

Michael M. Astanehe, SBN 312965
ASTANEHE LAW
71 Stevenson Street, Suite 400
San Francisco, California 94105
Phone: (415) 226-7170 | Fax: (415) 462-1732
Email: mastanehe@astanehelaw.com

Attorney for Plaintiff and the Proposed Plaintiff Class

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA
UNLIMITED JURISDICTION**

BRYAN MACARAIG, on behalf of himself
and all others similarly situated,

Plaintiffs,

v.

RETAIL SOLUTIONS LLC; and,
DOES 1 to 20, inclusive,

Defendants.

Case No.:

COMPLAINT FOR:

1. FAILURE TO FURNISH ACCURATE WAGE STATEMENTS IN VIOLATION OF LABOR CODE § 226;
2. FAILURE TO PROVIDE REST BREAKS IN VIOLATION OF LABOR CODE § 226.7;
3. FAILURE TO PERMIT MEAL BREAKS IN VIOLATION OF LABOR CODE §§ 226.7 & 512;
4. FAILURE TO REIMBURSE FOR BUSINESS EXPENSES IN VIOLATION OF LABOR CODE § 2802;
5. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF LABOR CODE §§ 510 & 1194;
6. FAILURE TO PAY EARNED WAGES UPON SEPARATION IN VIOLATION OF LABOR CODE §§ 201, 202, & 203;
7. FAILURE TO TIMELY PRODUCE EMPLOYEE RECORDS IN VIOLATION OF LABOR CODE §§ 226 & 1198.5;
8. VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW; AND,
9. VIOLATION OF PRIVATE ATTORNEY GENERAL ACT.

ENDORSED
FILED
ALAMEDA COUNTY

MAY 21 2020

CLERK OF THE SUPERIOR COURT
By JERRIE MOYER
Deputy

RG 20062032

DEMAND FOR JURY TRIAL

Plaintiffs BRYAN MACARAIG ("MACARAIG"), on behalf of himself and on behalf of the people of the State of California and as an "aggrieved employee" acting as a private attorney general under the Labor Code Private Attorneys General Act of 2004, section 2699, *et seq.* ("PAGA"), and on behalf of other members of the classes as defined below or as others similarly situated, brings this action against Defendant RETAIL SOLUTIONS LLC ("RETAIL"), based upon personal knowledge as to himself and his acts, and as to all other matters upon information and belief, and based upon, *inter alia*, the investigations of counsel and the facts that are a matter of public record:

INTRODUCTION

1. This is a class action under California Code of Civil Procedure section 382 and/or a representative action brought pursuant to California Labor Code section 2699, *et seq.*, and Business & Professions Code section 17200, *et seq.*, on behalf of the State of California and all individuals who are employed by Defendants RETAIL in California during the Class Period.

2. Plaintiff MACARAIG brings this action on behalf of himself, as a class representative for the Class Members, and as an aggrieved employee acting as a private attorney general under PAGA, and on behalf of other persons similarly situated, and on behalf of the people of the State of California, against Defendants for: (1) their failure to adhere to California Labor Code sections 201, 226, 226.7, 512, 1194, 1198.5, and 2802; (2) their failure to adhere to Business & Professions Code section 17200 ("UCL"), *et seq.*; and, (3) PAGA and other damages based on the foregoing. As a result of the foregoing, Defendants have violated California statutory laws as described below. The action is brought on behalf of Plaintiff MACARAIG and all other persons who are employed by Defendants in California for any non-managerial positions to work at Defendant RETAIL'S jobsites ("Class Position") during the statute of limitations periods applicable to the claims pleaded in this Complaint ("Class Period"). Persons holding a

1 Class Position(s) during the Class Period are sometimes referred to as "Class
2 Members," "aggrieved employees," and "others similarly situated."

3 3. Throughout the Class Period, Defendants have maintained a policy and practice
4 of: (1) Failing to provide Plaintiff MACARAIG, the Class Members, and the aggrieved
5 employees with itemized wage statements containing all information required under
6 California Labor Code section 226 and Industrial Welfare Commission IWC Wage Order
7 No. 4, section 7; (2) Failing to provide Plaintiff MACARAIG, the Class Members, and the
8 aggrieved employees with off-duty ten minute rest breaks as required by California
9 Labor Code section 226.7; (3) Failing to provide Plaintiff MACARAIG, the Class
10 Members, and the aggrieved employees with off-duty meal breaks as required by
11 California Labor Code section 512; (4) Failing to systematically provide Plaintiff
12 MACARAIG, the Class Members, and the aggrieved employees their final pay upon
13 separation in accordance with California Labor Code section 201; (5) Failing to
14 compensate Plaintiff MACARAIG, the Class Members, and the aggrieved employees at
15 minimum wage for overtime work pursuant to California Labor Code sections 510 &
16 1194; (6) Systematically failing to supply Plaintiff MACARAIG, the Class Members, and
17 the aggrieved employees their employee records, upon request, as required by
18 California Labor Code sections 226 and 1198.5; and, (7) Failing to reimburse Plaintiff
19 MACARAIG, the Class Members, and the aggrieved employees for using personal
20 property for business endeavors under California Labor Code section 2802.

21 4. This Complaint challenges Defendant RETAIL's systemic illegal employment
22 practices resulting in numerous California Labor Code and Unfair Competition Law
23 violations against Plaintiff MACARAIG, the aggrieved employees, the Class Members.

24 5. On information and belief, Defendants jointly and severally acted intentionally
25 and with deliberate indifference and conscious disregard of Plaintiff MACARAIG'S, the
26 aggrieved employees', and the Class Members' rights by failing to provide accurate
27 wage statements, failing to provide proper rest and meal breaks, failing to pay
28

1 reimbursement for business-related expenses, failing to pay wages due upon
2 separation, failing to pay overtime, and failing to honor employee record requests.

3 6. Defendants have engaged in a system of willful California Labor Code, IWC
4 Wage Order, and Unfair Competition Law violations by creating and maintaining
5 policies, practices, and procedures that knowingly deny employees the above stated
6 rights and benefits.

7 7. Defendants misconduct results in Defendants' unjust enrichment and an unfair
8 business advantage over businesses that routinely adhere to the strictures of the
9 California Labor Code and the UCL.

10 **PARTIES**

11 8. Plaintiff MACARAIG is an adult individual residing in California. He worked in a
12 non-exempt Class Position for Defendants at a California jobsite during the Class
13 Period. Specifically, Plaintiff MACARAIG worked in a Class Position from July 2019
14 until January 2020. Defendant RETAIL paid Plaintiff MACARAIG on an hourly basis.

15 9. At all pertinent times, Plaintiff MACARAIG was under the supervision and control
16 of Defendant RETAIL, and was, Defendant RETAIL'S employee.

17 10. Plaintiff MACARAIG and all of the other aggrieved employees are, and at all
18 times pertinent, have been classified as employees by Defendant RETAIL. Defendant
19 RETAIL hires employees to work in California. Defendant RETAIL employs more than
20 100 employees at numerous jobsites throughout the State of California.

21 11. Plaintiff MACARAIG represents the State of California as well as a group of
22 aggrieved employees defined as: all individuals who were or are currently employed by
23 Defendant RETAIL in California in non-managerial positions from May 10, 2017 to the
24 present.

25 12. Plaintiff MACARAIG, the aggrieved employees, and the Class Members were
26 and are the victims of Defendant RETAIL'S policies, practices, and procedures
27 complained of in this action in ways that deprived them of the rights guaranteed by the
28 California Labor Code, applicable wage orders, and the UCL.

1 13. Plaintiff MACARAIG brings this action on behalf of himself and a proposed class
2 of all non-managerial employees employed by Defendant RETAIL within California at
3 any time during the four-years preceding this complaint's filing date to the present, and
4 until Defendant RETAIL complies with the law. Plaintiff MACARAIG seeks recovery of
5 all allowable compensation and other sums for the violations described herein, including
6 penalties, premium pay, restitution, declaratory and injunctive relief, interest, attorney
7 fees, and costs.

8 14. Defendant RETAIL is, and at all times herein mentioned was, a boutique
9 merchandising company operating throughout California, including in Alameda County,
10 California. Defendant RETAIL'S principal office is located at 16445 N. 91st Street, Suite
11 105, Scottsdale, Arizona 85260, and is organized and existing under the laws of the
12 State of Arizona. Defendant RETAIL is authorized to operate and at all times operated
13 in the County of Alameda, State of California.

14 15. Defendant is a "person" as defined by California Labor Code section 18 and
15 California Business & Professions Code section 17201. Additionally, Defendant
16 RETAIL is an "employer" as utilized by the California Labor Code and the California
17 Industrial Welfare Commission's Orders regulating wages, hours, and working
18 conditions.

19 16. Defendant RETAIL and DOES 1 through 20 are sometimes collectively referred
20 to herein as "Defendants."

21 17. Plaintiff is ignorant of the true names and capacities of defendants named in this
22 complaint as DOES 1 through 20, inclusive, and therefore sues these defendants by
23 such fictitious names. Plaintiff will amend this complaint to allege their true names and
24 capacities when ascertained. Plaintiff is further informed and believes, and alleges, that
25 each of these fictitiously named defendants, at all relevant times, is responsible in some
26 manner for the occurrences alleged in this complaint, and that Plaintiff's injuries as
27 alleged were proximately caused by the illegal employment practices, wrongs, and
28 injuries complained of in this complaint.

1 18. Plaintiff is informed and believes and alleges that the defendants sued herein,
2 including those fictitious defendants sued as DOES 1 through 20, are the agents,
3 servants, and/or employees of each of the other defendants and in doing the things
4 hereinafter alleged, were acting in the course and scope of said agency and/or
5 employment.

6 19. At all pertinent times, Defendants, and each of them, were members of, and
7 engaged in, a joint venture, partnership, and common enterprise, and acted within the
8 course and scope of, and in pursuance of, said joint venture, partnership, and common
9 enterprise.

10 20. At all pertinent times, all Defendants acted as agents of all other Defendants in
11 committing the alleged acts.

12 **JURISDICTION & VENUE**

13 21. Jurisdiction and venue in this Court are proper because the employment contract
14 was entered into, and the unlawful practices were committed in Alameda County,
15 California. Further, Defendants employ a substantial number of employees in Alameda,
16 California, and Defendants have systematically and continuously conducted business in
17 the County of Alameda, California. Indeed, a substantial portion of Defendant's
18 California accounts are located in Alameda County, California.

19 22. This Court has jurisdiction over Plaintiff's and Class Members' claims for itemized
20 wage statement violations under California Labor Code section 226. This Court has
21 jurisdiction for Plaintiff's and Class Members' claims for overtime and minimum wage
22 violations under California Labor Code sections 510 & 1194. This court has jurisdiction
23 over Plaintiff's and Class Members' claims for rest break violations under California
24 Labor Code section 226.7. This court has jurisdiction for Plaintiff's and Class Members'
25 claims for meal break violations under California Labor Code section 512. This court
26 has jurisdiction over Plaintiff's and Class Members' claims for failure to pay earned
27 wages upon separation in violation of California Labor Code section 201. This court has
28 jurisdiction over Plaintiff's and Class Members' claims for employee records request

1 violations under California Labor Code sections 226 & 1198.5. This court has
2 jurisdiction over Plaintiff's and Class Members' claims for reimbursement violations
3 under California Labor Code section 2802. This Court has jurisdiction over Plaintiff's
4 and Class Members' claims for restitution arising from Defendants' unlawful business
5 practices under Business & Professions Code sections 17203 and 17204. This court
6 has jurisdiction over Plaintiffs', the aggrieved employees, and the Class Members'
7 claims under California Labor Code section 2698.

8 23. Upon exhaustion of administrative remedies, the Court shall have jurisdiction
9 over Plaintiff MACARAIG'S, Class Members', and the aggrieved employees' claims for
10 penalties for Defendants' Labor Code violations under California Labor Code sections
11 2699 and 2699.3.

12 24. Damages sought are within the Court's jurisdiction. Venue is proper in Alameda
13 County, California under California Code of Civil Procedure sections 393 and 395.5
14 because the unlawful practices occurred in Alameda County, liability arose, and the
15 breach occurred in Alameda County, California. Additionally, Defendant RETAIL
16 transacts business in Alameda County, California.

17 **FACTUAL ALLEGATIONS**

18 25. In California, Defendant RETAIL engages in merchandising and operates
19 numerous throughout the State of California, including at a job sites located at 301
20 Gellert Boulevard, Daly City, California 94015 ("Gellert Jobsite").

21 26. Defendant RETAIL employed Plaintiff MACARAIG from July 2019 through
22 January 2020. He worked as a merchandizer at the Gellert Jobsite.

23 **DEFENDANT RETAIL'S INACCURATE WAGE STATEMENTS**

24 27. During the period that Plaintiff MACARAIG worked for Defendant, Defendant did
25 not provide accurate itemized wage statements as required to be provided under
26 California Labor Code section 226. The wage statements did not contain Defendant's
27 legal name and address. Rather than list Defendant RETAIL'S legal address, which is
28

1 16445 N. 91st Street, Suite 105 in Scottsdale, Arizona, the wage statements list an
2 address in Saint Petersburg, Florida, which has no affiliation with the company.

3 RETAIL SOLUTIONS LLC
4 PAYCHEX PEO IV LLC
5 970 LAKE CARILLON DRIVE SUITE 400
6 SAINT PETERSBURG FL 33718

2001-1355
ORG1:000100 null
EE ID: 10644 DD

Payrolls by Paychex, Inc.

BRYAN MACARAIG

NON-NEGOTIABLE

Payrolls by Paychex, Inc.

NON-NEGOTIABLE

10 DEFENDANT RETAIL'S DENIED EMPLOYEES THEIR MANDATORY REST & MEAL BREAKS

11 28. At all pertinent times, California Labor Code sections 226.7 & 512, and IWC
12 Wage Order 4-2001, § 11 required Defendant RETAIL to provide employees with: (1) A
13 first meal break of at least thirty minutes during which the employee is relieved of all
14 duty before working more than five hours; and, (2) A second duty-free meal break of at
15 least thirty minutes before working more than ten hours per workday.

16 29. During the period that Plaintiff MACARAIG worked for Defendant, Defendant
17 routinely denied him his rest & meal breaks, which were often missed, cut short, or
18 interrupted. Defendant RETAIL'S staffing and assignment practices made it impossible
19 for Plaintiff MACARAIG, the aggrieved employees, and the Class Members to take their
20 mandatory breaks. They were forced to complete several complex assignments alone.
21 Further, they could not leave projects unfinished to take their breaks because they were
22 unsightly and left merchandise vulnerable to theft. As a result, Plaintiff MACARAIG, the
23 aggrieved employees, and the Class Members were forced to work continuously
24 through most of their shifts – which could last over nine hours in duration. Defendant
25 RETAIL did not provide its employees with relief staff.

26 30. Defendant RETAIL was aware of the denied breaks, but never corrected the
27 problem. Consequently, Plaintiff MACARAIG, the aggrieved employees, and the Class
28

Members' employment is and has been marred by numerous denied rest and meal breaks.

DEFENDANT RETAIL SYSTEMICALLY FLOUTED CALIFORNIA OVERTIME LAWS

31. Plaintiff MACARAIG, the aggrieved employees, and the Class Members routinely worked more than eight hours in a single day, and/or forty hours in a week without receiving mandatory overtime pay.

32. Although Defendant RETAIL was aware of its failure to properly compensate its employees, it did not correct the problem. Consequently, employees routinely worked without receiving corresponding overtime pay.

33. Further, Defendant RETAIL'S failure to adhere to California overtime law rendered nearly every wage statement furnished to Plaintiff MACARAIG, the aggrieved employees, and the Class Members inaccurate and unlawful.

DEFENDANT RETAIL IGNORES EMPLOYEE RECORDS REQUESTS

34. On January 31, 2020, Plaintiff MACARAIG requested employee records pursuant to California Labor Code sections 226 & 1198.5. Plaintiff MACARAIG sent a follow up letter requesting his records on February 24, 2020. Defendant RETAIL waited more than thirty days to produce Plaintiff MACARAIG'S employment records.

35. Defendant RETAIL systematically ignores employee records requests. The aggrieved employees and Class Members have suffered rights deprivations under these Labor Code provisions.

DEFENDANT RETAIL FAILED TO REIMBURSE EMPLOYEES FOR BUSINESS-EXPENSES

36. Defendant RETAIL mandated Plaintiff MACARAIG to use his personal cellular phone for several facets of work. Plaintiff MACARAIG regularly texted to clock in and out of work. He sent and received videos, photographs, and other digital items, which consumed his limited data. He had to make and receive phone calls. Defendant RETAIL never provided Plaintiff MACARAIG with any reimbursement for the costs associated with employer-mandated use of his cellular phone.

1 37. Similarly, Defendant RETAIL forced the aggrieved employees and Class
2 Members to use their personal cellular phones for business expenses. Defendant
3 RETAIL did not provide the aggrieved employees and Class Members reimbursement
4 for employer-mandated use of their cellular phones.

5 **DEFENDANT RETAIL REGULARLY FAILED TO PAY WAGES DUE UPON SEPARATION**

6 38. Plaintiff MACARAIG resigned from Defendant RETAIL on January 7, 2020.
7 Defendant RETAIL did not pay Plaintiff MACARAIG his final pay check until January 24,
8 2020. As a result, Plaintiff MACARAIG is entitled to recover a penalty.

9 39. Defendant RETAIL engages in a pattern of not adhering to California's final pay
10 laws. The aggrieved employees and Class Members similarly do not receive their
11 earned pay at separation, according to California law.

12 **CLASS ACTION ALLEGATIONS**

13 40. As to all representative claims requiring class action certification under California
14 Code of Civil Procedure section 382, Plaintiff MACARAIG brings this action on behalf of
15 himself and as a class action on behalf of the following proposed class, the members of
16 which have all been damaged by Defendants' above-described conduct, and who are
17 referred to herein as "Class Members." The proposed class satisfies the numerosity,
18 commonalty, typicality, and superiority requirements under California Code of Civil
19 Procedure section 382.

20 41. Plaintiff MACARAIG seeks certification of a Class, which Plaintiff MACARAIG is a
21 member. The Class is defined as follows:

22 **All persons who are or have been employed by Defendant RETAIL in California**
23 **in non-managerial positions to work at a California job site, or from home,**
24 **during the statute of limitations periods applicable to the claims pleaded in**
this complaint.

25 42. The Class are sometimes collectively referred to as "Class Members."

26 43. Plaintiff MACARAIG is a member of the Class.

27 44. On information and belief, more than two-thirds of the members of the proposed
28 class are California citizens.

1 45. Excluded from each of the above classes are Defendants, including any entity in
2 which Defendants have a controlling interest, is a parent or subsidiary, or which is
3 controlled by Defendants, as well as the officers, directors, affiliates, legal
4 representatives, heirs, predecessors, successors, and assigns of Defendants. Also
5 excluded are the judges and court personnel in this case, and any members of their
6 immediate families.

7 46. The claims alleged in this Complaint on behalf of Plaintiff MACARAIG and the
8 Class Members are limited to claims arising out of periods of employment in a Class
9 Position during the Class Period.

10 47. In violation of the California Labor Code and the UCL, Defendants' wrongful acts
11 against Plaintiff MACARAIG, the aggrieved employees, and the Class Members include,
12 but are not limited to:

- 13 a. Failure to provide itemized wage statements in violation of California Labor
14 Code section 226 that did not include, among other things, accurate wage
15 calculations and Defendant RETAIL'S legal name and address;
- 16 b. Failure to provide mandatory rest & meal breaks in violation of California
17 Labor Code sections 226.7 & 512;
- 18 c. Failure to pay Plaintiff MACARAIG, the aggrieved employees, and the Class
19 Members their earned pay upon separation from employment in accordance
20 with California Labor Code section 201;
- 21 d. Failure to pay Plaintiff MACARAIG, the aggrieved employees, and the Class
22 Members overtime in violation of California Labor Code section 510;
- 23 e. Failure to pay Plaintiff MACARAIG, the aggrieved employees, and the Class
24 Members minimum wage in violation of California Labor Code section 1194;
25
26
27
28

f. Failure to fulfill Plaintiff MACARAIG'S, the aggrieved employees, and the Class Members records requests as required by California Labor Code sections 226 & 1198.5;

g. Failure to reimburse Plaintiff MACARAIG, the aggrieved employees, and the Class Members for employer-mandated personal cellular phone use for business-related expenses in violation of California Labor Code section 2802; and,

h. Failure to adhere to the UCL.

48. The aforementioned violations result from centralized policies and practices created by Defendants, and implemented with the assistance of their management.

49. This action has been brought and may properly be maintained as a class action consistent with California Code of Civil Procedure section 382 because there is a well-defined community of interest in the litigation, and the proposed class is easily ascertainable.

a. Commonality: Plaintiff MACARAIG and the Class Members share a community of interests in that there are numerous common questions and issues of fact and law which predominate over any questions and issues solely affecting the individual Class Members, including:

1. Whether Defendant RETAIL violated California Labor Code section 226 by failing to provide Plaintiff MACARAIG, the aggrieved employees, and Class Members with accurate itemized wage statements showing, among other things, their accurate net and gross incomes, and Defendant RETAIL'S legal name & address;
2. Whether Defendant RETAIL violated California Labor Code section 2802 by failing to reimburse Plaintiff MACARAIG, the aggrieved employees, and Class Members for employer-mandated personal cellular phone usage for business-related expenses;

3. Whether Defendant RETAIL violated California Labor Code section 510 by failing to compensate Plaintiff MACARAIG, the aggrieved employees, and Class Members at all applicable overtime rates;
4. Whether Defendant RETAIL violated California Labor Code section 1194 by failing to compensate Plaintiff MACARAIG, the aggrieved employees, and Class Members at all applicable minimum wage rates;
5. Whether Defendant RETAIL violated California Labor Code sections 226& 1198.5 by systematically denying Plaintiff MACARAIG, the aggrieved employees, and Class Members' their rest & meal breaks;
6. Whether Defendant RETAIL failed to pay Plaintiff MACARAIG, the aggrieved employees, and Class Members' earned wages at separation in violation of California Labor Code section 201;
7. Whether Defendant RETAIL violated Business & Professions Code section 17200 by failing to adhere to California laws;
8. Whether Plaintiff MACARAIG, the aggrieved employees, and Class Members may obtain injunctive relief against Defendant RETAIL under the UCL;
9. Whether Defendant RETAIL has violated the California Private Attorneys General Act;
10. Whether Defendant RETAIL has been unjustly enriched; and,
11. The nature of the relief, including equitable relief, to which Plaintiff MACARAIG, the aggrieved employees, and Class Members are entitled.

b. Typicality. Plaintiff MACARAIG'S claims are typical of the Class Members' claims. Plaintiff MACARAIG and all Class Members sustained injuries and damages arising out of and caused by Defendants' common course of conduct in violation of the law as alleged herein. Plaintiff MACARAIG'S claims are not

subject to any unique defenses, nor does any interest of Plaintiff MACARAIG in this litigation conflict with any of the Class Members;

- c. Numerosity: A class action is the only available method for the fair and efficient adjudication of this controversy. The class is so numerous that joinder of all members is impractical, if not impossible, insofar as, among other things, the total number of Class Members is on information and belief approximately 100 and the Class Members are geographically dispersed throughout the State of California. Membership in the class is easily ascertainable from employment, payroll, and other records maintained by Defendants;
- d. Superiority of Class Action: This action is properly maintained as a class action because the questions of law and fact common to the members of the class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy. Should separate actions be brought or be required to be brought by each individual Class Member, the resulting multiplicity of lawsuits would cause undue hardship and expense for the Court and the litigants. The prosecution of separate actions would also create a risk of inconsistent rulings, which might be dispositive of the interests of other Class Members who are not parties to the adjudications and/or may substantially impede their ability to protect their interests adequately;
- e. Adequacy of Representation: Plaintiff MACARAIG is an adequate representative of the class in that his claims are typical of those of the other Class Members, and he has the same interests in the litigation of this case as the unnamed Class Members. Plaintiff MACARAIG is committed to the vigorous prosecution of this case and has retained competent counsel experienced in class action litigation. He will protect class interests. Plaintiff MACARAIG is not subject to any individual defenses unique from those conceivably applicable to the class as a

1 whole. Plaintiff MACARAIG anticipates no management difficulties in this
2 litigation;

3 50. Further, there will be no difficulty in the management of this action as a class
4 action.

5 51. Damages for for any individual class members are likely insufficient to justify the
6 cost of individual litigation so that in the absence of class treatment, Defendants'
7 violations of law inflicting substantial damages in the aggregate would go un-remedied
8 without certification of the class. Repeated individual litigation of the common issues
9 shared by the class members would reduce the recovery amount available to each
10 member.

11 52. Class certification is appropriate under California Code of Civil Procedure section
12 382 because Defendants have acted or refused to act on grounds generally applicable
13 to the class, so that final injunctive relief or corresponding declaratory relief is
14 appropriate as to the class as a whole.

15 53. Notice of this class action may be made to each Class Member by ordinary mail,
16 using employee lists obtained from Defendants.

17 **FIRST CAUSE OF ACTION FOR**
18 **ITEMIZED WAGE STATEMENT VIOLATIONS**
19 **(AGAINST ALL DEFENDANTS)**
20 **(LABOR CODE § 226)**

21 54. Plaintiff MACARAIG, the aggrieved employees, and the Class Members
22 incorporate by reference the preceding paragraphs of the complaint as though fully set
23 forth herein.

24 55. Under California Labor Code section 226, Defendants have at all relevant times
25 been required to provide Plaintiff MACARAIG, the aggrieved employees, and Class
26 Members with regular itemized written statements showing, among other things,
27 accurate gross and net wages, and Defendant RETAIL'S legal name & address.
28 Defendants knowingly and intentionally failed to provide timely, accurate itemized wage

1 statements, including this required information. As a result of Defendant RETAIL'S rest
2 & meal break violations, the wage statements furnished to Plaintiff MACARAIG, the
3 aggrieved employees, and Class Members failed to identify the wages owed for rest &
4 meal break premium pay, the correct gross wages, and the correct net wages earned
5 during the pay period. As a result of Defendant RETAIL's overtime violations, the wage
6 statements furnished to Plaintiff MACARAIG, the aggrieved employees, and Class
7 Members failed to identify the proper wages owed, all applicable hourly rates in effect,
8 the correct gross wages, and the correct net wages earned during the pay period.

9 56. Under Labor Code section 226(e), an employee suffering injury as a result of a
10 knowing and intentional failure by an employer to comply with California's itemized
11 wage statement law is entitled to recover the greater of all actual damages or fifty
12 dollars (\$50) for the initial pay period in which the violation occurs and one hundred
13 dollars (\$100) for each violation in a subsequent pay period, up to a maximum of
14 \$4,000.

15 57. As a direct and proximate result of Defendants' unlawful conduct, each Plaintiff
16 and the Class Member and the other aggrieved employees, have been injured by,
17 among other things, not being paid all wages due, not knowing their gross or net pay, or
18 their employer's legal name and address by way of wage statement. Plaintiff
19 MACARAIG, the aggrieved employees, and the Class Members are entitled to recover
20 the damages or penalties provided by California Labor Code section 226(e), including
21 interest thereon, and costs and reasonable attorney fees and costs.

22 **SECOND CAUSE OF ACTION FOR**

23 **FAILURE TO PROVIDE MANDATORY REST BREAKS**

24 **(AGAINST ALL DEFENDANTS)**

25 **(LABOR CODE § 226.7)**

26 58. Plaintiff MACARAIG, the aggrieved employees, and the Class Members
27 incorporate by reference the preceding paragraphs of the complaint as though fully set
28 forth herein.

1 59. At all relevant times, Defendant RETAIL failed in their affirmative obligation to
2 ensure that Plaintiff MACARAIG, the aggrieved employees, and Class Members, had
3 the opportunity to take and were provided with off-duty ten-minute rest breaks in
4 accordance with the strictures of the California Labor Code and the applicable IWC
5 Wage Order. Plaintiff MACARAIG, the aggrieved employees, and Class Members were
6 suffered and permitted to work through legally required rest periods and were denied
7 the opportunity to take their off-duty rest periods.

8 60. As such, Defendant RETAIL is responsible for paying premium compensation for
9 missed rest periods, pursuant to California Labor Code section 226.7 and the applicable
10 IWC Wage Order. Defendant RETAIL, as a matter of company policy and procedure,
11 regularly failed to pay such premium compensation for each full ten-minute off-duty rest
12 period Plaintiff MACARAIG, the aggrieved employees, and Class Members missed.

13 61. Plaintiff MACARAIG, the aggrieved employees, and Class Members regularly
14 worked shifts of three and a half hours or more per day and accordingly had a right to
15 take a ten-minute rest period during each shift. Further, Plaintiff MACARAIG, the
16 aggrieved employees, and Class Members who worked shifts of seven and a half hours
17 or more per day had a right to a second ten-minute rest break. As a pattern and
18 practice, Defendant RETAIL regularly required employees to work through their rest
19 periods without proper compensation and denied Plaintiff MACARAIG, the aggrieved
20 employees, and Class Members the right to take proper rest periods as required by
21 California law. This policy of requiring employees to work through their legally
22 mandated rest periods and not allowing them to take proper rest periods is a violation of
23 California law.

24 62. Plaintiff MACARAIG, the aggrieved employees, and Class Members are informed
25 and believe and alleges that Defendant RETAIL willfully failed to pay employees who
26 were not provided the opportunity to take rest breaks the premium compensation set out
27 in Labor Code section 226.7 and that Plaintiff MACARAIG, the aggrieved employees,
28 and Class Members are owed wages for the rest period violations set forth above.

1 Defendant RETAIL'S willful failure to provide Plaintiff MACARAIG, the aggrieved
2 employees, and Class Members the wages due and owing to them upon separation
3 from employment results in a continued payment of wages up to thirty (30) days from
4 the time wages were due. Therefore, members of the Class who have separated from
5 employment are entitled to compensation pursuant to California Labor Code section
6 203.

7 63. As a direct and proximate result of Defendants' unlawful conduct, each Plaintiff
8 and the Class Member and the other aggrieved employees, have been injured by,
9 among other things, not being paid all wages/premium pay due, not knowing their gross
10 or net pay, and may recover the unpaid balance pursuant to California Labor Code
11 section 226.7, including interest, penalties, attorney fees, and court costs.

12 **THIRD CAUSE OF ACTION FOR**

13 **FAILURE TO PROVIDE MANDATORY MEAL BREAKS**

14 **(AGAINST ALL DEFENDANTS)**

15 **(LABOR CODE § 512)**

16 64. Plaintiff MACARAIG, the aggrieved employees, and the Class Members
17 incorporate by reference the preceding paragraphs of the complaint as though fully set
18 forth herein.

19 65. At all relevant times, Defendant RETAIL failed in their affirmative obligation to
20 ensure that Plaintiff MACARAIG, the aggrieved employees, and Class Members, had
21 the opportunity to take and were provided with meal breaks in accordance with the
22 strictures of the California Labor Code and the applicable IWC Wage Order. Plaintiff
23 MACARAIG, the aggrieved employees, and Class Members were suffered and
24 permitted to work through legally required meal periods and were routinely denied the
25 opportunity to take their meal periods.
26

27 66. As such, Defendant RETAIL is responsible for paying premium compensation for
28 missed meal periods, pursuant to California Labor Code section 512 and the applicable

1 IWC Wage Order. Defendant RETAIL, as a matter of company policy and procedure,
2 regularly failed to pay such premium compensation for each full thirty-minute meal
3 period Plaintiff MACARAIG, the aggrieved employees, and Class Members missed.
4

5 67. Plaintiff MACARAIG, the aggrieved employees, and Class Members regularly
6 worked shifts of five hours or more per day and accordingly had a right to take a thirty-
7 minute meal period during each shift. Further, Plaintiff MACARAIG, the aggrieved
8 employees, and Class Members who worked shifts of ten hours or more per day had a
9 right to a second thirty-minute meal break. As a pattern and practice, Defendant
10 RETAIL regularly required employees to work through their meal periods without
11 providing premium pay compensation and denied Plaintiff MACARAIG, the aggrieved
12 employees, and Class Members the right to take proper meal periods as required by
13 California law. This policy of requiring employees to work through their legally
14 mandated meal periods and not allowing them to take proper meal periods is a violation
15 of California law.
16
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18 68. Plaintiff MACARAIG, the aggrieved employees, and Class Members are informed
19 and believe and alleges that Defendant RETAIL willfully failed to pay employees who
20 were not provided the opportunity to take meal breaks the premium compensation set
21 out in Labor Code section 226.7 and that Plaintiff MACARAIG, the aggrieved
22 employees, and Class Members are owed wages for the meal period violations set forth
23 above. Defendant RETAIL'S willful failure to provide Plaintiff MACARAIG, the
24 aggrieved employees, and Class Members the wages due and owing to them upon
25 separation from employment results in a continued payment of wages up to thirty (30)
26 days from the time wages were due. Therefore, members of the Class who have
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28

1 separated from employment are entitled to compensation pursuant to California Labor
2 Code section 203.

3 69. As a direct and proximate result of Defendants' unlawful conduct, each Plaintiff
4 and the Class Member and the other aggrieved employees, have been injured by,
5 among other things, not being paid all wages/premium pay due, not knowing their gross
6 or net pay, and may recover the unpaid balance pursuant to California Labor Code
7 section 226.7, including interest, penalties, attorney fees, and court costs.
8

9
10 **FOURTH CAUSE OF ACTION FOR**
11 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**
12 **(AGAINST ALL DEFENDANTS)**

13 70. Plaintiff MACARAIG, the aggrieved employees, and the Class Members
14 incorporate by reference the preceding paragraphs of the complaint as though fully set
15 forth herein.

16 71. California Labor Code section 2802 provides that employees are entitled to be
17 indemnified for expenses and losses in discharging their employer's duties.

18 72. At all relevant times, Defendant RETAIL failed to reimburse and indemnify
19 Plaintiff MACARAIG, the aggrieved employees, and Class Members for equipment
20 necessary for the discharge of their duties. Specifically, Defendant RETAIL failed to
21 pay Plaintiff MACARAIG, the aggrieved employees, and Class Members for the costs of
22 using their personal cellular phones. Defendant RETAIL required Plaintiff MACARAIG,
23 the aggrieved employees, and Class Members to use their personal cellular phones for
24 work-related purposes, including but not limited to, notifying Defendant RETAIL of their
25 location, answering work-related calls from Defendant RETAIL, clocking in and out of
26 shifts, and sending and receiving text messages with Defendant RETAIL. Despite
27 requiring Plaintiff MACARAIG, the aggrieved employees, and the Class Members to
28 perform these actions, Defendant RETAIL never reimbursed Plaintiff MACARAIG, the

1 aggrieved employees, and the Class Members for the costs of using their personal
2 cellular phones for work-related purposes.

3 73. Defendant RETAIL had a uniform pattern, practice, and, procedure regarding the
4 above practices in violation of California Labor Code section 2802.

5 74. Such a pattern, practice, and uniform administration of corporate policy regarding
6 illegal employee compensation as described herein is unlawful and creates an
7 entitlement to recovery by Plaintiff MACARAIG, the aggrieved employees, and Class
8 Members in a civil action, for the unpaid balance of the full amount of damages owed,
9 including interests, penalties, court costs, and attorney fees.

10 **FIFTH CAUSE OF ACTION FOR**
11 **VIOLATION OF CALIFORNIA OVERTIME LAW**
12 **(AGAINST ALL DEFENDANTS)**
13 **(LABOR CODE §§ 510 & 1194)**

14 75. Plaintiff MACARAIG, the aggrieved employees, and the Class Members
15 incorporate by reference the preceding paragraphs of the complaint as though fully set
16 forth herein.

17 76. During all pertinent times, Defendant RETAIL engaged in a widespread pattern
18 and practice of failing to pay Plaintiff MACARAIG, the aggrieved employees, and Class
19 Members for hours worked in excess of eight hours per workday and forty hours per
20 workweek.

21 77. During all pertinent times, Defendant RETAIL employed Plaintiff MACARAIG, the
22 aggrieved employees, and Class Members under the Labor Code, including Labor Code
23 section 1194, and all applicable IWC Wage Orders.

24 78. During all pertinent times, Defendant RETAIL required, and continue requiring,
25 Plaintiff MACARAIG, the aggrieved employees, and Class Members to work in excess
26 of eight hours per workday and forty hours per workweek.

27 79. During all pertinent times, California Labor Code section 510 and the applicable
28 IWC Wage Orders required an employer compensate all work performed by an

1 employee in excess of eight hours in one workday or in excess of forty hours in any one
2 workweek, and all work performed by an employee during the first eight hours worked
3 on the seventh day of work in any one workweek, at one and one-half times the
4 employee's regular pay rate.

5 80. During all relevant times, California Labor Code section 510 and the applicable
6 IWC Wage Orders required that an employer compensate all work performed in excess
7 of twelve hours in one workday, and all work in excess of eight hours on any seventh
8 day of a workweek, at twice the employee's regular pay rate.

9 81. Defendant RETAIL knowingly and willfully failed to pay overtime wages earned
10 and due to the Class Members and aggrieved employees who worked eight or more
11 hours in a workday.

12 82. Defendant RETAIL knowingly and willfully failed to pay overtime wages earned
13 and due to the Class Members and aggrieved employees who worked forty or more
14 hours in a workweek.

15 83. Defendant RETAIL'S conduct has deprived Plaintiff MACARAIG, the aggrieved
16 employees, and Class Members of full and timely payment for all overtime hours
17 worked in violation of the California Labor Code and the applicable IWC Wage Orders.

18 84. Defendant RETAIL had a uniform pattern, practice, and, procedure regarding the
19 above practices in violation of the California Labor Code.

20 85. Such a pattern, practice, and uniform administration of corporate policy regarding
21 illegal employee compensation as described herein is unlawful and creates an
22 entitlement to recovery by Plaintiff MACARAIG, the aggrieved employees, and Class
23 Members in a civil action, for the unpaid balance of the full amount of unpaid earned
24 overtime wages and other damages owed, including interests, penalties, court costs,
25 and attorney fees.

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SIXTH CAUSE OF ACTION FOR
FAILURE TO PAY EARNED WAGES UPON SEPARATION
(AGAINST ALL DEFENDANTS)
(LABOR CODE §§ 201, 202, 203)

86. Plaintiff MACARAIG, the aggrieved employees, and the Class Members incorporate by reference the preceding paragraphs of the complaint as though fully set forth herein.

87. California Labor Code §§ 201 and 202 require employers to pay all compensation due and owing to an employee immediately upon discharge or within seventy-two hours of resignation.

88. Under these laws, Defendant RETAIL must pay all compensation due and owing to Plaintiff MACARAIG, the aggrieved employees, and Class Members immediately upon discharge or within seventy-two hours of resignation. Defendant RETAIL have operated under and continue to operate under a common policy and plan of willfully failing and refusing to pay unpaid wages and overtime owed to Plaintiff MACARAIG, the aggrieved employees, and Class Members upon separation from employment, as required by Labor Code sections 201 & 202.

89. As a result of Defendant RETAIL'S willful failure to pay Plaintiff MACARAIG, the aggrieved employees, and Class Members' owed wages upon separation from employment, Defendant RETAIL is liable for statutory waiting time penalties pursuant to Labor Code section 203.

SEVENTH CAUSE OF ACTION FOR
FAILURE TO TIMELY PRODUCE EMPLOYEE RECORDS
(AGAINST ALL DEFENDANTS)
(LABOR CODE §§ 226 & 1198.5)

90. Plaintiff MACARAIG, the aggrieved employees, and the Class Members incorporate by reference the preceding paragraphs of the complaint as though fully set forth herein.

1 91. California employers are required to, “maintain a copy of each employee’s
2 personnel records” and make a current or former, “employee’s personnel records
3 available for inspection, and, if requested by the employee or his or her representative,
4 provide a copy thereof.” CALIFORNIA LABOR CODE § 1198.5(c)(1)-(3). “Every current or
5 former employee, or his or her representative, has the right to inspect and receive a
6 copy of the personnel records that the employer maintains relating to the employee’s
7 performance or to any grievance concerning the employee.” CALIFORNIA LABOR CODE §
8 1198.5(a).

9 92. Employers are required to, “make the contents of those personnel records
10 available for inspection to the current or former employee, or his or her representative,
11 at reasonable intervals and at reasonable times, but not later than 30 calendar days
12 form the date the employer receives a written request.” CALIFORNIA LABOR CODE §
13 1198.5(b)(1).

14 93. Further, California employers are required to maintain copies of payroll lawful
15 payroll records for at least three years. CALIFORNIA LABOR CODE § 226(a). Employers
16 shall, “afford current or former employees the right to inspect or receive a copy of
17 records pertaining to their employment.” CALIFORNIA LABOR CODE § 226(b).

18 94. Employers must produce responsive employment records within twenty-one (21)
19 calendar days from the date of the request. CALIFORNIA LABOR CODE § 226(c).

20 95. Under these laws, Defendant RETAIL must timely produce employee records
21 upon request. Defendant RETAIL have operated under and continue to operate under
22 a common policy and plan of willfully failing and refusing to produce employee records
23 upon request, including employee records owed to Plaintiff MACARAIG, the aggrieved
24 employees, and Class Members upon separation from employment, as required by
25 Labor Code sections 226 & 1198.5.

26 96. As a result of Defendant RETAIL’S willful failure to timely produce Plaintiff
27 MACARAIG, the aggrieved employees, and Class Members’ employee records,
28

1 Defendant RETAIL is liable for statutory penalties and Plaintiff MACARAIG, the
2 aggrieved employees, and Class Members' attorney fees.

3 **EIGHTH CAUSE OF ACTION FOR VIOLATION OF**
4 **THE CALIFORNIA UNFAIR COMPETITION LAW**
5 **(AGAINST ALL DEFENDANTS)**
6 **(BUSINESS & PROFESSIONS CODE § 17200, *ET SEQ.*)**

7 97. Plaintiff MACARAIG, the aggrieved employees, and the Class Members
8 incorporate by reference the preceding paragraphs of the complaint as though fully set
9 forth herein.

10 98. Plaintiff MACARAIG brings this cause of action on behalf of himself and others
11 similarly situated, seeking restitution and disgorgement of all profits from unlawful
12 conduct as described above, including interest thereon, for the four years preceding the
13 filing of this Complaint.

14 99. California Business and Professions Code section 17220 ("Unfair Competition
15 Law") defines unfair competition to include, "unlawful, unfair, or fraudulent business
16 practice," and consists of any business practice that is forbidden by law. As elaborated
17 upon above, Defendant RETAIL violated California Labor Code sections 226, 226.7,
18 510, 512, 201, 202, 203, 1194, 1198.5, and 2802. Defendant RETAIL unlawfully
19 deprived Plaintiff MACARAIG, the aggrieved employees, and the Class Members' right
20 to work free from the legal violations elaborated upon above. As a result, Defendant
21 RETAIL violated and deprived Plaintiff MACARAIG, the aggrieved employees, and the
22 Class Members' of statutory rights.

23 100. Defendant RETAIL is an employer doing business in California.

24 101. Defendant RETAIL violated California Labor Code sections 226, 226.7,
25 510, 512, 201, 202, 203, 1194, 1198.5, and 2802.

26 102. By the aforementioned conduct, Defendant RETAIL has engaged in
27 unlawful, unfair, and fraudulent business practices with the intent to injure Plaintiff
28

1 MACARAIG, the aggrieved employees, and the Class Members in violation of Business
2 & Professions Code section 17200 *et seq.*

3 103. As a result, Defendant RETAIL has gained economic benefit to which it is not
4 entitled, to Plaintiff MACARAIG, the aggrieved employees, and the Class Members'
5 detriment.

6 104. As a result of Defendant RETAIL'S unfair business practices, Plaintiff
7 MACARAIG, the aggrieved employees, and the Class Members suffered damages,
8 including but not limited to statutory damages.

9 105. As a result of Defendants' unfair business practices, Plaintiff RETAIL'S,
10 individually and on behalf of the aggrieved employees, and Class Members, seeks
11 remedies, including but not limited to statutory damages of \$5,000 per unfair business
12 act, disgorgement, and actual damages in an amount according to proof at trial.

13 106. Plaintiff MACARAIG, individually and on behalf of the aggrieved employees and
14 the Class Members and on behalf of the other aggrieved employees, seeks reasonable
15 attorney fees and costs under applicable laws, including California Code of Civil
16 Procedure section 1021.5 and California Business & Professions Code section 17200.

17 **NINTH CAUSE OF ACTION FOR**
18 **PRIVATE ATTORNEYS GENERAL ACT PENALTIES**
19 **FOR VIOLATIONS OF CALIFORNIA LABOR CODE**
20 **(AGAINST ALL DEFENDANTS)**
21 **(LABOR CODE § 2699, *ET SEQ.*)**

22 107. Plaintiff MACARAIG, the aggrieved employees, and the Class Members
23 incorporate by reference the preceding paragraphs of the complaint as though fully set
24 forth herein.

25 108. Under the Private Attorneys General Act of 2006, Labor Code sections 2698 –
26 2699.5, an aggrieved employee, on behalf of themselves and other current or former
27 employees, may recover penalties for any violations of the California Labor Code.
28 These penalties are in addition to any other relief available under the Labor Code.

1 109. As set forth above, Defendants have committed numerous violations for which
2 the California Labor Code provides for penalties, including violations of sections 226,
3 226.7, 510, 512, 201, 202, 203, 1194, 1198.5, and 2802.

4 110. Under California Labor Code section 2699(f)(2), for each violation, Plaintiff
5 MACARAIG and the other aggrieved employees are entitled to penalties in an amount
6 to be shown at the time of trial subject to the following formula:

- 7 a. \$100 for the initial violation per employee; and,
8 b. \$200 for each subsequent violation per employee.

9 111. Plaintiff MACARAIG has provided written notice by certified mail to the Labor &
10 Workforce Development Agency ("LWDA") and Defendants RETAIL of the legal claims
11 and theories of this case contemporaneous with the filing of this Complaint. LWDA
12 does not intend to investigate the violations.

13 112. As a direct result of Defendant RETAIL'S conduct as elaborated upon above,
14 Plaintiff MACARAIG is entitled to recover, on his behalf and on behalf of others similarly
15 situated, the maximum civil penalties permitted by the California Private Attorneys
16 General Act from Defendant for all violations of the California Labor Code, including
17 sections 226 and 432.3, as well as reasonable attorney fees and costs.

18 **DEMAND FOR JURY TRIAL**

19 113. Pursuant to California Code of Civil Procedure section 631, Plaintiff demands a
20 trial by jury on all issues so triable.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff prays, for themselves and all other aggrieved employees
23 and Class Members, for judgment against Defendants, and each of them as follows:

- 24 A. That this Court certifies the action as a class action under California Code of
25 Civil Procedure section 382 and California Rules of Court Rule 3.764 and/or a
26 representative action under Business & Professions Code section 17200, *et*
27 *seq.*, and Labor Code section 2699;
28 B. That the rights of class members be adjudicated and declared;

- 1 C. That Plaintiff MACARAIG, the Class Members, and the aggrieved employees
- 2 recover general and compensatory damages according to proof;
- 3 D. That Plaintiff MACARAIG, the Class Members, and the aggrieved employees
- 4 recover special damages according to proof;
- 5 E. That Plaintiff MACARAIG'S and the aggrieved employees' rights be
- 6 adjudicated and declared;
- 7 F. For equitable relief enjoining Defendant RETAIL from engaging in the wrongful
- 8 conduct complained about herein pertaining to its statutory violations during
- 9 employment and application;
- 10 G. Declare that the pattern or practice described above violates state law
- 11 prohibiting unfair competition, unjust enrichment, unauthorized obtaining and
- 12 use of Plaintiff MACARAIG and the aggrieved employees', where applicable,
- 13 salary history information, and conviction history;
- 14 H. For an award of punitive damages;
- 15 I. For contractual damages under applicable causes of action;
- 16 J. A civil penalty against Defendant RETAIL in the amount of \$100 for the initial
- 17 violation and \$200 for each subsequent violation as specified in California
- 18 Labor Code section 2699(f)(2) for Plaintiff MACARAIG and each of the
- 19 aggrieved employees;
- 20 K. For emotional distress damages under applicable causes of action;
- 21 L. For equitable relief requiring restitution and/or disgorgement of the profits
- 22 wrongfully retained as a result of Defendants' wrongful conduct;
- 23 M. For statutory penalties;
- 24 N. For a civil penalty for each unfair violation;
- 25 O. For penalties pursuant to Civil Code section 3345;
- 26 P. For costs of the instant lawsuit;
- 27 Q. For prejudgment interest;
- 28

1 R. That Plaintiff MACARAIG recover costs of suit and that Plaintiff MACARAIG'S,
2 the Class Members', and the aggrieved employees' attorneys be awarded
3 reasonable attorney fees and costs, as allowable by law, including, but not
4 limited to, California Labor Code section 2699(g)(1), and California Code of
5 Civil Procedure section 1021.5;

6 S. Plaintiff requests a jury trial; and,

7 T. For such other relief as the Court may deem just and proper.
8

9 Dated: May 21, 2020

ASTANEHE LAW



11 Michael M. Astanehe
12 Attorney for Plaintiff MACARAIG, the
13 Proposed Class, and all aggrieved
14 employees
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