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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

VERNELL BATTLE, JR., on behalf of
himself and other similarly-situated
employees,

Plaintiff,

vs.

SAFRAN CABIN, INC., a Delaware
Corporation; and DOES 1 through 25,
inclusive,

Defendants.

Case No. 30-2020-01140831-CU-OE-CXC

**FIRST AMENDED CLASS ACTION
COMPLAINT AND REPRESENTATIVE
ACTION FOR DAMAGES, PENALTIES, AND
RESTITUTION**

1. Failure to Pay Minimum and/or Regular Wages for all "Hours Worked" (Labor Code §§ 1194, 1194.2, and 1197.2) based on a Non-Neutral Rounding Policy;
2. Failure to Pay Overtime Wages (Labor Code §§ 510 and 1194) based on a Non-Neutral Rounding Policy;
3. Failure to Provide Compliant Meal Periods (Labor Code §§ 226.7 and 512, and IWC Wage Order 1-2001, § 11);
4. Failure to Provide Accurate Itemized Wage Statements showing all "Hours Worked" (Labor Code § 226);
5. Failure to Timely Pay all Wage Owed at Termination or Separation from Employment (Labor Code § 203); and
6. Unfair Competition and Restitution for Unpaid Wages pursuant to Business & Professions Code § 17200.

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7. PAGA Civil Penalties for Failure to Pay all Minimum, Regular, and Overtime Wages for all Hours Worked (Labor Code §§ 510, 1194, 1197, 1197.1, and 1198, and the “Minimum Wages” and “Hours and Days of Work” Sections of the Applicable Wage Order);
8. PAGA Civil Penalties for Failure to Provide Timely and Compliant Meal Periods (Labor Code §§ 226.7 and 512, and the “Meal Periods” Section of the Applicable Wage Order);
9. PAGA Civil Penalties for Failure to Provide Accurate Itemized Wage Statements (Labor Code §§ 246(i), 226(a), 226.3, 1198, and 2699, and the “Records” Section of the Applicable Wage Order); and
10. PAGA Civil Penalties for Failure to Timely Pay Wages Due During and Upon Termination of Employment (Labor Code §§ 201, 201.3, 202, 203, 204, 256, 1198, and 2699, and the “Minimum Wages” Section of the Applicable Wage Order).

DEMAND FOR JURY TRIAL

1 Plaintiff VERNELL BATTLE, JR. (“Plaintiff” or “BATTLE”), individually, on behalf
2 of other similarly-situated employees, hereby alleges as follows:

3 I.

4 **INTRODUCTION**

5 1. Plaintiff brings this proposed class action against his former employer SAFRAN
6 CABIN, INC., a Delaware Corporation, and DOES 1-25 (collectively referred to as “Safran” or
7 “Defendants”) for multiple wage and hour violations under the California Labor Code to
8 recover unpaid minimum, regular, and overtime wages. Specifically, during all or a significant
9 part of the applicable limitations period, or proposed “Class Period” (which is defined at any
10 time from four years prior to the commencement of this action until the commencement of trial
11 in the matter), Plaintiff alleges Defendants did not pay him or other hourly non-exempt
12 employees for all “hours worked” and in fact, used an illegal “non-neutral” time rounding
13 procedure.

14 2. Over time, the use of this non-neutral rounding system resulted in underpaid
15 minimum, regular, and overtime wages for hundreds of hours for all impacted employees using
16 the same clock system. See, *Morillion v. Royal Packing Co.* (2000) 22 Cal. 4th 575, 578;
17 *Troester v. Starbucks Corp.* (2018) 5 Cal. 5th 829, 847 [a rounding system must be fair and
18 neutral on its face and as applied – over a period of time – in order to lawfully comply with
19 California’s requirement that workers be paid for “all hours worked.”]; *Leyva v. Medline Indus.*
20 (9th Cir. 2013) 716 F.3d 510, 512; *Corbin v. Time Warner Entertainment-Advance/Newhouse*
21 *Partnership* (9th Cir. 2016) 821 F.3d 1069, 1077 [“If an employer’s rounding practice does not
22 permit both upward and downward rounding, then the system is not neutral.”]; *See’s Candy*
23 *Shops, Inc. v. Superior Court* (2012) 210 Cal. App. 4th 889, 701, n.4; and *Silva v. See’s Candy*
24 *Shops, Inc.* (2016) 7 Cal. App. 5th 235, 251.

25 3. At all relevant times, Safran engaged in a uniform and systematic payroll
26 rounding policy that was non-neutral and resulted in underpayment of wages. As a result of
27 Safran’s practice of rounding time entries, as shown by its own records, Plaintiff was not
28 credited with all time worked and subject to Safran’s control. This policy and practice resulted

1 in the underpayment of minimum, regular, and overtime wages, in an amount subject to audit
2 and proof.

3 4. Similarly, Safran's payroll system also resulted in non-compliant first and
4 second meal periods as required under Labor Code sections 226.7 and 512, and Industrial
5 Welfare Commission Wage Order 1-2001, section 11. Accordingly, Plaintiff will seek unpaid
6 meal period premiums where Defendants' records demonstrate a missed, late, or untimely first
7 or second meal period, in an amount according to proof.

8 **II.**

9 **JURISDICTION AND VENUE**

10 5. Venue as to each Defendant is proper in this judicial district, pursuant to Code of
11 Civil Procedure section 395. Defendants conduct business in the city of Huntington Beach,
12 California in the County of Orange, and each Defendant is within the jurisdiction of this Court
13 for service of process purposes. The unlawful acts alleged have a direct effect on Plaintiff and
14 other similarly-situated employees within the State of California and Orange County.
15 Defendants employ numerous employees in Orange County and in California generally. There
16 is no federal question at issue for removal under 28 U.S.C. section 1331, as the issues herein are
17 based solely on California statutes and law, including the Labor Code, IWC Wage Orders, and
18 the Code of Civil Procedure.

19 6. Plaintiff alleges, on information and belief, that no federal question is raised and
20 that the Class Action Fairness Act ("CAFA"), 28 U.S.C. section 1332(d), does not apply, or in
21 the alternative, that exceptions for local case or controversy under the CAFA do apply and
22 prohibit removal of the action to federal court. Plaintiff is also informed and believes that based
23 on his rate of pay, his individual claims do not arise to the necessary amount in controversy so
24 as to implicate traditional jurisdiction under 28 U.S.C. section 1332(a) or jurisdiction under the
25 CAFA.

26 7. Further, based on information and belief, Defendants' principal place of business
27 and headquarters is located in the State of California in Huntington Beach, such that diversity
28 does not exist for purposes of removal.

III.

THE PARTIES

8. Plaintiff VERNELL BATTLE, JR. worked as an hourly non-exempt technician for Safran (and C&D Zodiac, Inc. dba Zodiac Aerospace, which was acquired by Safran in February 2018) from approximately March 14, 2016 until approximately February 18, 2020. Plaintiff worked primarily as an installation technician in the building and fitting aircraft with interiors. He worked in Orange County at the Cypress facility in the State of California. He was paid approximately \$19.55 per hour and his employee ID was 101795. Safran has approximately 7-10 operational locations throughout California and employs several hundred hourly non-exempt employees subject to a common payroll and timekeeping system. Plaintiff and other similar employees generally worked a schedule of 5 days per week for a scheduled 40 hours per week.

9. Plaintiff alleges that all other non-exempt hourly employees in the State of California worked under Defendants' policies and as a result, suffered the same violations alleged herein.

10. Plaintiff was employed by the alleged violators and had one or more of the alleged violations committed against him and, therefore, is properly suited to represent the interests of all other current and former employees of Defendants.

11. Plaintiff is informed and believes, and based thereon alleges, that Defendant SAFRAN CABIN, INC. is a Delaware corporation with its principal place of business and headquarters located at 5701 Bolsa Avenue, Huntington Beach, California, and was Plaintiff's and proposed Class Members' employer during the proposed Class Period.

12. Pursuant to California Labor Code sections 558 and 558.1, Defendants are employers of Plaintiff, and/or a person acting on behalf of Plaintiff's employer, who violated, or caused to be violated, any provision regulating minimum wages or hours and days of work in the applicable order of the Industrial Welfare Commission, as well as California Labor Code sections 203, 226, 1194, 1197, 1197.1, and 1193.6.

13. At all times relevant Safran did, and does, transact and conduct business in the

1 state of California, including, but not limited to, within the jurisdiction of the Court. At all times
2 relevant, Safran was Plaintiff's employer for purposes of the California wage and hour laws at
3 issue in this action.

4 14. Plaintiff is unaware of the true names, capacities, relationships, and extent of
5 participation in the conduct alleged of Defendants sued as DOES 1 through 25, inclusive, but is
6 informed and believes, and based on that alleges, that DOE Defendants are legally responsible
7 for the wrongful conduct alleged, and sues these Defendants by such fictitious names. Plaintiff
8 will amend this complaint when their true names and capabilities are ascertained.

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

16 **IV.**

17 **GENERAL ALLEGATIONS**

18 16. At all times during the liability period, Plaintiff and similarly-situated current
19 and former employees were employed by Defendants and each of them, including Doe
20 Defendants, within the state of California.

21 17. At all relevant times, Plaintiff and other similarly-situated employees of
22 Defendants worked under the same policies, practices, and procedures relating to their
23 employment, including those governing wage statements, recordkeeping, and payment of wages
24 applicable to Defendants' facilities.

25 18. During the Class Period, Defendants maintained common policies and practices
26 of failing to pay all required wages for all hours worked.

27 19. The California Labor Code and applicable IWC Wage Order and portions of the
28 California Code of Regulations provide (1) that all persons employed in the State of California

1 shall be presumed to be an hourly or non-exempt employee; (2) that all “hours worked” and
2 subject to the control of the employer, whether exercised or not, are to be paid at least the
3 minimum wage as determined by the State of California, and for overtime wages at either 1.5x
4 the regular rate of pay or 2.0x the regular rate of pay when “hours worked” exceed 8 hours in a
5 single day or shift, or exceed 40 hours in a 168-total hour workweek. Labor Code sections
6 1194, *et seq.* provide that notwithstanding any agreement to work for a lesser wage, an
7 employee receiving less than the legal overtime or minimum wage compensation is entitled to
8 recover in a civil action the unpaid balance of their owed compensation, including interest
9 thereon, reasonable attorneys’ fees, and costs of suit.

10 20. Plaintiff and each similarly-situated employee worked in excess of the maximum
11 regular rate hours set by the IWC in the above Wage Orders, regulations, or statutes, and are
12 therefore entitled to appropriate overtime compensation at time and a half (1½) rate of their
13 regular pay, and when applicable, double-time rates as set forth by the above Wage Orders,
14 regulations, and/or statutes.

15 21. During the Class Period, Defendants maintained a common policy and practice
16 of failing to pay Plaintiff and other similarly-situated employees for all hours worked.
17 Defendants did not pay Plaintiff and others similarly situated based on the precise hours
18 worked. Rather, Defendants unlawfully rounded the beginning and ending time of each shift,
19 which resulted in the failure to pay for all hours worked as required by law, including the failure
20 to pay at least minimum wage for all hours worked, and the applicable overtime pay for
21 overtime hours worked. The rounding policy was not neutral on its face, nor in application.
22 Rather, Defendants’ rounding policy operated unilaterally to the benefit of Defendants and to
23 the detriment of Plaintiff and other similarly-situated employees. Other similarly-situated
24 employees, over time, lost more hours worked than they gained due to the unlawful rounding
25 policy.

26 22. Upon information and belief, Plaintiff and other similarly-situated employees
27 worked in non-exempt, hourly positions, and during the relevant time period, each was subject
28 to the Defendants’ rounding policy that resulted in underpayment of all minimum, regular, and

1 overtime wages owed.

2 23. Defendants' rounding policy also resulted in the failure to pay all required
3 overtime wages when the rounding deducted from shifts worked in excess of 8 hours in one
4 day, or 40 hours in one workweek, and when the rounding deducted from shifts which
5 otherwise would have exceeded 8 hours in length or totaled 40 hours in one workweek.

6 24. As a result of the failure to pay all minimum, regular, and overtime wages, as
7 described herein, Defendants further failed to pay Plaintiff and all other similarly-situated
8 employees timely during employment as required by Cal. Labor Code section 203.

9 25. During the applicable limitations period, the Defendants, by virtue of centralized
10 and uniform pay policies, failed to provide accurate, itemized wage statements to Plaintiff, and
11 similarly-situated employees, as required by Labor Code section 226. The wage statements did
12 not accurately state the total hours worked, the net and gross wages earned, or all applicable
13 hourly rates in effect during the pay period and the corresponding number of hours worked at
14 each hourly rate.

15 26. Similarly, Safran's payroll system also resulted in non-compliant first and
16 second meal periods as required under Labor Code sections 226.7 and 512, and Industrial
17 Welfare Commission Wage Order 1-2001, section 11. Initial examination of Mr. Battle's pay
18 and time records shows that first meal periods were either not provided or untimely for nearly
19 73% of all shifts worked. Examination of Safran's records as to whether second meal periods
20 were provided for shifts greater than 10 hours in length demonstrate a violation rate of 100% of
21 such qualifying shifts worked by Mr. Battle. Plaintiff and others similarly situated were
22 unaware of their right to second meal periods, and thus, that one-hour pay "premiums" would
23 be owed for each documented instance where a second meal period was required but not
24 provided. Thus, like the non-neutral rounding policy, Mr. Battles' timekeeping and payroll
25 records showing a meal period violation without corresponding meal period "premium" pay
26 suggests that many other employees at Safran in California were not paid what is a required
27 minimum standard under California Labor Code sections 226.7 and 512(b), as well as IWC
28 Wage Order 1-2001, section 11.

27. Plaintiff's employment ended in or around February 18, 2020. At the time of his separation from employment, he was owed minimum wages, regular wages, and overtime wages from Defendants for all hours worked, including all shifts where the rounding resulted in underpayment of wages during the relevant time period. Similarly, Defendants failed to pay all wages and premiums owed Plaintiff, and other similarly-situated terminated employees, as required by Labor Code section 203.

28. During the Class Period, the Defendants failed to pay all wages owed to similarly-situated terminated employees. As a result, Plaintiff and other similarly-situated employees are owed waiting time penalties as required by Labor Code section 203

29. Defendants have engaged in unfair business practices in California and willfully and knowingly have practiced, employed, and utilized the employment patterns and practices alleged in this complaint in violation of Business & Professions Code sections 17200, *et seq* in an attempt to improperly lower the costs of doing business to gain an unfair economic advantage.

V.

CLASS ACTION ALLEGATIONS

30. Plaintiff brings this action on behalf of himself and all others similarly situated as a class action pursuant to Code of Civil Procedure section 382. The members of the Plaintiff Class are defined as follows:

All individuals employed by Defendants in the State of California as hourly non-exempt employees at any time four years prior to the filing of this complaint until the time of trial in this action (the "Class" or "Plaintiff Class").

31. Further, Plaintiff brings this action on behalf of himself and all other similarly-situated persons in a Subclass of the Plaintiff Class, which is defined as follows:

Plaintiff Subclass One ("Minimum Wage Subclass"): All members of the Plaintiff Class who, within the applicable limitations period, were subject to a policy of not being compensated for all hours worked or under Defendants' control at the applicable minimum wage.

32. Further, Plaintiff brings this action on behalf of himself and all other similarly-situated persons in a Subclass of the Plaintiff Class, which is defined as follows:

Plaintiff Subclass Two (“Overtime Subclass”): All members of the Plaintiff Class who, within the applicable limitations period, were subject to a policy of not being compensated for all hours worked or under Defendants’ control in excess of eight hours per day and/or forty hours per week at the applicable overtime wage.

33. Further, Plaintiff brings this action on behalf of himself and all other similarly-situated persons in a Subclass of the Plaintiff Class, which is defined as follows:

Plaintiff Subclass Three (“Meal Period Subclass”): All members of the Plaintiff Class who, within the applicable limitations period, were not provided timely and compliant first or second meal periods or paid a “premium wage” as required by Labor Code sections 226.7 and 512, and IWC Wage Order 1-2001, section 11.

34. Further, Plaintiff brings this action on behalf of himself and all other similarly-situated persons in a Subclass of the Plaintiff Class, which is defined as follows:

Plaintiff Subclass Four (“Wage Statement Subclass”): All members of the Plaintiff Class who, within the applicable limitations period, were subject to the policy and/or practice of not providing accurate itemized wage statements.

35. Further, Plaintiff brings this action on behalf of himself and all other similarly-situated persons in a Subclass of the Plaintiff Class, which is defined as follows:

Plaintiff Subclass Five (“Waiting Time Subclass”): All members of the Plaintiff Class who, within the applicable limitations period, either voluntarily or involuntarily separated from their employment, and were subject to the Defendants’ policy and/or practice of failing to timely pay wages upon termination.

36. Plaintiff brings this action on behalf of himself and all other similarly-situated persons in a Subclass of the Plaintiff Class, which is defined as follows:

Plaintiff Subclass Six (“The UCL Subclass”): All members of the Plaintiff Class, within the applicable limitations period, who are owed restitution as a result of Defendants’ business acts and practices, to the extent such acts and practices are found to be unlawful, deceptive, and/or unfair.

37. Plaintiff reserves the right under California Rules of Court, Rule 3.765(b) and other applicable law to amend or modify the class definition with respect to issues or in any other ways. Plaintiff is the Named Representative and is a member of the Plaintiff Class.

1 Plaintiff seeks class-wide recovery based on the allegations set forth in this complaint. The
2 Court can define the Plaintiff Class and create additional subclasses as may be necessary or
3 desirable to adjudicate common issues and claims of the Plaintiff Class Members if, based on
4 discovery of additional facts, the need arises.

5 38. As set forth in the Prayer, below, Plaintiff will move the Court to try the UCL
6 Subclass Claims before the Court in Equity before trying the legal claims to a trier of fact in this
7 action. See, *Hoopes v. Dolan* (2008) 168 Cal. App. 4th 146, 156-157; *Pellegrino v. Robert Half*
8 *Intern., Inc.* (2010) 181 Cal. App. 4th 713 [“[B]etter practice” is for “the trial court [to]
9 determine the equitable issues before submitting the legal ones to the jury.”]. Same, *Hodge v.*
10 *Superior Court* (2006) 145 Cal. App. 4th 278, 284 and *Nwosu v. Uba* (2004) 122 Cal. App. 4th
11 1229, 1238, 1244.

12 39. This action has been brought and may be maintained as a class action pursuant to
13 Code of Civil Procedure section 382 because there is a well-defined community of interest in
14 the litigation and the proposed Plaintiff Class is easily ascertainable through the records
15 Defendants are required to keep.

16 40. Numerosity. The members of the Plaintiff Class are so numerous that individual
17 joinder of all of them as Plaintiff is impracticable. While the exact number of the Plaintiff Class
18 Members is unknown to Plaintiff at this time, Plaintiff is informed and believes and thereon
19 alleges that there are more than 100 Plaintiff Class Members.

20 41. Commonality. Common questions of law and fact exist as to all Plaintiff Class
21 Members and predominate over any questions that affect only individual members of the
22 Plaintiff Class. These common questions include, but are not limited to:

- 23 a. Did Defendants violate Labor Code sections 510, 1197, or 1194 by
24 failing to pay minimum, regular, and/or overtime wages for all hours
25 worked, including time subject to Defendants’ control?
- 26 b. Did Defendants violate Labor Code sections 226.7 and 512, and IWC
27 Wage Order 1-2001, section 11 where Defendants’ records show a
28 missed, late, or untimely first or second meal period for qualifying shifts

and a failure to pay a “premium wage”?

- c. Did Defendants violate Labor Code sections 201 and/or 202 by not paying Plaintiff Class Members who are no longer employed by Defendants all earned wages, including minimum, regular, and overtime wages upon their termination of employment? If so, were such violations “willful” within the meaning of Labor Code section 203?
- d. Did Defendants engage in business acts or practices which violate California’s Unfair Competition Law (“UCL”) as it relates to their policies and practices as to wages and pay?
- e. What are the effects and the extent of any injuries sustained by the Plaintiff Class and Plaintiff Subclass Members and appropriate type and/or measure of damages?
- f. What is the appropriateness and nature of relief to each Plaintiff Class and Subclass Member?
- g. What is the extent of liability of each Defendant, including DOE defendants, to each Plaintiff Class and Subclass Member?

42. Typicality. Plaintiff’s claims are typical of the claims of the other members of the Plaintiff Class. Plaintiff and other members of the Plaintiff Class were subject to the same policies and practices of Defendants resulting in underpayment for straight-time and overtime hours. Defendants failed to provide accurate, itemized wage statements to Plaintiff and members of the Plaintiff Class. Defendants also failed to pay all wages owed to Plaintiff and Plaintiff Class Members upon termination of employment.

43. Adequacy. Plaintiff will adequately and fairly protect the interests of the members of the Plaintiff Class. Plaintiff has no interest adverse to the interests of absent Plaintiff Class Members. Plaintiff is represented by attorneys who have substantial class action experience in wage-and-hour and class action law.

44. Superiority. A class action is superior to other available means for fair and efficient adjudication of the claims of the Plaintiff Class and would be beneficial for the parties

1 and the Court. Class action treatment will allow a large number of similarly-situated persons to
2 prosecute their common claims in a single forum, simultaneously, efficiently, and without the
3 unnecessary duplication of effort and expense that numerous individual actions would require.
4 The damages suffered by each Plaintiff Class Member are relatively small in the sense pertinent
5 to class action analysis, and the expense and burden of individual litigation would make it
6 extremely difficult or impossible for the individual Plaintiff Class Members to seek and obtain
7 individual relief. A class action will serve an important public interest by permitting such
8 individuals to effectively pursue recovery of the sums owed to them. Further, class litigation
9 prevents the potential for inconsistent or contradictory judgments raised by individual litigation.

10 45. Manageability. The class action procedure will be useful and manageable here
11 because all the liability and damages can be ascertained by forensic review of corporate and
12 employer timekeeping and payroll records and evidence that the Defendants implemented an
13 employer-favored non-neutral rounding system without advising employees and without having
14 the employees not begin performing work before their scheduled start time, while also insisting
15 that employees arrive early for scheduled shifts. Data analysis, corporate policy, and PMQ
16 testimony will demonstrate that Safran knowingly accepted the benefits of employees' free
17 labor and knew that the rounding system would significantly benefit the employer and harm the
18 employee.

19 **VI.**

20 **CAUSES OF ACTION**

21 **FIRST CAUSE OF ACTION**

22 **FAILURE TO PAY MINIMUM AND REGULAR WAGES FOR ALL HOURS
WORKED**

23 **(Labor Code §§ 204, 1194, 1194.2, and 1197)**

24 **(On Behalf of Plaintiff and the Minimum Wage Subclass Against Each Defendant)**

25 46. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in
full herein.

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

48. 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.”

49. Labor Code section 221 states: “It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.”

50. Labor Code section 223 states: “Where any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract.”

51. Section 4 of the applicable IWC Wage Order provides that an employer may not pay employees less than the applicable minimum wage for all hours worked.

52. Labor Code section 1194 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.”

53. As set forth herein, Defendants willfully breached their obligation to pay minimum and regular wages to Plaintiff and members of the Minimum Wage Subclass for all hours worked.

54. Plaintiff and members of the Minimum Wage Subclass did not receive proper protections and benefits of the laws governing the minimum wages. As set forth above, members of the Minimum Wage Subclass were not paid all minimum and regular wages for all hours worked.

55. Furthermore, Plaintiff and other members of the Minimum Wage Subclass were not properly paid for all hours worked including, but not limited to, the time Plaintiff and members of the Minimum Wages Subclass had deducted due to an unlawful rounding policy.

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56. As a result of the unlawful acts of Defendants, Plaintiff and the Plaintiff Class and the Minimum Wage Subclass he seeks to represent have been deprived of minimum and regular wages and/or other compensation in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest thereon, liquidated damages in an amount equal to the wages unlawfully unpaid, attorneys' fees, and costs to the fullest extent permitted by law.

57. Plaintiff and the Plaintiff Class he seeks to represent request relief as described below.

SECOND CAUSE OF ACTION
FAILURE TO PAY OVERTIME WAGES
(Labor Code §§ 510 and 1194)
(On Behalf of Plaintiff and the Overtime Subclass Against Each Defendant)

58. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in full herein.

59. 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."

60. 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."

61. Section 3 of the applicable IWC Wage Order provides that an employer may not pay non-exempt employees less than the applicable overtime rate for all overtime hours worked.

62. As set forth herein, Defendants willfully breached their obligations to pay overtime wages, violating the provisions of Labor Code sections 510 and 1194, and the

1 applicable Wage Order.

2 63. Through Defendants' conduct during the applicable statutory period including,
3 but not limited to, the conduct alleged herein, including that alleged on information and belief,
4 Defendants failed to pay Plaintiff and Plaintiff Class Members all overtime wages for all
5 overtime worked based on the unlawful rounding policy in violation of Labor Code sections
6 510 and 1198, and the applicable Wage Order.

7 64. As a result of the unlawful acts of Defendants, Plaintiff and the Plaintiff Class
8 and the Overtime Subclass he seeks to represent have been deprived of overtime wages and/or
9 other compensation in amounts to be determined at trial, and are entitled to recovery of such
10 amounts, plus interest thereon, attorneys' fees, and costs.

11 65. Plaintiff and the Plaintiff Class he seeks to represent request relief as described
12 below, in an amount according to proof.

13 **THIRD CAUSE OF ACTION**
14 **FAILURE TO PROVIDE TIMELY AND COMPLIANT MEAL PERIODS**
15 **(Labor Code §§ 226.7 and 512, and IWC Wage Order 1-2001, § 11)**
16 **(On Behalf of Plaintiff and the Meal Period Subclass Against Each Defendant)**

17 66. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in
18 full herein.

19 67. Labor Code section 226.7(b) provides: "An employer shall not require an
20 employee to work during a meal or rest or recovery period mandated pursuant to an applicable
21 statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the
22 Occupational Safety and Health Standards Board, or the Division of Occupational Safety and
23 Health."

24 68. Labor Code section 226.7(c) provides: "If an employer fails to provide an
25 employee a meal or rest or recovery period in accordance with a state law, including, but not
26 limited to, an applicable statute or applicable regulation, standard, or order of the Industrial
27 Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of
28 Occupational Safety and Health, the employer shall pay the employee one additional hour of
pay at the employee's regular rate of compensation for each workday that the meal or rest or

1 recovery period is not provided.”

2 69. Labor Code section 512(a) provides: “(a) An employer shall not employ an
3 employee for a work period of more than five hours per day without providing the employee
4 with a meal period of not less than 30 minutes, except that if the total work period per day of the
5 employee is no more than six hours, the meal period may be waived by mutual consent of both
6 the employer and employee. An employer shall not employ an employee for a work period of
7 more than 10 hours per day without providing the employee with a second meal period of not
8 less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second
9 meal period may be waived by mutual consent of the employer and the employee only if the
10 first meal period was not waived.”

11 70. IWC Wage Order 1-2001, section 11(A) provides: “No employer shall employ
12 any person for a work period of more than five (5) hours without a meal period of not less than
13 30 minutes, except that when a work period of not more than six (6) hours will complete the
14 day’s work the meal period may be waived by mutual consent of the employer and the
15 employee.”

16 71. IWC Wage Order 1-2001, section 11(B) provides: “An employer may not
17 employ an employee for a work period of more than ten (10) hours per day without providing
18 the employee with a second meal period of not less than 30 minutes, except that if the total
19 hours worked is no more than 12 hours, the second meal period may be waived by mutual
20 consent of the employer and the employee only if the first meal period was not waived.”

21 72. IWC Wage Order 1-2001, section 11(C) provides: “Unless the employee is
22 relieved of all duty during a 30-minute meal period, the meal period shall be considered an ‘on
23 duty’ meal period and counted as time worked. An ‘on duty’ meal period shall be permitted
24 only when the nature of the work prevents an employee from being relieved of all duty and
25 when by written agreement between the parties an on-the-job paid meal period is agreed to. The
26 written agreement shall state that the employee may, in writing, revoke the agreement at any
27 time.”

28 73. IWC Wage Order 1-2001, section 11(D) provides: “If an employer fails to provide an

employee a meal 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 workday that the meal period is not provided."

74. As alleged above, Safran and Doe Defendants 1-25, inclusive, have a regular policy and practice of failing to provide timely, compliant first or second meal periods for qualifying shifts and did not provide meal period "premium pay" of one hour of pay even when records demonstrate late, missed, or shortened meal periods.

75. As a direct result of Defendants' pattern, practice, and systematic conduct, Plaintiff and members of the Meal Period Subclass are owed premium pay at one hour of their regular rate of compensation for each instance Defendants' payroll and electronic records show that a meal period was not provided and a one-hour pay premium was not paid, in an amount according to proof.

76. Plaintiff and the Plaintiff Class he seeks to represent request relief as described below, in an amount according to proof.

FOURTH CAUSE OF ACTION
FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS
(Labor Code §§ 226 and 1174)
(On Behalf of Plaintiff and the Wage Statement Subclass Against Each Defendant)

77. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in full herein.

78. Labor Code section 226, subdivision (a) requires Defendants to itemize in wage statements all deductions from payment of wages and to accurately report total hours worked by Plaintiff and members of the Plaintiff Class. Defendants have knowingly and intentionally failed to comply with Labor Code section 226, subdivision (a) on each and every wage statement that should have been provided to Plaintiff and members of the Plaintiff Class.

79. Labor Code Section 226(a) provides in pertinent part: "An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in

writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (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 only 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, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of 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.”

80. Labor Code section 1174 requires Defendants to maintain and preserve, in a centralized location, among other items, records showing the names and addresses of all employees employed and payroll records showing the hours worked daily by, and the wages paid to, their employees. Defendants have knowingly and intentionally failed to comply with Labor Code section 1174.

81. Section 7 of the applicable Wage Order requires Defendants to maintain time records showing, including but not limited to, when the employee begins and ends each work period and total daily hours worked in itemized wage statements which must show all deductions from payment of wages and accurately report total hours worked by Plaintiff and members of the Plaintiff Class.

82. Through Defendants’ conduct during the applicable statutory period including, but not limited to, the conduct alleged herein, including that alleged on information and belief, Defendants failed to provide wage statements accurately reflecting all of the required information, including but not limited to gross wages earned, net wages earned, the total hours worked, and all applicable rates of pay and the total number of hours worked at each rate. This information could not be readily determined from the face of the wage statements alone.

///

83. Plaintiff and members of the Wage Statement Subclass suffered injuries as a result of Defendants' intentional and knowing failure to provide to Plaintiff and the Plaintiff Class Members accurate wage statements and to maintain the writings required by Labor Code section 226(a).

84. As a direct result, Plaintiff and members of the Wage Statement Subclass have suffered and continue to suffer substantial injuries, losses and actual damages related to Defendants' violations, including lost wages, lost interest on such wages, and expense and attorney's fees in seeking to compel Defendants to fully perform their obligations.

85. Accordingly, Plaintiff and the Plaintiff Class and Wage Statement Subclass he seeks to represent request relief as described below, including statutory penalties up to the maximum amount as permitted by law.

86. Plaintiff and the Plaintiff Class he seeks to represent request relief as described below.

FIFTH CAUSE OF ACTION

FAILURE TO PAY WAGES OWED AT TERMINATION OR SEPARATION (Labor Code §§ 201-203)

(On Behalf of Plaintiff and the Waiting Time Subclass Against Each Defendant)

87. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in full herein.

88. Labor Code sections 201 and 202 require Defendants to pay employees all wages due no later than 72 hours after resignation from employment, or immediately in the case of discharge by the employer. Labor Code section 203 provides that if an employer willfully fails to timely pay such wages, then the employer must, as a penalty, continue to pay the subject employees' wages until the back wages are paid in full or an action is commenced. The penalty cannot exceed 30 days of wages.

89. More than 30 days have passed since Plaintiff and members of the Waiting Time Subclass have left Defendants' employ.

90. As alleged above, Plaintiff and the proposed Waiting Time Subclass are entitled to compensation for unpaid minimum, regular, and overtime wages, and premium wages for

any non-compliant meal period, but to date have not received such compensation.

91. As a consequence of Defendants' willful conduct in not paying wages owed, certain members of the Plaintiff Class are entitled to 30 days' wages as a penalty under Labor Code section 203 for failure to pay legal wages, with interest and attorneys' fees and costs.

92. Accordingly, Plaintiff and the Plaintiff Class and Waiting Time Subclass he seeks to represent request relief as described below, including statutory penalties up to the maximum amount as permitted by law.

93. Plaintiff and the Plaintiff Class he seeks to represent request relief as described below.

SIXTH CAUSE OF ACTION
VIOLATIONS OF THE UNFAIR COMPETITION LAW
(Business and Professions Code §§ 17200, *et seq.*)
(On Behalf of Plaintiff and the UCL Subclass Against Each Defendant)

94. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in full herein.

95. The failure to pay minimum, regular, and overtime wages, and meal period premium wages caused by Defendants' systematic and routine conduct constituted unlawful, deceptive, and unfair business acts and/or practices within the meaning of Business and Professions Code sections 17200, *et seq.*

96. 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 members of the proposed UCL Subclass seek restitution of premium wages and other pay owed, where such wages were due during the Class Period, according to proof.

97. 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, the "Minimum Wage Subclass," the "Overtime Subclass," and the "Meal Period Subclass" for any portion of time commencing within three (3) years before filing this complaint, and as the primary remedy for Plaintiff, and aforementioned Subclasses for any

1 portion of time during the *fourth year* before filing this Complaint, as this period of time
2 exceeds the general three-year statute of limitations on statutory wage claims, and is a basis for
3 restitution for all wage claims on an equitable basis and subject to court adjudication.

4 98. As a result of Defendants' unlawful and unfair business practice of failing to pay
5 minimum, regular, and overtime wages for all applicable hours worked, failing to pay meal
6 period premium wages, and failing to pay all wages owed upon termination of employment,
7 Plaintiff and each member of the proposed "Minimum Wage Subclass," "Overtime Subclass,"
8 and the "Meal Period Subclass" have suffered damages and are entitled to restitution in an
9 amount according to proof for a time period of four years prior to the filing of this Complaint
10 and until such time as (1) Defendants cease their unlawful business practices, (2) the
11 commencement of trial, and/or (3) a date otherwise determined by the Court pursuant to the
12 laws of California.

13 99. Plaintiff, on behalf of himself and the proposed UCL Subclass, requests the
14 violations of each Defendant be enjoined, and other equitable relief be provided, as this court
15 deems proper, including an order requiring Defendants to make tax contributions on the accrued
16 wages in the form of FICA, Social Security, Medicare, Unemployment Insurance, or other
17 appropriate payments. Defendants' conduct, business acts, and practices undermined
18 competition and were done in order to avoid costs other lawful employers comply with in order
19 to avoid payment of full compensation, wages, and statutory penalties owed.

20 100. Plaintiff and the members of the UCL Subclass he seeks to represent request
21 relief as described below, including restitution owed, in an amount according to proof, and for
22 reasonable costs of suit and reasonable attorney's fees as provided by the Labor Code, Code of
23 Civil Procedure section 1021.5, or other applicable law.

24 **SEVENTH CAUSE OF ACTION**
25 **PAGA CIVIL PENALTIES FOR FAILURE TO PAY ALL MINIMUM, REGULAR,**
26 **AND OVERTIME WAGES FOR ALL HOURS WORKED**
27 **(Labor Code §§ 510, 1194, 1197, 1197.1, and 1198, and the "Minimum Wages" and**
28 **"Hours and Days of Work" Sections of the Applicable Wage Order)**

101. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in

1 full herein.

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

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

15 104. Defendants’ conduct violates Labor Code sections 510, 1194, 1197, and 1198, as
16 well as the “Hours and Days of Work” and “Minimum Wages” sections of the applicable Wage
17 Order.

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

22 106. Defendants systematically and uniformly rounded time entries to reflect
23 scheduled shift start and end times rather than actual clocked time, which resulted in Plaintiff
24 and other aggrieved employees not being paid any wages for some time that they worked or
25 were under Defendants’ control. Defendants’ rounding system unilaterally benefitted
26 Defendants and harmed Plaintiffs and other aggrieved employees.

27 107. As a result, Defendants violated the Labor Code and are liable to Plaintiff, and
28 other aggrieved employees, for penalties as required by Labor Code sections 558(a)(1)-(2),

1 1197.1, and 2699(a) and (f)(2), as well as attorney's fees and costs all recoverable in an amount
2 according to proof.

3 108. Plaintiff, as a representative of the general public, will and does seek to recover
4 any and all penalties for each and every violation, in an amount according to proof, as to those
5 penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance
6 with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State
7 of California.

8 **EIGHTH CAUSE OF ACTION**
9 **PAGA CIVIL PENALTIES FOR FAILURE TO PROVIDE TIMELY AND**
10 **COMPLIANT MEAL PERIODS**
(Labor Code §§ 226.7 and 512, and the "Meal Periods" Section of the Applicable Wage
Order)

11 109. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in
12 full herein.

13 110. California Labor Code section 226.7(a) provides in pertinent part: "An employer
14 shall not require an employee to work during a meal...period mandated pursuant to an
15 applicable statute, or applicable regulation, standard, or order of the Industrial Welfare
16 Commission."

17 111. California Labor Code section 226.7(b) provides in pertinent part: "If an
18 employer fails to provide an employee a meal...period in accordance with a state law,
19 including, but not limited to, an applicable statute or applicable regulation, standard, or order of
20 the Industrial Welfare Commission...the employer shall pay the employee one additional hour
21 or pay at the employee's regular rate of compensation for each workday that the meal...period
22 is not provided."

23 112. California Labor Code section 512 provides: "An employer may not employ an
24 employee for a work period of more than five hours per day without providing the employee
25 with a meal period of not less than 30 minutes, except that if the total work period per day of the
26 employee is no more than six hours, the meal period may be waived by mutual consent of both
27 the employer and employee. An employer may not employ an employee for a work period of
28 more than 10 hours per day without providing the employee with a second meal period of not

1 less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second
2 meal period may be waived by mutual consent of the employer and the employee only if the
3 first meal period was not waived.”

4 113. California Labor Code section 558 provides in pertinent part: “(a) Any employer
5 or other person acting on behalf of the employer who violates, or causes to be violated, a section
6 of this chapter or any provision regulating hours and days of work in any order of the Industrial
7 Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation,
8 fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was
9 underpaid in addition to an amount sufficient to recover underpaid wages; (2) For each
10 subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay
11 period for which the employee was underpaid in addition to an amount sufficient to recover
12 underpaid wages.”

13 114. Defendants’ payroll system resulted in Plaintiff and other aggrieved employees
14 not being provided timely and compliant first and second meal periods. Defendants further
15 failed to pay one hour of premium pay to Plaintiff and other aggrieved employees on days on
16 which a compliant meal period was not provided.

17 115. Plaintiff, as a representative of the general public, will and does seek to recover
18 any and all penalties for each and every violation, in an amount according to proof, as to those
19 penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance
20 with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State
21 of California.

22 **NINTH CAUSE OF ACTION**
23 **PAGA CIVIL PENALTIES FOR FAILURE TO PROVIDE ACCURATE ITEMIZED**
24 **WAGE STATEMENTS**
(Labor Code §§ 246(i), 226(a), 226.3, 1198, and 2699, and the “Records” Section of the
Applicable Wage Order)

25 116. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in
26 full herein.

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

118. Labor Code section 226.3 imposes an additional civil penalty on the employer 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 Plaintiff is entitled to an award of costs and reasonable attorney's fees.

119. IWC Wage Order 4-2001, section 7 provides in pertinent part: "(A) Every employer shall keep accurate information with respect to each employee including the following: (1) Full name, home address, occupation, and social security number. (2) Birth date, if under 18 years, and designation as a minor. (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. Meal periods during which operations cease and authorized rest periods need not be recorded. (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee. (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request."

120. Labor Code section 226(a) is a statute listed under Labor Code section 2699.5 for which civil penalties may be recovered under the default civil penalty scheme outlined in Labor Code section 2699(f)(2), cited above. Labor Code section 226.3 provides an additional recoverable penalty "in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation...". The civil penalty assessments under Section 226.3 "*are in addition to any other penalty provided by law.*" [Emphasis added.]

121. The wage statements Defendants provided to Plaintiff and other aggrieved employees were noncompliant because they did not include the correct number of hours worked, wages earned, or rates of pay for hours worked and earned.

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122. Plaintiff, as a representative of the general public, will and does seek to recover any and all penalties for each and every violation, in an amount according to proof, as to those penalties available pursuant to the PAGA. 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.

TENTH CAUSE OF ACTION
PAGA CIVIL PENALTIES FOR FAILURE TO TIMELY PAY WAGES DUE DURING
AND UPON TERMINATION OF EMPLOYMENT
(Labor Code §§ 201, 201.3, 202, 203, 204, 210, 256, 1198, AND 2699, and the “Minimum Wages” Section of the Applicable Wage Order)

123. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in full herein.

124. 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.”

125. 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.”

126. 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.”

127. 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, 201.6, 201.8, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall 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

1 than 30 days. An employee who secretes or absents themselves to avoid payment to them, or
2 who refuses to receive the payment when fully tendered to them, including any penalty then
3 accrued under this section, is not entitled to any benefit under this section for the time during
4 which the employee so avoids payment.”

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

12 129. Labor Code section 256 states: “The Labor Commissioner shall impose a civil
13 penalty in an amount not exceeding 30 days pay as waiting time under the terms of Section
14 203.”

15 130. As a result of its rounding policy, Defendants failed to pay Plaintiff and other
16 aggrieved employees for all hours worked or under Defendants’ control. Additionally,
17 Defendants failed to provide meal period premiums owed when Defendants failed to provide
18 compliant meal periods to Plaintiff and other aggrieved employees. Consequently, Defendants
19 failed to timely pay Plaintiff and other aggrieved employees all wages due and owing during
20 and upon termination of employment.

21 131. Plaintiff, as a representative of the general public, will and does seek to recover
22 any and all penalties for each and every violation, in an amount according to proof, as to those
23 penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance
24 with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State
25 of California.

26 **VII.**

27 **PRAYER FOR RELIEF**

28 WHEREFORE, Plaintiff VERNELL BATTLE, JR., on behalf of himself and all other

1 similarly-situated employees, prays for judgment only as to those remedies which are
2 permissible in superior court or district court and not subject to being compelled to arbitration
3 as follows:

4 a. For certification of this action as a class action pursuant to Code of Civil
5 Procedure section 382;

6 b. For appointment of Plaintiff as the representatives of the Plaintiff Class and
7 Subclasses;

8 c. For appointment of counsel for Plaintiff as Class Counsel;

9 d. For an order bifurcating the action into liability and damages stages, or as
10 otherwise efficient for the administration of justice;

11 e. On the First Cause of Action, for unpaid minimum wages and/or regular wages
12 as required by Labor Code sections 1194-1197.1 for each “Minimum Wage” Subclass Member,
13 in an amount according to proof;

14 f. On the Second Causes of Action, for unpaid overtime wages as required by
15 Labor Code sections 1194-1197.1 for each “Overtime Wage” Subclass Member, in an amount
16 according to proof;

17 g. On the First and Second Causes of Action, for liquidated damages under Labor
18 Code section 1194.2 for each “Minimum Wage” and “Overtime Wage” Subclass Member for
19 unpaid minimum wages under Labor Code section 1194, in an amount according to proof;

20 h. On the Third Cause of Action, for recovery of unpaid “premium wages” for
21 failure to provide compliant first and/or second meal periods for qualifying shifts in violation of
22 Labor Code sections 226.7 and 512, and IWC Wage Order 1-2001, § 11 for Plaintiff and the
23 “Meal Period” Subclass, in an amount according to proof;

24 i. On the Fourth Cause of Action, for statutory damages and penalties under Labor
25 Code sections 226(e) and (g), to the extent provided by law, up to a maximum of \$4,000.00 per
26 “Wage Statement” Subclass Member, in an amount according to proof;

27 j. On the Fifth Cause of Action, for statutory damages of up to 30 days of pay at
28 the regular rate of pay for failing to timely remit payment of wages to former employees in the

1 “Waiting Time” Subclass pursuant to Labor Code sections 201-203, in an amount according to
2 proof;

3 k. On the Sixth Cause of Action, for the “UCL” Subclass, to recover all restitution
4 for minimum, regular, and overtime wages, and any other form of wages that were not paid to
5 members of the UCL Subclass during the Class Period as a result of conduct of all Defendants.
6 Said restitution may be calculated in accordance with California Business and Professions Code
7 sections 17203 and 17204, including trial of UCL claims by the Court in equity before legal
8 claims in an amount according to proof;

9 l. On the Seventh Cause of Action, for recovery of civil penalties as provided by
10 Labor Code section 2699, for unpaid minimum, regular, and overtime wages pursuant to Labor
11 Code sections 510, 1194, 1197, and 1198, in an amount according to proof;

12 m. On the Eighth Cause of Action, for recovery of civil penalties as provided by
13 Labor Code section 2699, for failure to provide timely and compliant meal periods or pay in
14 lieu thereof pursuant to Labor Code sections 226.7 and 512, in an amount according to proof;

15 n. On the Ninth Cause of Action, for recovery of civil penalties as provided by
16 Labor Code section 2699, for failure to provide accurate itemized wage statements pursuant to
17 Labor Code sections 246(i), 226(a), 226.3, and 1198, in an amount according to proof;

18 o. On the Tenth Cause of Action, for recovery of civil penalties as provided by
19 Labor Code section 2699, for failure to pay all wages due during and upon termination of
20 employment pursuant to Labor Code sections 201, 201.3, 202, 203, 204, 256, and 1198, in an
21 amount according to proof;

22 p. For restitution of wages and liquidated damages under Labor Code sections
23 1194, 1194.2, and 1197, in an amount to be assessed and according to proof;

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

26 r. For Attorneys’ fees and costs of suit, including expert fees and fees pursuant to
27 California Labor Code sections 218.5, 226(h), 1194, and/or Code of Civil Procedure section
28 1021.5 on a public benefit theory; and all other applicable state laws;

1 s. For injunctive and/or declaratory relief declaring the rounding policy non-neutral
2 and harmful to employees and shorting them wages for hours worked; and

3 t. Such other legal equitable relief as this Court deems necessary, just, equitable
4 and proper.

5 COHELAN KHOURY & SINGER
6 DAVTYAN LAW FIRM, INC.

7
8 Dated: July 8, 2020

9 By:  _____
10 Michael D. Singer, Esq.
J. Jason Hill, Esq.
Counsel for Plaintiff VERNELL BATTLE, JR.

11 **VIII.**

12 **DEMAND FOR JURY TRIAL**

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

14 COHELAN KHOURY & SINGER
15 DAVTYAN LAW FIRM, INC.

16 Dated: July 8, 2020

17 By:  _____
18 Michael D. Singer, Esq.
J. Jason Hill, Esq.
Counsel for Plaintiff VERNELL BATTLE, JR.