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individually and on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

RAUL SANTOS, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

WESCOM CENTRAL CREDIT UNION;
and DOES 1 through 20, inclusive,

Defendants.

Case No. CIVDS2011236

[Amended as a matter of right, pursuant to
Labor Code section 2699.3(a)(2)(C)]

FIRST AMENDED CLASS ACTION
COMPLAINT FOR:

1. Failure to Pay Wages;
2. Failure to Provide Meal Periods;
3. Failure to Permit Rest Breaks;
4. Failure to Provide Accurate Itemized Wage Statements;
5. Failure to Pay All Wages Due Upon Separation of Employment;
6. Violation of Business and Professions Code §§ 17200, *et seq.*; and
7. Enforcement of Labor Code § 2698 *et seq.* ("PAGA")

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO CIVIL DIVISION

JUL 13 2020

BY VERONICA GONZALEZ, DEPUTY

1 Plaintiff Raul Santos, individually and on behalf of others similarly situated, alleges as
2 follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiff Raul Santos (“Plaintiff”) brings this putative class and representative
5 action pursuant to the Private Attorneys General Act of 2004, Cal. Lab. Code. § 2698 *et seq.*,
6 against defendants Wescom Central Credit Union and DOES 1 through 20, inclusive
7 (collectively, “Defendants”), on behalf of himself individually and on behalf of non-exempt
8 employees employed by Defendants throughout California.

9 2. Defendants provide financial services throughout California.

10 3. Through this action, Plaintiff alleges that Defendants have engaged in a
11 systematic pattern of wage and hour violations under the California Labor Code and Industrial
12 Welfare Commission (“IWC”) Wage Orders, all of which contribute to Defendants’ deliberate
13 unfair competition.

14 4. Plaintiff is informed and believes, and thereon alleges, that Defendants have
15 increased their profits by violating state wage and hour laws by, among other things:

- 16 (a) Failing to pay all wages at the proper rates;
17 (b) Failing to provide meal periods or compensation in lieu thereof;
18 (c) Failing to authorize or permit rest breaks or provide compensation in lieu thereof;
19 (d) Failing to provide accurate itemized wage statements; and
20 (e) Failing to pay all wages due upon separation of employment.

21 5. Plaintiff brings this lawsuit seeking monetary relief against Defendants on
22 behalf of himself and all others similarly situated in California to recover, among other things,
23 unpaid wages and benefits, interest, attorneys’ fees, costs and expenses and penalties pursuant
24 to Labor Code §§ 201-204, 210, 223, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194,
25 1198, and 2698, *et seq.*

26 **JURISDICTION AND VENUE**

27 6. This is a class action, pursuant to California Code of Civil Procedure § 382. The
28 monetary damages and restitution sought by Plaintiff exceeds the minimal jurisdictional limits

1 of the Superior Court and will be established according to proof at trial.

2 7. This Court has jurisdiction over this action pursuant to the California
3 Constitution, Article VI, § 10, which grants the Superior Court original jurisdiction in all
4 causes except those given by statutes to other courts. The statutes under which this action is
5 brought do not specify any other basis for jurisdiction.

6 8. This Court has jurisdiction over all Defendants because, upon information and
7 belief, they are citizens of California, have sufficient minimum contacts in California or
8 otherwise intentionally avail themselves of the California market so as to render the exercise of
9 jurisdiction over them by the California courts consistent with traditional notions of fair play
10 and substantial justice.

11 9. Venue is proper in this Court because, upon information and belief, Defendants
12 reside, transact business or have offices in this county or the acts and omissions alleged herein
13 took place in this county.

14 **THE PARTIES**

15 10. Plaintiff is a citizen of California. Plaintiff was employed by Defendants during
16 the Class Period in California.

17 11. Plaintiff is informed and believes, and thereon alleges, that Defendants at all
18 times hereinafter mentioned, were and are employers as defined in and subject to the Labor
19 Code and IWC Wage Orders, whose employees were and are engaged throughout this county
20 and the State of California.

21 12. Plaintiff is unaware of the true names or capacities of the defendants sued herein
22 under the fictitious names DOES 1 through 20, but will seek leave of this Court to amend this
23 Complaint and serve such fictitiously named defendants once their names and capacities
24 become known.

25 13. Plaintiff is informed and believes, and thereon alleges, that each defendant acted
26 in all respects pertinent to this action as the agent of the other defendant, carried out a joint
27 scheme, business plan or policy in all respects pertinent hereto, and the acts of each defendant
28

1 are legally attributable to the other defendant. Furthermore, defendants in all respects acted as
2 the employer and/or joint employer of Plaintiff and the class members.

3 14. Plaintiff is informed and believes, and thereon alleges, that each and all of the
4 acts and omissions alleged herein were performed by, or are attributable to, Defendants and/or
5 DOES 1 through 20, acting as the agent or alter ego for the other, with legal authority to act on
6 the other's behalf. The acts of any and all Defendants were in accordance with, and represent,
7 the official policy of Defendants.

8 15. At all relevant times, Defendants, and each of them, acted within the scope of
9 such agency or employment, or ratified each and every act or omission complained of herein.
10 At all relevant times, Defendants, and each of them, aided and abetted the acts and omissions of
11 each and all the other Defendants in proximately causing the damages herein alleged.

12 16. Plaintiff is informed and believes, and thereon alleges, that each of said
13 Defendants is in some manner intentionally, negligently or otherwise responsible for the acts,
14 omissions, occurrences and transactions alleged herein.

15 **CLASS ACTION ALLEGATIONS**

16 17. Plaintiff brings this action under Code of Civil Procedure § 382 on behalf of
17 himself and all others similarly situated who were affected by Defendants' Labor Code,
18 Business and Professions Code §§ 17200 and IWC Wage Order violations.

19 18. All claims alleged herein arise under California law for which Plaintiff seeks
20 relief authorized by California law.

21 19. Plaintiff's proposed Class consists of and is defined as follows:

22 Class

23 All California citizens currently or formerly employed as non-exempt employees
24 by Defendants in the State of California at any time between April 6, 2016¹ and
the date of class certification.

25 20. Plaintiff also seeks to certify the following Subclass of employees:

26
27 ¹ The statute of limitations for this matter was tolled pursuant to Cal. Rules of Court, Appendix I,
28 Emergency Rule No. 9.

1 Waiting Time Subclass

2 All members of the Class who separated their employment from Defendants at
3 any time between April 6, 2017 and the date of class certification.

4 21. Members of the Class and Subclass described above will be collectively referred
5 to as “class members.” Plaintiff reserves the right to establish other or additional subclasses, or
6 modify any Class or Subclass definition, as appropriate based on investigation, discovery and
7 specific theories of liability.

8 22. This action has been brought and may properly be maintained as a class action
9 under the California Code of Civil Procedure § 382 because there are common questions of law
10 and fact as to the Class that predominate over questions affecting only individual members
11 including, but not limited to:

- 12 (a) Whether Defendants paid Plaintiff and class members overtime compensation at
13 the proper rates;
- 14 (b) Whether Defendants promised Plaintiff and Class Members commissions and
15 failed to pay the commissions;
- 16 (c) Whether Defendants deprived Plaintiff and class members of timely meal periods;
- 17 (d) Whether Defendants deprived Plaintiff and class members of rest breaks;
- 18 (e) Whether Defendants failed to timely pay Plaintiff and former class members all
19 wages due upon termination or within 72 hours of resignation;
- 20 (f) Whether Defendants failed to furnish Plaintiff and class members with accurate,
21 itemized wage statements; and
- 22 (g) Whether Defendants engaged in unfair business practices in violation of Business
23 & Professions Code §§ 17200, *et seq.*

24 23. There is a well-defined community of interest in this litigation and the Class is
25 readily ascertainable:

- 26 (a) Numerosity: The members of the Class are so numerous that joinder of all
27 members is impractical. Although the members of the Class are unknown
28 to Plaintiff at this time, on information and belief, the Class is estimated to
 be greater than 100 individuals. The identity of the class members are

1 readily ascertainable by inspection of Defendants' employment and payroll
2 records.

3 (b) Typicality: The claims (or defenses, if any) of Plaintiff are typical of the
4 claims (or defenses, if any) of the Class because Defendants' failure to
5 comply with the provisions of California wage and hour laws entitled each
6 class member to similar pay, benefits and other relief. The injuries
7 sustained by Plaintiff are also typical of the injuries sustained by the Class
8 because they arise out of and are caused by Defendants' common course of
9 conduct as alleged herein.

10 (c) Adequacy: Plaintiff is qualified to, and will fairly and adequately represent
11 and protect the interests of all members of the Class because it is in his best
12 interest to prosecute the claims alleged herein to obtain full compensation
13 and penalties due to him and the Class. Plaintiff's attorneys, as proposed
14 class counsel, are competent and experienced in litigating large
15 employment class actions and are versed in the rules governing class action
16 discovery, certification and settlement. Plaintiff has incurred and,
17 throughout the duration of this action, will continue to incur attorneys' fees
18 and costs that have been and will be necessarily expended for the
19 prosecution of this action for the substantial benefit of each class member.

20 (d) Superiority: The nature of this action makes the use of class action
21 adjudication superior to other methods. A class action will achieve
22 economies of time, effort and expense as compared with separate lawsuits,
23 and will avoid inconsistent outcomes because the same issues can be
24 adjudicated in the same manner and at the same time for each Class. If
25 appropriate this Court can, and is empowered to, fashion methods to
26 efficiently manage this case as a class action.

27 (e) Public Policy Considerations: Employers in the State of California and
28 other states violate employment and labor laws every day. Current

1 employees are often afraid to assert their rights out of fear of direct or
2 indirect retaliation. Former employees are fearful of bringing actions
3 because they believe their former employers might damage their future
4 endeavors through negative references and/or other means. Class actions
5 provide the class members who are not named in the complaint with a
6 type of anonymity that allows for the vindication of their rights at the
7 same time as affording them privacy protections.

8 **GENERAL ALLEGATIONS**

9 24. At all relevant times mentioned herein, Defendants employed Plaintiff and other
10 persons as non-exempt employees.

11 25. Plaintiff was employed in a non-exempt position at Defendants' California
12 business location(s).

13 26. Defendants continue to employ non-exempt employees within California.

14 27. Plaintiff is informed and believes, and thereon alleges, that at all times herein
15 mentioned, Defendants were advised by skilled lawyers, employees and other professionals
16 who were knowledgeable about California's wage and hour laws, employment and personnel
17 practices and the requirements of California law.

18 28. Plaintiff is informed and believes, and thereon alleges, that Defendants
19 improperly calculated the overtime rate of pay for Plaintiff and Class Members because the
20 rates did not include non-discretionary wages, including, but not limited to, bonuses,
21 commissions, and/or other incentive pay into the computation of their regular rate of pay for
22 purposes of calculating the overtime rate of pay.

23 29. Plaintiff is informed and believes, and thereon alleges, that Defendants promised
24 Plaintiff and Class Members commissions and failed to pay the commissions.

25 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
26 should have known that Plaintiff and class members were entitled to receive all required meal
27 periods or payment of one (1) additional hour of pay at Plaintiff and class members' regular
28 rate of pay when they did not receive a timely meal period. In violation of the Labor Code and

1 IWC Wage Orders, Plaintiff and class members did not receive all timely meal periods or
2 payment of one (1) additional hour of pay at Plaintiff and class members' regular rate of pay
3 when they did not receive a timely meal period.

4 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
5 should have known that Plaintiff and class members were entitled to receive all rest breaks or
6 payment of one (1) additional hour of pay at Plaintiff and class members' regular rate of pay
7 when a rest break was missed. In violation of the Labor Code and IWC Wage Orders, Plaintiff
8 and class members did not receive all rest breaks or payment of one (1) additional hour of pay
9 at Plaintiff and class members' regular rate of pay when a rest break was missed.

10 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
11 should have known that Plaintiff and class members were entitled to receive itemized wage
12 statements that accurately showed their gross and net wages earned, inclusive dates of pay
13 periods, total hours worked and all applicable hourly rates in effect and the number of hours
14 worked at each hourly rate in accordance with California law. In violation of the Labor Code,
15 Plaintiff and class members were not provided with accurate itemized wage statements.

16 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
17 should have known that Plaintiff and Waiting Time Subclass members were entitled to timely
18 payment of wages due upon separation of employment. In violation of the Labor Code,
19 Plaintiff and Waiting Time Subclass members did not receive payment of all wages within
20 permissible time periods.

21 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
22 should have known they had a duty to compensate Plaintiff and class members, and Defendants
23 had the financial ability to pay such compensation but willfully, knowingly and intentionally
24 failed to do so all in order to increase Defendants' profits.

25 **FIRST CAUSE OF ACTION**

26 **FAILURE TO PAY WAGES**

27 **(Violation of Labor Code §§ 223, 510, 1194 and 1198; Violation of IWC Wage Order § 3)**

1 35. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
2 though fully set forth herein.

3 36. Labor Code § 223 prohibits employers from secretly paying lower wages than
4 those promised in a contract.

5 37. Labor Code § 1198 and the applicable IWC Wage Order provide that it is
6 unlawful to employ persons without compensating them at a rate of pay either one and one-half
7 or two times the person's regular rate of pay, depending on the number of hours worked by the
8 person on a daily or weekly basis.

9 38. Pursuant to California Labor Code §§ 510 and 1194, during the relevant time
10 period, Defendants were required to compensate Plaintiff and class members for all overtime
11 hours worked, calculated at one and one-half (1½) times the regular rate of pay for hours
12 worked in excess of eight (8) hours per day and/or forty (40) hours per week and for the first
13 eight (8) hours of the seventh consecutive work day, with double time after eight (8) hours on
14 the seventh day of any work week, or after twelve (12) hours in any work day.

15 39. Plaintiff and class members were non-exempt employees entitled to the
16 protections of California Labor Code §§ 510 and 1194.

17 40. During the relevant time period, Defendants failed to pay Plaintiff and class
18 members overtime wages at the correct rate because they failed to include non-discretionary
19 wages, including, but not limited to, bonuses, commissions, and/or other incentive pay in the
20 computation of their overtime rate of pay, which caused Plaintiff and Class Members to not be
21 paid all overtime wages owed.

22 41. During the relevant time period, Defendants failed to pay Plaintiff and class
23 members earned commissions.

24 42. In violation of state law, Defendants have knowingly and willfully refused to
25 perform their obligations and compensate Plaintiff and class members for all wages earned as
26 alleged above.

1 43. Defendants' failure to pay Plaintiff and class members all earned wages, as
2 required by California law, violates the provisions of Labor Code §§ 510 and 1198, and is
3 therefore unlawful.

4 44. Pursuant to Labor Code § 1194, Plaintiff and class members are entitled to
5 recover their unpaid overtime compensation as well as interest, costs and attorneys' fees.

6 **SECOND CAUSE OF ACTION**

7 **FAILURE TO PROVIDE MEAL PERIODS**

8 **(Violation of Labor Code §§ 226.7 and 512; Violation of IWC Wage Order § 11)**

9 45. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
10 though fully set forth herein.

11 46. Labor Code § 226.7 provides that no employer shall require an employee to work
12 during any meal period mandated by the IWC Wage Orders.

13 47. Section 11 of the applicable IWC Wage Order states, "no employer shall employ
14 any person for a work period of more than five (5) hours without a meal period of not less than
15 30 minutes, except that when a work period of not more than six (6) hours will complete the
16 day's work the meal period may be waived by mutual consent of the employer and the
17 employee."

18 48. Labor Code § 512(a) provides that an employer may not require, cause or permit
19 an employee to work for a period of more than five (5) hours per day without providing the
20 employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if
21 the total work period per day of the employee is not more than six (6) hours, the meal period
22 may be waived by mutual consent of both the employer and the employee.

23 49. Labor Code § 512(a) also provides that an employer may not employ an
24 employee for a work period of more than ten (10) hours per day without providing the employee
25 with a second meal period of not less than thirty (30) minutes, except that if the total hours
26 worked is no more than twelve (12) hours, the second meal period may be waived by mutual
27 consent of the employer and the employee only if the first meal period was not waived.

1 50. During the relevant time period, Plaintiff and class members did not receive
2 compliant meal periods for each five hours worked per day.

3 51. Labor Code § 226.7(b) and section 11 of the applicable IWC Wage Order require
4 an employer to pay an employee one additional hour of pay at the employee's regular rate of
5 compensation for each work day that a meal period is not provided.

6 52. At all relevant times, Defendants failed to pay Plaintiff and class members meal
7 period premiums for meal period violations pursuant to Labor Code § 226.7(b) and section 11
8 of the applicable IWC Wage Order.

9 53. As a result of Defendants' failure to pay Plaintiff and class members an
10 additional hour of pay for each day a meal period was not provided, Plaintiff and class members
11 suffered and continue to suffer a loss of wages and compensation.

12 **THIRD CAUSE OF ACTION**

13 **FAILURE TO PERMIT REST BREAKS**

14 **(Violation of Labor Code §§ 226.7; Violation of IWC Wage Order § 12)**

15 54. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
16 though fully set forth herein.

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

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

24 57. During the relevant time period, Plaintiff and class members did not receive a ten
25 (10) minute rest period for every four (4) hours or major fraction thereof worked.

26 58. Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order
27 requires an employer to pay an employee one additional hour of pay at the employee's regular
28 rate of compensation for each work day that the rest period is not provided.

1 59. At all relevant times, Defendants failed to pay Plaintiff and class members rest
2 period premiums for rest period violations pursuant to Labor Code § 226.7(b) and section 12 of
3 the applicable IWC Wage Order.

4 60. As a result of Defendants' failure to pay Plaintiff and class members an
5 additional hour of pay for each day a rest period was not provided, Plaintiff and class members
6 suffered and continue to suffer a loss of wages and compensation.

7 **FOURTH CAUSE OF ACTION**

8 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

9 **(Violation of Labor Code § 226)**

10 61. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
11 though fully set forth herein.

12 62. Labor Code § 226(a) requires Defendants to provide each employee with an
13 accurate wage statement in writing showing nine pieces of information, including: (1) gross
14 wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units
15 earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all
16 deductions, provided that all deductions made on written orders of the employee may be
17 aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period
18 for which the employee is paid, (7) the name of the employee and the last four digits of his or
19 her social security number or an employee identification number other than a social security
20 number, (8) the name and address of the legal entity that is the employer, and (9) all applicable
21 hourly rates in effect during the pay period and the corresponding number of hours worked at
22 each hourly rate by the employee.

23 63. During the relevant time period, Defendants have knowingly and intentionally
24 failed to comply with Labor Code § 226(a) on wage statements that were provided to Plaintiff
25 and class members. The deficiencies include, among other things, the failure to correctly state
26 accurate inclusive dates of the pay period for Plaintiff and class members.

27 64. As a result of Defendants' violation of California Labor Code § 226(a), Plaintiff
28 and class members have suffered injury and damage to their statutorily protected rights.

1 Specifically, Plaintiff and class members have been injured by Defendants' intentional
2 violation of California Labor Code § 226(a) because they were denied both their legal right to
3 receive, and their protected interest in receiving, accurate itemized wage statements under
4 California Labor Code § 226(a). Plaintiff has had to file this lawsuit in order to determine the
5 extent of the underpayment of wages, thereby causing Plaintiff to incur expenses and lost time.
6 Plaintiff would not have had to engage in these efforts and incur these costs had Defendants
7 provided the accurate wages earned. This has also delayed Plaintiff's ability to demand and
8 recover the underpayment of wages from Defendants.

9 65. California Labor Code § 226(a) requires an employer to pay the greater of all
10 actual damages or fifty dollars (\$50.00) for the initial pay period in which a violation occurred,
11 and one hundred dollars (\$100.00) per employee for each violation in subsequent pay periods,
12 plus attorney's fees and costs, to each employee who was injured by the employer's failure to
13 comply with California Labor Code § 226(a).

14 66. Defendants' violations of California Labor Code § 226(a) prevented Plaintiff
15 and class members from knowing, understanding and disputing the wages paid to them, and
16 resulted in an unjustified economic enrichment to Defendants. As a result of Defendants'
17 knowing and intentional failure to comply with California Labor Code § 226(a), Plaintiff and
18 class members have suffered an injury, and the exact amount of damages and/or penalties is all
19 in an amount to be shown according to proof at trial.

20 67. Plaintiff and class members are also entitled to injunctive relief under California
21 Labor Code § 226(h), compelling Defendants to comply with California Labor Code § 226, and
22 seek the recovery of attorneys' fees and costs incurred in obtaining this injunctive relief.

23 **FIFTH CAUSE OF ACTION**

24 **FAILURE TO PAY ALL WAGES DUE UPON SEPARATION OF EMPLOYMENT AND**
25 **WITHIN THE REQUIRED TIME**

26 **(Violation of Labor Code §§ 201, 202 and 203)**

27 68. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
28 though fully set forth herein.

1 69. California Labor Code §§ 201 and 202 provide that if an employer discharges an
2 employee, the wages earned and unpaid at the time of discharge are due and payable
3 immediately, and that if an employee voluntarily leaves his employment, his wages shall
4 become due and payable not later than seventy-two (72) hours thereafter, unless the employee
5 has given seventy-two (72) hours previous notice of his intention to quit, in which case the
6 employee is entitled to his wages at the time of quitting.

7 70. During the relevant time period, Defendants willfully failed to pay Plaintiff and
8 Waiting Time Subclass members all their earned wages upon termination including, but not
9 limited to, proper minimum wages and overtime compensation, either at the time of discharge
10 or within seventy-two (72) hours of their leaving Defendants' employ.

11 71. Defendants' failure to pay Plaintiff and Waiting Time Subclass members all
12 their earned wages at the time of discharge or within seventy-two (72) hours of their leaving
13 Defendants' employ is in violation of Labor Code §§ 201 and 202.

14 72. California Labor Code § 203 provides that if an employer willfully fails to pay
15 wages owed immediately upon discharge or resignation in accordance with Labor Code §§ 201
16 and 202, then the wages of the employee shall continue as a penalty from the due date at the
17 same rate until paid or until an action is commenced; but the wages shall not continue for more
18 than thirty (30) days.

19 73. Plaintiff and Waiting Time Subclass members are entitled to recover from
20 Defendants the statutory penalty which is defined as Plaintiff's and Waiting Time Subclass
21 members' regular daily wages for each day they were not paid, at their regular hourly rate of
22 pay, up to a thirty (30) day maximum pursuant to Labor Code § 203.

23 **SIXTH CAUSE OF ACTION**

24 **VIOLATION OF BUSINESS AND PROFESSIONS CODE §§ 17200, ET SEQ.**

25 74. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
26 though fully set forth herein.

1 75. Defendants' conduct, as alleged herein, has been and continues to be unfair,
2 unlawful and harmful to Plaintiff and class members. Plaintiff seek to enforce important rights
3 affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

4 76. Defendants' activities, as alleged herein, violate California law and constitute
5 unlawful business acts or practices in violation of California Business and Professions Code
6 §§ 17200, *et seq.*

7 77. A violation of Business and Professions Code §§ 17200, *et seq.* may be
8 predicated on the violation of any state or federal law.

9 78. Defendants' policies and practices have violated state law in at least the
10 following respects:

- 11 (a) Failing to pay all wages at the proper rate to Plaintiff and class members
12 in violation of Labor Code §§ 223, 510, 1194 and 1198;
- 13 (b) Failing to provide timely meal periods without paying Plaintiff and class
14 members premium wages for every day said meal periods were not
15 provided in violation of Labor Code §§ 226.7 and 512;
- 16 (c) Failing to authorize or permit rest breaks without paying Plaintiff and
17 class members premium wages for every day said rest breaks were not
18 authorized or permitted in violation of Labor Code § 226.7;
- 19 (d) Failing to provide Plaintiff and class members with accurate itemized
20 wage statements in violation of Labor Code § 226; and
- 21 (e) Failing to timely pay all earned wages to Plaintiff and Waiting Time
22 Subclass members upon separation of employment in violation of Labor
23 Code §§ 201, 202 and 203.

24 79. Defendants intentionally avoided paying Plaintiff and class members' wages and
25 monies, thereby creating for Defendants an artificially lower cost of doing business in order to
26 undercut their competitors and establish and gain a greater foothold in the marketplace.

80. Pursuant to Business and Professions Code §§ 17200, *et seq.* Plaintiff and class members are entitled to restitution of the wages unlawfully withheld and retained by Defendants during a period that commences four years prior to the filing of the Complaint; an award of attorneys' fees pursuant to Code of Civil Procedure § 1021.5 and other applicable laws; and an award of costs.

SEVENTH CAUSE OF ACTION

ENFORCEMENT OF LABOR CODE §§ 2698 ET SEQ. (“PAGA”)

81. Plaintiff hereby re-alleges and incorporate by reference the previous paragraphs as though fully set forth herein.

82. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency (“LWDA”) or any of its departments, divisions, commissions, boards, agencies, or employees for violation of the Labor Code may, as an alternative, 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 Labor Code § 2699.3.

83. For all provisions of the Labor Code except those for which a civil penalty is specifically provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent pay period in which Defendants violated these provisions of the Labor Code.

84. Defendants' conduct violates numerous Wage Order and Labor Code sections, including, but not limited to, the following:

a. violation of Labor Code §§ 201-203, 204, 210, 223, 510, 558, 1194, and 1198 for failure to timely pay all earned wages (including minimum wage and overtime wages) owed to Plaintiff and other aggrieved employees during employment and upon separation of employment as herein alleged;

- b. violation of Labor Code §§ 226.7 and 512 for failure to provide meal periods to Plaintiff and other aggrieved employees and failure to pay premium wages for missed meal periods as herein alleged;
- c. violation of Labor Code § 226.7 for failure to permit rest breaks to Plaintiff and other aggrieved employees and failure to pay premium wages for missed rest periods as herein alleged;
- d. violation of Labor Code § 226 for failure to provide accurate itemized wage statements to Plaintiff and other aggrieved employees as herein alleged; and
- e. violation of Labor Code §§ 1174 and 1174.5 for failure to maintain accurate and complete records showing, among other things, the hours worked daily by and the wages paid to aggrieved employees.

85. Plaintiff is an “aggrieved employee” because he was employed by the alleged violator and had one or more of the violations committed against him, and therefore is properly suited to represent the interests of all other aggrieved employees.

86. Plaintiff has exhausted the procedural requirements under Labor Code § 2699.3 as to Defendants and is therefore able to pursue a claim for penalties on behalf of himself and all other aggrieved employees under PAGA.

87. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiff is entitled to recover civil penalties, in addition to other remedies, for violations of the Labor Code sections cited above.

88. For bringing this action, Plaintiff is entitled to attorney’s fees and costs incurred herein.

PRAYER FOR RELIEF

Plaintiff, on his own behalf and on behalf of all others similarly situated, pray for relief and judgment against Defendants, jointly and severally, as follows:

1. For certification of this action as a class action, including certifying the Class and Subclass alleged by Plaintiff;

2. For appointment of Raul Santos as the class representatives;
3. For appointment of Aegis Law Firm, PC as class counsel for all purposes;
4. For compensatory damages in an amount according to proof with interest thereon;
5. For economic and/or special damages in an amount according to proof with interest thereon;
6. For reasonable attorneys' fees, costs of suit and interest to the extent permitted by law, including pursuant to Code of Civil Procedure § 1021.5 Labor Code §§ 226(e) and 1194, and 2698 *et seq.*;
7. For statutory penalties to the extent permitted by law, including those pursuant to the Labor Code and IWC Wage Orders;
8. For restitution as provided by Business and Professions Code §§ 17200, *et seq.*;
9. For an order requiring Defendants to restore and disgorge all funds to each employee acquired by means of any act or practice declared by this Court to be unlawful, unfair or fraudulent and, therefore, constituting unfair competition under Business and Professions Code §§ 17200, *et seq.*;
10. For an award of damages in the amount of unpaid compensation including, but not limited to, unpaid wages, benefits and penalties, including interest thereon;
11. For pre-judgment interest
12. For civil penalties; and
13. For such other relief as the Court deems just and proper.

Dated: July 10, 2020

AEGIS LAW FIRM, PC

By: 

Jessica L. Campbell
Attorneys for Plaintiff