF ACTION**

10 **(FAILURE TO PAY WAITING TIME PENALTIES IN VIOLATION OF**
11 **LABOR CODE § 203)**

12 **(Against All Defendants)**

13 84. Representative Plaintiffs hereby re-allege and incorporate all preceding paragraphs
14 as though fully set forth herein.

15 85. California Labor Code section 201 requires an employer who discharges an
16 employee to pay all compensation due and owing to that employee immediately upon discharge.

17 86. California Labor Code section 203 provides that if an employer willfully fails to
18 pay compensation promptly upon separation from employment, as required by either Sections 201
19 or 202, then the employer is liable for waiting time penalties in the form of continued
20 compensation for up to 30 work days.

21 87. Defendants willfully failed and refused to timely pay all straight time wages,
22 overtime, and off the clock compensation to Representative Plaintiffs and the putative class
23 members whose employment terminated. As a result, Defendants are liable to Representative
24 Plaintiffs and the putative class members for waiting time penalties, together with interest thereon
25 and attorneys' fees and costs, under Labor Code section 203.

26 88. As a result of Defendants' unlawful conduct, Representative Plaintiffs and putative
27 class members have suffered damages in an amount, subject to proof, to the extent they were not
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1 paid all wages due each pay period. The precise amount of unpaid wages is not presently known
2 to Representative Plaintiffs but can be determined directly from Defendants' records or indirectly
3 based on information from Defendants' records.

4 89. Pursuant to Labor Code sections 218.5 and 218.6, Representative Plaintiffs and the
5 putative class members are entitled to recover the full amount of their unpaid wages, interest
6 thereon, reasonable attorneys' fees and costs of suit.

7 **SEVENTH CAUSE OF ACTION**

8 **FAILURE TO PAY WAGES UPON TERMINATION IN VIOLATION OF LABOR**

9 **CODE §§ 201 and 202**

10 **(Against All Defendants)**

11 90. Representative Plaintiffs hereby re-allege and incorporate all preceding paragraphs
12 as though fully set forth herein.

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

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

19 93. California Labor Code section 203 provides that if an employer willfully fails to pay
20 wages owed, in accordance with sections 201 and 202, then the wages of the employee shall
21 continue as a penalty from the due date thereof at the same rate until paid or until an action is
22 commenced; but the wages shall not continue for more than thirty (30) days.

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

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EIGHTH CAUSE OF ACTION

FAILURE TO PAY WAGES UPON TERMINATION IN VIOLATION OF LABOR

CODE § 1174(d)

(Against All Defendants)

95. Representative Plaintiffs hereby re-allege and incorporate all preceding paragraphs as though fully set forth herein.

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

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

98. More specifically, Plaintiffs 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

FAILURE TO REIMBURSE BUSINESS EXPENSES IN VIOLATION OF LABOR

CODE §§ 2800 and 2802

(Against All Defendants)

99. Representative Plaintiffs hereby re-allege and incorporate all preceding paragraphs as though fully set forth herein

100. Plaintiffs and the other class members incurred necessary business-related expenses and costs that were not fully reimbursed by Defendants. Defendants have intentionally and willfully failed to reimburse Plaintiffs and the other class members for all necessary business-related expenses and costs. Plaintiffs 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

1 employment, plus interest accrued from the date on which the employee incurred the necessary
2 expenditures at the same rate as judgments in civil actions in the State of California.

3 **TENTH CAUSE OF ACTION**

4 **FAILURE TO PROVIDE REST BREAKS IN VIOLATION OF LABOR CODE §**
5 **226.7 & IWC WAGE ORDERS**

6 **(Against All Defendants).**

7 101. Representative Plaintiffs hereby re-allege and incorporate all preceding
8 paragraphs as though fully set forth herein.

9 102. At all times herein set forth, the California IWC Order and California Labor
10 Code section 226.7 was applicable to Plaintiffs and the other class members employed by
11 Defendants.

12 103. At all times herein set forth, California Labor Code section 226.7 provides
13 that no employer shall require an employee to work during any rest period mandated by an
14 applicable order of the California IWC.

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

18 105. During the relevant time period, Defendants willfully required Plaintiffs and
19 the other class members to work during rest periods and failed to pay Plaintiffs and the
20 other class members the full rest period premium for work performed during rest periods.

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

24 107. Defendants' conduct violates applicable IWC Wage Orders and California
25 Labor Code section 226.7.

26 108. Pursuant to the applicable IWC Wage Orders and California Labor Code section
27 226.7(b), Plaintiffs and the other class members are entitled to recover from Defendants one
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1 additional hour of pay at the employees' regular hourly rate of compensation for each work day
2 that the rest period was not provided

3 **ELEVENTH CAUSE OF ACTION**

4 **(Penalties Under California Labor Code §§ 2698, et seq.)**

5 **(Against All Defendants)**

6 109. Representative Plaintiffs hereby re-allege and incorporate all preceding paragraphs
7 as though fully set forth herein.

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

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

17 112. Plaintiffs and the other hourly-paid or non-exempt employees, are "aggrieved
18 employees" within the meaning of California Labor Code section 2699(c) as they are all current or
19 former employees of Defendants, and one or more of the alleged violations was committed against
20 them.

21 **Failure to Pay Overtime**

22 113. Defendants' failure to pay legally required overtime wages to Plaintiffs and the
23 other aggrieved employees is in violation of the Wage Orders and constitutes unlawful or unfair
24 activity prohibited by California Labor Code sections 510 and 1198.

25 **Failure to Provide Meal Periods**

26 114. Defendants' failure to provide legally required meal periods to Plaintiffs and the
27 other aggrieved employees is in violation of the Wage Orders and constitutes unlawful or unfair
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1 activity prohibited by California Labor Code sections 226.7 and 512(a).

2 **Failure to Provide Rest Periods**

3 115. Defendants' failure to provide legally required rest periods to Plaintiffs and the
4 other aggrieved employees is in violation of the Wage Orders and constitutes unlawful or unfair
5 activity prohibited by California Labor Code section 226.7.

6 **Failure to Pay Minimum Wages**

7 116. Defendants' failure to pay legally required minimum wages to Plaintiffs and the
8 other aggrieved employees is in violation of the Wage Orders and constitutes unlawful or unfair
9 activity prohibited by California Labor Code sections 1194, 1197 and 1197.1.

10 **Failure to Timely Pay Wages Upon Termination**

11 117. Defendants' failure to timely pay wages to Plaintiffs and the other aggrieved
12 employees upon termination in accordance with Labor Code sections 201 and 202 constitutes
13 unlawful and/or unfair activity prohibited by California Labor Code sections 201 and 202.

14 **Failure to Timely Pay Wages During Employment**

15 118. Defendants' failure to timely pay wages to Plaintiffs and the other aggrieved
16 employees during employment in accordance with Labor Code section 204 constitutes unlawful
17 and/or unfair activity prohibited by California Labor Code section 204.

18 **Failure to Provide Complete and Accurate Wage Statements**

19 119. Defendants' failure to provide complete and accurate wage statements to Plaintiffs
20 and the other aggrieved employees in accordance with Labor Code section 226(a) constitutes
21 unlawful and/or unfair activity prohibited by California Labor Code section 226(a).

22 **Failure to Keep Complete and Accurate Payroll Records**

23 120. Defendants' failure to keep complete and accurate payroll records relating to
24 Plaintiffs and the other aggrieved employees in accordance with California Labor Code section
25 1174(d) constitutes unlawful and/or unfair activity prohibited by California Labor Code section
26 1174(d).

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1 **Failure to Reimburse Necessary Business-Related Expenses and Costs**

2 121. Defendants' failure to reimburse Plaintiffs and the other aggrieved employees for
3 necessary business-related expenses and costs in accordance with California Labor Code sections
4 2800 and 2802 constitutes unlawful and/or unfair activity prohibited by California Labor Code
5 sections 2800 and 2802.

6 **Failure to Pay Discharged or Quitting Employee**

7 122. Defendants willful failure to timely pay, without abatement or reduction, wages to
8 Plaintiffs and other aggrieved employees at the time of discharge, or resignation in violation of
9 Labor Code section 203.

10 **Failure to Pay Wages Conceded to be Due**

11 123. Defendants failure to pay all wages, or parts thereof, conceded by him to be due to
12 the Plaintiffs within the time set by the Labor Code, and Defendant, having the ability to pay for
13 same, places Defendant in violation of Labor Code section 206.

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

- 19 a. Penalties under California Labor Code section 2699 in the amount of a
20 hundred dollars (\$100) for each aggrieved employee per pay period for the initial
21 violation, and two hundred dollars (\$200) for each aggrieved employee per pay
22 period for each subsequent violation;
- 23 b. Penalties under California Code of Regulations Title 8 section 11010, et seq.
24 in the amount of fifty dollars (\$50) for each aggrieved employee per pay period for
25 the initial violation, and one hundred dollars (\$100) for each aggrieved employee
26 per pay period for each subsequent violation;
- 27 c. Penalties under California Labor Code section 210 in addition to, and
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1 entirely independent and apart from, any other penalty provided in the California
2 Labor Code in the amount of a hundred dollars (\$100) for each aggrieved employee
3 per pay period for the initial violation, and two hundred dollars (\$200) for each
4 aggrieved employee per pay period for each subsequent violation; and
5 d. Any and all additional penalties and sums as provided by the California
6 Labor Code and/or other statutes.

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

12 126. Further, Plaintiff Robert Martinez is entitled to seek and recover reasonable
13 attorneys' fees and costs pursuant to California Labor Code sections 210, 218.5 and 2699 and any
14 other applicable statute.

15 THEREFORE, Plaintiffs and the individuals they seek to represent request relief as
16 described below:

17 **PRAYER**

18 1. That his action be certified as a class action, that Plaintiffs be appointed as the
19 representatives of the Class, and that counsel for Plaintiffs be appointed as Class Counsel.

20 2. For compensatory damages in a sum according to proof;

21 3. For wages pursuant to the California Labor Code;

22 4. For damages and/or penalties, an award of costs and reasonable attorney's fees
23 pursuant to the California Labor Code;

24 5. For penalties pursuant to the California Labor Code;

25 6. That Defendants be found to have engaged in unfair competition in violation of
26 California Business and Professions Code section 17200, *et seq.*

1 7. That Defendants be ordered and enjoined to make restitution to Representative
2 Plaintiff due to their unfair competition, pursuant to California Business and Professions Code
3 sections 17203 and 17204;

4 8. That Defendants further be enjoined to cease and desist from unfair competition in
5 violation of California Business and Professions Code section 17200, *et seq.*;

6 9. For prejudgment interest pursuant to California Civil Code section 3287 and/or
7 section 3288;

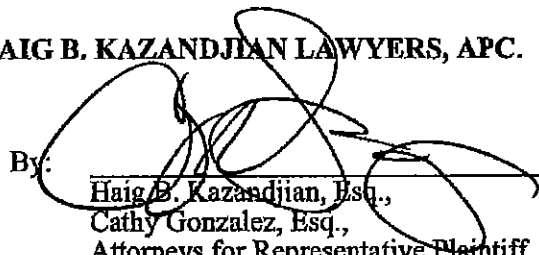
8 10. For attorneys' fees, interests and costs of suit pursuant to Labor Code sections
9 218.5, 218.6, 1194(a) and Code of Civil Procedure section 1021.5;

10 11. For civil penalties and wages pursuant to California Labor Code sections 2699(a),
11 (f) and (g) plus costs and attorneys' fees for violation of California Labor Code sections 201, 202,
12 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802; and

13 12. For such other and further relief as the Court deems just and proper.

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15 Dated: June 30, 2020

HAIG B. KAZANDJIAN LAWYERS, APC.

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17 By: 

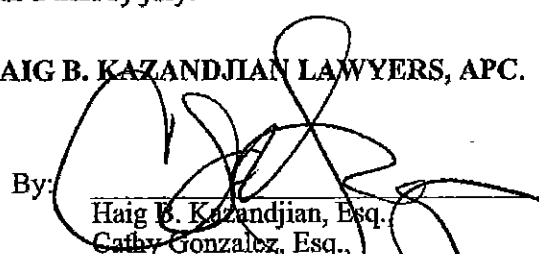
Haig B. Kazandjian, Esq.,
Cathy Gonzalez, Esq.,
Attorneys for Representative Plaintiff
Robert Martinez

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21 **DEMAND FOR JURY TRIAL**

22 Representative Plaintiffs hereby demands a trial by jury.

23 Dated: June 30, 2020

HAIG B. KAZANDJIAN LAWYERS, APC.

24
25 By: 

Haig B. Kazandjian, Esq.,
Cathy Gonzalez, Esq.,
Attorneys for Representative Plaintiff
Robert Martinez

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 801 North Brand Boulevard, Suite 970, Glendale, California 91203.

On July 1, 2020, I served the foregoing document(s) described as:

JOINT STIPULATION FOR FIRST AMENDED COMPLAINT, TO VACATE INITIAL STATUS CONFERENCE AND TO SET A HEARING DATE FOR PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL; AND [PROPOSED] ORDER

by method indicated below, on the interested parties in this action by placing a true copy thereof, enclosed in a sealed envelope, addressed as follows:

SEE ATTACHED SERVICE LIST

☐ **BY PERSONAL DELIVERY:** I caused a copy of the document to be delivered personally to the individual(s) named in the attached service list.

☐ **BY OVERNIGHT DELIVERY:** I enclosed the above-listed document(s) in an envelope or package provided by an overnight delivery carrier and addressed it to the referenced in attached service list. I placed the envelope or package for collection and overnight delivery at an area regularly utilized by said delivery carrier.

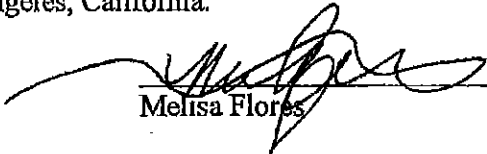
☒ **BY U.S. MAIL:** I enclosed said document(s) in a sealed envelope or package to each addressee. I placed the envelope for collection and mailing, following our firm's ordinary business practices. I am readily familiar with the firm's practice for collecting and processing correspondence for mailing. Under that practice, the correspondence is deposited with the United States Postal Service, with postage fully prepaid, on the same day in the ordinary course of business.

☒ **BY ELECTRONIC MAIL:** I transmitted the foregoing document(s) by electronic mail from melisaf@hbklawyers.com to the electronic mail addresses indicated on the attached mailing list. The transmission was reported as complete and without error.

☐ **BY FAX TRANSMISSION:** I transmitted the foregoing document(s) by facsimile transmission from 818-696-2307 to the facsimile numbers indicated on the attached mailing list. The transmission was reported as complete and without error on the transmission report, which was properly issued by the transmitting facsimile machine and, pursuant to Rule 2.306(h)(4), a copy of which is attached to the original of this proof of service.

☒ **(STATE):** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on July 1, 2020, at Los Angeles, California.


Melisa Flores

SERVICE LIST

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