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on behalf of himself and others similarly situated

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

**SECOND 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 Compliant Rest Periods (Labor Code §§ 226.7 and IWC Wage Order 1-2001, § 12);
5. Failure to Provide Accurate Itemized Wage Statements showing all "Hours Worked" (Labor Code § 226);

6. Failure to Timely Pay all Wage Owed at Termination or Separation from Employment (Labor Code § 203); and
7. Unfair Competition and Restitution for Unpaid Wages pursuant to Business & Professions Code § 17200.
8. 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);
9. 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);
10. PAGA Civil Penalties for Failure to Provide Timely and Compliant Rest Periods (Labor Code § 226.7 and the “Rest Periods” Section of the Applicable Wage Order);
11. PAGA Civil Penalties for Failure to Reimburse Business Expenses (Labor Code §§ 2800, 2802, and the “Cash Shortage and Breakage” and “Uniforms and Equipment” Sections of the Applicable Wage Order);
12. 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
13. 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).
14. PAGA Civil Penalties for Failure to Maintain Accurate Records (Labor Code § 1174, and the “Records” 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 and representative action against his former
6 employer SAFRAN CABIN, INC., a Delaware Corporation, and DOES 1-25 (collectively
7 referred to as “Safran” or “Defendants”) for multiple wage and hour violations under the
8 California Labor Code to recover unpaid minimum, regular, and overtime wages. Specifically,
9 during all or a significant part of the applicable limitations period, or proposed “Class Period”
10 (which is defined at any time from four years prior to the commencement of this action until the
11 commencement of trial in the matter) and the proposed “PAGA Period” (which is defined as
12 one year and 65 days prior to the commencement on this action until the commencement of trial
13 in the matter), Plaintiff alleges Defendants did not pay him or other hourly non-exempt
14 employees for all “hours worked” and in fact, used an illegal “non-neutral” time rounding
15 procedure.

16 2. Plaintiff gave notice of these claims to the California Labor and Workforce
17 Development Agency (“LWDA”) and Defendants on April 28, 2020 in compliance with section
18 2699.3. There was no LWDA intervention within 65 days of that notice, and no notice of cure
19 by Defendants. Plaintiff asserts claims for civil penalties as a representative of the State of
20 California, as authorized by the Private Attorneys General Act (“PAGA”), Labor Code sections
21 2698, *et seq.*, and to the extent permitted by law, on behalf of the aggrieved employees who
22 held the positions identified and suffered one or more of the violations alleged. Labor Code §
23 2699.3(a)(2)(C). The April 28, 2020 Notice demonstrates Plaintiff is an aggrieved employee
24 and has standing to bring a representative action on behalf of the State and as a private attorney
25 general.

26 3. Plaintiff provided an Amended Notice to the LWDA on October 22, 2021
27 encompassing claims for rest periods and expense reimbursements. There was no LWDA
28 intervention within 65 days of that notice, and no notice of cure by Defendants.

1 4. Plaintiff seeks to represent all current and former non-exempt employees of
2 Defendants who suffered one or more of the alleged violations (“aggrieved employees”) during
3 the PAGA Period.

4 5. Over time, the use of this non-neutral rounding system resulted in underpaid
5 minimum, regular, and overtime wages for hundreds of hours for all impacted employees using
6 the same clock system. See, *Morillion v. Royal Packing Co.* (2000) 22 Cal. 4th 575, 578;
7 *Troester v. Starbucks Corp.* (2018) 5 Cal. 5th 829, 847 [a rounding system must be fair and
8 neutral on its face and as applied – over a period of time – in order to lawfully comply with
9 California’s requirement that workers be paid for “all hours worked.”]; *Leyva v. Medline Indus.*
10 (9th Cir. 2013) 716 F.3d 510, 512; *Corbin v. Time Warner Entertainment-Advance/Newhouse*
11 *Partnership* (9th Cir. 2016) 821 F.3d 1069, 1077 [“If an employer’s rounding practice does not
12 permit both upward and downward rounding, then the system is not neutral.”]; *See’s Candy*
13 *Shops, Inc. v. Superior Court* (2012) 210 Cal. App. 4th 889, 701, n.4; and *Silva v. See’s Candy*
14 *Shops, Inc.* (2016) 7 Cal. App. 5th 235, 251.

15 6. At all relevant times, Safran engaged in a uniform and systematic payroll
16 rounding policy that was non-neutral and resulted in underpayment of wages. As a result of
17 Safran’s practice of rounding time entries, as shown by its own records, Plaintiff was not
18 credited with all time worked and subject to Safran’s control. This policy and practice resulted
19 in the underpayment of minimum, regular, and overtime wages, in an amount subject to audit
20 and proof.

21 7. Similarly, Safran’s payroll system also resulted in non-compliant first and
22 second meal periods and rest periods as required under Labor Code sections 226.7 and 512, and
23 Industrial Welfare Commission Wage Order 1-2001, sections 11 and 12. Accordingly, Plaintiff
24 will seek unpaid meal and rest period premiums where Defendants’ records demonstrate a
25 missed, late, or untimely first or second meal period or rest period, in an amount according to
26 proof.

27 8. Safran also violated Labor Code section 2802 by failing to reimburse employees
28 who incurred reasonable and necessary business expenses on behalf of Defendants.

II.

JURISDICTION AND VENUE

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

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

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

III.

THE PARTIES

12. 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

1 paid approximately \$19.55 per hour and his employee ID was 101795. Safran has
2 approximately 7-10 operational locations throughout California and employs several hundred
3 hourly non-exempt employees subject to a common payroll and timekeeping system. Plaintiff
4 and other similar employees generally worked a schedule of 5 days per week for a scheduled 40
5 hours per week.

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

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

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

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

21 17. At all times relevant Safran did, and does, transact and conduct business in the
22 state of California, including, but not limited to, within the jurisdiction of the Court. At all times
23 relevant, Safran was Plaintiff's employer for purposes of the California wage and hour laws at
24 issue in this action.

25 18. Plaintiff is unaware of the true names, capacities, relationships, and extent of
26 participation in the conduct alleged of Defendants sued as DOES 1 through 25, inclusive, but is
27 informed and believes, and based on that alleges, that DOE Defendants are legally responsible
28 for the wrongful conduct alleged, and sues these Defendants by such fictitious names. Plaintiff

1 will amend this complaint when their true names and capabilities are ascertained.

2 19. Plaintiff is informed and believes and, based thereon alleges, that each
3 Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and
4 other similarly-situated employees, and exercised control over their wages, hours, and working
5 conditions. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
6 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a
7 joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each
8 Defendant is legally attributable to the other Defendants.

9 IV.

10 **GENERAL ALLEGATIONS**

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

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

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

20 23. The California Labor Code and applicable IWC Wage Order and portions of the
21 California Code of Regulations provide (1) that all persons employed in the State of California
22 shall be presumed to be an hourly or non-exempt employee; (2) that all "hours worked" and
23 subject to the control of the employer, whether exercised or not, are to be paid at least the
24 minimum wage as determined by the State of California, and for overtime wages at either 1.5x
25 the regular rate of pay or 2.0x the regular rate of pay when "hours worked" exceed 8 hours in a
26 single day or shift, or exceed 40 hours in a 168-total hour workweek. Labor Code sections
27 1194, *et seq.* provide that notwithstanding any agreement to work for a lesser wage, an
28 employee receiving less than the legal overtime or minimum wage compensation is entitled to

1 recover in a civil action the unpaid balance of their owed compensation, including interest
2 thereon, reasonable attorneys' fees, and costs of suit.

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

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

19 26. Upon information and belief, Plaintiff and other similarly-situated employees
20 worked in non-exempt, hourly positions, and during the relevant time period, each was subject
21 to the Defendants' rounding policy that resulted in underpayment of all minimum, regular, and
22 overtime wages owed.

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

27 28. As a result of the failure to pay all minimum, regular, and overtime wages, as
28 described herein, Defendants further failed to pay Plaintiff and all other similarly-situated

1 employees timely during employment as required by Cal. Labor Code section 203.

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

8 30. Similarly, Safran's payroll system also resulted in non-compliant first and
9 second meal periods as required under Labor Code sections 226.7 and 512, and Industrial
10 Welfare Commission Wage Order 1-2001, section 11. Initial examination of Mr. Battle's pay
11 and time records shows that first meal periods were either not provided or untimely for nearly
12 73% of all shifts worked. Examination of Safran's records as to whether second meal periods
13 were provided for shifts greater than 10 hours in length demonstrate a violation rate of 100% of
14 such qualifying shifts worked by Mr. Battle. Plaintiff and others similarly situated were
15 unaware of their right to second meal periods, and thus, that one-hour pay "premiums" would
16 be owed for each documented instance where a second meal period was required but not
17 provided. Thus, like the non-neutral rounding policy, Mr. Battles' timekeeping and payroll
18 records showing a meal period violation without corresponding meal period "premium" pay
19 suggests that many other employees at Safran in California were not paid what is a required
20 minimum standard under California Labor Code sections 226.7 and 512(b), as well as IWC
21 Wage Order 1-2001, section 11.

22 31. Similarly, Defendants had a consistent policy which did not authorize or permit
23 Plaintiff and all other similarly-situated employees to receive rest periods of at least ten (10)
24 minutes per four (4) hours, or major fraction, worked, and failed to pay such employees one (1)
25 hour of pay at their regular rate of compensation for each workday a rest period was not
26 authorized or permitted, as required by California wage and hour laws.

27 32. During the PAGA Period, Defendants had a consistent policy of failing to
28 reimburse Plaintiff and all other similarly-situated employees for all necessary and reasonable

1 business expenses incurred in the discharge of duties, in violation of California state wage and
2 hour laws.

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

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

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

17 V.

18 **CLASS ACTION ALLEGATIONS**

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

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

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

27 Plaintiff Subclass One ("Minimum Wage Subclass"): All members of
28 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.

38. 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.

39. 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" at the regular rate of pay as required by Labor Code sections 226.7 and 512, and IWC Wage Order 1-2001, section 11.

40. 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 ("Rest Period Subclass"): All members of the Plaintiff Class who, within the applicable limitations period, were not provided timely and compliant rest periods or paid a "premium wage" at the regular rate of pay as required by Labor Code sections 226.7 and 512, and IWC Wage Order 1-2001, section 11.

41. 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 ("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.

42. 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 Six ("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.

43. 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:

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

6 44. Plaintiff reserves the right under California Rules of Court, Rule 3.765(b) and
7 other applicable law to amend or modify the class definition with respect to issues or in any
8 other ways. Plaintiff is the Named Representative and is a member of the Plaintiff Class.
9 Plaintiff seeks class-wide recovery based on the allegations set forth in this complaint. The
10 Court can define the Plaintiff Class and create additional subclasses as may be necessary or
11 desirable to adjudicate common issues and claims of the Plaintiff Class Members if, based on
12 discovery of additional facts, the need arises.

13 45. As set forth in the Prayer, below, Plaintiff will move the Court to try the UCL
14 Subclass Claims before the Court in Equity before trying the legal claims to a trier of fact in this
15 action. See, *Hoopes v. Dolan* (2008) 168 Cal. App. 4th 146, 156-157; *Pellegrino v. Robert Half*
16 *Intern., Inc.* (2010) 181 Cal. App. 4th 713 “[B]etter practice” is for “the trial court [to]
17 determine the equitable issues before submitting the legal ones to the jury.”]. Same, *Hodge v.*
18 *Superior Court* (2006) 145 Cal. App. 4th 278, 284 and *Nwosu v. Uba* (2004) 122 Cal. App. 4th
19 1229, 1238, 1244.

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

24 47. Numerosity. The members of the Plaintiff Class are so numerous that individual
25 joinder of all of them as Plaintiff is impracticable. While the exact number of the Plaintiff Class
26 Members is unknown to Plaintiff at this time, Plaintiff is informed and believes and thereon
27 alleges that there are more than 100 Plaintiff Class Members.

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

- a. Did Defendants violate Labor Code sections 510, 1197, or 1194 by failing to pay minimum, regular, and/or overtime wages for all hours worked, including time subject to Defendants' control?
- b. Did Defendants violate Labor Code sections 226.7 and 512, and IWC Wage Order 1-2001, section 11 where Defendants' records show a missed, late, or untimely first or second meal period for qualifying shifts and a failure to pay a "premium wage" at the regular rate of pay?
- c. Did Defendants violate Labor Code sections 226.7 and IWC Wage Order 1-2001, section 12 where Defendants' records by failing to provide rest periods for qualifying shifts and a failure to pay a "premium wage" at the regular rate of pay?
- d. 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?
- e. 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?
- f. 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?
- g. What is the appropriateness and nature of relief to each Plaintiff Class and Subclass Member?
- h. What is the extent of liability of each Defendant, including DOE defendants, to each Plaintiff Class and Subclass Member?

49. 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

1 policies and practices of Defendants resulting in underpayment for straight-time and overtime
2 hours. Defendants failed to provide accurate, itemized wage statements to Plaintiff and
3 members of the Plaintiff Class. Defendants also failed to pay all wages owed to Plaintiff and
4 Plaintiff Class Members upon termination of employment.

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

9 51. Superiority. A class action is superior to other available means for fair and
10 efficient adjudication of the claims of the Plaintiff Class and would be beneficial for the parties
11 and the Court. Class action treatment will allow a large number of similarly-situated persons to
12 prosecute their common claims in a single forum, simultaneously, efficiently, and without the
13 unnecessary duplication of effort and expense that numerous individual actions would require.
14 The damages suffered by each Plaintiff Class Member are relatively small in the sense pertinent
15 to class action analysis, and the expense and burden of individual litigation would make it
16 extremely difficult or impossible for the individual Plaintiff Class Members to seek and obtain
17 individual relief. A class action will serve an important public interest by permitting such
18 individuals to effectively pursue recovery of the sums owed to them. Further, class litigation
19 prevents the potential for inconsistent or contradictory judgments raised by individual litigation.

20 52. Manageability. The class action procedure will be useful and manageable here
21 because all the liability and damages can be ascertained by forensic review of corporate and
22 employer timekeeping and payroll records and evidence that the Defendants implemented an
23 employer-favored non-neutral rounding system without advising employees and without having
24 the employees not begin performing work before their scheduled start time, while also insisting
25 that employees arrive early for scheduled shifts. Data analysis, corporate policy, and PMQ
26 testimony will demonstrate that Safran knowingly accepted the benefits of employees' free
27 labor and knew that the rounding system would significantly benefit the employer and harm the
28 employee.

VI.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

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

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

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

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

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

55. 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.”

56. 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.”

57. 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.”

58. 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.

59. 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.”

///

60. 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.

61. 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.

62. 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.

63. 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.

64. 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)

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

66. 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

1 addition, any work in excess of eight hours on any seventh day of a workweek shall be
2 compensated at the rate of no less than twice the regular rate of pay of an employee.”

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

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

9 69. As set forth herein, Defendants willfully breached their obligations to pay
10 overtime wages, violating the provisions of Labor Code sections 510 and 1194, and the
11 applicable Wage Order.

12 70. Through Defendants’ conduct during the applicable statutory period including,
13 but not limited to, the conduct alleged herein, including that alleged on information and belief,
14 Defendants failed to pay Plaintiff and Plaintiff Class Members all overtime wages for all
15 overtime worked based on the unlawful rounding policy in violation of Labor Code sections
16 510 and 1198, and the applicable Wage Order.

17 71. As a result of the unlawful acts of Defendants, Plaintiff and the Plaintiff Class
18 and the Overtime Subclass he seeks to represent have been deprived of overtime wages and/or
19 other compensation in amounts to be determined at trial, and are entitled to recovery of such
20 amounts, plus interest thereon, attorneys’ fees, and costs.

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

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

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

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1 74. Labor Code section 226.7(b) provides: “An employer shall not require an
2 employee to work during a meal or rest or recovery period mandated pursuant to an applicable
3 statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the
4 Occupational Safety and Health Standards Board, or the Division of Occupational Safety and
5 Health.”

6 75. Labor Code section 226.7(c) provides: “If an employer fails to provide an
7 employee a meal or rest or recovery period in accordance with a state law, including, but not
8 limited to, an applicable statute or applicable regulation, standard, or order of the Industrial
9 Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of
10 Occupational Safety and Health, the employer shall pay the employee one additional hour of
11 pay at the employee’s regular rate of compensation for each workday that the meal or rest or
12 recovery period is not provided.”

13 76. Labor Code section 512(a) provides: “(a) An employer shall not employ an
14 employee for a work period of more than five hours per day without providing the employee
15 with a meal period of not less than 30 minutes, except that if the total work period per day of the
16 employee is no more than six hours, the meal period may be waived by mutual consent of both
17 the employer and employee. An employer shall not employ an employee for a work period of
18 more than 10 hours per day without providing the employee with a second meal period of not
19 less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second
20 meal period may be waived by mutual consent of the employer and the employee only if the
21 first meal period was not waived.”

22 77. IWC Wage Order 1-2001, section 11(A) provides: “No employer shall employ
23 any person for a work period of more than five (5) hours without a meal period of not less than
24 30 minutes, except that when a work period of not more than six (6) hours will complete the
25 day’s work the meal period may be waived by mutual consent of the employer and the
26 employee.”

27 78. IWC Wage Order 1-2001, section 11(B) provides: “An employer may not
28 employ an employee for a work period of more than ten (10) hours per day without providing

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

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

11 80. IWC Wage Order 1-2001, section 11(D) provides: “If an employer fails to provide an
12 employee a meal period in accordance with the applicable provisions of this order, the employer shall
13 pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each
14 workday that the meal period is not provided.”

15 81. As alleged above, Safran and Doe Defendants 1-25, inclusive, have a regular
16 policy and practice of failing to provide timely, compliant first or second meal periods for
17 qualifying shifts and did not provide meal period “premium pay” of one hour of pay even when
18 records demonstrate late, missed, or shortened meal periods, or failed to pay premium pay at the
19 applicable regular rate of pay.

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

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

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FOURTH CAUSE OF ACTION
FAILURE TO PROVIDE REST PERIODS
(Violation of Cal. Labor Code §§ 226.7 and IWC Wage Order 1, § 12)

84. Plaintiff re-alleges and incorporates herein by this reference each and every allegation set forth in all previous paragraphs of the Complaint.

85. Labor Code § 226.7(a) provides that no employer shall require an employee to work during any rest period mandated by the IWC Wage Orders.

86. Section 12 of the Applicable IWC Wage Order states “every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period” and the “authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof” unless the total daily work time is less than three and one-half (3½) hours.

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

88. Labor Code 226.7(d) provides that a rest period mandated by state law or IWC Wage Order “shall be counted as hours worked, for which there shall be no deduction from wages.”

89. During the relevant time period, Plaintiff and members of the Plaintiff Class did not receive a ten (10) minute net rest period for every four (4) hours or major fraction thereof worked.

90. Labor Code § 226.7(b) and section 12 IWC Wage Order 1 requires an employer to pay an employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the rest period is not provided.

91. At all relevant times, Defendants failed to pay Plaintiff and members of the Plaintiff Class the full rest period premium for missed rest periods pursuant to Labor Code § 226.7(b) and section 12 IWC Wage Order 1, and failed to pay premium pay at the applicable regular rate of pay.

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

7 93. Defendants' unlawful acts deprived Plaintiff and members of the Plaintiff Class
8 Plaintiff seeks to represent of premium wages and/or other compensation in amounts to be
9 determined at trial.

10 94. Plaintiff seeks to recover in a civil action the unpaid balance of the full amount
11 of the unpaid wages resulting from Defendants' rest period violations and penalties to the
12 fullest extent permissible including those permitted pursuant to Labor Code sections 226.7.

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

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

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

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

26 98. Labor Code Section 226(a) provides in pertinent part: "An employer,
27 semimonthly or at the time of each payment of wages, shall furnish to his or her employee,
28 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

1 writing showing (1) gross wages earned, (2) total hours worked by the employee, except as
2 provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece
3 rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions
4 made on written orders of the employee may be aggregated and shown as one item, (5) net
5 wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name
6 of the employee and only the last four digits of his or her social security number or an employee
7 identification number other than a social security number, (8) the name and address of the legal
8 entity that is the employer and, if the employer is a farm labor contractor, as defined in
9 subdivision (b) of Section 1682, the name and address of the legal entity that secured the
10 services of the employer, and (9) all applicable hourly rates in effect during the pay period and
11 the corresponding number of hours worked at each hourly rate by the employee.”

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

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

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

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102. 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).

103. 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.

104. 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.

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

SIXTH 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)

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

107. 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.

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

109. 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.

110. 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.

111. 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.

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

SEVENTH 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)

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

114. 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.*

115. 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.

116. 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 portion of time during the *fourth year* before filing this Complaint, as this period of time exceeds the general three-year statute of limitations on statutory wage claims, and is a basis for

1 restitution for all wage claims on an equitable basis and subject to court adjudication.

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

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

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

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

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

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

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

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

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

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

26 126. As a result, Defendants violated the Labor Code and are liable to Plaintiff, and
27 other aggrieved employees, for penalties as required by Labor Code sections 558(a)(1)-(2),
28 1197.1, and 2699(a) and (f)(2), as well as attorney’s fees and costs all recoverable in an amount

1 according to proof.

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

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

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

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

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

22 131. California Labor Code section 512 provides: “An employer may not employ an
23 employee for a work period of more than five hours per day without providing the employee
24 with a meal period of not less than 30 minutes, except that if the total work period per day of the
25 employee is no more than six hours, the meal period may be waived by mutual consent of both
26 the employer and employee. An employer may not employ an employee for a work period of
27 more than 10 hours per day without providing the employee with a second meal period of not
28 less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second

1 meal period may be waived by mutual consent of the employer and the employee only if the
2 first meal period was not waived.”

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

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

17 134. 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 **TENTH CAUSE OF ACTION**
23 **PAGA CIVIL PENALTIES FOR FAILURE TO PROVIDE TIMELY AND**
24 **COMPLIANT REST PERIODS**
(Labor Code § 226.7 and the “Rest Periods” Section of the Applicable Wage Order)

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

27 136. California Labor Code section 226.7(b) provides in pertinent part: “An employer
28 shall not require an employee to work during a meal or rest or recovery period mandated

1 pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial
2 Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of
3 Occupational Safety and Health.”

4 137. California Labor Code section 226.7(c) provides in pertinent part: “If an
5 employer fails to provide an employee a ... rest ... period in accordance with a state law,
6 including, but not limited to, an applicable statute or applicable regulation, standard, or order of
7 the Industrial Welfare Commission...the employer shall pay the employee one additional hour
8 or pay at the employee’s regular rate of compensation for each workday that the ... rest ...
9 period is not provided.”

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

19 139. Defendants’ payroll system resulted in Plaintiff and other aggrieved employees
20 not being provided timely and compliant rest periods. Defendants further failed to pay one hour
21 of premium pay to Plaintiff and other aggrieved employees on days on which a compliant rest
22 period was not provided and failed to pay premium pay at the applicable regular rate of pay.

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

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ELEVENTH CAUSE OF ACTION
PAGA CIVIL PENALTIES FOR FAILURE TO REIMBURSE BUSINESS EXPENSES
(Labor Code §§ 2800, 2802 and the “Cash Shortages and Breakage” and “Uniforms and
Equipment” Sections of the Applicable Wage Order)

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

142. Labor Code sections 2699(a) and 2699(f) provide for assessment and collection of civil penalties for violations of the labor code, to be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.

143. Aggrieved employees are entitled to pursue civil penalties under the PAGA for violations of Labor Code sections 2800 and 2802. Labor Code § 2699.5.

144. As alleged herein, during the PAGA period, Defendant failed to reimburse Plaintiff and other aggrieved employees for or all necessary expenditures incurred for business purposes.

145. Defendants’ conduct violated, and continues to violate, Labor Code sections 2800 and 2802.

146. As a result, Defendants violated the Labor Code and are liable to Plaintiff, and other aggrieved employees, for penalties as required by Labor Code sections 2699(a) and (f)(2), as well as attorney’s fees and costs all recoverable in an amount according to proof.

147. 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.

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TWELFTH CAUSE OF ACTION
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)

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

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

150. 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.

151. 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.”

152. 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

1 violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation
2 in a subsequent citation...”. The civil penalty assessments under Section 226.3 “*are in addition*
3 *to any other penalty provided by law.*” [Emphasis added.]

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

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

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

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

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

25 157. Labor Code section 201 states: “If an employer discharges an employee, the
26 wages earned and unpaid at the time of discharge are due and payable immediately.”

27 158. Labor Code section 202 states: “If an employee not having a written contract for
28 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

1 quitting.”

2 159. Labor Code section 203(a) states, in relevant part: “If an employer willfully fails
3 to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.6,
4 201.8, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the
5 wages of the employee shall continue as a penalty from the due date thereof at the same rate
6 until paid or until an action therefor is commenced; but the wages shall not continue for more
7 than 30 days. An employee who secretes or absents themselves to avoid payment to them, or
8 who refuses to receive the payment when fully tendered to them, including any penalty then
9 accrued under this section, is not entitled to any benefit under this section for the time during
10 which the employee so avoids payment.”

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

18 161. Labor Code section 256 states: “The Labor Commissioner shall impose a civil
19 penalty in an amount not exceeding 30 days pay as waiting time under the terms of Section
20 203.”

21 162. As a result of its rounding policy, Defendants failed to pay Plaintiff and other
22 aggrieved employees for all hours worked or under Defendants’ control. Additionally,
23 Defendants failed to provide meal period premiums owed when Defendants failed to provide
24 compliant meal periods to Plaintiff and other aggrieved employees. Consequently, Defendants
25 failed to timely pay Plaintiff and other aggrieved employees all wages due and owing during
26 and upon termination of employment.

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

1 penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance
2 with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State
3 of California.

4 **FOURTEENTH CAUSE OF ACTION**
5 **PAGA CIVIL PENALTIES FOR FAILURE TO MAINTAIN ACCURATE RECORDS**
6 **(Labor Code § 1174 and 2699, and the “Records” Section of the Applicable Wage Order)**

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

9 165. Labor Code section 1174(d) requires each employee to “[k]eep, at a central
10 location in the state or at the plants or establishments at which employees are employed, payroll
11 records showing the hours worked daily by and the wages paid to, and the number of piece-rate
12 units earned by and any applicable piece rate paid to, employees employed at the respective
13 plants or establishments.”

14 166. The “Records” section of the applicable IWC wage order requires each employer
15 to maintain “[t]ime records showing when the employee begins and ends each work period.
16 Meal periods, split shift intervals and total daily hours worked shall also be recorded.”

17 167. California Labor Code section 1174.5 imposes a \$500 civil penalty for any
18 failure to maintain records required by Section 1174(d).

19 168. Labor Code sections 2699(a) and 2699(f) provide for assessment and collection
20 of civil penalties for violations of the labor code, to be recovered through a civil action brought
21 by an aggrieved employee on behalf of himself or herself and other current or former employees
22 pursuant to the procedures specified in Section 2699.3.

23 169. Defendants failed to maintain all records as required by law through use of an
24 unlawful and no-neutral rounding policy for tracking employees’ time.

25 170. As a result, Defendants willfully violated the Labor Code and are liable to
26 Plaintiff, and other aggrieved employees, for penalties as required by Labor Code sections
27 1174.5 and 2699(a) or, in the alternative, section 2699(f)(2), and recoverable in an amount
28 according to proof.

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171. 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.

VII.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff VERNELL BATTLE, JR., on behalf of himself and all other similarly-situated and aggrieved employees, prays for judgment only as to those remedies which are permissible in superior court or district court and not subject to being compelled to arbitration as follows:

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

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

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

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

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

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

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

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

5 i. On the Fourth Cause of Action, for recovery of unpaid “premium wages” for
6 failure to provide compliant rest periods for qualifying shifts in violation of Labor Code
7 sections 226.7 and 512, and IWC Wage Order 1-2001, section 12 for Plaintiff and the “Rest
8 Period” Subclass, in an amount according to proof;

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

12 k. On the Sixth Cause of Action, for statutory damages of up to 30 days of pay at
13 the regular rate of pay for failing to timely remit payment of wages to former employees in the
14 “Waiting Time” Subclass pursuant to Labor Code sections 201-203, in an amount according to
15 proof;

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

22 m. That this action be maintained as a Representative Action under the PAGA, and
23 Plaintiff and his counsel be provided with all enforcement capability as if the action were
24 brought by the California Division of Labor Standards Enforcement;

25 n. For the Plaintiff to be recognized by the Court as serving as a Representative of
26 the LWDA, that he be deemed an “aggrieved employee,” and that he be awarded some form of
27 enhanced compensation for bringing this action should she prevail and provide benefit to the
28 State of California or other “aggrieved employees,” subject to the Court’s discretion

1 o. On the Eighth Cause of Action, for recovery of civil penalties as provided by
2 Labor Code section 2699, for unpaid minimum, regular, and overtime wages pursuant to Labor
3 Code sections 510, 1194, 1197, and 1198, in an amount according to proof;

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

7 q. On the Tenth Cause of Action, for recovery of civil penalties as provided by
8 Labor Code section 2699, for failure to provide timely and compliant rest periods or pay in lieu
9 thereof pursuant to Labor Code section 226.7, in an amount according to proof;

10 r. On the Eleventh Cause of Action, for recovery of civil penalties as provided by
11 Labor Code section 2699, for failure to reimburse business expenses pursuant to Labor Code
12 section 2802, in an amount according to proof;

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

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

20 u. On the Fourteenth Cause of Action, for recovery of civil penalties as provided
21 by Labor Code section 2699, for failure to maintain records pursuant to Labor Code sections
22 1174 and 1174.5

23 v. For restitution of wages and liquidated damages under Labor Code sections
24 1194, 1194.2, and 1197, in an amount to be assessed and according to proof;

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

27 x. For Attorneys' fees and costs of suit, including expert fees and fees pursuant to
28 California Labor Code sections 218.5, 226(h), 1194, and/or Code of Civil Procedure section

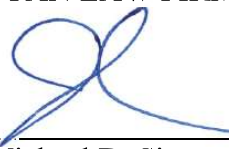
1021.5 on a public benefit theory; and all other applicable state laws;

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

z. Such other legal equitable relief as this Court deems necessary, just, equitable and proper.

COHELAN KHOURY & SINGER
DAVTYAN LAW FIRM, INC.

Dated: January 25, 2022

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

VIII.

DEMAND FOR JURY TRIAL

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

COHELAN KHOURY & SINGER
DAVTYAN LAW FIRM, INC.

Dated: January 25, 2022

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

1 **PROOF OF SERVICE**

2 ***Battle, Jr. v. Safran Cabin, Inc.***

3 ***O.C.S.C. Case No. 30-2020-01140831-CU-OE-CXC***

4 I, Karla Sousa, declare as follows:

5 I am employed in the County of San Diego, State of California. I am over the age of 18 and not a
6 party to this action. My business address is 605 "C" Street, Suite 200, San Diego, California 92101.

7 On January 25, 2022, I instituted service of the forgoing document(s) described as:

8 **SECOND AMENDED CLASS ACTION COMPLAINT AND REPRESENTATIVE**
9 **ACTION FOR DAMAGES, PENALTIES, AND RESITUTION**

10 on the following party:

11 **Counsel for Defendant:**

12 Alaya B. Meyers, Esq.
13 Tracy R. Williams, Esq.
14 LITTLER MENDELSON, P.C.
15 18565 Jamboree Road, Suite 800
16 Irvine, CA 92612
17 ameyers@littler.com
18 trwilliams@littler.com

19 in the manner described below:

20 [XX] **BY EMAIL:** Pursuant to Cal. Code of Civil Procedure section 1010.6(e)(1), I transmitted the
21 foregoing document(s) electronically via the email addresses listed above.

22 [XX] **STATE:** I declare under penalty of perjury under the laws of the State of California that the
23 foregoing is true and correct.

24 Executed on January 25, 2022, at San Diego, California.

25
26
27
28

Karla Sousa