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individually and on behalf of all others similarly situated and aggrieved

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

OMAR AYALA, individually and on behalf
of all others similarly situated and
aggrieved,

Plaintiff,

v.

ZODIAC POOL SYSTEMS LLC, a
Delaware Limited Liability Company;
FLUIDRA USA LLC, a Florida Limited
Liability Company; and DOES 1 through
10, Inclusive,

Defendants.

Case No. 37-2020-00017229-CU-OE-CTL

**CLASS ACTION [Cal. Code Civ. Proc. § 382]
AND REPRESENTATIVE ACTION
[PRIVATE ATTORNEYS GENERAL ACT
OF 2004, Labor Code §§ 2698, *et seq.*]
COMPLAINT**

1. Failure to Pay Minimum, Regular, and Overtime Wages (Lab. Code §§ 510, 1194 and 1197.1, and IWC Order 7-2001 §§ 3 & 4);
2. Failure to Provide Meal Periods (Lab. Code §§ 226.7 and 512, and IWC Order 7-2001 § 11);
3. Failure to Provide Rest Periods (Lab. Code § 226.7 and IWC Order 7-2001 § 12);
4. Failure to Reimburse Business Expenses (Lab. Code § 2802);
5. Failure to Provide Accurate Itemized Wage Statements (Lab. Code § 226);
6. Failure to Timely Pay Wages Due Upon Separation of Employment (Lab. Code §§ 201, 202, and 203);
7. Violation of the Unfair Competition Law (Bus. & Prof. Code §§ 17200, *et seq.*).
8. PAGA Civil Penalties for Failure to Pay

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Minimum, Regular, and Overtime Wages (Lab. Code §§ 2698, *et seq.*);

9. PAGA Civil Penalties for Failure to Provide Meal Periods (Lab. Code §§ 2698, *et seq.*);

10. PAGA Civil Penalties for Failure to Provide Rest Periods (Lab. Code §§ 2698, *et seq.*);

11. PAGA Civil Penalties for Failure to Reimburse Business Expenses (Lab. Code §§ 2698, *et seq.*);

12. PAGA Civil Penalties for Failure to Provide Accurate Wage Statements (Lab. Code §§ 2698, *et seq.*);

13. PAGA Civil Penalties for Failure to Timely Pay Wages Due Upon Separation of Employment (Lab. Code §§ 2698, *et seq.*);

14. PAGA Civil Penalties for Failure to Timely Pay Wages Due During Employment (Lab. Code §§ 2698, *et seq.*); and

15. PAGA Civil Penalties for Failure to Maintain Accurate Records (Lab. Code §§ 2698, *et seq.*).

DEMAND FOR JURY TRIAL

1 Plaintiff OMAR AYALA (“Plaintiff”), individually, and on behalf of the general public,
2 all others similarly situated and aggrieved, and as a representative of the State of California and
3 the California labor and Workforce Development Agency (“LWDA”), complains and alleges as
4 follows:

5 **I.**

6 **INTRODUCTION**

7 1. Plaintiff brings this class action pursuant to California Code of Civil Procedure
8 section 382 and representative Private Attorneys General Act of 2004 (“PAGA”), Labor Code
9 section 2698, *et seq.*, action on behalf of himself and all other current and former non-exempt
10 employees of ZODIAC POOL SYSTEMS LLC, a Delaware Limited Liability Company;
11 FLUIDRA USA LLC, a Florida Limited Liability Company; and Does 1 through 10
12 (collectively, “Defendants”) within the State of California during the four years prior to April 6,
13 2014 (“Class Period”).¹ Plaintiff brings this action for Defendants’ failure to: pay non-exempt
14 employees all wages, including regular and/or minimum wages for all hours worked and
15 premium wages for overtime hours worked; inform of and provide off-duty meal and rest
16 periods; reimburse for necessary business-related expenses; provide accurate itemized wage
17 statements; and timely pay all wages due upon separation of employment. In addition, Plaintiff
18 brings this action for unfair competition under Business and Professions Code sections 17200,
19 *et seq.*

20 2. Plaintiff notified the LWDA of these claims. The LWDA did not intervene, and
21 Defendants did not attempt to cure within 65 days of that notice. Plaintiff seeks civil penalties
22 as a representative of the State of California, as provided by the PAGA, for the period one year
23 and 65 days from the date of filing for PAGA penalties (“PAGA Period”).

24 3. A true and correct copy of the March 20, 2020 Notice showing compliance with
25 Labor Code section 2699.3 is attached as **Exhibit 1**.

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27 _____
28 ¹ The statute of limitations for this matter was tolled on April 6, 2020 pursuant to Cal. Rules of
Court, Appendix I, Emergency Rule No. 9.

1 II.

2 **JURISDICTION AND VENUE**

3 4. Venue as to each Defendant is proper in this judicial district, pursuant to Code of
4 Civil Procedure section 395. Defendants conduct business in San Diego County and each
5 Defendant is within the jurisdiction of this Court for service of process. The unlawful acts
6 alleged have a direct effect on Plaintiff and proposed members of the Plaintiff Class within San
7 Diego County and California. The California Superior Court also has jurisdiction in this matter
8 because individual members of the Plaintiff Class are under the seventy-five thousand dollar
9 (\$75,000.00) jurisdictional threshold for Federal Court. The aggregate amount in controversy
10 does not exceed \$5 million (\$5,000,000) and this matter is not subject to federal jurisdiction
11 under the Class Action Fairness Act ("CAFA"). There is no federal question for removal under
12 28 U.S.C. section 1331, as the issues are based solely on California law, including the Labor
13 Code, IWC Wage Orders, and Code of Civil Procedure.

14 5. The PAGA representative claims pled in this matter are not subject to removal.
15 28 U.S.C. §§ 1332(a)-(d).

16 III.

17 **THE PARTIES**

18 **A. Plaintiff**

19 6. Plaintiff OMAR AYALA is over the age of eighteen (18) and was at all relevant
20 times a California resident. From approximately March 2013 to October 2019, Plaintiff worked
21 for Defendants as an "Assembler, Tester, and Builder," a non-exempt hourly-paid position, in
22 Defendants' Carlsbad location within the San Diego County of California, as well as in Rancho
23 Santa Margarita, California.

24 **B. Defendants**

25 7. Plaintiff is informed, believes, and alleges that Defendant ZODIAC POOL
26 SYSTEMS LLC is a Delaware Limited Liability Company engaged in business throughout
27 California and in San Diego County, and during the Class Period, employed Plaintiff and the
28 members of the Plaintiff Class and Subclasses.

9. Plaintiff is unaware of the true names, capacities, relationships, and extent of participation in the conduct alleged of Defendants sued as DOES 1 through 10, but is informed and believes, and based on that alleges, that DOE Defendants are legally responsible for the wrongful conduct alleged and sues these Defendants by such fictitious names. Plaintiff will amend this complaint when their true names and capabilities are ascertained.

10. Plaintiff is informed, believes, and alleges each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all pertinent respects, and the acts of each Defendant are legally attributable to the other Defendants.

GENERAL ALLEGATIONS

11. During the Class Period, Plaintiff and each member of the Plaintiff Class were employed by Defendants in the State of California.

12. During the Class Period, Defendants have conducted business in California and San Diego County, California.

13. During the Class Period, Plaintiff and members of the Plaintiff Class worked shifts over eight hours per day and were paid as hourly, non-exempt employees.

14. During all, or portions, of the Class Period, Defendants had a consistent policy of failing to pay Plaintiff and members of the Plaintiff Class all wages due including overtime premium wages for hours worked in excess of eight (8) hours per day and/or forty (40) hours per week.

15. During all, or portions, of the Class Period, Defendants subjected all non-exempt hourly employees, including Plaintiff, to a uniform policy and practice of unlawful time rounding, resulting in the underpayment of wages, including minimum, regular, and overtime

1 wages, on a systematic basis. This rounding policy was not neutral on its face or in application
2 and resulted in a cumulative loss of time and wages to Plaintiff and members of the Plaintiff
3 Class. Despite being readily capable and able to use precise timeclock entries for all “hours
4 worked,” Defendants disregarded actual time worked and issued pay checks and wage
5 statements that systematically reflected rounded time as a basis to underpay their employees.
6 Defendants’ rounding policy resulted in underpayment for all straight-time and overtime
7 worked (including double-time hours). On information and belief, Defendants’ rounding policy
8 operated unilaterally to the benefit of Defendants and to detriment of Plaintiff and members of
9 the Plaintiff Class.

10 16. During the Class Period, Plaintiff and members of the Plaintiff Class were paid
11 non-discretionary bonuses if predetermined sales quotas were met. On information and belief,
12 Defendants failed to incorporate the non-discretionary bonus compensation into the employee’s
13 regular rate of pay for purposes of calculating the overtime rate of pay, resulting in the
14 underpayment of all overtime wages due.

15 17. During the Class Period, Defendants failed to pay for time actually worked by
16 Plaintiff and members of the Plaintiff Class, including overtime, including by failing to include
17 all compensation in the regular rate of pay to calculate the correct overtime rate.

18 18. During all, or portions, of the Class Period, Defendants had a consistent policy
19 which did not provide Plaintiff and members of the Plaintiff Class with duty-free meal periods
20 of at least thirty (30) minutes for shifts of five hours or more, which began before the end of the
21 fifth hour of work, and failed to pay such employees one (1) hour of pay at their regular rate of
22 compensation for each workday a meal period was not authorized or permitted, as required by
23 California wage and hour laws. Furthermore, Plaintiff and other members of the Plaintiff Class
24 regularly worked shifts of more than 10 hours per day and were not provided with a second off-
25 duty meal period of 30 minutes for each shifts of more than 10 hours. On information and
26 belief, Plaintiff and other members of the Plaintiff Class did not waive their right to receive
27 meal periods, including their right to a second meal period on eligible workdays.

28 19. During all, or portions, of the Class Period, Defendants had a consistent policy

1 which did not authorize or permit Plaintiff and members of the Plaintiff Class to receive duty-
2 free rest periods of at least ten (10) minutes per four (4) hours, or major fraction, worked, and
3 failed to pay such employees one (1) hour of pay at their regular rate of compensation for each
4 workday a rest period was not authorized or permitted, as required by California wage and hour
5 laws. Furthermore, Plaintiff and other members of the Plaintiff Class regularly worked shifts of
6 more than 10 hours per day and were not provided with a third duty-free rest period of 10-
7 minutes for each shifts of more than 10 hours.

8 20. During all, or portions, of the Class Period, Defendants had a consistent policy of
9 failing to reimburse Plaintiff and members of the Plaintiff Class for all necessary and reasonable
10 business expenses incurred by the requirement to use personal cell phones for work-related
11 purposes, in violation of California state wage and hour laws.

12 21. During all, or portions, of the Class Period, Defendants knowingly and willfully
13 failed to provide accurate itemized wage statements to Plaintiff and other members of the
14 Plaintiff Class, which did not include, among other things, the total number of hours worked
15 and/or wages due. Additionally, because Defendants failed to compensate Plaintiff and other
16 members of the Plaintiff Class for all hours worked and for any non-compliant meal or rest
17 periods, the itemized wage statements provided by Defendants to Plaintiff and other members of
18 the Plaintiff Class were inaccurate. As a result, the wage statements that Defendants furnished
19 to Plaintiff and other members of the Plaintiff Class were incomplete and inaccurate and fail to
20 comply with the requirements of Labor Code section 226(a).

21 22. During all, or portions, of the Class Period, Defendants had a consistent policy
22 and practice of failing to timely compensate Plaintiff and other members of the Plaintiff Class
23 for all wages owed during employment, in violation of California state wage and hour laws.

24 23. During all, or portions, of the Class Period, Defendants had a consistent policy of
25 failing to pay Plaintiff and members of the Plaintiff Class all wages due upon termination, in
26 violation of California state wage and hour laws.

27 24. Plaintiff, on behalf of himself and all similarly-situated employees in the State of
28 California, brings this class action pursuant to Labor Code sections 201, 202, 203, 204(a), 210,

218, 218.5, 218.6, 223, 226(a), 226(h), 226.3, 226.7, 256, 510, 512, 558, 558.1, 1174(d), 1174.5, 1194, 1194.5, 1194.2, 1197, 1197.1, 1198, 2802 seeking unpaid wages including minimum and overtime wages, meal and rest period premiums, unreimbursed expenses, penalties, equitable relief, and reasonable attorneys' fees and costs.

25. Plaintiff, on behalf of himself and all Plaintiff Class Members, brings this action pursuant to Business and Professions Code sections 17200-17208, seeking injunctive relief, restitution, and disgorgement of all benefits obtained by Defendants by failing to pay all wages owed.

V.

CLASS ACTION ALLEGATIONS

26. Plaintiff brings this action on behalf of himself and all other similarly-situated persons as a class action pursuant to California Code of Civil Procedure section 382. The class which Plaintiff seeks to represent is composed of and defined as follows:

Plaintiff Class:

All individuals employed by Defendants in the State of California as an hourly non-exempt employee at any time from April 6, 2016 through the date of trial.

27. Plaintiff seeks to certify a Subclass of employees defined as:

Unpaid Wages Subclass

All members of the proposed Plaintiff Class who worked over eight (8) hours of work in one day or forty (40) hours in one week.

28. Plaintiff seeks to certify a Subclass of employees defined as:

First Meal Period Subclass

All members of the proposed Plaintiff Class who worked one or more work periods in excess of five (5) hours.

29. Plaintiff seeks to certify a Subclass of employees defined as:

Second Meal Period Subclass

All members of the proposed Plaintiff Class who worked one or more work periods in excess of ten (10) hours.

30. Plaintiff seeks to certify a Subclass of employees defined as:

Rest Period Subclass

All members of the proposed Plaintiff Class who worked one or more work periods in excess of three and a half hours (3 ½).

31. Plaintiff seeks to certify a Subclass of employees defined as:

Third Rest Period Subclass

All members of the proposed Plaintiff Class who worked one or more work periods in excess of ten (10) hours.

32. Plaintiff seeks to certify a Subclass of employees defined as:

Unreimbursed Business Expense Subclass

All members of the proposed Plaintiff Class who were required to use a personal cell phone for business-related purposes and as a result incurred expenses in the discharge of duties for Defendants.

33. Plaintiff seeks to certify a Subclass of employees defined as:

Wage Statement Subclass

All members of the proposed Plaintiff Class who, within one year of the filing of the Complaint, received one or more itemized wage statements that did not include all wages due and/or the accurate number of hours worked from and after April 6, 2019.

34. Plaintiff seeks to certify a Subclass of former employees defined as:

Waiting Time Penalty Subclass

All members of the proposed Plaintiff Class whose employment ended at any time from and after April 6, 2017.

35. Plaintiff seeks to certify a Subclass of employees defined as:

UCL Subclass

All members of the proposed Plaintiff Class who were subject to Defendants' pay practices relating to failure to pay all wages, failure to pay meal and rest period premium compensation, failure to reimburse business expenses, and failure to timely pay all wages due during and at separation from employment.

36. Plaintiff reserves the right under Rule 3.765(b), California Rules of Court, to amend or modify the Plaintiff Class description with greater specificity or further division into subclasses or limitation to particular issues.

37. This action has been brought and may be maintained as a class action pursuant to Code of Civil Procedure section 382 because there is a well-defined common interest of many persons and it is impractical to bring them all before the court.

38. **Ascertainable Class**: The proposed Plaintiff Class and Subclasses are ascertainable in that their members can be identified and located using information contained in Defendants' payroll and personnel records.

1 39. **Numerosity**: The potential quantity of members of the Plaintiff Class and
2 Subclasses as defined is so numerous that joinder of all members would be unfeasible and
3 impractical. The disposition of their claims through this class action will benefit both the parties
4 and this Court. The quantity of members of the Plaintiff Class and Subclasses is unknown to
5 Plaintiff at this time, however, it is estimated that the Plaintiff Class and Subclasses number
6 approximately 100 individuals. The quantity and identity of such membership is readily
7 ascertainable via inspection of Defendants' records.

8 40. **Typicality**: The claims of Plaintiff for minimum, regular, and overtime
9 compensation, meal and rest period premiums, unreimbursed business expenses, wage statement
10 penalties, waiting time penalties, interest, and attorneys' fees are typical of the claims of all
11 members of the Plaintiff Class and Subclasses mentioned herein because all members of the
12 Plaintiff Class and Subclasses sustained similar injuries and damages arising out of Defendants'
13 common course of conduct in violation of law, and the injuries and damages of all members of the
14 Plaintiff Class and Subclasses were caused by Defendants' wrongful conduct in violation of law, as
15 alleged herein.

16 41. **Adequacy**: Plaintiff is an adequate representative of the Plaintiff Class and
17 Subclasses herein, will fairly protect the interests of the members of the Plaintiff Class and
18 Subclasses, has no interests antagonistic to the members of the Plaintiff Class and Subclasses, and
19 will vigorously pursue this suit via attorneys who are competent, skilled, and experienced in
20 litigating matters of this type. Class Counsel is competent and experienced in litigating large
21 employment law class actions.

22 42. **Superiority**: A class action is superior to other available means for fair and
23 efficient adjudication of the claims of the Plaintiff Class and would be beneficial for the parties
24 and the Court. Class action treatment will allow a large number of similarly-situated persons to
25 prosecute their common claims in a single forum, simultaneously, efficiently, and without the
26 unnecessary duplication of effort and expense numerous individual actions would require. The
27 damages suffered by each Plaintiff Class Member are relatively small in the sense pertinent to
28 class action analysis, and the expense and burden of individual litigation would make it

1 extremely difficult or impossible for individual Plaintiff Class Members to seek and obtain
2 individual relief. A class action will serve an important public interest by permitting such
3 individuals to effectively pursue recovery of sums owed to them. Class litigation also prevents
4 the potential for inconsistent or contradictory judgments raised by individual litigation.

5 43. **Existence and Predominance of Common Questions of Fact and Law**: There
6 are common questions of law and fact as to the members of the Plaintiff Class and Subclasses
7 which predominate over questions affecting only individual members of the Plaintiff Class and
8 Subclasses including, without limitation:

- 9 a. Whether Defendants compensated Plaintiff and members of the Plaintiff Class
10 for all hours worked, including all overtime wages for all hours worked in excess
11 of 8 hours per day and/or 40 hours per week;
- 12 b. Whether Defendants' rounding policy and practice resulted in the cumulative
13 loss of time and wages to Plaintiff and members of the Plaintiff Class;
- 14 c. Whether Defendants included non-discretionary bonus compensation in the
15 employee's regular rate of pay for purposes of calculating the accurate overtime
16 rate of pay;
- 17 d. Whether Defendants provided Plaintiff and members of the Plaintiff Class legally
18 compliant duty-free meal periods on eligible workdays;
- 19 e. Whether Defendants provided Plaintiff and members of the Plaintiff Class legally
20 compliant, duty-free rest periods on eligible workdays;
- 21 f. Whether Defendants reimbursed Plaintiff and members of the Plaintiff Class for
22 all business-expenses incurred in the discharge of job duties;
- 23 g. Whether Defendants maintained accurate records for Plaintiff and members of
24 the Plaintiff Class pursuant to Labor Code section 1174(d) and section 7 of the
25 applicable IWC Wage order;
- 26 h. Whether Defendants provided Plaintiff and members of the Plaintiff Class with
27 accurate itemized wage statements pursuant to Labor Code section 226;
- 28 i. Whether Defendants timely paid Plaintiff and members of the Plaintiff Class

wages due during employment pursuant to Labor Code section 204;

j. Whether Defendants timely paid Plaintiff and members of the Plaintiff Class wages due upon separation of employment pursuant to Labor Code sections 201, 202, and 203;

k. Whether Defendants violated sections 17200, *et seq.* of the Business and Professions Code; Labor Code sections 201-203, 226, 226.7, 510, 512, 1194, and 2802; and IWC Wage Order 7-2001, and other applicable IWC Wage Orders which constitutes a violation of fundamental public policy;

h. Whether Plaintiff and members of the Plaintiff Class are entitled to equitable relief pursuant to Business and Professions Code, sections 17200, *et seq.*

VI.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

FAILURE TO PAY MINIMUM, REGULAR, AND OVERTIME WAGES

[Lab. Code §§ 218, 510, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198 and 1199(c) and §§ 3 & 4 of IWC Wage Order 7-2001]

44. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

45. Labor Code section 218 provides in pertinent part: “Nothing in this article shall limit the authority of the district attorney of any county or prosecuting attorney of any city to prosecute actions, either civil or criminal, for violations of this article or to enforce the provisions thereof independently and without specific direction of the division. Nothing in this article shall limit the right of any wage claimant to sue directly or through an assignee for any wages or penalty due him under this article.”

46. Labor Code section 1194(a) states: “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.”

47. Labor Code section 1194.2 states: “In any action under Section 98, 1193.6, 1194,

1 or 1197.1 to recover wages because of the payment of a wage less than the minimum wage
2 fixed by an order of the commission or by statute, an employee shall be entitled to recover
3 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.”

4 48. Labor Code section 1194.2 provides for liquidated damages equal to unlawfully
5 unpaid minimum wages, with interest.

6 49. Labor Code section 1197 states: “The minimum wage for employees fixed by the
7 commission is the minimum wage to be paid to employees, and the payment of a less wage than
8 minimum wages so fixed is unlawful.”

9 50. Labor Code section 1197.1 states: “Any employer or other person acting either
10 individually or as an officer, agent, or employee of another person, who pays or causes to be
11 paid to any employee a wage less than the minimum fixed by an order of the commission shall
12 be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee,
13 and any applicable penalties imposed pursuant to Section 203. For any initial violation that is
14 intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay
15 period for which the employee is underpaid. For each subsequent violation for the same specific
16 offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for
17 which the employee is underpaid regardless of whether the initial violation is intentionally
18 committed.”

19 51. Labor Code section 1198 states: “The maximum hours of work and the standard
20 conditions of labor fixed by the commission shall be the maximum hours of work and the
21 standard conditions of labor for employees. The employment of any employee for longer hours
22 than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

23 52. Pursuant to the “Minimum Wages” Section of IWC Wage Order 7-2001 (Section
24 4), an employer may not pay employees less than the applicable minimum wage for all hours
25 worked.

26 53. Labor Code section 1198 and the applicable IWC Wage Order provide that it is
27 unlawful to employ persons without compensating them at a rate of pay either one and one-half
28 (1½) or two (2) times the person’s regular rate of pay, depending on the number of hours or

1 days worked by the person on a daily or weekly basis.

2 54. Section 3 of IWC Wage Order 7-2001 further provides that Defendants are and
3 were required to pay overtime compensation to Plaintiff and members of the Unpaid Overtime
4 Wages Subclass at a rate of two times their regular rate of pay when working and for all hours
5 worked in excess of twelve (12) hours in a day or in excess of eight (8) hours on the seventh day
6 of work in a workweek.

7 55. Labor Code section 510 codifies the right to overtime compensation at one and
8 one-half (1½) times the regular hourly rate for hours worked in excess of eight (8) hours in a
9 day or forty (40) hours in a week and for the first eight (8) hours worked on the seventh
10 consecutive day of work, and overtime compensation at twice the regular hourly rate for hours
11 worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the
12 seventh day of work in a workweek.

13 56. Labor Code section 510 and IWC Wage Order 7-2001 provide that employment
14 of more than six days in a workweek is only permissible if the employer pays proper overtime
15 compensation as set forth herein.

16 57. During all, or portions, of the Class Period, Defendants subjected all non-exempt
17 hourly employees, including Plaintiff, to a uniform policy and practice of unlawful time
18 rounding, resulting in the underpayment of wages, including overtime wages, on a systematic
19 basis. This rounding policy was not neutral on its face or in application and resulted in a
20 cumulative loss of time and wages to Plaintiff and members of the Unpaid Wages Subclass.
21 Despite being readily capable and able to use precise timeclock entries for all “hours worked,”
22 Defendants disregarded actual time worked and issued pay checks and wage statements that
23 systematically reflected rounded time as a basis to underpay their employees. Defendants’
24 rounding policy resulted in underpayment for all straight-time and overtime worked (including
25 double-time hours). On information and belief, Defendants’ rounding policy operated
26 unilaterally to the benefit of Defendants and to detriment of Plaintiff and members of the
27 Unpaid Wages Subclass.

28 58. During the Class Period, Plaintiff and members of the Unpaid Wages Subclass

1 were paid non-discretionary bonuses if predetermined sales quotas were met. On information
2 and belief, Defendants failed to incorporate the non-discretionary bonus compensation into the
3 employee's regular rate of pay for purposes of calculating the overtime rate of pay, resulting in
4 the underpayment of all overtime wages due.

5 59. As a direct result, Plaintiff and members of the Unpaid Wages Subclass have
6 suffered and continue to suffer, substantial losses related to the use and enjoyment of such wages,
7 including lost interest on such monies and expenses and attorney's fees in seeking to compel
8 Defendants to fully perform their obligation under state law, all to their respective damage in
9 amounts according to proof at trial and within the jurisdictional limitations of this Court.

10 60. Labor Code section 218.5(a) provides in pertinent part: "In any action brought for
11 the nonpayment of wages, fringe benefits, or health and welfare or pension fund contributions, the
12 court shall award reasonable attorney's fees and costs to the prevailing party if any party to the
13 action requests attorney's fees and costs upon the initiation of the action."

14 61. Defendants' unlawful acts deprived Plaintiff and members of the Unpaid Wages
15 Subclass Plaintiff seeks to represent of minimum and regular wages, and/or other compensation,
16 in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest
17 thereon, liquidated damages in an amount equal to the wages unlawfully unpaid, attorneys' fees,
18 and costs to the fullest extent permitted by law.

19 62. Plaintiff, on behalf of himself and members of the Unpaid Wages Subclass,
20 requests relief as described below.

21 **SECOND CAUSE OF ACTION**
22 **FAILURE TO PROVIDE MEAL PERIODS**
23 **[Lab. Code §§ 512, 226.7 and § 11 of IWC Wage Order 7-2001]**

24 63. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

25 64. Labor Code section 226.7(a) provides: "No employer shall require any employee
26 to work during any meal or rest period mandated by an applicable order of the Industrial
27 Welfare Commission."

28 65. Labor Code section 512(a) provides: "An employer may not employ an employee
for a work period of more than five hours per day without providing the employee with a meal

1 period of not less than 30 minutes, except that if the total work period per day of the employee
2 is no more than six hours, the meal period may be waived by mutual consent of both the
3 employer and employee. An employer may not employ an employee for a work period of more
4 than 10 hours per day without providing the employee with a second meal period of not less
5 than 30 minutes.”

6 66. Labor Code section 1198 states: “The maximum hours of work and the standard
7 conditions of labor fixed by the commission shall be the maximum hours of work and the
8 standard conditions of labor for employees. The employment of any employee for longer hours
9 than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

10 67. IWC Wage Order 7-2001, section 11 provides, in part, that no employer shall
11 employ any person for a work period of more than five (5) hours without a meal period of not
12 less than 30 minutes, except that when a work period of not more than six (6) hours will
13 complete the day’s work the meal period may be waived by mutual consent of the employer and
14 the employee, and that an employer may not employ an employee for a work period of more
15 than ten (10) hours without proving the employee with a second meal period of not less than 30
16 minutes, except if the total hours worked is no more than 12 hours, the second meal period may
17 be waived by mutual consent of the employer and the employee only if the first meal period was
18 not waived.

19 68. Subsection D of IWC Wage Order 7-2001, section 11 further provides that if an
20 employer fails to provide an employee a meal period in accordance with the applicable
21 provisions of this order, the employer shall pay the employee one (1) hour of pay at the
22 employee’s regular rate of compensation for each workday that the meal period is not provided.

23 69. Plaintiff and members of the First and Second Meal Period Subclasses were
24 frequently not provided with legally compliant meal periods before the end of the fifth hour
25 work. Furthermore, Plaintiff and members of the First and Second Meal Period Subclasses were
26 not provided a second meal period when working a shift of ten (10) hours or more, nor did
27 Plaintiff and members of the First and Second Meal Period Subclasses enter into a mutual
28 waiver to forgo a second meal period.

1 70. Defendants failed to pay meal premium compensation on work periods in which
2 a legally compliant meal period was not provided, as required under California law.

3 71. By failing to provide off-duty and uninterrupted meal periods of at least thirty
4 (30) minutes for shifts of five (5) hours or more, which began before the end of the fifth hour of
5 work, and failing to pay employees one hour of pay at their regular rate of pay for each workday
6 a meal period was not provided, Defendants willfully violated Labor Code sections 226.7 and
7 512(a), and section 11 of the IWC Wage Order No. 7-2001.

8 72. By failing to provide a second off-duty and uninterrupted meal period of at least
9 thirty (30) minutes for shifts of ten (10) hours or more and failing to pay employees one hour of
10 pay at their regular rate of pay for each eligible workday a second meal period was not
11 provided, Defendants willfully violated Labor Code sections 226.7 and 512(a), and section 11
12 of the IWC Wage Order No. 7-2001.

13 73. As a direct result of Defendants' violations alleged herein, Plaintiff and members
14 of the First and Second Meal Period Subclasses have suffered and continue to suffer substantial
15 losses related to the use and enjoyment of such wages, including lost interest on such monies
16 and expenses and attorney's fees in seeking to compel Defendants to fully perform their
17 obligation under state law, all to their respective damage in amounts according to proof at trial
18 and within the jurisdictional limitations of this Court.

19 74. Defendants' unlawful acts deprived Plaintiff and members of the First and
20 Second Meal Period Subclasses Plaintiff seeks to represent of premium wages and/or other
21 compensation in amounts to be determined at trial, and they are entitled to recover such
22 amounts, plus interest, attorneys' fees, and costs.

23 75. Plaintiff seeks to recover in a civil action the unpaid balance of the full amount
24 of the unpaid wages resulting from Defendants' meal period violations including interest
25 thereon, reasonable attorney's fees and costs of suit, and penalties to the fullest extent
26 permissible including those permitted pursuant to Labor Code sections 226.7 and 512, and Code
27 of Civil Procedure section 1021.5.

28 76. Plaintiff, on behalf of himself and members of the First and Second Meal Period

Subclasses, requests relief as described below.

THIRD CAUSE OF ACTION
FAILURE TO PROVIDE REST PERIODS
[Labor Code § 226.7; § 12 of IWC Wage Order 7-2001]

77. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

78. Labor Code section 226.7(a) provides: “No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.”

79. Labor Code section 1198 states: “The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

80. IWC Wage Order 7-2001, section 12(A) states that every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized 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. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked, for which there shall be no deduction from wages.

81. IWC Wage Order 7-2001, section 12(B) states that if an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each work day that the rest period is not provided.

82. Defendants failed to provide Plaintiff and members of the Rest Period and Third Rest Period Subclasses with legally compliant, duty-free rest periods and failed to pay premium compensation equal to one hour of pay at the employee’s regular rate of pay for each workday that a rest period was not provided in accordance with California law. Plaintiff and members of the Rest Period and Third Rest Period Subclasses regularly worked shifts of more than 10 hours per workday. Despite working for more than 10 hours per workday, Defendants failed to provide

1 Plaintiff and members of the Rest Period and Third Rest Period Subclasses with a third duty-free
2 rest period on eligible workdays. Defendant failed to pay premium compensation in the form of a
3 rest period premium for eligible workdays on which a compliant rest period was not provided to
4 Plaintiff and members of the Rest Period and Third Rest Period Subclasses.

5 83. As a direct result of Defendants' violations alleged herein, Plaintiff and members
6 of the Rest Period and Third Rest Period Subclasses have suffered and continue to suffer
7 substantial losses related to the use and enjoyment of such wages, including lost interest on such
8 monies and expenses and attorney's fees in seeking to compel Defendants to fully perform their
9 obligation under state law, all to their respective damage in amounts according to proof at trial
10 and within the jurisdictional limitations of this Court.

11 84. Defendants' unlawful acts deprived Plaintiff and members of the Rest Period and
12 Third Rest Period Subclasses Plaintiff seeks to represent of premium wages and/or other
13 compensation in amounts to be determined at trial, and they are entitled to recover such
14 amounts, plus interest, attorneys' fees, and costs.

15 85. Plaintiff seeks to recover in a civil action the unpaid balance of the full amount of
16 the unpaid wages resulting from Defendants' rest period violations including interest thereon,
17 reasonable attorney's fees and costs of suit, and penalties to the fullest extent permissible
18 including those permitted pursuant to Labor Code section 226.7 and Code of Civil Procedure
19 section 1021.5.

20 86. Plaintiff, on behalf of himself and members of the Rest Period and Third Rest
21 Period Subclasses, requests relief as described below.

22 **FOURTH CAUSE OF ACTION**
23 **FAILURE TO REIMBURSE BUSINESS EXPENSES**
24 **[Lab. Code §§ 2800 and 2802]**

25 87. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

26 88. Labor Code section 2800 provides, in pertinent part, "[a]n employer shall in all
27 cases indemnify his employee for losses caused by the employer's want of ordinary care."

28 89. Labor Code section 2802 provides, in pertinent part, "[a]n employer shall
indemnify his or her employee for all necessary expenditures or losses incurred by the employee

1 in direct consequence of the discharge of his or her duties...”

2 90. Further, Labor Code section 2802 additionally provides, in pertinent part:
3 “(c)...the term ‘necessary expenditures or losses’ shall include all reasonable costs, including
4 but not limited to, attorney’s fees incurred by the employee enforcing the rights granted by this
5 section.”

6 91. California Labor Code section 2804 mandates that this statutory right cannot be
7 waived.

8 92. During the relevant time period, Defendants were required to indemnify and
9 reimburse Plaintiff and members of the Unreimbursed Business Expense Subclass for all
10 expenditures or losses caused by the employer’s want of ordinary care and/or incurred in direct
11 consequent of the discharge of their duties, but failed to indemnify and reimburse Plaintiff and
12 class members. For example, Plaintiff and members of the Unreimbursed Business Expense
13 Subclass were required to use their personal cellphones for business-related purposes, including
14 without limitation, to coordinate with clients and other employees, in violation of Labor Codes
15 sections 2800 and 2802.

16 93. As a direct and proximate result, Plaintiff and members of the Unreimbursed
17 Business Expense Subclass have suffered, and continue to suffer, substantial losses, related to
18 the use and enjoyment of such monies to be reimbursed, lost interest on such monies, and
19 expenses and attorney’s fees in seeking to compel Defendants to fully perform their obligations
20 under California law, all to their damage in amounts according to proof at the time of trial.

21 94. Accordingly, Plaintiff and members of the Unreimbursed Business Expense
22 Subclass are entitled to recover, and hereby seek, an amount equal to incurred necessary
23 expenditures, pre- and post-judgment interest, applicable penalties, attorneys’ fees and costs,
24 and any further equitable relief this Court may deem just and proper. See Cal. Lab. Code §
25 2802; see also, Cal. Civ. Proc. Code § 1021.5.

26 95. Plaintiff, on behalf of himself and members of the Unreimbursed Business
27 Expense Subclass, requests relief as described below.

28 ///

FIFTH CAUSE OF ACTION
FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS
[Labor Code § 226]

96. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

97. Labor Code section 226(a) provides: “Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees... an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, (5) net wages earned... ..and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee...”

98. Due to Defendants’ failure to pay for all hours worked and all meal and rest period premiums as required by the Labor Code, the wages and hours worked listed on each wage statement provided to Plaintiff and members of the Wage Statement Subclass were misstated and violated Sections 226(a)(1), (2), (5), and (9). Defendants’ actions were intentional and willful.

99. As a consequence of Defendants’ knowing and willful failure to comply with Labor Code section 226(a), Plaintiff and members of the Wage Statement Subclass are entitled to actual damages or penalties not to exceed \$4,000 for each employee pursuant to Labor Code section 226(b), together with interest and attorneys’ fees and costs.

100. Labor Code section 226(e) states: “An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorneys’ fees.” Labor Code section 226(e)(2)(B) states: “An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide accurate and complete information as required by any one or more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and easily determine from the wage statement alone one or more of the following: (i) The amount of gross wages or net wages paid to the employee during the pay period or any other information

1 required to be provided on the itemized wage statement pursuant to items (2) to (4), inclusive,
2 (6) and (9) of subdivision (a)...” Because Plaintiff’s wage statements did not include, among
3 other things, an accurate accounting of gross wages earned or the accurate total hours worked,
4 he is deemed to have suffered injury.

5 101. Labor Code section 226(h) states: “An employee may also bring an action for
6 injunctive relief to ensure compliance with this section, and is entitled to an award of costs and
7 reasonable attorney’s fees.”

8 102. Labor Code section 226.3 states, in part: “Any employer who violates
9 subdivision (a) of section 226 shall be subject to a civil penalty in the amount of two hundred
10 fifty dollars (\$250) per employee per violation in an internal citation and one thousand dollars
11 (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails
12 to keep the records required in subdivision (a) of Section 226. The civil penalties provided for
13 in this section are in addition to any other penalty provided by law.”

14 103. As a direct result of Defendants’ violations alleged herein, Plaintiff and members
15 of the Wage Statement Subclass have suffered, and continue to suffer injury including
16 substantial losses related to the use and enjoyment of such wages, lost interest on such monies
17 and expenses and attorney’s fees in seeking to compel Defendants to fully perform their
18 obligations under state law, all to their respective damage in amounts according to proof at trial
19 and within the jurisdictional limitations of this Court.

20 104. Plaintiff seeks to recover in a civil action all remedies including damages, unpaid
21 wages, penalties, attorney’s fees and costs, and injunctive relief to the fullest extent permissible
22 including those permitted pursuant to Labor Code sections 226(e), 226(h), and 226.3, and Code
23 of Civil Procedure section 1021.5.

24 105. Plaintiff, on behalf of himself and the members of the members of the Wage
25 Statement Subclass, requests relief as described below.

26 **SIXTH CAUSE OF ACTION**
27 **FAILURE TO TIMELY PAY WAGES UPON SEPARATION OF EMPLOYMENT**
28 **[Labor Code §§ 201, 202, 203]**

106. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

1 107. Labor Code section 201(a) states: “If an employer discharges an employee, the
2 wages earned and unpaid at the time of discharge are due and payable immediately.”

3 108. Labor Code section 202(a) states: “If an employee not having a written contract
4 for a definite period quits his or her employment, his or her wages shall become due and
5 payable not later than 72 hours thereafter, unless the employee has given 72 hours previous
6 notice of his or her intention to quit, in which case the employee is entitled to his or her wages
7 at the time of quitting. Notwithstanding any other provision of law, an employee who quits
8 without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so
9 requests and designates a mailing address. The date of the mailing shall constitute the date of
10 payment for purposes of the requirement to provide payment within 72 hours of the notice of
11 quitting.”

12 109. Through Defendants’ conduct during the applicable statutory period including,
13 but not limited to, the conduct alleged herein, including that alleged on information and belief,
14 Defendants willfully failed to provide Plaintiff and members of the Waiting Time Penalty
15 Subclass with all wages due and owing, including minimum, regular, and overtime wages, and
16 premium wages for non-compliant meal or rest periods, by the time specified by Labor Code
17 sections 201(a) and 202(a), as applicable.

18 110. Labor Code section 203(a) states, in relevant part: “If an employer willfully fails
19 to pay, without abatement or reduction, in accordance with sections 201, 201.3, 201.5, 202, and
20 205.5, any wages of an employee who is discharged or who quits, the wages of the employee
21 shall continue as a penalty from the due date thereof at the same rate until paid or until an action
22 therefore is commenced; but the wages shall not continue for more than 30 days.”

23 111. As a direct result of Defendants’ violations alleged herein, Plaintiff and
24 members of the Waiting Time Penalty Subclass have suffered and continue to suffer substantial
25 losses related to the use and enjoyment of such wages, including lost interest on such monies
26 and expenses and attorneys’ fees in seeking to compel Defendants to fully perform their
27 obligation under state law, all to their respective damage in amounts according to proof at trial
28 and within the jurisdictional limitations of this Court.

112. Plaintiff seeks to recover in a civil action all remedies to the fullest extent permissible including those permitted pursuant to Labor Code section 203 and Code of Civil Procedure 1021.5.

113. Plaintiff, on behalf of himself and the members of the Waiting Time Penalty Subclass, requests relief as described below.

SEVENTH CAUSE OF ACTION
VIOLATION OF THE UNFAIR COMPETITION LAW
[Business and Professions Code §§ 17200, *et seq.*]

114. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

115. The failure to pay regular, minimum, and overtime compensation, rest and meal period premiums, reimburse business expenses, and timely pay all pay due during and upon termination of employment to Plaintiff, and each Plaintiff Class Member and UCL Subclass Member, is an unlawful and unfair business practice within the meaning of Business and Professions Code sections 17200, *et seq.*, including but not limited to a violation of the applicable State of California Industrial Welfare Commission Wage Orders, regulations, and statutes, or is otherwise a practice which is otherwise unfair and unlawful, including that the Defendants did not pay tax contributions on the accrued compensation in the form of FICA, Social Security, Medicare, and Unemployment Insurance.

116. This cause of action is brought under Business and Professions Code sections 17203 and 17204, commonly called the Unfair Competition Law. Under this cause of action and pursuant to Business and Professions Code section 17208, Plaintiff and all Plaintiff Class Members seek restitution of wages owed and, where applicable, penalties under Labor Code section 203, where such wages were due to each of the Class Members during the Class Period, commencing four (4) years prior to filing of this complaint, according to proof.

117. This cause of action is brought as a cumulative remedy as provided in Business and Professions Code section 17205, and is intended as an alternative remedy for restitution for Plaintiff, each Plaintiff Class Member, and each UCL Subclass Member, for the time period, or any portion thereof, commencing within four (4) years prior to the filing of this complaint, and as the primary remedy for Plaintiff, each Plaintiff Class Member, and each UCL Subclass

1 Member for the time period of the fourth year prior to the filing of this complaint, as such one-
2 year time period exceeds the statute of limitations on statutory wage claims.

3 118. As a result of the Defendants' unlawful and unfair business practice of failing
4 to pay minimum, regular, and overtime wages, meal and rest period premiums, reimburse
5 business expenses, and prompt payment of wages in violation of Labor Code sections 201 and
6 202, each Plaintiff Class Member and UCL Subclass Member has suffered damages and is
7 entitled to restitution in an amount according to proof. The wages and restitution sought are
8 based on the alleged failure to provide legally compliant meal and rest periods, as these claims
9 relate only to wages or premiums that were required to be paid, but for which, due to
10 Defendants' unfair competition, were not paid as required by law.

11 119. Plaintiff, on behalf of himself and other proposed members of the Plaintiff
12 Class, will seek restitution of wages, including premium wages for non-compliant break
13 periods, in an amount according to proof within the UCL's applicable limitations period.

14 120. Plaintiff, on behalf of himself and the members of the UCL Subclass, requests
15 relief as described below.

16 **EIGHTH CAUSE OF ACTION**
17 **PAGA CIVIL PENALTIES FOR FAILURE TO PAY MINIMUM, REGULAR, AND**
18 **OVERTIME WAGES**
[Lab. Code §§ 2698, *et seq.*]

19 121. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

20 122. Labor Code section 1194(a) provides: "(a) Notwithstanding any agreement to
21 work for a lesser wage, any employee receiving less than the legal minimum wage or the legal
22 overtime compensation applicable to the employee is entitled to recover in a civil action the
23 unpaid balance of the full amount of this minimum wage or overtime compensation, including
24 interest thereon, reasonable attorney's fees, and costs of suit."

25 123. Labor Code section 1197 states: "The minimum wage for employees fixed by the
26 commission is the minimum wage to be paid to employees, and the payment of a less wage than
27 minimum wage so fixed is unlawful."

28 124. Labor Code section 510 codifies the right to overtime compensation at one and

1 one-half (1½) times the regular hourly rate for hours worked in excess of eight (8) hours in a
2 day or forty (40) hours in a week and for the first eight (8) hours worked on the seventh
3 consecutive day of work, and overtime compensation at twice the regular hourly rate for hours
4 worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the
5 seventh day of work in a workweek.

6 125. Labor Code section 2699(a) provides: “Notwithstanding any other provision of
7 law, any provision of this code that provides for a civil penalty to be assessed and collected by
8 the Labor and Workforce Development Agency or any of its departments, divisions,
9 commissions, boards, agencies, or employees, for a violation of this code, may, as an
10 alternative, be recovered through a civil action brought by an aggrieved employee on behalf of
11 himself or herself and other current or former employees pursuant to the procedures specified in
12 Section 2699.3.”

13 126. Labor Code section 2699(f)(2) states: “For all provisions of this code except
14 those for which a civil penalty is specifically provided, there is established a civil penalty for a
15 violation of these provisions, as follows... (2) If, at the time of the alleged violation, the person
16 employs one or more employees, the civil penalty is one hundred dollars (\$100) for each
17 aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for
18 each aggrieved employee per pay period for each subsequent violation.” Labor Code §
19 2699(f)(2).

20 127. Labor Code section 2699.5 provides, in pertinent part that “provisions of
21 subdivision (a) of Section 2699.3 apply to any alleged violation of the following provisions:
22 [Labor Code §§] ...510, 1194, 1194.1” and allow for recovery of civil penalties pursuant to the
23 PAGA.

24 128. During all or a substantial part of the PAGA Period, Defendants failed to pay
25 minimum, regular, and overtime wages for all work hours.

26 129. As a result of Defendants’ failure to pay minimum, regular, and overtime wages
27 for all hours worked, Defendants, and each of them, are liable for civil penalties within the
28 applicable limitations period of Labor Code section 2699(f)(2) for violations of Labor Code

1 sections 510, 1194, and 1194.2, in the amount of \$100 for each aggrieved employee per pay
2 period for the initial violation and \$200 for each subsequent violation, for Defendants' failure to
3 pay Plaintiff and other aggrieved employees minimum, regular, or overtime wages.

4 130. Defendants' conduct also violates Wage Order 7-2001 by failing to pay
5 minimum and overtime wages to employees.

6 131. Plaintiff will seek civil penalties of \$50 for the initial pay period an employee
7 was underpaid, and \$100 for each subsequent violation. Funds recovered will be distributed in
8 accordance with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf
9 of the State of California.

10 **NINTH CAUSE OF ACTION**
11 **PAGA CIVIL PENALTIES FOR FAILURE TO PROVIDE MEAL PERIODS**
12 **[Labor Code §§ 2698, *et seq.*]**

13 132. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

14 133. Labor Code section 226.7(b)(c) provides: "An employer shall not require an
15 employee to work during a meal period mandated pursuant to an applicable statute, or
16 applicable regulation, standard, or order of the Industrial Welfare Commission, the
17 Occupational Safety and Health Standards Board, or the Division of Occupational Safety and
18 Health."

19 134. Labor Code section 226.7(c) provides: "If an employer fails to provide an
20 employee a meal period in accordance with a state law...the employer shall pay the employee
21 one additional hour of pay at the employee's regular rate of compensation for each workday that
22 the meal or rest or recovery period is not provided."

23 135. During the PAGA Period, Plaintiff and other aggrieved employees were not
24 provided with legally compliant, off-duty meal periods.

25 136. By failing to provide off-duty and uninterrupted meal periods of at least thirty
26 (30) minutes for shifts of five (5) hours or more, which began before the end of the fifth hour of
27 work, and failing to pay employees one hour of pay at their regular rate of pay for each workday
28 a meal period was not provided, Defendants willfully violated Labor Code sections 226.7, 512,
and 558(a)(3), and Wage Order 7-2001.

1 137. Labor Code section 2699(f)(2) provides for civil penalties for violations of the
2 Labor Code for which there is no corresponding civil penalty, including Labor Code sections
3 226.7 and 512. The civil penalty is \$100 for the initial violation and \$200 for each subsequent
4 violation for each underpaid employee. Labor Code § 2699(f)(2).

5 138. Plaintiff, as a representative of the general public, seeks to recover all Labor
6 Code section 2699(f)(2) civil penalties for each Labor Code sections 226.7 or 512(a) violation,
7 according to proof, as to those penalties otherwise only available in public agency enforcement
8 actions. Funds recovered will be distributed in accordance with the PAGA, with 75% of
9 penalties recovered provided to the LWDA on behalf of the State of California.

10 **TENTH CAUSE OF ACTION**
11 **PAGA CIVIL PENALTIES FOR FAILURE TO PROVIDE REST PERIODS**
12 **[Labor Code §§ 2698, *et seq.*]**

13 139. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

14 140. During the PAGA Period, Plaintiff and other aggrieved employees were not
15 provided legally compliant, duty-free rest periods.

16 141. By failing to authorize and permit rest periods of at least ten (10) minutes for
17 every four (4) hours or major fraction thereof worked per day, and by failing to provide
18 premium wages at the regular rate of pay when these periods were not permitted or authorized,
19 Defendants willfully violated Labor Code section 226.7 and Wage Order 7-2001.

20 142. Labor Code section 2699(f)(2) provides for civil penalties for violations of the
21 Labor Code for which there is no corresponding civil penalty, including Labor Code section
22 226.7. The civil penalty is \$100 for the initial violation and \$200 for each subsequent violation
23 for each underpaid employee. Labor Code § 2699(f)(2).

24 143. Plaintiff, as a representative of the general public, seeks to recover all Labor
25 Code section 2699(f)(2) civil penalties for each Labor Code section 226.7 violation, according
26 to proof, as to those penalties otherwise only available in public agency enforcement actions.
27 Funds recovered will be distributed in accordance with the PAGA, with 75% of penalties
28 recovered provided to the LWDA on behalf of the State of California.

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ELEVENTH CAUSE OF ACTION
PAGA CIVIL PENALTIES FOR FAILURE TO REIMBURSE BUSINESS EXPENSES
[Labor Code §§ 2698, *et seq.*]

144. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

145. California Labor Code section 2802 provides: “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, obedience to the directions of the employer...[].”

146. For purposes of this section, the term “necessary expenditures or losses” shall include all reasonable costs, including, but not limited to, attorney’s fees incurred by the employee enforcing the rights granted by this section.

147. California Labor Code section 2804 mandates this statutory right cannot be waived.

148. Labor Code section 2699(f)(2) states: “For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows... (2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one 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.”

149. Aggrieved employees are entitled to pursue civil penalties under the PAGA for violations of Labor Code section 2802. Labor Code § 2699.5.

150. Because there is no established civil penalty for violations of Section 2802, Labor Code section 2699(f)(2) provides the appropriate civil penalty, as Defendants employed more than one person during the statutory period, and still employ more than one person.

151. Defendants violated the above statutes throughout the applicable statutory period by failing to fully reimburse Plaintiff and other aggrieved employees for necessary expenditures incurred in direct consequence of discharging their duties, including failing to reimburse for all expenses incurred by Plaintiff and aggrieved employees for the use of personal cell phones for business-related purposes.

153. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

154. Labor Code section 226(a) provides: “Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees... an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, (5) net wages earned... ...and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee...”

155. Due to Defendants' failure to pay for all hours worked and all meal and rest period premiums as required by the Labor Code, the wages and hours worked listed on each wage statement provided to Plaintiff and other aggrieved employees were misstated and violated Sections 226(a)(1), (2), (5), and (9). Defendants' actions were intentional and willful.

156. Plaintiff has satisfied all prerequisites to serve as a representative of the general public to enforce California’s labor laws, and the penalty provisions identified in Labor Code section 226.3. Plaintiff, as a representative of the people of the State of California, seeks all penalties otherwise capable of being collected by the Division of Labor Standards Enforcement (“DLSE”). Labor Code section 2699.5 provides that Section 2699.3(a) applies to an alleged violation of Labor Code section 226.

157. Labor Code section 226.3 provides for civil penalties for violations of Section 226. The civil penalty is \$250 for the initial violation and \$1,000 for each subsequent violation.

158. Plaintiff, as a representative of the general public, seek to recover all Labor Code section 2699(f)(2) civil penalties for each Labor Code section 226 violation, according to proof,

1 as to those penalties otherwise only available in public agency enforcement actions. Funds
2 recovered will be distributed in accordance with the PAGA, with 75% of penalties recovered
3 provided to the LWDA on behalf of the State of California.

4 **THIRTEENTH CAUSE OF ACTION**
5 **PAGA CIVIL PENALTIES FOR FAILURE TO TIMELY PAY WAGES DUE UPON**
6 **SEPARATION OF EMPLOYMENT**
7 **[Labor Code §§ 2698, *et seq.*]**

8 159. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

9 160. Labor Code sections 201-203 require employers to pay wages earned by
10 employees within strict time requirements. Defendants had a policy, practice, and procedure of
11 willfully failing to pay the earned wages of Defendants' former employees. If an employer
12 willfully fails to timely and fully pay all final wages the employer must, as a penalty, continue
13 to pay an employee's wages for 30 days, or until the back wages are paid in full.

14 161. Defendants failed to pay Plaintiff and other aggrieved employees who ended
15 their employment with the Defendant all wages, including minimum, regular, and overtime, and
16 meal and rest period premium wages, as required by Labor Code sections 201-203.

17 162. Labor Code section 256 states: "The Labor Commissioner shall impose a civil
18 penalty in an amount not exceeding 30 day's pay as waiting time under the terms of Section
19 203."

20 163. Labor Code section 2699(f)(2) provides for civil penalties for violations of the
21 Labor Code for which there is no corresponding civil penalty, including Labor Code section
22 203. The civil penalty is \$100 for the initial violation and \$200 for each subsequent violation for
23 each underpaid employee. Labor Code § 2699(f)(2).

24 164. Plaintiff, as a representative of the general public, seeks to recover all Labor
25 Code section 2699(f)(2) civil penalties for each Labor Code section 201-203 violation,
26 according to proof, as to those penalties otherwise only available in public agency enforcement
27 actions. Funds recovered will be distributed in accordance with the PAGA, with 75% of
28 penalties recovered provided to the LWDA on behalf of the State of California.

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FOURTEENTH CAUSE OF ACTION
PAGA CIVIL PENALTIES FOR FAILURE TO TIMELY PAY WAGES DUE DURING
EMPLOYMENT
[Labor Code §§ 2698, *et seq.*]

165. Plaintiff incorporates all preceding paragraphs of this Complaint.

166. Labor Code section 204(a) requires employers to pay wages earned by employees within strict time requirements. Defendants had a policy, practice, and procedure of willfully failing to pay the earned wages of Defendants' employees twice during each calendar month, on days designated in advance by the employer as the regular paydays.

167. Labor Code section 210(a) provides: "In addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and 1197.5, shall be subject to a penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld."

168. Defendant failed to pay Plaintiff and other aggrieved employees all minimum, regular, and overtime wages and all meal and rest period premium wages during their employment, as required by Labor Code section 204.

169. Labor Code section 2699(f)(2) provides for civil penalties for violations of the Labor Code for which there is no corresponding civil penalty. The civil penalty is \$100 for the initial violation and \$200 for each subsequent violation for each underpaid employee. Labor Code § 2699(f)(2).

170. Plaintiff, as a representative of the general public, seeks to recover all civil penalties under Labor Code section 2699(f)(2) and/or section 210 for each and every violation of Labor Code section 204(a), in an amount according to proof, as to those penalties that are otherwise only available in public agency enforcement actions. Funds recovered will be distributed in accordance with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State of California.

FIFTHTEENTH CAUSE OF ACTION
PAGA CIVIL PENALTIES FOR FAILURE TO MAINTAIN ACCURATE RECORDS
[Labor Code §§ 2698, *et seq.*]

171. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

172. Labor Code section 1174(d) requires, every person employing labor in California to “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. 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 three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.”

173. Defendants failed to maintain accurate records by failing to record all hours worked and the wages owed to Plaintiff and other aggrieved employees. Defendants failed to keep accurate records of accurate minimum and overtime wages paid and hours worked, including hours worked during meal periods.

174. Labor Code section 2699(f)(2) provides for civil penalties for violations of the Labor Code for which there is no corresponding civil penalty, including Labor Code section 1174(d). The civil penalty is \$100 for the initial violation and \$200 for each subsequent violation for each underpaid employee. Labor Code § 2699(f)(2).

175. Plaintiff, as a representative of the general public, seeks to recover all Labor Code section 2699(f)(2) civil penalties for each Labor Code section 1174 violation, according to proof, as to those penalties otherwise only available in public agency enforcement actions. Funds recovered will be distributed in accordance with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State of California.

VII.

PRAYER FOR RELIEF

Plaintiff prays for judgment as follows:

1. That the Court determine this action may be maintained as a class action and

1 Plaintiff as Class Representative and Plaintiff's counsel as Class Counsel;

2 2. For injunctive relief as provided by the Labor Code to the extent permitted by
3 law including, but not limited to, pursuant to Section 226(h), and Business and Professions
4 Code sections 17200, *et seq.*;

5 3. For restitution as provided by Business and Professions Code sections 17200, *et*
6 *seq.*;

7 4. For an order requiring Defendants to restore and disgorge all funds to each
8 affected person acquired by means of any act or practice declared by this Court to be unlawful,
9 unfair, or fraudulent and, therefore, constituting unfair competition under Business and
10 Professions Code sections 17200, *et seq.*;

11 5. For an award of unpaid wages, including minimum, regular, and overtime wages,
12 to the extent permissible by law to each affected person;

13 6. For an award of liquidated damages to the extent permissible by Labor Code
14 section 1194.2;

15 7. For an award of meal period premium wages equal to one hour of pay at the
16 employee's regular rate of pay for each workday that a meal period was not provided in
17 accordance with Labor Code sections 226.7 and 512, and Section 11 of the applicable IWC
18 Wage Order;

19 8. For an award of rest period premium wages equal to one hour of pay at the
20 employee's regular rate of pay for each workday that a rest period was not provided in
21 accordance with Labor Code section 226.7 and Section 12 of the applicable IWC Wage Order;

22 9. For reimbursement of unpaid expenses incurred as a result of the use of cell
23 phones at the direction of and for the benefit of Defendants, in accordance with Labor Code
24 section 2802;

25 10. For penalties to the extent permitted pursuant to the Labor Code, and Orders of
26 the Industrial Welfare Commission including, but not limited to penalties under Labor Code
27 section 226(e);

28 11. For an award of waiting time penalties per former employee pursuant to Labor

1 Code section 203(a);

2 12. For an award of penalties incurred under sections 210, 226.3, 226(e), and 1174.5
3 per underpaid employee pursuant to Labor Code sections 210, 226(e), 226.3, and 1174.5;

4 13. For the remedies provided by Labor Code section 233 including reasonable
5 attorneys' fees;

6 14. For an award of liquidated damages to the extent permissible by Labor Code
7 section 1194.2;

8 15. For penalties incurred under Labor Code section 1197.1 for each underpaid
9 employee per pay period for which the employee was underpaid;

10 16. For pre and post-judgment interest to the extent permitted by law including, but
11 not limited to, Labor Code section 1194;

12 17. Determine the appropriate remedy to compensate Plaintiff, Plaintiff Class, and
13 Subclass members, as required to promote fairness and justice, including but not limited to
14 establishing procedures for compensation, and fluid recovery if appropriate;

15 18. For recovery of all civil penalties as permitted by Labor Code section 2699, for
16 unpaid minimum, regular, and overtime wages owed pursuant to Labor Code section 1194,
17 according to proof;

18 19. For recovery of civil penalties as permitted by Labor Code section 2699, for
19 unpaid meal period premiums earned pursuant to Labor Code section 226.7, according to proof;

20 20. For recovery of civil penalties as permitted by Labor Code section 2699 for
21 unpaid rest period premiums earned pursuant to Labor Code section 226.7, according to proof;

22 21. For recovery of civil penalties as permitted by Labor Code section 2699 for
23 unreimbursed business expenses pursuant to Labor Code section 2802, according to proof;

24 22. For recovery of civil penalties as permitted by Labor Code section 2699, for
25 inaccurate itemized wage statements pursuant to Labor Code sections 226 and 226.3, according
26 to proof;

27 23. For recovery of civil penalties pursuant to Labor Code section 2699 where a
28 statutory civil penalty is not provided, for failing to comply with Labor Code sections 201-203;

24. For recovery of civil penalties pursuant to Labor Code section 256 in an amount not exceeding 30 days' pay as a waiting time penalty under the terms of section 203;

25. For recovery of civil penalties pursuant to Labor Code section 2699(f)(2) and/or section 210 for failing to timely pay all wage due pursuant to Labor Code section 204(a).

26. Attorneys' fees and costs of suit, including expert fees and fees pursuant to California Labor Code sections 218.5, 226, 226(h), 1194, and Code of Civil Procedure section 1021.5, the PAGA, and all other applicable state laws;

27. For Pre-Judgment and Post-Judgment interest, to the extent permitted by law as to any restitution recovery; and

28. Any other relief as this Court deems proper.

COHELAN KHOURY & SINGER
LAW OFFICES OF SAHAG MAJARIAN II

Dated: May 27, 2020

By: 
Michael D. Singer, Esq.
Marta Manus, Esq.
Attorneys for Plaintiff Omar Ayala

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial of all claims triable as of right by jury.

COHELAN KHOURY & SINGER
LAW OFFICES OF SAHAG MAJARIAN II

Dated: May 27, 2020

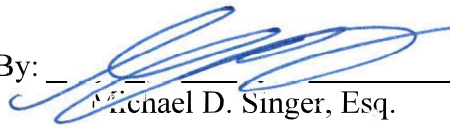
By: 
Michael D. Singer, Esq.
Marta Manus, Esq.
Attorneys for Plaintiff Omar Ayala

EXHIBIT 1

COHELAN KHOURY & SINGER

A PARTNERSHIP OF PROFESSIONAL LAW CORPORATIONS

TIMOTHY D. COHELAN, APLC*
ISAM C. KHOURY, APC
DIANA M. KHOURY, APC
MICHAEL D. SINGER, APLC •

(*Also admitted in the District of Columbia)
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JEFF GERACI
J. JASON HILL†
MARTA MANUS
KRISTINA DE LA ROSA

(† Also admitted in Illinois)

March 20, 2020

NOTICE VIA ONLINE SUBMISSION

California Labor and Workforce Development Agency (LWDA)

VIA CERTIFIED U.S. MAIL WITH RETURN RECEIPT

Zodiac Pool Systems, LLC
2882 Whiptail Loop East # 100
Carlsbad, CA 92010

Zodiac Pool Solutions, LLC
2882 Whiptail Loop East # 100
Carlsbad, CA 92010

Fluidra USA, LLC
c/o Ted Kampe
27647 W. Redwood Way
Castaic, CA 91384

Zodiac Pool Systems, LLC
Zodiac Pool Solutions, LLC
c/o CSC-Lawyers Incorporating Service
2710 Gateway Oaks Dr., Suite 150N
Sacramento, CA 95833

Re: Notice pursuant to California Labor Code sections 2698, *et seq.*, the Private Attorneys General Act ("PAGA"), sent by Omar Ayala on behalf of himself and all other non-exempt employees of Zodiac Pool Systems, LLC, Zodiac Pool Solutions, LLC and Fluidra USA, LLC in the State of California, as an individual and as proposed a Representative of the State of California

Dear PAGA Administrator and Zodiac Pool Systems, LLC, Zodiac Pool Solutions, LLC, and Fluidra USA, LLC:

This letter shall serve as Omar Ayala's (hereafter "Claimant") Notice pursuant to the California Private Attorneys General Act of 2004 ("PAGA"), California Labor Code sections 2698, *et seq.* regarding his claims against Zodiac Pool Systems, LLC, Zodiac Pool Solutions, LLC (collectively "Zodiac"), and Fluidra USA, LLC, (collectively referred to herein as "the Employers"). Claimant submits this notice on behalf of himself and all current and former non-exempt employees employed by the Employers in California during the one year preceding the date of this notice suffered one or more of the violations described herein (collectively referred to as "aggrieved employees").

If the LWDA does not intend to investigate the allege violations, Claimant intends to file a representative action for PAGA *civil penalties* on behalf of himself and all other aggrieved employees of the Employers, seeking civil penalties on behalf of himself and all other aggrieved non-exempt employees in the State of California. A copy of this notice is being sent to the Employers by certified mail at the addresses above.

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Fluidra USA, LLC
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Claimant and other non-exempt employees were subject to the same policies and practices alleged herein which impermissibly denied aggrieved employees their rights pursuant to the California Labor Code and caused violation of the Labor Code as set forth below.

FACTUAL STATEMENT

Claimant worked for the Employers as a non-exempt employee in the job position(s) of “Assembler, Tester, and Builder” beginning in approximately March 2013 when Claimant was hired by Grand Effects, Inc. On October 2, 2017, Zodiac Pools Systems LLC acquired Grand Effects, Inc. Zodiac Pool Systems LLC is a subsidiary of Zodiac Pool Solutions, LLC. In July 2018, Zodiac Pool Systems, LLC merged with Fluidra USA, LLC. The Employers are a global provider of equipment and solutions for in-ground residential swimming pools and spas. Claimant’s employment ended in approximately October 2019.

At all relevant times at least one year prior to the date of this Notice, the Employers subjected Claimant and non-exempt employees to policies and practices which caused the violations of the Labor Code as described herein. Claimant now seeks civil penalties individually and on behalf of other non-exempt employees (“aggrieved employees”) based on the alleged violations of the California Labor Code and applicable IWC Wage Order, including civil penalties pursuant to Labor Code section 558(a), *excluding underpaid wages per ZB, N.A. v. Superior Court* (2019) 8 Cal. 5th 175, 252 Cal. Rptr. 3d 228, 448 P.3d 239. Claimant’s claims are set forth in further detail below.

For reasons set forth herein, Claimant alleges the following violations of the California Labor Code and the applicable IWC Wage Order(s) on behalf of himself and all other non-exempt employees employed by the Employers in California.

FAILURE TO PAY MINIMUM, REGULAR, AND OVERTIME WAGES

(Labor Code §§ 218, 510, 1194, 1197, 1197.1, 1198, and 1199(c) and the “Minimum Wages” and “Hours and Days of Work” Sections of the Applicable Wage Order)

At all times during his employment and at least one year prior to the date of this Notice, Claimant was subjected to a uniform policy and practice of unlawful time rounding. That is, the Employers did not pay Claimant and other aggrieved employees precisely for all hours worked and rounded his and other aggrieved employees’ hours worked to the nearest quarter of an hour, which over time, unlawfully favored the Employers and resulted in time lost to the employees, including Claimant. This rounding policy was not neutral on its face or in application and resulted in a cumulative loss of time to the employees. The Employers had the ability to pay for the precise hours worked but opted instead to utilize the rounding policy with no apparent benefit other than to benefit the Employers and deprive employees of payment for all hours worked. Strict rules regarding punctuality and rules favoring meal periods of less than thirty minutes further affected the rounding policy to result in more favorable results to the Employers. As a result, Claimant and other employees were not paid all minimum and regular wages for all hours worked. When the employees worked overtime, the rounding policy also resulted in the failure to

pay all overtime wages for all overtime hours worked. Furthermore, on information and belief, Claimant and other aggrieved employees were paid non-discretionary bonus if they met their sales quotas, which the Employers failed to factor into the regular rate of pay for purposes of calculating the accurate overtime rate of pay due and owed for overtime hours worked.

Labor Code section 510 provides in pertinent part: “Eight hours of labor constitutes a day’s work. Any work in excess of 8 hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.”

Labor Code section 1194(a) states: “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.”

Labor Code section 1198 provides: “The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

Labor Code section 1199, which is a statute listed for which PAGA default civil penalties are recoverable pursuant to Labor Code sections 2699.5 and 2699(f)(2), provides that:

“Every employer or other person acting either individually or as an officer, agent, or employee of another person is guilty of a misdemeanor and is punishable by a fine of not less than one hundred dollars (\$100) or by imprisonment for not less than 30 days, or by both, who does any of the following:

- (a) Requires or causes any employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission.
- (b) Pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission.
- (c) Violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission.”

Labor Code section 1197 states: “The minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful. This section does not change the applicability of local minimum wage laws to any entity.”

Labor Code section 1197.1 states: “Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203. For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed.”

Pursuant to the “Hours & Days of Work” Section of the applicable Wage Order, an employer may not pay non-exempt employees less than the applicable overtime rate for all overtime hours worked.

Pursuant to the “Minimum Wages” and “Hours & Days of Work” Sections of the applicable Wage Order, an employer may not pay employees less than the applicable minimum wage for all hours worked and provides that an employer may not pay non-exempt employees less than the applicable overtime rate for all overtime hours worked.

The Employers violated Labor Code sections 218, 510, 1194, 1197, 1198, and the “Minimum Wages” and “Hours and Days of Work” Sections of the Applicable Wage Order because it did not pay Claimant and other aggrieved current and former employees all minimum, regular, and overtime wages for all hours worked as a result of its unlawful rounding system and failure to accurately calculate the overtime rate of pay during pay periods when/if a non-discretionary bonus was paid.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of himself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO PROVIDE MEAL AND REST PERIODS

(Labor Code §§ 226.7, 512, and 1198, and the “Meal Period” and “Rest Period” Sections of the applicable IWC Wage Order)

Labor Code section 512(a) states in pertinent part: “[A]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes” Labor Code section 226.7(a) states that “no employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.”

The “Rest Period” Section of applicable IWC Wage Order states: “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period 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.” If an employer fails to provide an employee a rest period in accordance with the applicable provision of the order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation of each workday that the rest period is not provided.

Labor Code section 226.7(c) states: “[I]f an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the IWC, the employer shall pay the employee one 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.”

The Employers failed to provide Claimant and other aggrieved employees with legally compliant meal and rest periods on eligible workdays. The Employers regularly failed to provide a duty-free and uninterrupted meal period before the end of the fifth hour of work and failed to provide a second meal period on shifts of more than 10 hours, as required under California law. Furthermore, the meal periods provided to Claimant and other aggrieved employees were often short insofar as they were not at least 30 minutes in length, as required under California law. On information and belief, Claimant and other aggrieved employees did not waive their right to receive meal periods, including second meal periods and third rest periods on eligible shifts. During Claimant’s employment, the Employers failed to provide Claimant and other aggrieved employees with legally compliant off-duty meal periods and duty-free rest periods as required by Labor Code sections 226.7 and 512, and sections 11 and 12 of the applicable IWC Wage Order. Furthermore, the Employers failed to pay one (1) hour of pay at the employee’s *regular rate* of compensation for each workday that the meal and/or rest period was not provided, in accordance with California law.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of himself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO REIMBURSE BUSINESS-RELATED EXPENSES
(Labor Code §§ 2802 and 2804, and the “Tools and Equipment” section of the applicable IWC Wage Order)

Labor Code section 2802(a) provides that “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.”

Labor Code section 2802(c) states that “[f]or purposes of [2802], the term ‘necessary expenditures or losses’ shall include all reasonable costs, including, but not limited to attorney’s

fees incurred by the employee enforcing the rights granted by [2802].”

Section 9(b) of the applicable IWC Wage Order states in pertinent part: “When tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer.”

Labor Code section 2802 prohibits employers, such as the Employers, from shifting their cost of doing business onto the employee. California Labor Code section 2802 states that employers must “indemnify” an employee for “all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.” This means that if the expense in question is “necessary” for performance of the job, the employer must reimburse the employee 100% of the cost. An expense is considered “necessary” if it directly results from the employee’s performance of his or her work duties. An expense is also “necessary” if it occurs because the employee is following the directions given by the employer.

“Any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled to under the laws of this State.” Cal. Labor Code § 2804.

The Employers failed to comply with Labor Code section 2802 and the applicable IWC Wage Order by failing to reimburse Claimant and other aggrieved employees for necessary business-related expenses incurred in direct consequence of the discharge of his or her duties, including for the use of personal cell phones for work-related purposes.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of himself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO PAY ALL VACATION WAGES
(Labor Code §§ 218.5, 218.6, 227.3, and 2698, *et seq.*)

California Labor Code section 227.3 states, in pertinent part: “Whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served; provided, however, that an employment contract or employer policy shall not provide for forfeiture of vested vacation time upon termination. The Labor Commissioner or a designated representative, in the resolution of any dispute with regard to vested vacation time, shall apply the principles of equity and fairness.”

On information and belief, the Employers failed to comply with Labor Code section 227.3 by failing to pay all vacation wages due and earned to Claimant and all other aggrieved

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employees. By failing to accurately pay for all hours worked, the Employers failed to accurately calculate vacation wages earned, and therefore, failed to pay all vacation wages due upon termination of employment.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of himself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO PROVIDE PAID SICK LEAVE
(Labor Code §§ 246, 248.5)

Labor Code section 246 grants the right to employees to paid sick days. Specifically, Cal. Labor Code section 246(b) states that:

“(1) An employee shall accrue paid sick days at the rate of not less than one hour per every 30 hours worked, beginning at the commencement of employment or the operative date of this article, whichever is later, subject to the use and accrual limitations set forth in this section.

(2) An employee who is exempt from overtime requirements as an administrative, executive, or professional employee under a wage order of the Industrial Welfare Commission is deemed to work 40 hours per workweek for the purposes of this section, unless the employee’s normal workweek is less than 40 hours, in which case the employee shall accrue paid sick days based upon that normal workweek.

(3) An employer may use a different accrual method, other than providing one hour per every 30 hours worked, provided that the accrual is on a regular basis so that an employee has no less than 24 hours of accrued sick leave or paid time off by the 120th calendar day of employment or each calendar year, or in each 12-month period.

(4) An employer may satisfy the accrual requirements of this section by providing not less than 24 hours or three days of paid sick leave that is available to the employee to use by the completion of his or her 120th calendar day of employment.”

Labor Code section 246(i) further requires that an employer provide employees written notice setting forth the amount of paid sick leave available either on an employee’s wage statement pursuant to Section 226 or in a separate writing on the designated pay date.

On information and belief, the Employers failed to comply with Labor Code sections 246 and 248.5 by failing to provide all paid sick leave due and earned and failing to set forth in a written notice the accurate amount of paid sick leave Claimant and other aggrieved employees accrued. By failing to accurately record all hours actually worked and failing to pay for all hours worked, the Employers failed to provide all paid sick leave in accordance with California law,

which requires that paid sick days accrue at the rate of not less than one hour per every 30 hours worked.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of himself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Labor Code §§ 226(a), 226.3, 1198, 2699, and the “Records” Section of the applicable IWC Wage Order)

Labor Code section 226(a) states in pertinent part that every employer shall provide an accurate itemized statement in writing with respect to each one of its employees showing: 1) gross wages earned; 2) total hours worked by an employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission; (3) the number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item; (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number; (8) the name and address of the legal entity that is the employer...; and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

Furthermore, Labor Code section 226(e)(2)(A) states: “An employee is deemed to suffer injury for purposes of this subdivision if the Employer fails to provide a wage statement.”

Labor Code section 226.3 imposes an additional civil penalty on the Employers of \$250.00 per employee per violation of Labor Code section 226(a) in an initial citation and \$1,000.00 per employee for each violation in a subsequent citation. In addition, Labor Code section 226(e) imposes a penalty of the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of \$4,000, and Claimant is entitled to an award of costs and reasonable attorney’s fees.

Due to the Employers’ failure to pay all wages due at all times during Claimant’s employment, including minimum, regular, or overtime for all hours worked in excess of 8 hours in a given workday, due in part to the Employers’ unlawful rounding practice, the Employers violated Labor Code section 226 by failing to provide accurate itemized wage statements to Claimant and other aggrieved employees. The wage statements issued by the Employers fail to inform of the accurate number of hours worked, accurate total wages due and earned, accurate vacation wages earned, and accurate number of paid sick days.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of himself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO MAINTAIN ACCURATE RECORDS

(Labor Code § 1174 and the “Records” Section of the applicable IWC Wage Order)

Labor Code section 1174(d) states: “Every person employing labor in this state 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 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 three years.”

Labor Code section 1174.5 states “Any person employing labor who willfully fails to maintain accurate and complete records required by subdivision (d) of Section 1174, shall be subject to a civil penalty of five hundred dollars.”

IWC Wage Order 4-2001, section 7 obligates an employer to keep accurate information by underpaying minimum wages, regular wages, and overtime, and not recording accurate meal periods. IWC Wage Order 4-2001, section 7(A)(3) states in pertinent part: “Every employer shall keep accurate information with respect to each employee including the following: ... (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded.”

The Employers failed to maintain accurate records showing the accurate number of hours worked and accurate wages owed. Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of himself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO TIMELY PAY WAGES DUE DURING AND UPON TERMINATION OF EMPLOYMENT

(Labor Code §§ 201, 202, 203, 204, 256, 1198, and 2699)

Labor Code section 201 states: “If an Employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Labor Code section 202 states “If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.”

Labor Code section 203(a) states, in relevant part: “If an Employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall

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continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. An employee who secretes or absents himself or herself to avoid payment to his or her, or who refuses to receive the payment when fully tendered to his or her, including any penalty then accrued under this section, is not entitled to any benefit under this section for the time during which he or she so avoids payment.”

Labor Code section 204(a) states, in pertinent part: “All wages . . . earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.” The “Minimum Wages” Section of the applicable Wage Order further states “every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period.”

Labor Code section 256 states: “The Labor Commissioner shall impose a civil penalty in an amount not exceeding 30 days of pay as waiting time under the terms of Section 203.”

As detailed above, the Employers failed to pay Claimant and other aggrieved employees all wages that were due and owing to them including meal and rest period premiums, and regular, minimum, overtime, and vacation wages within the required time during their employment and upon their separation of employment, in violation of the Labor Code and the applicable IWC Wage Order because of the violations alleged herein. As a result, the Employers violated the above sections of the Labor Code.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of himself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

CIVIL PENALTIES FOR VIOLATION OF
THE LABOR CODE AND IWC WAGE ORDERS
(Labor Code §§ 558, 558.1, and 1197.1)

Labor Code section 558 subjects any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of Part 2, Chapter 1, of the Labor Code or any provision regulating hours and days of work in any IWC Wage Order to a civil penalty in the amount of \$50 for any initial violation for each pay period in which an employee is underpaid in addition to an amount sufficient to recover underpaid wages, and \$100 for each subsequent violation in addition to an amount sufficient to recover underpaid wages, which shall be paid to each affected employee.

Labor Code section 558.1(a) states: “Any Employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the

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Employer for such violation.” Labor Code section 558.1 expressly defines “employer or other person acting on behalf of an employer” to include a “natural person who is an owner, director, officer, or managing agent of the employer.”

Labor Code section 1197.1 states that any employer or other person acting either individually or as an officer, agent or employee of another person, which pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission shall be subject to a civil penalty and restitution of wages payable to the employee in an amount of \$100 for the initial violation for each pay period in which an employee underpaid in addition to an amount sufficient to recover underpaid wages, and \$250 for each subsequent violation in addition to an amount sufficient to recover underpaid wages, which shall be paid to each affected employee.

As set forth above, the Employers underpaid Claimant and other aggrieved employees by failing to provide them with compliant meal and rest periods or compensation in lieu thereof and failed to pay regular, minimum, overtime, and vacation wages as required by Labor Code sections 226.7, 510, 512 and sections 3 and 11 of the applicable IWC Wage Order. As a result, the Employers are liable for *civil penalties* under Labor Code section 558.

Accordingly, Claimant will pursue civil penalty or other lawful remedies for himself and other current and former non-exempt employees, including recovery of attorney’s fees, costs, and civil penalties to the extent allowed by law. However, pursuant to the recent California Supreme Court decision in *ZB, N.A. v. Superior Court* (2019) 8 Cal. 5th 175, 252 Cal. Rptr. 3d 228, 448 P.3d 239, Claimant does not seek underpaid wages as part of any anticipated PAGA action.

DUTIES OF EMPLOYER

(Labor Code §§ 1174, 1174.5, 1175, and 1198, and the Applicable Wage Order)

Labor Code section 1174 describes certain duties of every employer in this state. Subsection (d) of this labor code section requires that payroll records show the hours worked daily by employees and the corresponding wages to be paid for the hours worked. The Employers violated this requirement by their failure to accurately record employee hours worked and/or paid including wages owed for rounded time and meal and rest period premiums. Labor Code section 1174.5 imposes a civil penalty of \$500 for an employer’s failure to maintain accurate and complete records. This civil penalty is addition to the civil penalty of \$100 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code section 2699 for a violation of Labor Code section 1174(d). Furthermore, Claimant and all other aggrieved current and former employees are entitled to collect 25% of the penalty imposed pursuant to Section 2699.

The Employers failed to accurately record all hours worked by Claimant and other aggrieved employees and failed to record all accurate wages to be paid.

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Claimant will pursue all remedies on behalf of himself and other current and former employees, including recovery of attorney's fees, costs, damages and penalties to the extent allowed by law.

ATTORNEY'S FEES, COSTS, INTEREST AND PENALTIES

(Labor Code §§ 218.6, 226(e), 1194, 1194.2, and 2699, *et seq.*)

Labor Code sections 218.6, 226(e), 1194, 1194.2, and 2699, *et seq.* give employees the right to recover in a civil action the unpaid balance of the full amount of minimum wages, regular wages, overtime compensation, damages, liquidated damages, and penalties, including interest thereon, reasonable attorney's fees, and costs of suit.

Pursuant to Labor Code sections 2699, *et seq.*, aggrieved employees are entitled to collect 25% of the penalty assessment and 100% of the underpaid wages. Accordingly, the Employers are liable for these items in addition to the unpaid wages. Claimant has already incurred in actual damages, costs and attorney's fees and will continue to incur costs as a result of the Employers' unlawful actions.

CONCLUSION

Claimant requests the Labor and Workforce Development Agency ("LWDA") initiate enforcement for the violations described above. If the LWDA does not pursue enforcement, Claimant will pursue claims for civil penalties and will seek all remedies available for violations of the Labor Code and the applicable Industrial Welfare Commission Wage Orders, including all available penalties set forth in Labor Code section 2699(f).

Sincerely,
COHELAN KHOURY & SINGER

A handwritten signature in blue ink, appearing to read 'Marta Manus', with a stylized, flowing script.

Marta Manus, Esq.

cc:
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