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County of Los Angeles

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on behalf of himself and all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

COREY SMITH, on behalf of himself and all
others similarly situated

Plaintiffs,

vs.

VELOCITY AEROSPACE GROUP, INC.
and DOES 1 through 100, inclusive,

Defendants.

Case No. **20STCV03159**

**CLASS ACTION COMPLAINT FOR
DAMAGES AND PENALTIES**

1. FAILURE TO PAY STRAIGHT AND OVERTIME COMPENSATION IN VIOLATION OF LABOR CODE §§ 223, 510, 558, 1194, 1198, and 1199;
2. FAILURE TO PROVIDE MEAL PERIODS IN VIOLATION OF LABOR CODE §§ 226.7, 512, 516, 558, and IWC Wage Orders;
3. FAILURE TO AUTHORIZE AND PERMIT PAID REST PERIODS;
4. FAILURE TO PROVIDE ITEMIZED WAGE STATEMENTS IN VIOLATION OF LABOR CODE § 226
5. FAILURE TO KEEP ACCURATE PAYROLL RECORDS IN VIOLATION OF LABOR CODE §§ 226, 558, 1198 AND THE LW.C. WAGE ORDERS;
6. UNLAWFUL BUSINESS PRACTICES IN VIOLATION OF BUS. & PROF. CODE § 17200, *ET SEQ.*;
7. FAILURE TO PAY WAITING TIME PENALTIES IN VIOLATION OF LABOR CODE §§ 203, 558;
8. FAILURE TO PAY WAGES UPON TERMINATION IN VIOLATION OF LABOR CODE § 1174(d);

I.

CLASS ACTION COMPLAINT FOR DAMAGES AND PENALTIES

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9. FAILURE TO PAY WAGES UPON
TERMINATION IN VIOLATION OF
LABOR CODE §§ 2800 and 2802;
10. FAILURE TO PAY MINIMUM WAGES

DEMAND FOR JURY TRIAL

Plaintiff Corey Smith individually, and on behalf of himself and all other similarly situated (hereinafter collectively referred to "Plaintiffs"), hereby file this Complaint against Defendant Velocity Aerospace Group, Inc. and DOES 1 through 100, Inclusive (hereinafter collectively referred to as "Defendants"). Plaintiffs are informed and believe, and on the basis of that information and belief, allege as follows:

I. INTRODUCTION

1. This is a Class Action, pursuant to California Code of Civil Procedure §382 on behalf of Plaintiff and other non-exempt current and former employees employed by Defendants

2. Representative Plaintiff Corey Smith is an individual who resides in California and was employed by Defendant Velocity Aerospace Group, Inc. ("Velocity" or "Defendants") from on or about the year 1987 until on or about November 8, 2019.

3. This is a civil action seeking recovery for Defendant's violations of California Labor Code ("Labor Code") §1194, et seq., §1197, §200 et seq., Labor Code §500 et seq., California Business and Professions Code ("B& PC") §17000 et seq. and §17200 , et seq., the applicable Wage Order(s) issued by the California Industrial Welfare Commission (hereinafter, the "IWC Wage Order(s)") and related common law principles.

4. Plaintiffs' action seeks monetary damages, including full restitution from Defendants as a result of Defendants' unlawful, fraudulent and/or unfair business practices.

5. The acts complained of herein occurred, occur and will occur, at least in part, within the time period from four (4) years preceding the filing of this complaint, up to and through the time of trial for this matter.

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1 12. Plaintiff seeks unpaid wages, penalties and other compensation from Defendants for
2 the relevant time period because Defendants have (Plaintiff himself was harmed by):

- 3 a. Failed to pay all wages due including overtime wages for all hours worked;
4 b. Failed to provide meal periods;
5 c. Failed to authorize and permit paid rest periods;
6 d. Failed to provide itemized wage statements;
7 e. Failed to keep accurate payroll records;
8 f. Conducted unfair business practices;
9 g. Failed to pay waiting time penalties;
10 h. Violated Labor Code § 1174(d);
11 i. Violated Labor Code §§ 2800 and 2802; and
12 j. Failed to pay the required minimum wage for all hours worked.

13 **DEFENDANTS**

14 13. Plaintiff is informed and believes, and thereon alleges, that, at all times herein
15 mentioned, Defendant Velocity was and is a California corporation duly organized, authorized, and
16 licensed to do business in the State of California with its primary place of business in Los Angeles
17 County. Plaintiff is also informed and believes, and thereon alleges, that, at all times herein
18 mentioned, Defendant Velocity was and is a California business duly organized, authorized, and
19 licensed to do business in the State of California with its primary place of business in Los Angeles
20 County. Defendants Velocity and DOES 1 through 100 were joint employers of Plaintiffs in that
21 they were operating as a joint enterprise and both suffered and permitted Plaintiffs to work for each
22 and both of them; controlled Plaintiffs hours and working conditions; Controlled Plaintiffs wages;
23 Defendants Velocity and DOES 1 through 100 made the decision to hire Plaintiff and had control
24 of Plaintiff s employment and therefore jointly employed Plaintiff. These Defendants and DOES
25 are collectively hereinafter referred to as "Defendants."

26 **DOES 1 TO 100. INCLUSIVE**

27 14. DOES 1 to 100, inclusive are not, and/or at all times mentioned in this Complaint
28 were doing business in the State of California.

1 15. Plaintiffs do not know the true names or capacities, whether individual, partner or
2 corporate, of DOES 1 to 100, inclusive and for that reason, DOES 1 to 100 are sued under such
3 fictitious names pursuant to California Code of Civil Procedure ("CCP") §474.

4 16. Plaintiffs will seek leave of court to amend this Complaint to allege such names and
5 capacities as soon as they are ascertained.

6 ALL DEFENDANTS

7 17. Defendants, and each of them, are now and/or at all times mentioned in this
8 Complaint were in some manner legally responsible for the events, happenings and circumstances
9 alleged in this Complaint.

10 18. Defendants, and each of them, proximately subjected Plaintiffs to the unlawful
11 wrongs, complaint, injuries and/or damages alleged in the Complaint.

12 19. Defendants, and each of them, are now and/or at all times mentioned in this
13 Complaint were the agents, servants and/or employees of some or all other Defendants, and vice
14 versa, and in doing the things alleged in this Complaint, Defendants are now and/or at all times
15 mentioned in this Complaint were acting within the course and scope of that agency, servitude
16 and/or employment.

17 20. Defendants, and each of them, are now and/or at all times mentioned in this
18 Complaint were members of and/or engaged in a joint venture, partnership and common enterprise,
19 and were acting within the course and scope of, and in pursuance of said joint venture, partnership
20 and common enterprise.

21 21. Defendants, and each of them, at all times mentioned in this Complaint concurred
22 and contributed to the various acts and omissions of each and every one of the other Defendants in
23 proximately causing complaint, injuries and/or damages alleged in this Complaint.

24 22. Defendants, and each of them, at all times mentioned in this Complaint approved of,
25 condoned and/or otherwise ratified each and every one of the acts and/or omissions alleged in this
26 Complaint.

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23. Defendants, and each of them, at all times mentioned in this Complaint aided and abetted the acts and omissions of each and every one of the other Defendants thereby proximately causing the damages alleged in this Complaint.

III. JURISDICTION AND VENUE

24. The California Superior Court has jurisdiction in this matter due to Defendants' violations of Labor Code §201 et seq, Labor Code §500 et seq., Labor Code § 1194. Business & Professions Code §17200 et seq., the IWC Wage Order(s) and related common law principles.

25. The California Superior Court also has jurisdiction in this matter because both the individual and aggregate monetary damages and restitution sought herein exceed the minimal jurisdictional limits of the Superior court and will be established at trial according to proof.

26. The California Superior Court also has jurisdiction in this matter because the individual claims of the members of the Classes herein are under the seventy-five thousand (\$75,000) jurisdictional threshold for Federal Court and the aggregate claim is under five million dollars (\$5,000,000) threshold of the Class Action Fairness Act of 2005 ("CAFA"). Further, there is no federal question at issue, as the issues herein are based solely on California statutes and law, including the Labor Code, IWC Wage Order(s), CCP, and Business & Profession Code. The present action is also exempt from CAFA because this matter is a local controversy within the meaning of CAFA as follows: 1) More than two thirds of the putative class members are residents of California 2) the principal injuries resulting from defendant's conduct occurred in California 3) no class action asserting similar factual allegations has been filed against any defendant in the preceding three years and 4) at least one defendant is a citizen of California and significant relief is sought from that defendant and that defendant's conduct is a significant basis for the claims.

27. Venue is proper in Los Angeles County pursuant to CCP §395(a) and CCP §395.5 in that liability arose there because at least some of the transactions that are the subject matter of this Complaint occurred therein and/or each Defendant either is found, maintains offices, transacts business, and/or has an agent therein.

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IV. CLASS ALLEGATIONS

28. CCP §382 provides in pertinent part: "... [W]hen the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all.

29. Plaintiffs bring this suit as a class action pursuant to CCP § 382, on behalf of individuals who are entitled to the monies unlawfully withheld by Defendants.

30. The putative classes Plaintiffs will seek to certify are currently composed of and defined as follows:

a. All of Defendants' California-based non-exempt, hourly paid current and former employees, employed during the relevant time period (as defined, supra) to whom Defendants failed to pay overtime wages (hereinafter, the "Overtime Class");

b. All of Defendants' California-based non-exempt, hourly paid current and former employees, employed during the relevant time period (as defined, supra) to whom Defendants failed to provide the legally requisite meal periods (hereinafter, the "Meal Period Class");

c. All of Defendants' California-based non-exempt, hourly paid current and former employees, employed during the relevant time period (as defined, supra) to whom Defendants' failed to provide the legally requisite rest periods (hereinafter, the "Rest Period Class");

d. All of Defendants' California-based non-exempt, hourly paid current and former employees, employed during the relevant time period (as defined, supra) to whom Defendants' failed to provide legally requisite itemized wage statements in Violation of Labor Code § 226 (hereinafter, the "LC 226 Class");

e. All of Defendants' California-based non-exempt, hourly paid current and former employees, employed during the relevant time period (as defined, supra) to whom Defendants' failed to keep accurate payroll records (hereinafter, the "Payroll Records Class");

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1 f. All of Defendants' California-based non-exempt, hourly paid current and
2 former employees, employed during the relevant time period (as defined supra) to whom
3 Defendants' have engaged in unlawful, unfair and/or fraudulent business acts or practices
4 prohibited by B & PC Section 17200 (hereinafter, the "17200 Class");

5 g. All of Defendants' California-based non-exempt, hourly paid current and
6 former employees, employed during the relevant time period (as defined, supra) to whom
7 Defendants' willfully failed to pay and all waiting time penalties (hereinafter, the "Waiting
8 Time Class").

9 h. All of Defendants' California-based non-exempt, hourly paid current and
10 former employees, employed during the relevant time period (as defined, supra) to whom
11 Defendants' willfully failed to pay all wages in violation of Labor Code § 1174(d)
12 (hereinafter, the "LC 1174(d) Class").

13 i. All of Defendants' California-based non-exempt, hourly paid current and
14 former employees, employed during the relevant time period (as defined, supra) to whom
15 Defendants' willfully failed to pay all wages in violation of Labor Code §§ 2800 and 2802
16 Class (hereinafter, the "LC 2800 and 2802 Class"); and

17 j. All of Defendants' California-based non-exempt, hourly-paid current and
18 former employees, employed during the relevant time period to whom Defendants failed to
19 pay the required minimum wage (hereinafter, the "Minimum Wage Class").

20 31. The Overtime Class, Meal Period Class, Rest Period Class, LC 226 Class, Payroll
21 Records Class, 17200 Class, the Waiting Time Class, the LC 1174(d) Class, the LC 2800 and 2802
22 Class, and Minimum Wage Class are hereinafter collectively referred to as the "Classes."

23 32. Throughout discovery in this litigation, Plaintiffs may find it appropriate and/or
24 necessary to amend the definition of the Classes. In any event, Plaintiffs will formally define and
25 designate a class definition at such time when Plaintiffs seek to certify the Classes alleged herein.

26 33. Numerosity (CCP §382):

27 a. The potential quantity of members of the Classes as defined is so numerous
28 that joinder of all members is unfeasible and impractical.

1 b. The disposition of the claims of the members of the Classes through this
2 class action will benefit both the parties and this Court.

3 c. The quantity of members of the Classes is unknown to Plaintiffs at this time;
4 however, it is estimated that the membership of the Classes numbers greater than 50
5 individuals.

6 d. The quantity and identity of such members is readily ascertainable via
7 inspection of Defendants' records.

8 34. Superiority (CCP §382): The nature of this action and the nature of the laws
9 available to Plaintiffs makes the use of the class action format particularly efficient and the
10 appropriate procedure to afford relief to Plaintiffs for the wrongs alleged herein, as follows:

11 a. California has a public policy which encourages the use of the class action
12 device;

13 b. By establishing a technique whereby, the claims of many individuals can be
14 resolved at the same time, the class suit both eliminate the possibility of repetitious
15 litigation and provides small claimants with a method of obtaining redress for claims which
16 would otherwise may be too small to warrant individual litigation;

17 c. This case involves large corporate Defendants and a large number of
18 individual Class Members with many relatively small claims and common issues of law and
19 fact;

20 d. If each individual member of the Classes was required to file an individual
21 lawsuit, the large corporate Defendants would necessarily gain an advantage because
22 Defendants would be able to exploit and overwhelm the limited resources of each
23 individual member of the Classes with Defendants superior financial and legal resources;

24 e. Requiring each individual member of the Classes to pursue an individual
25 remedy would also discourage the assertion of lawful claims by the members of the Classes
26 who would be disinclined to pursue an action against Defendants because of an applicable
27 and justifiable fear of retaliation and permanent damage to their lives, careers and well-
28 being;

1 f. Proof of a common business practice or factual pattern, of which the
2 members of the Classes experienced, is representative of the Classes herein and will
3 establish the rights of each of the members of the Classes to recover on the causes of action
4 alleged herein;

5 g. Absent class treatment, the prosecution of separate actions by the individual
6 members of the Classes, even if possible, would likely create:

7 i. a substantial risk of each individual plaintiff presenting in separate,
8 duplicative proceedings the same or essentially similar arguments and evidence,
9 including expert testimony;

10 ii. a multiplicity of trial conducted at enormous expense to both the
11 judicial system and the litigants;

12 iii. inconsistent or varying verdicts or adjudications with respect to the
13 individual members of the Classes against Defendants;

14 iv. potentially incompatible standards of conduct for Defendants; and

15 v. potentially incompatible legal determinations with respect to
16 individual members of the Classes which would, as a practical matter, be dispositive
17 of the interest of the other members of the Classes who are not parties to the
18 adjudications or which would substantially impair or impede the ability of the
19 members of the Classes to protect their interests.

20 h. The claims of the individual members of the Classes are not sufficiently
21 large to warrant vigorous individual prosecution considering all of the concomitant costs
22 and expenses attendant thereto;

23 i. Courts seeking to preserve efficiency and other benefits of class actions
24 routinely fashion methods to manage any individual questions; and

25 j. The Supreme Court of California urges trial courts, which have an obligation
26 to consider the use of innovative procedural tools to certify a manageable class, to be
27 procedurally innovative in managing class actions.

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1 35. Well-defined Community of Interest: Plaintiffs also meet the established standards
2 for class certification (see, e.g. Lockheed Martin Corp., V, Superior Court (2003) 29 Cal. 4th 1096),
3 as follows:

4 a. Typicality: The claims of Plaintiff Smith are typical of the claims of all
5 members of the Classes Plaintiff seeks to represent because all members of the Classes
6 sustained injuries and damages arising out of Defendants' common course of conduct in
7 violation of law and the injuries and damages of all members of the Classes were caused by
8 Defendants' wrongful conduct in violation of law, as alleged herein.

9 b. Adequacy: Plaintiff Smith:

10 i. is an adequate representative of the Classes Plaintiff is seeking to
11 represent;

12 ii. will fairly protect the interests of the members of the Classes;

13 iii. has no interests antagonistic to the members of the Classes; and

14 iv. will vigorously pursue this suit via attorneys who are competent,
15 skilled and experienced in litigating matters of this type.

16 c. Predominate Common Questions of Law or Fact: There are common
17 questions of law and/or fact as to the members of the Classes which predominate over
18 questions affecting only individual members of the Classes, including with limitation:

19 i. whether Defendants failed to pay the legal and appropriate overtime
20 compensation to the members of the Overtime Class in violation of the Labor Code
21 and the IWC Wage Order(s);

22 ii. whether Defendants failed to pay the legal and appropriate minimum
23 wage to the members of the Minimum Wage Class in violation of the Labor Code
24 and the IWC Wage Order(s);

25 iii. whether Defendants failed and continue to failed to provide meal
26 periods to the members of the Meal Period Class in violation of the Labor Code and
27 the IWC Wage Orders;

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1 iv. whether Defendants failed and continue to fail to authorize and
2 permit paid rest periods to the members of the Rest Period Class in violation of the
3 Labor Code and section 12 of the IWC Wage Orders;

4 v. whether Defendants are liable pursuant to Labor Code §203;

5 vi. whether Defendants conduct conducts unfair competition within the
6 meaning of B & PC §17200 et seq.;

7 vii. whether Defendants' conduct constitutes unfair business practices
8 within the meaning of B & PC§ 17200, et seq.;

9 viii. whether the members of the Classes are entitled to compensatory
10 damages, and if so, the means of measuring such damages;

11 ix. whether the members of the Classes are entitled to injunctive relief;

12 x. whether the members of the Classes are entitled to restitution;

13 xi. whether Defendants are liable for attorneys' fees and costs; and

14 xii. whether each member of the Classes might be required to ultimately
15 justify an individual claim does not preclude maintenance of a class action (see,
16 Collins v. Rocha (1972) 7 Cal. 3d 232, 238).

17 **V. CAUSES OF ACTION**

18 **FIRST CAUSE OF ACTION**

19 **FAILURE TO PAY STRAIGHT AND OVERTIME COMPENSATION IN VIOLATION OF**
20 **LABOR CODE §§ 223, 510, 558, 1194, 1198, and 1199**

21 (On Behalf of the Overtime Class)

22 (Against All Defendants)

23 36. Plaintiffs incorporate by reference and reallege each and every one of the allegations
24 contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

25 37. Labor Code §204 establishes the fundamental right of all employees in the State of
26 California to be paid wages, including straight time and overtime, in a timely fashion for their
27 work.

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1 38. Labor Code §510(a) states in pertinent part: "Any work in excess of eight hours in
2 one workday and any work in excess of 40 hours in any one workweek and the first eight hours
3 worked on the seventh day of work in any one workweek shall be compensated at the rate of no
4 less that one and one-half times the regular rate of pay for an employee."

5 39. Labor Code §510 (a) further provides that "Any work in excess of 12 hours in one
6 day shall be compensated at the rate of no less than twice the regular rate of pay for an employee."

7 40. Pursuant to Labor Code § 1198, it is unlawful to employ person for longer than the
8 hours set by the Industrial Welfare Commission or under conditions prohibited by the IWC Wage
9 Order(s).

10 41. Defendants, as a matter of established company policy and procedure, at each and
11 every one of the individual facilities owned and/or operated by Defendants, consistently:

12 a. Administered a uniform company policy and practice regarding the payment
13 of wage to the member of the Overtime Class;

14 b. Scheduled to work and in fact required the members of the Overtime Class
15 to work in excess of eight (8) hours per workday and/or in excess of forty (40) hours per
16 workweek without paying overtime compensation for all such excess hours worked by
17 requiring the Overtime Class to remain under Defendant's control without paying them
18 therefore which resulted in;

19 c. Failure to pay members of the Overtime Class overtime compensation for
20 work in excess of eight (8) hours per day and/or forty (40) hours per week;

21 d. Failure to pay members of the Overtime Class overtime compensation for
22 work in excess of twelve (12) hours per day;

23 e. Failure to pay members of the Overtime Class overtime compensation for
24 the first eight hours worked on the seventh day of work in any one workweek;

25 f. Did not employ the members of the Overtime Class using: i) an alternative
26 workweek schedule pursuant to Labor Code §511; and did not employ the members of the
27 Overtime Class using ii) an alternative workweek schedule adopted pursuant to a collective
28 bargaining agreement.

1 g. Required that the members of the Overtime Class to spend more than fifty
2 percent (50%) of their work performing non-exempt tasks; and

3 h. Disseminated incorrect information throughout Defendant's facilities and
4 amongst Defendants' employees reciting that, under Defendants' labor policies and
5 practices and under California law, the members of the Overtime Class were not entitled to
6 overtime compensation.

7 42. Defendants' pattern, practice and uniform administration of corporate policy
8 regarding illegal employee compensation as described herein is unlawful and creates as
9 entitlement, pursuant to Labor Code §218 and §1194(a), to recovery by the members of the
10 Overtime Classes, in a civil action, for the unpaid balance of the full amount of the overtime wages
11 owing, including interest thereon, reasonable attorneys' fees, and costs of suit.

12 43. That calculation of individual damages for the members of the Wage Class may at
13 some point be required does not foreclose the possibility of taking common evidence on questions
14 regarding their entitlement to overtime compensation (see, e.g. Collins v. Rocha (1972) 7 Cal. 3d
15 232; Hypolite v. Carleson (1975) 52 Cal. App. 3d 566; Employment Development Dent, v.
16 Superior Court (1981) 30 Cal. 3d 256.

17 44. Pursuant to Labor Code § 1194(a) and Civil Code §3287, the members of the
18 Overtime Class seek recovery of pre-judgment interest on all amounts recovered herein.

19 45. Pursuant to Labor Code § 1194, the members of the Overtime Class request that the
20 Court award reasonable attorneys' fees and costs incurred by them in this action.

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1 **SECOND CAUSE OF ACTION**

2 **FAILURE TO PROVIDE MEAL PERIODS IN VIOLATION OF LABOR CODE §§ 226.7,**

3 **512, 516, 558, and IWC Wage Orders**

4 (On Behalf of the Meal Periods Class)

5 (Against All Defendants)

6 46. Plaintiffs incorporate by reference and reallege each and every one of the allegations
7 contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

8 47. Labor Code §226.7(a) provides that "No employer shall require any employee to
9 work during any meal or rest period mandated by an applicable order of the Industrial Welfare
10 Commission."

11 48. Labor Code §512 provides that "An employer may not employ an employee for a
12 work period of more than five hours per day without providing the employee with a meal period of
13 not less than 30 minutes, except that if the total work period per day of the employee is no more
14 than six hours, the meal period may be waived by mutual consent of both the employer and
15 employee".

16 49. Labor Code §512 further provides that "An employer may not employ an employee
17 for a work period of more than 10 hours per day without providing the employee with a second
18 meal period of not less than 30 minutes, except that if the total hours worked is no more than 12
19 hours, the second meal period may be waived by mutual consent of the employer and the employer
20 only if the first meal period was not waived."

21 50. Labor Code §516 provides that the Industrial Welfare Commission may adopt or
22 amend working condition orders with respect to meal periods for any workers in California
23 consistent with the heal and welfare of those workers.

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1 51. Section 11(A) of the IWC Wage Order(s) provides that "Unless the employee is
2 relieved of all duty during a 30 minutes meal period, the meal period shall be considered an "on
3 duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only
4 when the nature of the work prevents an employee from being relieved of all duty and when by
5 written agreement between the parties an on-the-job paid meal period is agreed to. The written
6 agreement shall state that the employee may, in writing, revoke the agreement at any time."

7 52. Section 11(B) of the IWC Wage Orders(s) provides that "if an employer fails to
8 provide an employee a meal period in accordance with the applicable provision of this order, the
9 employer shall pay the employee one (1) hour of pay at the employee's regular rate of
10 compensation for each workday that the meal period is not provided."

11 53. The members of the Meal Period Class consistently worker over five (5) hours per
12 shift and therefore were entitled to a meal period of not less than thirty (30) minutes prior to
13 exceeding five (5) hours of employment.

14 54. Further, some members of the Meal Period Class consistently worked over ten (10)
15 hours per shift and therefore were entitled to a second meal period of not less than 30 minutes.

16 55. The members of the Meal Period Class did not validly or legally wavier their meal
17 periods, by mutual consent with Defendants or otherwise.

18 56. The members of the Meal Period Class did not enter into any written agreement
19 with Defendants agreeing to an on-the-job paid meal period.

20 57. As a matter of Defendants' established company policy, Defendant failed to comply
21 with the meal period requirements established by Labor Code §226.7, Labor Code §512, Labor
22 Code §516 and Section 11 of the IWC Wage Order(s).

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1 58. Pursuant to Section 11(B) of the IWC Wages Order(s) and Labor Code §226.7(b)
2 which states "if an employer fails to provide an employee a meal or rest period in accordance with
3 an applicable order of the industrial Welfare Commission, the employer shall pay the employee
4 one additional hour of pay at the employee's regular rate of compensation for each work day that
5 the meal or rest period is not provided," the member of the Meal Period Class are entitled to
6 damages in an amount equal to one(l) additional hours of pay at each employee's regular rate of
7 compensation for each work day that the meal period was not provided.

8 59. Pursuant to Civil Code §3287, the members of the Meal Period Class seek recovery
9 of pre-judgment interest on all amounts recovered herein.

10 **THIRD CAUSE OF ACTION**

11 **FAILURE TO AUTHORIZE AND PERMIT PAID REST PERIODS**

12 (On Behalf of the Rest Period Class)

13 (Against All Defendants)

14 60. Plaintiffs incorporate by reference and reallege each and every one of the allegations
15 contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

16 61. Labor Code §226.7(a) states: "No employer shall require any employee to work
17 during any meal or rest period mandated by an applicable order of the Industrial Welfare
18 Commission."

19 62. Labor Code §516 provides that the Industrial Welfare commission may adopt or
20 amend working conditions orders with respect to break periods for any workers in California
21 consistent with the health and welfare of those workers.

22 63. Section 12(A) of the IWC Wage Order(s) states: "Every employer shall authorize
23 and permit all employee to take rest periods, which insofar as practicable shall be in the middle of
24 each work period. The authorized rest period time shall be based on the total hours worked daily at
25 the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a
26 rest period need not be authorized for employees whose total daily work time is less than three and
27 one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there
28 shall be no deduction from wages."

64. Section 12(B) of the IWC Wage Order(s) states: "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 workday that the rest period is not provided."

65. The members of the Rest Period Class consistently worked over four (4) hours per shift and therefore were entitled to a rest period of not less than ten (10) minutes prior to exceeding four (4) hours of employment.

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE ITEMIZED WAGE STATEMENTS IN VIOLATION OF LABOR

CODE § 226

(On Behalf of the LC 226 Class)

(Against All Defendants)

66. Plaintiffs incorporate by reference and reallege each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

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

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68. Plaintiff contends that he and the LC 226 Class Members have been injured by Defendants' failure to provide all of the requisite information on its itemized wage statements in that such failure, inter alia: (1) masks possible and actual underpayments to Defendants' employees; (2) make it difficult for Defendants' employees to verify that they have in fact been paid the proper amounts owing for all hours worked; and (3) makes it difficult for Plaintiff to identify his true employer for purposes of this litigation. Said conduct was done knowingly and intentionally since Defendants are aware of California law, and with the design to harm Plaintiff and the LC 226 Class Members.

FIFTH CAUSE OF ACTION

**FAILURE TO KEEP ACCURATE PAYROLL RECORDS IN VIOLATION OF
LABOR CODE §§ 226, 558, 1198, the Wage Orders**

(On Behalf of the Payroll Records Class)

(Against All Defendants)

69. Plaintiffs incorporate by reference and reallege each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

70. At all times relevant during the liability period, Plaintiffs were employees of Defendants covered by Labor Code sections 226, 558 and 1198, and the Wage Orders.

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

72. Representative Plaintiff is informed, believes, and thereon alleges, that at all times relevant during the liability period, Defendants maintained a policy or practice of utilizing an “auto-deduct” system whereby thirty (30) minutes were automatically deducted from the hours worked by Representative Plaintiff and the putative class members on a daily basis, whether or not a 30 minute off-duty meal period was actually provided or taken.

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73. Defendants also did not record and pay the time that its employees spent under its control as the company utilized improper rounding policies and practices which resulted in the under payment of wages to Representative Plaintiff and the putative class members.

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

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

SIXTH CAUSE OF ACTION

UNLAWFUL BUSINESS PRACTICES IN VIOLATION OF

BUS. & PROF. CODE § 17200, ET SEQ.

(On Behalf of the 17200 Class)

(Against All Defendants)

76. Plaintiffs incorporate by reference and reallege each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

77. B&PC § 17200 provides in pertinent part “[U]nfair competition shall mean and include any unlawful, unfair or fraudulent business act....”

78. B&PC § 17205 provides that unless otherwise expressly provided, the remedies or penalties provided for unfair competition “are cumulative to each other and to the remedies or penalties available under all other laws of this state.”

79. B&PC § 17204 provides that an action for any relief from unfair competition may be prosecuted by any person who has suffered injury in fact and has lost money or property as a result of such unfair competition.

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1 80. Defendants have engaged in unlawful, unfair and fraudulent business acts or
2 practices prohibited by B&PC § 17200, including those set forth in the preceding and foregoing
3 paragraphs of the complaint, thereby depriving Plaintiffs and all others similarly situated of the
4 minimum working standards and conditions due to them under the Labor Code and/or the IWC
5 Wage Orders, as specifically described herein.

6 81. Defendants have engaged in unfair business practices in California by practicing,
7 employing and utilizing the employment practices outlined in the preceding paragraphs,
8 specifically, by requiring employees to perform the labor services complained of herein without the
9 requisite compensation.

10 82. Defendants' use of such practices constitutes an unfair business practice, unfair
11 competition and provides an unfair advantage over Defendants' competitors.

12 83. Plaintiffs have suffered injury in fact and have lost money or property as a result of
13 such unfair competition.

14 84. Plaintiffs seek full restitution from Defendants, as necessary and according to proof,
15 restore any and all monies withheld, acquired and/or converted by Defendants by means of the
16 unfair practices complained of herein.

17 85. Further, if Defendants are not enjoined set forth, above, Defendants will continue to
18 practice, employ and utilize the employment practices outlined in the preceding paragraphs.

19 86. Therefore, Plaintiffs request that the Court issue a preliminary and permanent
20 injunction prohibiting Defendants from engaging in the foregoing conduct.

21 87. Plaintiffs seek the appointment of a receiver, as necessary, to establish the total
22 monetary relief sought from Defendants.

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

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

EIGHTH CAUSE OF ACTION

FAILURE TO PAY WAGES UPON TERMINATION IN VIOLATION OF LABOR CODE

§ 1174(d)

(On Behalf of the LC 1174(d) Class)

(Against All Defendants)

91. Plaintiffs incorporate by reference and reallege each and every one of the allegations contained in the preceding and foregoing paragraphs of this Compliant as if fully set forth herein.

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

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

94. More specifically, Plaintiff and the other class members have been injured by Defendants' intentional and willful violation of California Labor Code section 1174(d) because they were denied both their legal right and protected interest, in having available, accurate and complete payroll records pursuant to California Labor Code section 1174(d).

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1 **NINTH CAUSE OF ACTION**

2 **FAILURE TO PAY WAGES UPON TERMINATION IN VIOLATION OF LABOR CODE**

3 **§§ 2800 and 2802**

4 (On Behalf of the LC 2800 and 2802 Class)

5 (Against All Defendants)

6 95. Plaintiffs incorporate by reference and reallege each and every one of the allegations
7 contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

8 96. Plaintiff and the other class members incurred necessary business-related expenses
9 and costs that were not fully reimbursed by Defendants.

10 97. Defendants have intentionally and willfully failed to reimburse Plaintiff and the
11 other class members for all necessary business-related expenses and costs. Plaintiff and the other
12 class members are entitled to recover from Defendants their business-related expenses and costs
13 incurred during the course and scope of their employment, plus interest accrued from the date on
14 which the employee incurred the necessary expenditures at the same rate as judgments in civil
15 actions in the State of California.

16 **TENTH CAUSE OF ACTION**

17 **FAILURE TO PAY MINIMUM WAGES**

18 (On Behalf of the Minimum Wage Class)

19 (Against All Defendants)

20 97. Plaintiffs incorporate by reference and reallege each and every one of the allegations
21 contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

22 98. Plaintiff incorporates by reference and reallege each and every one of the allegations
23 contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

24 99. Pursuant to Labor Code § 1197, payment of less than the minimum wage fixed by
25 the Labor Commission is unlawful.

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1 100. California Code of Regulations Title 8, § 11000(s) and the IWC Wage Orders §4(A)
2 state: "Every employer shall pay to each employee... wages not less than eight dollars (\$8.00) per
3 hour for all hours worked, effective January 1, 2008... and not less than nine dollars (\$9.00) per
4 hours for all hours worked, effective July 1, 2014... and not less than ten dollars (\$10.00) per hour
5 for all hours worked, effective January 2016.

6 101. Defendants, as a matter of established company policy and procedure, at each and
7 every one of the individual facilities owned and/or operated by Defendants which resulted in the
8 members of the Minimum Wage Class earning less than the legal minimum wage in the State of
9 California.

10 102. Defendants' pattern and practice in uniform administration of corporate policy
11 regarding Defendants' failure to pay the legal minimum wage to the members of the Minimum
12 Wage Class as described herein is unlawful and creates entitlement, pursuant to Labor Code §
13 1194(a), to recovery by the members of the Minimum Wage Class, in a civil action, for the unpaid
14 balance of the full amount of the unpaid minimum wages owed, calculated as the difference
15 between the straight time compensation paid and the applicable minimum wage, including interest
16 thereon.

17 103. Pursuant to Labor Code § 1194.2(a) (which provides that in any action under Labor
18 Code §1194, an employee shall be entitled to recover liquidated damages, the members of the
19 Minimum Wage Class seek recovery of liquidated damages on the straight-time portion of
20 uncompensated hours of work (not including the overtime portion thereof) in an amount equal to
21 the wages unlawfully unpaid and interest thereon.

22 104. Pursuant to Labor Code §218.6, Labor Code § 1194(a) and CÇ §3287, the members
23 of the Minimum Wage Class seek recover of pre-judgment interest on all amount recovered herein.

24 105. Pursuant to Labor Code § 1194(a), the members of the Minimum Wage Class
25 request that the Court award reasonable attorneys' fees and costs incurred by them in this action.

26 106. THEREFORE, Representative Plaintiff and the individuals he seeks to represent
27 request relief as described below:

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PRAYER

1. That his action be certified as a class action, that Plaintiff be appointed as the representative of the Class, and that counsel for Plaintiff be appointed as Class Counsel.

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

3. For wages pursuant to the California Labor Code;

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

5. For penalties pursuant to the California Labor Code;

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

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

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

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

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

11. For civil penalties and wages pursuant to California Labor Code sections 2699(a), (f) and (g) and 558 plus costs and attorneys' fees for violation of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802; and

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

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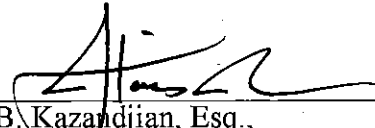
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1 Dated: January 24, 2019

HAIG B. KAZANDJIAN LAWYERS, APC.

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3 By:


Haig B. Kazandjian, Esq.,
Cathy Gonzalez, Esq.,
Attorneys for Representative Plaintiff
Corey Smith

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6 **DEMAND FOR JURY TRIAL**

7 Representative Plaintiff hereby demands a trial by jury.

8 Dated: January 24, 2019

HAIG B. KAZANDJIAN LAWYERS, APC.

9
10 By:


Haig B. Kazandjian, Esq.,
Cathy Gonzalez, Esq.,
Attorneys for Representative Plaintiff
Corey Smith