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10 on behalf of herself and similarly situated employees

FILED/ENDORSED

JUN 26 2020

By: K. Spichka
Deputy Clerk

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SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

DANDREA MORRIS, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

RESOLUTE ENTERPRISES, LLC, a
Florida Limited Liability Company;
ZACHARY COLLIER, an individual; and
DOES 1 to 100, inclusive,

Defendants.

Case No. 34-2020-00278078

CLASS ACTION

**FIRST AMENDED COMPLAINT FOR
DAMAGES**

1. Failure to Pay Overtime Wages
2. Failure to Pay Minimum Wages
3. Failure to Provide Meal Periods
4. Failure to Provide Rest Periods
5. Failure to Reimburse Expenses
6. Failure to Provide Accurate
Itemized Statements
7. Waiting Time Penalties
8. Unfair Competition
9. Private Attorneys General Act

JURY TRIAL DEMANDED

Plaintiff DANDREA MORRIS ("Plaintiff"), on behalf of herself and all other similarly situated
employees, hereby file this Class Action Complaint against Defendant RESOLUTE ENTERPRISES,

1 LLC, a Limited Liability Company, ZACHARY COLLIER, an individual, and DOES 1 to 100
2 (hereinafter collectively referred to as "Defendants"). Plaintiff is informed and believe and based
3 thereon allege as follows:

4 INTRODUCTION

5 1. This is a class action and representative Private Attorneys General Act ("PAGA") action
6 brought by Plaintiff for overtime wages, regular wages, minimum wages, meal and rest period
7 violations, wage statement violations, waiting time penalties, and unfair competition under the
8 California Labor Code, Industrial Welfare Commission Wage Order ("Wage Order") No. 4-2001, and
9 California Business & Professions Code.

10 JURISDICTION AND VENUE

11 2. The Sacramento County Superior Court has jurisdiction in this matter due to alleged
12 violations of the California Labor Code, Business and Professions Code § 17200 *et seq.*, and Industrial
13 Welfare Commission Wage Order ("Wage Order") No. 4-2001.

14 3. Venue is proper pursuant to Civil Procedure Code §§ 395(a) and 395.5, in that some of
15 the wrongful acts and violations of law asserted herein occurred within Sacramento County.
16 Additionally, Defendant's obligation to pay wages, including minimum wages, meal and rest periods,
17 reimbursement of expenses, wage statement violations, waiting time penalties, unfair competition, and
18 violation of labor code 212, arose in Sacramento County pursuant to *Madera Police Officers Assn. v.*
19 *City of Madera*, 36 Cal.3d 403, 414 (1984).

20 4. Plaintiff has sought permission pursuant to Labor Code § 2699 *et seq.* to pursue the
21 claims set forth in this Complaint against Defendants as a Private Attorney General on behalf of himself
22 and other aggrieved employees. Pursuant to California Labor Code section 2699.3, Plaintiff gave
23 written notice via online submission to the Labor and Workforce Development Agency ("LWDA") on
24 approximately April 13, 2020. Plaintiff provided facts and legal bases for his claims within the notice to
25 the LWDA on all violations asserted under the Private Attorneys General Act cause of action. Plaintiff
26 also submitted the \$75.00 filing fee. The April 13, 2020 notice was also sent via certified mail to
27 Defendant RESOLUTE ENTERPRISES, LLC on the same day. Plaintiff is informed and believes that,
28 to date, the LWDA has not provided any response to Plaintiff's notice correspondence. Accordingly,

1 Plaintiff is informed and believes that she has exhausted all administrative remedies pursuant to the
2 Private Attorneys General Act ("PAGA") and may bring this action on behalf of herself and all
3 aggrieved employees. *See* Cal. Lab. Code § 2699.3(a)(2)(A), (c)(3); *Caliber Bodyworks, Inc., v. Sup.*
4 *Ct.*, 134 Cal.App.4th 365, 383 n.18, 385 n.19 (2005). Aggrieved employees (referred to herein as
5 "similarly situated employees") include all hourly non-exempt employees who worked for Defendant
6 RESOLUTE ENTERPRISES, LLC in California from April 13, 2019 to the present.

7 PARTIES

8 5. Plaintiff DANDREA MORRIS is an individual over the age of eighteen (18) and is now
9 and/or at all relevant times mentioned in this Complaint was a resident of the State of California.

10 6. Plaintiff is informed and believe, and thereupon allege, that Defendant RESOLUTE
11 ENTERPRISES, LLC, is now and/or at all times mentioned in this Complaint a Florida Limited
12 Liability Company and the owner and operator of an industry, business and/or facility licensed to do
13 business and/or actually doing business in the State of California.

14 7. Plaintiff is informed and believes, and thereupon alleges, ZACHARY COLLIER is an
15 individual over the age of eighteen (18) and is now and/or at all times mentioned in this Complaint was
16 a resident of the State of Florida.

17 8. Plaintiff is informed and believes, and thereupon alleges, that ZACHARY COLLIER is
18 an owner, director, officer, or managing agent of RESOLUTE ENTERPRISES, INC. responsible for
19 creating, ratifying, and/or implementing RESOLUTE ENTERPRISES, INC.'s unlawful policies and
20 practices and causing the Labor Code violations outlined in the First through Seventh and Ninth Causes
21 of Action. As such ZACHARY COLLIER is individually liable pursuant to California Labor Code
22 section 558.1

23 9. DOES 1 through 100 are affiliates, subsidiaries and related entities and the alter egos of
24 RESOLUTE ENTERPRISES, LLC, corporate or otherwise, who participated in and are liable for the
25 actions herein alleged. themselves will seek to amend this Complaint to allege the true names and
26 capacities of these DOE Defendants when they are ascertained. At all times mentioned herein, each
27 Defendant was the agent or employee of each of the other Defendants and was acting within the course
28 and scope of such agency or employment. The Defendants are jointly and severally liable to themselves.

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

11. Defendants, and each of them, are now and/or at all times mentioned in this Class Action Complaint approved, ratified, acquiesced, aided or abetted the acts and omissions alleged in this Class Action Complaint.

12. Defendants proximately caused Plaintiff and similarly situated employees to be subjected to the unlawful practices, wrongs, complaints, injuries, and/or damages alleged in this Class Action Complaint.

CLASS ALLEGATIONS

13. Plaintiff brings this action, on behalf of herself and all others similarly situated, as a class action pursuant to California Code of Civil Procedure section 382. The class that Plaintiff seeks to represent is composed of and defined as follows:

All of Defendants' current and former non-exempt employees who worked for Defendants' in California at any point from May 6, 2016 to the present.

14. This action has been brought and may be properly maintained as a class action, pursuant to the provision of California Code of Civil Procedure section 382, because there is a well-defined community of interests in the litigation and the proposed class is easily ascertainable.

(a) **Numerosity**: The Plaintiff Class is so numerous that the individual joinder of all members is impracticable under the circumstances of this case. While the exact number of class members is unknown to Plaintiff at this time, Plaintiff is informed and believe that Defendants have employed as many as 50 individuals falling within the above stated class definition throughout the State of California during the applicable statute of limitations, who were subjected to the practices outlined in this Complaint. As such, joinder of all members of the Plaintiff Class is not practicable.

(b) **Common Questions Predominate**: Common questions of law and fact exist as to all members of the Plaintiff Class and predominate over questions that affect only individual

members of the class. These common questions of law and fact include, without limitation, the following:

- (1) Whether Defendants' policies and practices, including Defendants' timekeeping policy and practice resulted in Plaintiff and putative class members not being paid all regular, overtime, and double time hours worked;
 - (2) Whether Defendants failed to authorize and permit Plaintiff and putative class members to take all meal periods they were entitled to under the law;
 - (3) Whether Defendants failed to authorize and permit Plaintiff and putative class members to take all rest periods they were entitled to under the law;
 - (4) Whether Defendants failed to pay Plaintiff and putative class members for all regular, overtime, and double time hours worked;
 - (5) Whether Defendants had a policy and/or practice to pay Plaintiff and putative class members for missed meal periods;
 - (6) Whether Defendants had a policy and/or practice to pay Plaintiff and putative class members for missed rest periods;
 - (7) Whether Defendants issued checks that were able to be cashed without discount at the bank named on the checks;
 - (8) Whether as a result of Defendants' policies and practices Plaintiff and putative class members received all wages, due and owing, at the time of their termination or separation; and
 - (9) Whether Defendants provided Plaintiff and putative class members with wage statements that complied with Labor Code section 226.
- (c) Typicality: Plaintiff's claims are typical of the claims of the members of the Plaintiff Class. They also sustained damages arising out of Defendants' common course of conduct in violation of the law as complained of herein. Plaintiff and all members of the putative class were non-exempt employees and thus who were not paid for all hours worked and were not provided all legally mandated meal and rest periods, because of Defendants' policies and practices resulting in a failure to pay all overtime wages,

1 minimum wages, and meal and rest period premiums. As a result, each putative class
2 member will have the same basis for unpaid wage claims as Plaintiff.

3 (d) Adequacy: Plaintiff will fairly and adequately protect the interests of the members of the
4 putative class. For all relevant times, Plaintiff resided in California, worked for
5 Defendants in California, and is an adequate representative of the putative class as she
6 has no interests that are adverse to those of absent class members. Additionally, Plaintiff
7 has retained counsel who has substantial experience in complex civil litigation and wage
8 and hour matters.

9 (e) Superiority: A class action is superior to other available means for the fair and efficient
10 adjudication of the controversy since individual joinder of all members of the class is
11 impracticable. Class action treatment will permit a larger number of similarly situated
12 persons to prosecute their common claims in a single forum simultaneously, efficiently,
13 and without the unnecessary duplication of effort and expense that numerous individual
14 actions would engender. Further, as damages suffered by each individual member of the
15 class may be relatively small, the expenses and burden of the individual litigation would
16 make it difficult or impossible for individual members of the class to redress the wrongs
17 done to them, and an important public interest will be served by addressing the matter as
18 a class action. The cost to the court system of adjudication of such individualized
19 litigation would be substantial. Individualized litigation would also present the potential
20 for inconsistent or contradictory judgments.

21 15. Plaintiff is unaware of any difficulties that are likely to be encountered in the
22 management of this action that would preclude its maintenance as a class action.

23 GENERAL ALLEGATIONS

24 16. Plaintiff incorporate by reference and re-allege paragraphs 1 through 15 as though fully
25 set forth herein.

26 17. Plaintiff worked for Defendants from December 19, 2019 to February 11, 2020 as a non-
27 exempt hourly employee. Defendants are an industrial staffing service that provides day labor to clients
28 and has offices in Corona, Hayward, Sacramento, and Fresno. During her employment, Plaintiff and

1 similarly situated employees would arrive to Defendants' office location before traveling to a site to
2 work for the day and would travel back to Defendants' office after work at the job site was done for the
3 day. However, Plaintiff and similarly situated employees' hours worked did not start being counted
4 until they arrived at the job site, which left the travel time to and from the site employer uncompensated.
5 This travel was required as Defendants made employees show up every morning for at least two hours in
6 order to be dispatched to a client employer. Before traveling to a job fair to represent the company,
7 Plaintiff would go to the office to pick up supplies and/or other materials needed in order to perform her
8 job at the job fair. If employees were not dispatched to a client employer, they did not receive any pay
9 for the day. Upon completion of their workday, the travel back to Defendants' office was required as
10 well. In addition to this travel time, there were several occasions where Plaintiff and similarly situated
11 employees had to continue working off the clock in order to distribute checks to workers for their
12 weekly or daily pay. These practices resulted in unpaid minimum, straight time, and overtime wages.

13 18. Defendants did not keep accurate records of the start and stop times that Plaintiff and
14 similarly situated employees would work in a day. For example, the day labor employees only had a
15 total number of hours reported for them. Defendants did not maintain any records showing their clock
16 in and clock out times for the day.

17 19. Plaintiff is informed and believes that Defendants failed to maintain a reimbursement
18 policy. Plaintiff and similarly situated employees used their personal cell phones and vehicles for work
19 purposes on several occasions, but were not reimbursed for such use. The use of the cell phone and
20 personal vehicles were required because Plaintiff and similarly situated employees were required to
21 arrive at the office location before heading to a client site and regularly had to maintain communications
22 with the office. Plaintiff and similarly situated employees were not reimbursed for all expenses incurred
23 as part of their job working for Defendants.

24 20. Defendants did not authorize and provide an opportunity for Plaintiff and similarly
25 situated employees to take all thirty (30) minute meal periods and ten (10) minute rest periods owed to
26 them. This was due to Defendants' lack of policies and the amount of work Defendants required
27 Plaintiff and similarly situated employees to complete each day. Furthermore, Defendants' failure to
28 account for all hours worked resulted in Plaintiff and similarly situated employees being entitled to more

1 meal and rest periods and at earlier times than their timecards would demonstrate. Defendants also did
2 not authorize and provide an opportunity for Plaintiff and similarly situated employees to take all second
3 thirty (30) minute meal periods and third ten (10) minute rest periods when they worked over ten (10)
4 hours in a day. Defendants did not pay Plaintiff and similarly situated employees all missed meal and
5 rest period premiums they were owed.

6 21. Plaintiff is informed and believes that similarly situated employees were not paid the
7 appropriate overtime rates of pay based on multiple earning rates through the week as Defendants did
8 not appropriately calculate their regular rate of pay in accordance with the law.

9 22. As a result of Defendants failure to pay minimum, straight time, and overtime wages and
10 provide meal and rest periods, Defendants failed to provide all wages owed to Plaintiff and similarly
11 situated employees upon their termination. In addition, Defendants failed to provide Plaintiff and
12 similarly situated employees with accurate wage statements. Defendants failed to accurately itemize the
13 total hours worked, gross and net wages earned, applicable rates of pay for each hour worked on
14 paystubs issued to Plaintiff and similarly situated employees as a result of their policies. In addition to
15 the wage statements being inaccurate, Defendants failed to comply with Labor Code section 212 in that
16 it issued checks to Plaintiff and similarly situated employees that could not be cashed without having to
17 pay a bank fee. Plaintiff regularly had to pay \$7.50 at the drawee bank named on the check in order to
18 cash her check and receive her wages immediately.

19 23. Zachary Collier was an owner, director, officer, shareholder, and/or managing agent of
20 Defendants. Zachary Collier had the authority to set and determine Plaintiff's and similarly situated
21 employees' wages, set and determine Plaintiff's and similarly situated employees' work schedule, hire
22 and/or fire Plaintiff and similarly situated employees, and discipline Plaintiff and similarly situated
23 employees. Plaintiff is informed and believes that Zachary Collier was responsible for overseeing all
24 practices alleged to be unlawful that are described above.

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1 **CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION**
3 **FAILURE TO PAY OVERTIME WAGES**
4 **(As to all Defendants)**

5 24. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 23 as though fully
6 set forth herein.

7 25. During the period Plaintiff were employed by Defendants, Defendants were required to
8 compensate Plaintiff at one and one-half (1½) times the regular rate of pay for hours worked in excess of
9 eight (8) hours per day and/or forty (40) hours per week, and two (2) times the regular rate of pay for
10 hours worked in excess of twelve (12) hours per day. *See, e.g., IWC Wage Order No. 4, section (3)(A);*
11 Cal. Labor Code §§ 510, 1194.

12 26. Plaintiff and similarly situated employees worked in excess of eight (8) hours per day and
13 forty (40) hours per week while employed by Defendants. Defendants failed to compensate Plaintiff and
14 similarly situated employees for all overtime work, which is calculated at one and one-half (1½) times
15 the regular rate of pay for hours worked in excess of eight (8) hours per day and/or forty (40) hours per
16 week, and two (2) times the regular rate of pay for hours worked in excess of twelve (12) hours per day.
17 *See, e.g., IWC Wage Order No. 4, section (3)(A); Cal. Labor Code §§ 510 and 1194.*

18 27. Plaintiff and similarly situated employees were non-exempt employees under the
19 administrative, executive, or professional exemptions found in IWC Wage Order No. 4, section 1 and
20 Cal. Labor Code section 510.

21 28. Defendants' conduct described herein violates Cal. Labor Code sections 510 and 1194,
22 and IWC Wage Order No. 4. As a proximate result of Defendants' conduct, Plaintiff have been
23 damaged and deprived of overtime wages for three (3) years from the filing of this Complaint. Plaintiff
24 now seek these wages, as well as attorney's fees and costs, and interest pursuant to Cal. Labor Code
25 section 1194.

26 **SECOND CAUSE OF ACTION**
27 **FAILURE TO PAY MINIMUM WAGES**
28 **(As to all Defendants)**

29 29. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 28 as though fully
30 set forth herein.

30. For the period preceding the filing of this Complaint, Defendants were required to compensate California's minimum wage of \$8.00 per hour (beginning January 1, 2008), \$9.00 per hour (beginning July 1, 2014), \$10.00 per hour (beginning January 1, 2016), \$10.50 per hour (beginning January 1, 2017, for employers with twenty-six (26) or more employees) or \$10.00 per hour (beginning January 1, 2017, for employers with twenty-five (25) or less employees), \$11.00 per hour (beginning January 1, 2018, for employers with twenty-six (26) or more employees) or \$10.50 per hour (beginning January 1, 2018, for employers with twenty-five (25) or less employees), \$12.00 per hour (beginning January 1, 2019, for employers with twenty-six (26) or more employees) or \$11.00 per hour (beginning January 1, 2019, for employers with twenty-five (25) or less employees), and \$13.00 per hour (beginning January 1, 2020, for employers with twenty-six (26) or more employees) or \$12.00 per hour (beginning January 1, 2020, for employers with twenty-five (25) or less employees). *See, e.g.*, IWC Wage Order, No. 4, section 4(A); Labor Code § 1194.

31. Plaintiff was not exempt to the State's Minimum Wage Orders. Defendants were aware of their obligation to pay the minimum wage for each hour worked but failed to do so.

32. As a proximate result of Defendants' conduct, Plaintiff has been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

THIRD CAUSE OF ACTION
FAILURE TO PROVIDE MEAL PERIODS
(As to all Defendants)

33. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 32 as though fully set forth herein.

34. An employer must provide an employee a meal period in accordance with the applicable Wage Order, and Labor Code sections 226.7 and 512.

35. Labor Code sections 226.7 and 512 and IWC Wage Order No. 4, section 11(A) require an employer to provide an uninterrupted meal period of not less than thirty (30) minutes for each work period of more than five (5) hours.

36. Labor Code section 512 and Wage Order No. 4 section 11(B) further provide that employers may not employ employees for a work period for more than ten (10) hours per day

1 without providing the employee with a second meal period of at least thirty (30) minutes. However,
2 if the total hours worked is no more than twelve (12) hours, the second meal period may be waived
3 so long as there was no waiver as to the first meal period.

4 37. Plaintiff allege that Defendants employed Plaintiff and similarly situated employees
5 for periods of more than five (5) hours without providing meal breaks of at least thirty (30) minutes
6 or a second meal period of at least thirty (30) minutes when Plaintiff and similarly situated
7 employees worked more than ten (10) hours in a day. Plaintiff and similarly situated employees did
8 not waive their rights to all meal periods throughout their employment.

9 38. Defendants further failed to pay Plaintiff and similarly situated employees the
10 applicable meal period premiums for any such missed meal breaks.

11 39. As a proximate cause of Defendants' failure to permit meal periods as legally required,
12 Plaintiff is entitled to one (1) hour of pay at the employee's regular rate of compensation for each meal
13 period not provided, as a wage, from three (3) years of the filing of this action. Labor Code § 226.7 and
14 IWC Wage Order No. 4, § 11(D).

15 **FOURTH CAUSE OF ACTION**
16 **FAILURE TO PROVIDE REST PERIODS**
17 **(As to all Defendants)**

18 40. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 39 as though
19 fully set forth herein.

20 41. An employer must provide an employee a rest period in accordance with the
21 applicable Wage Order and Labor Code section 226.7.

22 42. Labor Code section 226.7 and Wage Order No. 4, section 12(A) require an employer
23 to provide a rest period of not less than ten (10) minutes for each work period of more than four (4)
24 hours or a major fraction thereof.

25 43. Plaintiff allege that Defendants failed to authorize and permit Plaintiff and similarly
26 situated employees to take rest periods of at least ten (10) minutes for each work period that she
27 worked more than four (4) hours or a major fraction thereof.

28 44. As a proximate cause of Defendants' failure to "authorize and permit" rest periods,
Plaintiff is entitled to one (1) hour of pay at the employee's regular rate of compensation for each

1 rest period not provided, as a wage, from three (3) years of the filing of this action. Labor Code §
2 226.7 and IWC Wage Order No. 4, § 12(B).

3 **FIFTH CAUSE OF ACTION**
4 **FAILURE TO REIMBURSE EXPENSES**
5 **(As to all Defendants)**

6 45. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 44 as though fully
7 set forth herein.

8 46. Labor Code section 2802(a) states that "An employer shall indemnify his or her
9 employee for all necessary expenditures or losses incurred by the employee in direct consequence of the
10 discharge of his or her duties, or of his or her obedience to the directions of the employer, even though
11 unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful."

12 47. Plaintiff and similarly situated employees used their personal cell phones and vehicles for
13 work purposes but did not receive all reimbursement due for such use.

14 48. Defendants' conduct described herein violated California Labor Code section 2802. As a
15 proximate result of Defendants' conduct, Plaintiff have been damaged as stated in the section below
16 titled "DAMAGES."

17 **SIXTH CAUSE OF ACTION**
18 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**
19 **(As to all Defendants)**

20 49. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 48 as though fully
21 set forth herein.

22 50. Pursuant to Labor Code section 226(a), an employer must provide an itemized statement
23 to an employee, semimonthly or at the time of each payment of wages, showing:

24 *(1) gross wages earned, (2) total hours worked by the employee, except for*
25 *any employee whose compensation is solely based on a salary and who is*
26 *exempt from payment of overtime under subdivision (a) of Section 515 or*
27 *any applicable order of the Industrial Welfare Commission, (3) the*
28 *number of piece-rate units earned and any applicable piece rate if the*
employee is paid on a piece-rate basis, (4) all deductions, provided that
all deductions made on written orders of the employee may be aggregated
and shown as one item, (5) net wages earned, (6) the inclusive dates of the
period for which the employee is paid, (7) the name of the employee and
the last four digits of his or her social security number or an employee
identification number other than a social security number, (8) the name
and address of the legal entity that is the employer and, if the employer is
a farm labor contractor, as defined in subdivision (b) of Section 1682, the

1 *name and address of the legal entity that secured the services of the*
2 *employer, and (9) all applicable hourly rates in effect during the pay*
3 *period and the corresponding number of hours worked at each hourly rate*
4 *by the employee. The deductions made from payment of wages shall be*
5 *recorded in ink or other indelible form, properly dated, showing the*
6 *month, day, and year, and a copy of the statement and the record of the*
7 *deductions shall be kept on file by the employer for at least three years at*
8 *the place of employment or at a central location within the State of*
9 *California.*

10 51. Plaintiff allege that Defendants intentionally and knowingly failed to provide an itemized
11 statement or failed to provide an accurate and complete itemized statement showing the requirements set
12 forth in Labor Code section 226(a). Due to Defendants' compensation policies during Plaintiff'
13 employment that resulted in failing to pay accurately for all hours worked, Defendants did not properly
14 itemize all hours worked.

15 52. Additionally, Plaintiff allege she suffered injury as a result of the Defendants' failure to
16 provide any wage statement or by failing to provide accurate and complete information as required by
17 any one or more of items (1) to (9), inclusive, of Labor Code section 226, subdivision (a). Plaintiff and
18 similarly situated employees cannot promptly and easily determine, or, in other words, a reasonable
19 person would not be able to readily ascertain the information without reference to other documents or
20 information from the wage statement alone, one or more of the following:

- 21 (i) The amount of the gross wages or net wages paid to the employee
22 during the pay period or any of the other information required to be
23 provided on the itemized wage statement pursuant to items (2) to (4),
24 inclusive, (6), and (9) of section 226, subdivision (a); or
25 (ii) Which deductions the employer made from gross wages to determine
26 the net wages paid to the employee during the pay period; or
27 (iii) The name and address of the employer and, if the employer is a farm
28 labor contractor, as defined in subdivision (b) of Labor Code section 1682,
the name and address of the legal entity that secured the services of the
employer during the pay period.
(iv) The name of the employee and only the last four digits of his or her
social security number or an employee identification number other than a
social security number.

53. As a proximate cause of Defendants' failure to provide accurate statements, Plaintiff
were damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the
extent pertinent as if set forth here in full.

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SEVENTH CAUSE OF ACTION
WAITING TIME PENALTIES
(As to all Defendants)

54. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 53 as though fully set forth herein.

55. An employer must pay an employee who is terminated all unpaid wages immediately upon termination. *See* Labor Code § 201.

56. An employer must pay an employee who resigns all unpaid wages within seventy-two (72) hours of their resignation. *See* Labor Code § 202.

57. Plaintiff and similarly situated employees did not receive all wages, including minimum wages, overtime compensation, and meal and rest period premiums, at their termination or within the required time after their separation from employment.

58. An employer who willfully fails to pay an employee wages in accordance with Labor Code §§ 201 and/or 202 must pay the employee a waiting time penalty of up to thirty (30) days. *See* Labor Code § 203.

59. Defendants knew of their obligation to pay Plaintiff and similarly situated employees when employment terminated yet failed to do so. Such conduct shows the Defendants' knowledge of their obligation to pay upon termination and their willful refusal.

60. As a proximate result of the Defendants' conduct, Plaintiff have been damaged and deprived of their wages and thereby seek their daily rate of pay multiplied by thirty (30) days for Defendants' failure to pay all wages due.

EIGHTH CAUSE OF ACTION
UNFAIR COMPETITION
(As to all Defendants)

61. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 60 as though fully set forth herein.

62. Unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1

1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code. *See*
2 California Business and Professions ("B&P") Code § 17200.

3 63. Plaintiff and similarly situated employees were not paid all wages earned, including
4 minimum wages, overtime wages, double time wages, sick leave wages under the Healthy Workplace
5 Healthy Family Act of 2014, and meal and rest period premiums.

6 64. Plaintiff is also informed and believes and thereon alleges that such actions and/or
7 conduct constitute a violation of the California Unfair Competition Law ("UCL") (Business and
8 Professions Code 17200 *et seq.*) pursuant to *Cortez v. Purolator Air Filtration Products Co.*, 23 Cal. 4th
9 163 (2000).

10 65. As a direct and legal result of Defendants' conduct, as alleged herein, pursuant to the
11 UCL (including B&P Code §17203), Plaintiff is entitled to restitution as a result of its unfair business
12 practices, including, but not limited to, interest and penalties pursuant to B&P §§ 17203, 17208,
13 violations of Labor Code sections 226.7, 246, 246.5, 248.5, 510, 512, and 1194, all in an amount as yet
14 unascertained but subject to proof at trial, for four (4) years from the filing of this Complaint.

15
16 **NINTH CAUSE OF ACTION**
PRIVATE ATTORNEYS GENERAL ACT
17 **(As to All Defendants)**

18 66. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 65 as though fully
19 set forth herein.

20 67. Plaintiff has alleged to the Labor Commissioner that Defendants have violated the
21 following provisions of the Labor Code in their dealings with Plaintiff and other similarly situated
22 current and former employees:

- 23 • Violation of Labor Code §§ 510, 1194 and Wage Order No. 4-2001, § 3 (Failure to Pay
24 Overtime Wages)
- 25 • Violation of Labor Code §§ 1194, 1197.1 and Wage Order No. 4-2001, § 4 (Failure to
26 Pay Minimum Wages)
- 27 • Violation of Labor Code § 2802 (Failure to Pay Reimbursements for Expenses)
- 28 • Violation of Labor Code §§ 226.7 & 512 and Wage Order No. 4-2001, §§ 11(A) and

11(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)

- Violation of Labor Code § 226.7 and Wage Order No. 4-2001, § 12(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof)
- Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)
- Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)
- Violation of Labor Code § 558 and 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order)
- Violation of Labor Code §§ 226.3, 1174 (Failure to Maintain Accurate Records)
- Violation of Labor Code §§ 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave)
- Violation of Labor Code §§ 212 (Prohibited Forms of Payment)

68. Plaintiff seeks civil penalties against Defendants as provided in the Labor Code, or, if no civil penalty is provided, default penalties pursuant to Labor Code section 2699(f)(2).

69. Plaintiff seeks these civil penalties from Defendants pursuant to Labor Code sections 2699(a) and 2699.3.

DAMAGES

WHEREFORE Plaintiff request relief as follows:

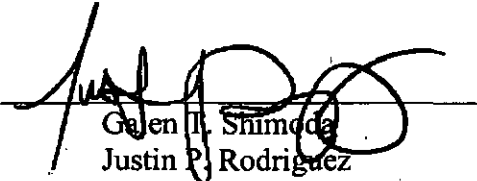
1. A jury trial;
2. As to the First Cause of Action:
 - a. \$250,000;
 - b. Interest for the wages due pursuant to Labor Code section 1194;
 - c. For reasonable attorney's fees and costs incurred pursuant to Labor Code section 1194;
3. As to the Second Cause of Action:
 - a. Wages in the amount of \$250,000;
 - b. Interest for the wages due pursuant to Labor Code section 1194;
 - c. For reasonable attorney's fees and costs incurred pursuant to Labor Code section 1194;
 - d. Liquidated damages pursuant to Labor Code section 1194.2;

- 1 4. As to the Third Cause of Action:
- 2 a. \$250,000;
- 3 b. Attorney's fees and costs as provided for by law;
- 4 5. As to the Fourth Cause of Action:
- 5 a. \$250,000;
- 6 b. Attorney's fees and costs as provided for by law;
- 7 6. As to the Fifth Cause of Action:
- 8 a. \$250,000;
- 9 b. For attorney's fees, interest, and costs pursuant to Labor Code section 2802(c);
- 10 7. As to the Sixth Cause of Action:
- 11 a. Penalties as provided for in Labor Code section 226, including the greater of all
- 12 actual damages or fifty dollars (\$50.00) for the initial pay period in which the
- 13 violation occurred and one hundred dollars (\$100.00) per employee for each
- 14 violation in the subsequent pay periods, but not to exceed four thousand dollars
- 15 (\$4,000.00);
- 16 b. For reasonable attorney's fees and costs incurred pursuant to Labor Code section
- 17 226(e);
- 18 8. As to the Ninth Cause of Action:
- 19 a. For civil penalties as provided for in the Labor Code for each enumerated violation;
- 20 b. For those Labor Code sections, the violation of which there is no civil penalty
- 21 provided, the default penalty provided in Labor Code section 2699(f): for any initial
- 22 violation, one hundred dollars (\$100) for each aggrieved employee per pay period;
- 23 For any subsequent violation, two hundred dollars (\$200) for each aggrieved
- 24 employee per pay period;
- 25 c. Reasonable attorney's fees and costs pursuant to Labor Code section 2699;
- 26 d. For any other remedies as allowed by law and/or deemed appropriate by the Court;
- 27 9. For such other and further relief as this Court may deem just and proper,
- 28 including, but not limited to:

- 1 a. Wages as proved at trial;
2 b. Injunctive and Declaratory relief;
3 c. Attorney's fees and costs; and
4 d. Interest.

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6 Dated: June 24, 2020

Shimoda Law Corp.

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8 By: 

9 Glen H. Shimoda
10 Justin P. Rodriguez
11 Brittany V. Berzin
12 Attorneys for Plaintiff
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