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Superior Court of California
County of Los Angeles

AUG 04 2020

Sherri R. Carter, Executive Officer/Clerk of Court
By: Tanya Herrera, Deputy

Attorneys for Plaintiff HAROUTYOUN KIOUDJIAN,
on behalf of himself and all others similarly situated

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

HAROUTYOUN KIOUDJIAN, an
individual, on behalf of himself and others
similarly situated,

Plaintiff,

vs.

BODY VISION JEWELRY, INC., a
California corporation; and DOES 1 through
50, inclusive,

Defendants.

Case No.: 20STCV13964

Assigned for All Purposes To:
Judge Ann I. Jones
Dept. 11, Spring Street Courthouse

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages and for all hours worked;
2. Failure to Pay Wages and Overtime Under Labor Code § 510;
3. Misclassification of Employees Under Labor Code § 2750.3 and 226.8;
4. Meal Period Liability Under Labor Code § 226.7;
5. Rest-Break Liability Under Labor Code § 226.7;
6. Violation of Labor Code § 226(a)
7. Violation of Labor Code § 221;
8. Violation of Labor Code § 204;
9. Violation of Labor Code § 203;
10. Violation of Business & Professions Code § 17200 *et seq.*; and
11. Penalties under PAGA, Labor Code § 2698

DEMAND FOR JURY TRIAL

Original Complaint Filed: April 9, 2020

BY FAX

1 Plaintiff HAROUTYOUN KIOUDJIAN (hereinafter “Plaintiff”), on behalf of himself and
2 all other similarly situated non-exempt, hourly workers employed by Defendants at their jewelry
3 manufacturing and processing facilities in California (collectively, “Employees”; individually,
4 “Employee”), complains of Defendants, and each of them, as follows:

5 **INTRODUCTION**

6 1. Plaintiff brings this action on behalf of himself and all current and former
7 Employees within the State of California who, at any time four (4) years prior to the filing of this
8 lawsuit, are or were employed as non-exempt, hourly workers by Defendants BODY VISION
9 JEWELRY, INC., a California corporation, and DOES 1 through 50 (all defendants being
10 collectively referred to herein as “Defendants”). Plaintiff alleges that Defendants, and each of
11 them, violated various provisions of the California Labor Code, relevant orders of the Industrial
12 Welfare Commission (IWC), and California Business & Professions Code, and seeks redress for
13 these violations.

14 2. Plaintiff is a resident of Los Angeles county and was employed during the relevant
15 period by Defendants as a jeweler, with responsibilities for manufacturing the jewelry pieces
16 which Defendants sell to customers on-line and through catalogs and studio sales. Plaintiff and the
17 Class members were employed by Defendants in non-exempt, hourly jewelry manufacturing and
18 related and supporting positions, including jewelers, gem handlers and polishers, wax injectors,
19 and stone setters, and those related to packaging and shipping. Plaintiff and the other similarly
20 situated Employees were required to perform various jewelry manufacturing and processing
21 related work tasks at Defendants’ behest without being paid all wages due and provided all
22 required breaks. Upon information and belief, Plaintiff was employed by Defendants, shared
23 similar job duties and responsibilities, was subjected to the same policies and practices, and
24 endured similar violations at the hands of Defendants as the other Employee Class members who
25 served in similar and related positions.

26 3. Defendants required Plaintiff and the Employees in the Class to work off the clock
27 and failed to record accurate time worked by these Employees, failed to pay them at the
28 appropriate rates for all hours worked, failed to pay all wages due and owing twice monthly and at

1 termination or resignation, and provided Plaintiff and the Class members with untimely payments
2 and inaccurate wage statements that prevented them from learning of these unlawful pay practices.
3 Defendants also failed to provide Plaintiff and the Class with lawful meal and rest periods, as
4 Employees were required to remain under Defendants' control and were not provided with the
5 opportunity to take full, timely, uninterrupted and duty-free rest periods and meal breaks, as
6 required by the Labor Code and the applicable paragraphs of the IWC Wage Orders.

7 4. Defendant BODY VISION JEWELRY, INC. is a California corporation which lists
8 is principal executive offices and California address in LaVerne, California in Los Angeles
9 County. It lists its type of business with the California Secretary of State as "Jewelry
10 Manufacturer," and upon information and belief, also does business in California as "Body Vision
11 Los Angeles" and "BVLA" and "BV & CO" The wage statements issued to Plaintiff, and upon
12 information and belief the Class members, listed "BV & CO" as the employer, with Defendants'
13 La Verne, California address listed. Its web-site explains that Body Vision Los Angeles (BVLA)
14 "is the world's leading manufacturer of precious metal body jewelry...Each piece is designed,
15 handmade and hand polished with love in Los Angeles, California." Defendant BODY VISION
16 JEWELRY, INC. manufactures its jewelry products based out of multiple facilities and offices in
17 La Verne and Los Angeles, California, where it employs Plaintiff and the Class members in non-
18 exempt, hourly jewelry manufacturing and related and supporting positions, including jewelers,
19 gem handlers and polishers, wax injectors, and stone setters, and those employed in positions
20 related to packaging and shipping and other processing tasks all working to manufacture, process,
21 and ship jewelry products to customers throughout California and the world.

22 5. This Court has jurisdiction over this Action pursuant to California Code of Civil
23 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought
24 as a Class Action on behalf of similarly situated Employees of Defendants pursuant to California
25 Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district
26 pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the
27 obligations and liabilities giving rise to this lawsuit occurred, at least in part in Los Angeles
28 County where Defendant BODY VISION JEWELRY, INC. is headquartered and maintains

facilities and offices, including those where Plaintiff and the other Class members were employed.

6. The true names and capacities, whether individual, corporate, associate, or whatever else, of the Defendants sued herein as Does 1 through 50, inclusive, are currently unknown to Plaintiff, who therefore sues these Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is informed and believes and thereon alleges that Defendants designated herein as Does 1 through 50, inclusive, and each of them, are legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated herein as Does 1 through 50 when their identities become known.

7. Plaintiff is informed and believes and thereon alleges that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, that Defendants carried out a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of each Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted in all respects as the employers or joint employers of Employees. Defendants, and each of them, exercised control over the wages, hours or working conditions of Employees, created and implemented the policies and practices that governed the employment of Plaintiff and the Class members and dictated their job duties and responsibilities, or otherwise suffered or permitted Plaintiff and the other Employee Class members to work, or engaged, thereby creating a common law employment relationship, with the Employee Class members. Therefore, Defendants, and each of them, employed or jointly employed the Employee Class members.

FACTUAL BACKGROUND

8. The Employees who comprise the Class, including Plaintiff, are non-exempt employees of Defendants pursuant to the applicable Wage Order of the Industrial Welfare Commission (“IWC”). Upon information and belief, their employment has not been governed under any collective bargaining agreements. During the period of four years prior to the filing of this action through its resolution, Plaintiff and the Class members were either not paid by Defendants for all hours worked or were not paid at the appropriate minimum, regular and overtime rates. Plaintiff also contends that Defendants failed to pay Plaintiff and the Class

1 members all wages due and owing, including by requiring off the clock work and by
2 misclassifying them to willfully avoid paying overtime premiums, failed to provide meal and rest
3 breaks, and failed to furnish accurate wage statements and timely pay all wages owed, all in
4 violation of various provisions of the California Labor Code and applicable paragraphs of the
5 IWC Wage Orders.

6 9. During the course of Plaintiff and the Class members' employment with
7 Defendants, they were not paid all wages they were owed, including for all work performed
8 (resulting in "off the clock" work) and for all their overtime hours worked at the required
9 overtime premium rates. This has resulted in systematic and ongoing violations of the California
10 Labor Code and relevant IWC Wage Orders.

11 10. Plaintiff, along with the similarly situated Employees in the Class, worked as non-
12 exempt, hourly employees at Defendants' facilities in California, including those in La Verne and
13 Los Angeles in Los Angeles County. Plaintiff was scheduled to work eight hour shifts, and was
14 able to decide when to work those eight hours within the operational hours for the facilities,
15 which were usually 7:00 a.m. to 6:00 or 7:00 p.m. This time included a daily paid allocation of 30
16 minutes to a meal period, but Defendants nevertheless failed to provide and permit lawful breaks.
17 Management pressure and job production demands Defendants placed on Plaintiff and the Class
18 members required them to work substantially more than these scheduled hours, but Defendants
19 failed to pay them for all their hours worked. Defendants also systematically and unlawfully
20 failed to pay those additional hours at the required overtime rate.

21 11. Defendants implemented a company-wide timekeeping policy and procedures
22 which required Plaintiff and the Class members to utilize two separate timekeeping systems for
23 recording their hours worked. The first was a computer based program and application which
24 Employees logged into and which recorded time punches for work start and end times and for
25 meal period start and end times by mouse clicks. Defendants and the Employees referred to this
26 as the "Regular Hours" time clock. If more than eight hours were recorded by an Employee in
27 this Regular Hours time clock, Defendants' management would pay some required overtime
28 premiums. However, Defendants' management admonished Employees for recording these hours

1 over eight as overtime, and threatened discipline if they incurred too much of such overtime.

2 12. Prior to clocking into the Regular Hours clock, Plaintiff also incurred further off
3 the clock work by having to prepare his work area and perform other job related duties required
4 of him for that shift, and similarly incurred off the clock hours at the end of his shifts to complete
5 job duties and requirements. Defendants also uniformly applied a policy and practice of not
6 paying employees for times beyond 30 minutes during a meal period, and would track the time
7 after 30 minutes through the time clocked back in as unpaid. Defendants thus failed to
8 compensate Employees in the Class and Plaintiff for hours while they were working, including
9 between meal period punch times, in order to complete their job requirements and keep up with
10 production demands.

11 13. Even though Defendants scheduled Plaintiff and the Class Members to work as
12 close to eight hour shifts as possible without incurring overtime, the work demands and
13 production requirements placed upon them by Defendants required substantially more than eight
14 hours of work on most shifts. On such occasions, Defendants' uniformly applied policy willfully
15 and knowingly required Plaintiff and the Class members to clock out of the Regular Hours clock
16 and clock into a second timekeeping system, which Defendants and the Employees referred to as
17 the "Overtime Clock." However, the time entries Employees inputted into the Overtime Clock by
18 finger scanning were recorded separately so that Defendants could categorize payments for these
19 hours as 1099 pay exempt from overtime. Upon information and belief, Defendants implemented
20 this policy with the specific intention of avoiding paying Plaintiff and the Class members
21 overtime premiums for the hours recorded by the Overtime Clock. In fact, Defendants would
22 compile the hours recorded in the Overtime Clock and unlawfully and untimely pay Plaintiff and
23 the Class members once monthly for the previous month, and Defendants paid all listed and
24 totaled hours only at the Employee's regular hourly rate without paying any overtime premium.
25 Statements, labeled and referred to as "Time Cards" were provided to Plaintiff and the Class
26 members detailing their hours from the Overtime Clock along with the corresponding monthly
27 check for hours paid as if they were exempt from overtime.

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1 14. Plaintiff and the Class members were specifically told that they should not work
2 overtime hours, at least as inputted into the Regular Hours clock, and would be disciplined if they
3 recorded too much. Instead, any additional hours Employees were required to work after eight in
4 a given shift had to be entered separately into the Overtime Clock, even though hours recorded
5 under by it were only paid at the regular hourly rate. For the separate hours employees were
6 required to enter on the Overtime Clock, Defendants paid Plaintiff and the Class members as if
7 they were exempt from overtime, and issued them 1099 forms, thus evidencing a specific intent
8 to willfully misclassify the Class members as independent contractors under Labor Code §§
9 2750.3 and 226.8 for significant portions of their daily work hours.

10 15. Plaintiff was therefore not paid for all his hours worked at the required minimum,
11 overtime and double time wage rates due to Defendants' policy and practice of requiring him to
12 work off the clock and without pay, and failed to pay Plaintiff at the required overtime rates for
13 all hours over eight in a shift, or over forty in a work week. Defendants' unlawful timekeeping
14 and wage payment practices consistently applied to all Employees. With work shifts generally
15 being scheduled for eight hours or more, the unpaid off the clock work resulted in Plaintiff and
16 the Class members working past eight hours on most shifts, which required that they be paid at
17 the correct overtime rate of 1.5 times their regular rate.

18 16. Defendants thus systematically underpaid Plaintiff and the Class members by
19 failing to pay them at the required overtime rates for all hours over eight in a work shift or over
20 forty in a work week, and all hours over twelve in a day at the required double time rate. Upon
21 information and belief, the Class members were bound by similar scheduling and work policies as
22 Plaintiff, which Defendants required them to follow, and Class members endured similar
23 violations at Defendants' hands as Plaintiff.

24 17. Defendants have either failed to maintain timekeeping records for Plaintiff that
25 would permit Plaintiff to discover the nature and extent of the off the clock work Defendants'
26 required and the actual hours Plaintiff worked, or have otherwise declined to produce them to
27 Plaintiff in response to a timely and lawful records request. By failing to pay for all hours
28 worked, and not paying overtime premiums for hours over eight on a shift or forty in a week,

1 Defendants have committed knowing and intentional ongoing violations of the record keeping
2 requirements under the Labor Code, including section 1174.

3 18. The failure to pay for all hours worked and underpayment of wages to Plaintiff
4 and the Class members is and has been a direct consequence of Defendants' unlawful
5 compensation policies and practices, which applied uniformly to the Class members working at
6 Defendants' facilities and offices in California. As a result of the above described unlawful
7 requirements to work off the clock, the failure to accurately record all hours worked and pay
8 wages at the correct rates, and the other wage violations they endured at Defendants' hands,
9 Plaintiff and the Class members were not properly paid all wages earned and all wages owed to
10 them by Defendants, including when working more than eight hours in any given day and/or
11 more than forty hours in any given week. As a result of Defendants' unlawful policies and
12 practices, Plaintiff and Class members incurred overtime hours worked for which they were not
13 adequately and completely compensated, in addition to the hours they were required to work off
14 the clock at their regular rates. Additionally, when receiving 1099 payments for hours worked as
15 they were clocked into the second Overtime Clock, Defendants only made these payments once
16 monthly, and did so at the incorrect regular rate. This further resulted in systematic violations of
17 Labor Code § 204 for failure to pay all wages owed twice monthly.

18 19. Therefore, from at least four years prior to the filing of this lawsuit and continuing
19 to the present, Defendants had a consistent policy or practice of failing to pay Employees for all
20 hours worked, and failing to pay wages for all hours worked or under Defendants' control, as
21 required by California law. Also, from at least four years prior to the filing of this lawsuit and
22 continuing to present, Defendants consistently failed to pay Employees overtime compensation at
23 premium overtime rates for all hours worked in excess of eight hours a day and/or forty hours a
24 week, and double-time rates for all hours worked in excess of twelve hours a day, in violation of
25 Labor Code § 510 and the corresponding sections of IWC Wage Orders. Defendants have also
26 misclassified Plaintiff and the Employee Class members as independent contractors exempt from
27 the overtime requirements for a substantial portion of their hours worked during their work shifts,
28 work weeks, and pay periods, in violation of Labor Code §§ 2750.3 and 226.8.

1 20. Defendants also failed to provide Plaintiff and the Class members with their
2 required first and second meal periods, and their first, second, and third required rest breaks.
3 Defendants followed a common policy of failing to provide lawful meal periods to Plaintiff and
4 the Class members, as required under the Labor Code and Paragraph 11 of the applicable IWC
5 Wage Order(s). Defendants similarly systematically failed to authorize and permit Plaintiff and
6 the employee Class Members to take all required 10-minute rest breaks, as required under the
7 Labor Code and Paragraph 12 of the applicable IWC Wage Order(s).

8 21. Plaintiff and the Class members generally worked shifts that entitled them to
9 receive at least one meal period and two rest breaks. However, Defendants failed to provide all
10 required meal periods and rest breaks to them. Defendants' uniformly applied policies and
11 practices systematically failed to provide required duty-free meal periods to Plaintiff and the
12 Class members. If and when Plaintiff received a meal break, it was generally interrupted by work
13 demands. Plaintiff and other Class members were required to perform work as ordered by
14 Defendants for more than five hours during a shift, but were often required to do so without
15 receiving a compliant meal break. Plaintiff would clock out for his meal period and keep working
16 because he did not want to fall behind in all his work due the production requirements
17 Defendants' managers placed upon him and other Class members. Plaintiff was compelled to do
18 this, and to bring in snacks to eat at his work area during breaks, and Defendants' managers and
19 management were aware of Plaintiff working off the clock during meal periods. A similar
20 problem occurred with rest breaks, as production requirements and work demands prevented
21 Plaintiff and the Class members from taking all authorized rest periods, or required them to be
22 untimely or interrupted or on-duty. Additionally, as addressed above, Defendants followed a
23 practice of under-reporting or not recording all hours worked in a manner that would impact
24 when Employees were to receive meal periods, and meal periods were therefore either provided
25 late or were shortened or otherwise interrupted by work demands. On occasions when Employees
26 in the Class worked over ten hours in a shift, Defendants also failed to provide them with a
27 second meal period.

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1 22. While Defendant may contend that it paid Plaintiff and the Class Members for on-
2 duty meal periods for thirty minutes in a shift, the fact that the opportunity to take meal periods
3 timely or for their full duration was not provided to Plaintiff and the Class members requires
4 Defendants to pay premium wages of one full hour of regular wages for each unprovided or
5 untimely or impermissibly shortened meal period. In other words, any payments Defendants
6 made for time during a meal period do not excuse Defendants' failure to provide a lawful meal
7 period during any given work shift. Defendants also uniformly applied a policy and practice of
8 not paying employees for times beyond 30 minutes during a meal period, and would track the
9 remaining time after 30 minutes through clocking in as unpaid. Defendants thus also failed to
10 compensate Employees in the Class and Plaintiff for hours they were working between meal
11 period punch times in order to complete their job requirements and keep up with production
12 demands.

13 23. Defendants thus failed to provide all the legally required unpaid, off-duty meal
14 periods and all the legally required paid, off-duty rest periods to Plaintiff and the other Class
15 members, as required by the applicable Wage Order and Labor Code. Plaintiff and other Class
16 members were required to perform work as ordered by Defendants or otherwise remain under
17 Defendants' control for more than five hours during a shift, or ten hours in a shift, but were often
18 required to do so without receiving lawful, timely, and duty-free 30-minute meal breaks.
19 Additionally, as addressed above, Defendants followed a practice of requiring off the clock work,
20 in a manner that would impact when Employees were to receive meal periods and rest breaks,
21 thus leading to further violations.

22 24. As a result, Defendants' failure to provide Plaintiff and the Class members with all
23 legally required off-duty, unpaid meal periods and all the legally required off-duty, paid rest
24 periods is and will be evidenced by Defendants' business records, or lack thereof. Defendants have
25 either failed to maintain required records of when meal periods were actually provided or failed to
26 produce them in response to Plaintiff's timely and lawful requests, or else maintained inaccurate
27 and incomplete records. Defendants also failed to pay Employees "premium pay," i.e. one hour of
28 wages at each Employee's effective hourly rate of pay, for each meal period or rest break that

Defendants failed to provide or deficiently provided, in violation of Labor Code § 226.7.

25. Therefore, from at least four years prior to the filing of this action and through to the present, Plaintiff and the Class members were unable to take off-duty breaks or were otherwise not provided with the opportunity to take required meal breaks due to Defendants' policies and practices. On the occasions when Plaintiff and the Class members were provided with a meal period, it was often untimely or interrupted, or was impermissibly shortened, and Employees were not provided with one hour's wages in lieu thereof. Meal period violations thus occurred in one or more of the following manners:

- (a) Class members were not provided full thirty-minute duty free meal periods for work days in excess of five hours and were not compensated one hour's wages in lieu thereof, all in violation of, among others, Labor Code §§ 226.7, 512, and the applicable Industrial Welfare Commission Wage Order(s);
- (b) Class members were not provided second full thirty-minute duty free meal periods for work days in excess of ten hours;
- (c) Class members were required to work through at least part of their daily meal period(s);
- (d) Meal periods were provided after five hours of continuous work during a shift; and
- (e) Class members were restricted in their ability to take a full thirty-minute meal period or were otherwise required to remain under Defendants' control during meal periods.

26. Defendants also failed to authorize and permit Plaintiff and the Class members to take duty-free, net ten minute rest breaks for every four hours of shift work, or major fraction thereof. There were similar issues with the required net-ten minute rest breaks that Plaintiff and the Class members were unable to take as with meal periods. Rest breaks were not scheduled, as Defendants' policy was not to provide them, and management did not emphasize the requirement to provide at least one ten minute duty-free rest period for each four hour duty period, or major

1 fraction thereof. If and when Plaintiff and the Class members were provided with even a single
2 rest break on a shift, they were not provided with the required second or third rest period or else
3 they were interrupted or shortened by work demands and were not off-duty.

4 27. Defendants did not schedule any required ten minute rest breaks, and Plaintiff and
5 the Class members were compelled by work requirements and scheduling demands to continue
6 working throughout their shifts without receiving their required first, second, and third rest
7 breaks. Even the rest breaks they were authorized and permitted to take were often interrupted
8 regarding work matters. Therefore, the job requirements and duties required of Plaintiff and the
9 Class members, and the demands from Defendants' management and ownership, manifested a
10 failure to authorize and permit Class members to take all their required rest breaks. Plaintiff and
11 the other similarly situated Class members were either not authorized and permitted the
12 opportunity to take a rest break, or were required to remain under Defendants' control and
13 respond to and complete work requirements. Defendants also failed to authorize and permit
14 Employees to leave the facilities during rest breaks, or else prevented them from doing so, thus
15 further evidencing Defendants' policy and practice of requiring Plaintiff and the Class members
16 to remain under their control during required off-duty rest breaks.

17 28. Defendants' policies and practices thus systematically deny and denied Plaintiff
18 and the Class members full, duty-free ten-minute rest periods and thirty-minute, duty-free meal
19 periods. The California Supreme Court has instructed that the rest period requirement obligates
20 employers to permit-and authorizes employees to take-off-duty rest periods. That is, during rest
21 periods employers must relieve employees of all duties and relinquish control over how
22 employees spend their time. Plaintiff and the Class members were and are under Defendants'
23 control when they are working through rest breaks, and Defendants failed to schedule or account
24 for required first, second, and third rest breaks during the shifts Plaintiff and the Class members
25 generally worked.

26 29. Plaintiff and the Defendants' Employees in the Class were also not authorized and
27 permitted to take lawful rest periods, were systematically required by Defendants to work through
28 or during breaks, and were not provided with one hour's wages in lieu thereof. They were

1 required to remain on-duty during breaks or portions of their breaks, thus making them either
2 untimely or shortened and on-duty, and they were also prevented from leaving the premises
3 during rest breaks under Defendants' policies and practices. Rest period violations therefore arose
4 in one or more of the following manners:

- 5 a. Class members were required to work without being provided a minimum ten
6 minute rest period for every four hours or major fraction thereof worked and were
7 not compensated one hour of pay at their regular rate of compensation for each
8 workday that a rest period was not provided;
- 9 b. Class members were not authorized and permitted to take timely rest periods for
10 every four hours worked, or major fraction thereof; and
- 11 c. Class members were required to remain on-duty and under Defendants' control
12 during rest periods or otherwise had their rest periods interrupted by work
13 demands.

14 30. From at least four years prior to the filing of this lawsuit and continuing to the
15 present, Defendants have also consistently violated Labor Code § 221 by unlawfully collecting or
16 deducting the Employees' earned wages, including by the above described off the clock work
17 before and after work shifts and by categorizing other hours worked as unpaid hours. Also,
18 Defendants willfully classified overtime hours as regular hours with the intent to avoid paying the
19 required overtime premium wages, thus unlawfully deducting overtime premium payments for
20 certain hours worked over eight in a shift or over forty in a week. By not compensating Employees
21 for all hours worked and spent under Defendants' control, and by failing to pay all required
22 overtime premiums, Defendants unlawfully deducted wages earned by and owed to Plaintiff and
23 the Class members, in violation of Labor Code § 221.

24 31. As a result of the above described illegal policies and practices, Defendants
25 engaged in and enforced the following additional unlawful practices and policies against Plaintiff
26 and the Class members he seeks to represent:

- 27 a. failing to pay all wages owed to Class members who either were discharged, laid
28 off, or resigned in accordance with the requirements of Labor Code §§ 201, 202,

203;

- b. failing to pay all wages owed to the Class members twice monthly in accordance with the requirements of Labor Code § 204;
- c. failing to pay Class members all wages owed, including all meal and rest period premium wages;
- d. failing to maintain accurate records of Class members' earned wages and meal periods in violation of Labor Code §§ 226 and 1174(d) and section 7 of the applicable IWC Wage Orders; and
- e. failing to produce timekeeping records in response to Plaintiff's timely and lawful request to receive them under these authorities.

32. From at least four years prior to the filing of this lawsuit, and continuing to the present, Defendants have also consistently failed to provide Employees with timely, accurate, and itemized wage statements, in writing, as required by California wage-and-hour laws, including by the above-described requirement of off the clock work, failure to pay all overtime, and failure to pay premium wages for unprovided or otherwise unlawful meal and rest breaks. If and when Defendants provided statements, or Time Cards, with 1099 payments once-monthly, they failed to accurately list the applicable overtime rate required and therefore systematically underpaid wages leading to inaccurate wage statements. Defendants have also made it difficult to account with precision for the unlawfully withheld wages and meal and rest period compensation owed to Plaintiff and the Class, during the liability period, because they did not implement and preserve a record-keeping method as required for non-exempt employees by California Labor Code §§ 226, 1174(d), and paragraph 7 of the applicable California Wage Orders. Upon information and belief, time clock punches were not maintained or were not accurately maintained for work shifts and meal periods, which were automatically presumed by Defendants to have been lawfully provided when they were not. Defendants also failed to accurately record and pay for all regular and overtime hours worked by Plaintiff and the Class members. In addition to not paying for all hours worked off the clock and for all meal and rest period premiums owed during a pay period, Defendants only made 1099 payments for hours recorded on the Overtime Clock once monthly,

1 which further directly violates Labor Code § 204 for failure to pay all wages owed twice monthly,
2 and failure to provide accurate itemized wage statements listing these hours worked and applicable
3 rates.

4 33. Defendants thus also provided Plaintiff and the Class members with wage
5 statements that failed to accurately report all hours worked and applicable hourly rates for all
6 hours worked. As explained above, complaining about inaccurate wage statements that failed to
7 reflect all hours worked was futile, as Plaintiff and the Class members were required to work more
8 total hours than were reflected or reflected wage payments at inaccurate rates, including for
9 overtime hours. Plaintiff and the Employees in the Class were therefore unable to discern from
10 their wage statements alone the actual hours they worked in total during a pay period.

11 34. Defendants have thus also failed to comply with Labor Code § 226(a) by issuing
12 wage statements that inaccurately reported total hours worked and total wages earned by Plaintiff
13 and the Class members, along with the appropriate applicable rates, among other requirements.
14 Plaintiff and Class members are therefore entitled to penalties not to exceed \$4,000.00 for each
15 employee pursuant to Labor Code § 226(b). Defendants have also failed to comply with paragraph
16 7 of the applicable California IWC Wage Orders by failing to maintain time records showing
17 when the employee begins and ends each work period, meal periods, wages earned pursuant to
18 Labor Code § 226.7, and total daily hours worked by itemizing in wage statements all deductions
19 from payment of wages and accurately reporting total hours worked by the Class members.

20 35. Defendants required Plaintiff and the Class members to work hours off the clock
21 for which they were not compensated, including during interrupted or otherwise on-duty meal and
22 rest periods. Defendants also failed to pay all overtime premium wages owed for work conducted
23 on a work shift or over the course of a work week, as addressed above. Therefore, from at least
24 four years prior to filing this lawsuit and continuing to the present, Defendants have also followed
25 a uniform and consistent policy of failing to pay all wages owed to Plaintiff and other similarly
26 situated Employees at the time of their termination or within seventy-two hours of their
27 resignation, as required by California wage-and-hour laws. Defendants also failed to pay all wages
28 owed to Plaintiff and the Class members at the time they were terminated or otherwise separated

1 from employment, in violation of the requirements of Labor Code §§ 201, 202, 203.

2 36. In light of the foregoing, Plaintiff and the Employees in the Class bring this action
3 pursuant to, *inter alia*, Labor Code §§ 201, 202, 203, 204, 218, 218.5, 218.6, 221, 226, 226.7,
4 226.8, 510, 511, 512, 558, 1174, 1185, 1194, 1194.2, 1197, 1198, 1199, 2750.3, and 2698 *et seq.*,
5 and California Code of Regulations, Title 8, section 11000 *et seq.*

6 37. Furthermore, pursuant to Business and Professions Code §§ 17200-17208, Plaintiff
7 and the Class members seek injunctive relief, restitution, and disgorgement of all benefits
8 Defendants have enjoyed from their violations of Labor Code and the other unfair, unlawful, or
9 fraudulent practices alleged in this Complaint.

10 **CLASS ALLEGATIONS**

11 38. Plaintiff brings this class action on behalf of himself and all others similarly
12 situated pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a Class (or “the
13 Class” or “Class members”) defined as follows: “All individuals employed by Defendants at any
14 time during the period of four years prior to the filing of this lawsuit and ending on a date as
15 determined by the Court (“the Class Period”), and who have been employed as non-exempt,
16 hourly jewelry workers and in related positions at Defendants’ facilities and offices within the
17 State of California.” Further, Plaintiff seeks to represent the Subclasses composed of and defined
18 as follows:

19 a. Subclass 1. Minimum Wages Subclass. All Class members who were not
20 compensated for all hours worked for Defendants at the applicable minimum wage.

21 b. Subclass 2. Wages and Overtime Subclass. All Class members who were not
22 compensated for all hours worked for Defendants at the required rates of pay, including for all
23 hours worked in excess of eight in a day and/or forty in a week.

24 c. Subclass 3. Misclassification Subclass. All Class members who were misclassified
25 by Defendants as exempt from the California overtime laws for any portion of their hours worked.

26 d. Subclass 4. Meal Period Subclass. All Class members who were subject to
27 Defendants’ policy and/or practice of failing to provide unpaid 30-minute uninterrupted and duty-
28 free meal periods or one hour of pay at the Employee’s regular rate of pay in lieu thereof.

- e. Subclass 5. Rest Break Subclass. All Class members who were subject to Defendants' policy and/or practice of failing to authorize and permit Employees to take uninterrupted, duty-free, 10-minute rest periods for every four hours worked, or major fraction thereof, and failing to pay one hour of pay at the Employee's regular rate of pay in lieu thereof.
- f. Subclass 6. Wage Statement Subclass. All Class members who, within the applicable limitations period, were not provided with accurate itemized wage statements.
- g. Subclass 7. Unauthorized Deductions from Wages Subclass. All Class members who were subject to Defendants' policy and/or practice of deducting wages earned from their pay, including by requiring off the clock work.
- h. Subclass 8. Failure to Timely Pay Wages Twice Monthly Subclass. All Class members who were subject to Defendants' policy and practice of not timely paying all wages earned when they were due and payable at least twice monthly.
- i. Subclass 9. Termination Pay Subclass. All Class members who, within the applicable limitations period, either voluntarily or involuntarily separated from their employment and were subject to Defendants' policy and/or practice of failing to timely pay wages upon termination.
- j. Subclass 10. UCL Subclass. All Class members who are owed restitution as a result of Defendants' business acts and practices, to the extent such acts and practices are found to be unlawful, deceptive, and/or unfair.

39. Plaintiff reserves the right under California Rule of Court 3.765 to amend or modify the class description with greater particularity or to provide further division into subclasses or limitation to particular issues. To the extent equitable tolling operates to toll claims by the Class against Defendants, the Class Period should be adjusted accordingly.

40. Defendants, as a matter of company policy, practice and procedure, and in violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order requirements, and the applicable provisions of California law, intentionally, knowingly, and willfully, engaged in a practice whereby Defendants failed to correctly calculate and pay compensation for the time worked by Plaintiff and the other members of the Class, even though Defendants enjoyed the

benefit of this work, required Employees to perform this work and permitted or suffered to permit this work. Defendants have uniformly denied these Class members wages to which these employees are entitled, and failed to provide meal periods or authorize and permit rest periods, in order to unfairly cheat the competition and unlawfully profit.

41. This action has been brought and may properly be maintained as a class action under the provisions of Code of Civil Procedure § 382 because there is a well-defined community of interest in this litigation and the proposed Class is easily ascertainable from the employment records for Plaintiff and the Class members that Defendants are required to maintain under California law.

A. Numerosity

42. The potential members of the Class as defined are so numerous that joinder of all the Class members is impracticable. While the precise number of Class member has not been determined at this time, Plaintiff is informed and believes that Defendants employ or, during the time period relevant to this lawsuit employed, approximately 100 Employees who satisfy the Class definition within the State of California. Plaintiff alleges that Defendants' employment records will provide information as to the number and location of all Class members.

B. Commonality

43. There are questions of law and fact common to the Class that predominate over any questions affecting only individual Class members. The common questions are numerous and substantial and flow from Defendants' uniform policies and/or practices of violating the California Labor Code addressed above. As such, these common questions predominate over individual questions concerning each individual Class Member's showing as to his or her eligibility for recovery or as to the amount of damages. These common questions of law and fact include:

- a. Whether Defendants failed to pay Employees minimum wages;
- b. Whether Defendants failed to pay Employees wages for all hours worked;
- c. Whether Defendants failed to pay Employees overtime as required under Labor Code § 510;

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- 1 d. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable
2 IWC Wage Orders, by failing to provide Employees with requisite meal periods or
3 premium pay in lieu thereof;
- 4 e. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage
5 Orders, by failing to authorize and permit Employees to take requisite rest breaks
6 or provide premium pay in lieu thereof;
- 7 f. Whether Defendants violated Labor Code § 226(a) by providing Employees with
8 inaccurate wage statements;
- 9 g. Whether Defendants violated Labor Code § 221;
- 10 h. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay
11 wages and compensation due and owing at the time of termination of employment;
- 12 i. Whether Defendants' conduct was willful;
- 13 j. Whether Defendants violated Labor Code § 226 and § 1174 and the IWC Wage
14 Orders by failing to maintain accurate records of Class members' earned wages and
15 work periods;
- 16 k. Whether Defendants violated Labor Code § 1194 by failing to compensate all
17 Employees during the relevant time period for all hours worked, whether regular or
18 overtime;
- 19 l. Whether Defendants violated Labor Code § 204 by failing to pay Employees all
20 wages earned at least twice monthly;
- 21 m. Whether Defendants misclassified Employees under Labor Code § 2750.3, and
22 whether they did so willfully under Labor Code § 226.8;
- 23 n. Whether Defendants violated Business and Professions Code § 17200 *et seq.*; and
- 24 o. Whether Employees are entitled to equitable relief pursuant to Business and
25 Professions Code § 17200 *et seq.*

26 **C. Typicality**

- 27 44. The claims of the named Plaintiff are typical of those of the other Employees. The
28 Employee Class members all sustained injuries and damages arising out of and caused by

Defendants' common course of conduct and uniformly applied policies in violation of statutes, as well as regulations, that have the force and effect of law, as alleged herein. Plaintiff's claims for the off the clock work and unpaid overtime premiums and meal and rest violations he was required to endure are typical of those of the other Class members.

D. Adequacy of Representation

45. Plaintiff will fairly and adequately represent and protect the interest of the Employee Class members. Counsel who represents Plaintiff and the Employees in the Class are experienced and competent in litigating employment class actions.

E. Superiority of Class Action

46. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Employees is not practicable, and questions of law and fact common to all Employees predominate over any questions affecting only individual Employees. Each Employee in the Class has been damaged and is entitled to recovery by reason of Defendants' illegal policies or practices of failing to compensate Employees properly.

47. As to the issues raised in this case, a class action is superior to all other methods for the fair and efficient adjudication of this controversy, as joinder of all Class members is impracticable and many legal and factual questions to be adjudicated apply uniformly to all Class members. Further, as the economic or other loss suffered by vast numbers of Class members may be relatively small, the expense and burden of individual actions makes it difficult for the Class members to individually redress the wrongs they have suffered. Moreover, in the event disgorgement is ordered, a class action is the only mechanism that will permit the employment of a fluid fund recovery to ensure that equity is achieved. There will be relatively little difficulty in managing this case as a class action, and proceeding on a class-wide basis will permit Employees to vindicate their rights for violations they endured which they would otherwise be foreclosed from receiving in a multiplicity of individual lawsuits that would be cost prohibitive to them.

48. Class action treatment will allow those persons similarly situated to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Plaintiff is unaware of any difficulties in managing this case that should preclude class treatment.

1 Plaintiff contemplates the eventual issuance of notice to the proposed Class members that would
2 set forth the subject and nature of the instant action. The Defendants' own business records can be
3 utilized for assistance in the preparation and issuance of the contemplated notices. To the extent
4 that any further notice is required additional media and/or mailings can be used.

5 49. Defendants, as prospective and actual employers of the Employees in the Class,
6 had a special fiduciary duty to disclose to prospective Class members the true facts surrounding
7 Defendants' pay practices, policies and working conditions imposed upon the similarly situated
8 Employees as well as the effect of any alleged arbitration agreements that may have been forced
9 upon them. In addition, Defendants knew they possessed special knowledge about pay practices
10 and policies, most notably intentionally refusing to pay for all hours actually worked which should
11 have been recorded in Defendants' pay records and the consequence of the alleged arbitration
12 agreements and policies and practices on the Employees and Class as a whole.

13 50. Plaintiff and the Employees in the Class did not discover the fact that they were
14 entitled to all pay under the Labor Code until shortly before the filing of this lawsuit nor was there
15 any discussion about Plaintiff's and the Class' waiver of their Constitutional rights of trial by jury,
16 to collectively organize and oppose unlawful pay practices under California law as well as obtain
17 injunctive relief preventing such practices from continuing. As a result, the applicable statutes of
18 limitation tolled until such time as Plaintiff and the Class members discovered their claims.

19 **FIRST CAUSE OF ACTION**

20 **FAILURE TO PAY MINIMUM WAGES**

21 **(Against All Defendants)**

22 51. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in
23 full herein.

24 52. Defendants failed to pay Employees minimum wages they were owed, including
25 by their consistent policy of failing to pay Employees for all hours worked. Employees would
26 work hours and not receive wages, including as alleged above in connection with off the clock
27 work, including all the time required to remain on duty and under Defendants' control and during
28 breaks and due to the work demands placed upon them by Defendants' management. Defendants

1 also imposed difficult to attain job and performance requirements on Plaintiff and the Class
2 members, which resulted in off the clock work and underpayment of all wages owed to
3 Employees over a period of time, while benefiting Defendants. During the relevant Class Period,
4 Defendants thus regularly failed to pay minimum wages to Plaintiff and the Class members,
5 including by requiring systematic off the clock work. Defendants' uniform pattern of unlawful
6 wage and hour practices manifested, without limitation, applicable to the Class as a whole, as a
7 result of implementing a uniform policy and practice that denied accurate compensation to
8 Plaintiff and the other members of the Class as to minimum wage pay.

9 53. In California, employees must be paid at least the then applicable state minimum
10 wage for all hours worked, including under Labor Code § 1197, IWC Wage Order MW-2014,
11 and paragraphs 2(K), 2(S), and 4(A)-4(C) of the applicable IWC Wage Orders. Paragraph 2(H)
12 of the applicable IWC Wage Orders defines "Hours Worked" as "the time during which an
13 employee is subject to the control of an employer, and includes all the time the employee is
14 suffered or permitted to work, whether or not required to do so." Additionally, pursuant to Labor
15 Code § 204, other applicable laws and regulations, and public policy, an employer must timely
16 pay its employees for all hours worked. Defendants failed to do so.

17 54. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage"
18 states: "The minimum wage for employees fixed by the commission is the minimum wage to be
19 paid to employees, and the payment of a less wage than the minimum so fixed is unlawful."

20 55. The applicable minimum wage rate fixed by the commission for work during the
21 relevant period is found in the Wage Orders.

22 56. The minimum wage provisions of California Labor Code are enforceable by private
23 civil action pursuant to Labor Code § 1194(a) which states: "Notwithstanding any agreement to
24 work for a lesser wage, any employee receiving less than the legal minimum wage or the legal
25 overtime compensation applicable to the employee is entitled to recover in a civil action the
26 unpaid balance of the full amount of this minimum wage or overtime compensation, including
27 interest thereon, reasonable attorney's fees and costs of suit."

28 ///

1 57. As described in California Labor Code §§ 1185 and 1194.2, any action for wages
2 incorporates the applicable Wage Order of the California Industrial Welfare Commission. Also,
3 California Labor Code §§ 1194, 1197, 1197.1 and those Industrial Welfare Commission Wage
4 Orders entitle non-exempt employees to an amount equal to or greater than the minimum wage for
5 all hours worked. All hours must be paid at the statutory or agreed rate, or at the minimum rate in
6 the absence of a contractually agreed upon one. The underpayment of wages to Plaintiff and the
7 Class members is and has been a direct consequence of Defendants' unlawful compensation
8 policies and practices, which applied uniformly to the Class members working at locations and
9 work sites throughout California.

10 58. In committing the above described violations of the California Labor Code,
11 Defendants inaccurately recorded, or required Plaintiff and the Class members to input times that
12 did not reflect their actual hours worked, or calculated the correct time worked and consequently
13 underpaid the actual time worked by Plaintiff and other members of the Class, including by
14 requiring off the clock work and refusing to pay overtime, as addressed in detail above.
15 Defendants acted in an illegal attempt to avoid the payment of all earned wages, and other benefits
16 in violation of the California Labor Code, the Industrial Welfare Commission requirements and
17 other applicable laws and regulations. As a result of these violations, Defendants also failed to
18 timely pay all wages earned in accordance with California Labor Code § 1194.

19 59. California Labor Code § 1194.2 also provides for the following remedies: "In any
20 action under Section 1194 . . . to recover wages because of the payment of a wage less than the
21 minimum wages fixed by an order of the commission, an employee shall be entitled to recover
22 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon."

23 60. In addition to restitution for all unpaid wages, pursuant to California Labor Code §
24 1197.1, Plaintiff and Class members are entitled to recover a penalty of \$100.00 for the initial
25 failure to timely pay each employee minimum wages, and \$250.00 for each subsequent failure to
26 pay each employee minimum wages.

27 61. Pursuant to California Labor Code § 1194.2, Plaintiff and Class members are
28 further entitled to recover liquidated damages in an amount equal to wages unlawfully unpaid and

1 interest thereon.

2 62. Defendants have the ability to pay minimum wages for all time worked and have
3 willfully refused to pay such wages with the intent to secure for Defendants a discount upon this
4 indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Employees.

5 63. Wherefore, Plaintiff and the Employee Class members are entitled to recover the
6 unpaid minimum wages (including double minimum wages), liquidated damages in an amount
7 equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney's fees
8 and costs of suit pursuant to California Labor Code § 1194(a). Plaintiff and the other members of
9 the Class further request recovery of all unpaid wages, according to proof, interest, statutory costs,
10 as well as the assessment of any statutory and/or civil penalties against Defendants, in a sum as
11 provided by the California Labor Code, including § 558, and/or other applicable statutes. To the
12 extent minimum wage compensation is determined to be owed to the Class members who have
13 terminated their employment, Defendants' conduct also violates Labor Code §§ 201 and/or 202,
14 and therefore these individuals are also be entitled to waiting time penalties under California
15 Labor Code § 203, which penalties are sought herein on behalf of these Class members.
16 Defendants' failure to timely pay all wages owed also violated Labor Code § 204 for failure to pay
17 all wages owed twice monthly, and resulted in violations of Labor Code § 226 because they
18 resulted in the issuance of inaccurate wage statements. Defendants' conduct as alleged herein was
19 willful, intentional and not in good faith. Further, Plaintiff and other Class members are entitled to
20 seek and recover statutory costs.

21 **SECOND CAUSE OF ACTION**

22 **FAILURE TO PAY WAGES AND OVERTIME UNDER LABOR CODE § 510**

23 **(Against All Defendants)**

24 64. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in
25 full herein.

26 65. California Labor Code § 1194 provides that "any employee receiving less than the
27 legal minimum wage or the legal overtime compensation applicable to the employee is entitled to
28 recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime

1 compensation, including interest thereon, reasonable attorney's fees, and costs of suit." The action
2 may be maintained directly against the employer in an employee's name without first filing a
3 claim with the Division of Labor Standards and Enforcement.

4 66. By their conduct, as set forth herein, Defendants violated Labor Code § 1194 and
5 Labor Code § 510 (and paragraphs 2(K), 2(S), 3(A) and 4(A)-4(B) of the relevant orders of the
6 Industrial Welfare Commission) by failing to pay Employees for all their hours worked, including:
7 (a) time and one-half their regular hourly rates for hours worked in excess of eight hours in a
8 workday or in excess of forty hours in any workweek or for the first eight hours worked on the
9 seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours worked
10 in excess of twelve hours in any one day or for hours worked in excess of eight hours on any
11 seventh day of work in a workweek. Defendants had a consistent policy of not paying Employees
12 wages for all hours worked, including by requiring off the clock work as addressed above and by
13 under-reporting actual hours worked. With work shifts generally being scheduled for eight hours
14 or more, this unpaid off the clock work resulted in Plaintiff and the Class members working past
15 eight hours on a shift, which required that they be paid at the correct overtime rate of 1.5 times
16 their regular rate.

17 67. Defendants thus had a consistent policy of not paying Employees wages for all
18 hours worked, including hours at their required regular, overtime, and double-time rates.
19 Defendants required Plaintiff and the Class members to clock in overtime hours in the separate
20 Overtime Clock but paid these hours at only the regular rate in order to specifically avoid paying
21 overtime premium wages for all the hours they worked, in violation of the California Labor Code,
22 the California Code of Regulations and the IWC Wage Orders and guidelines set forth by the
23 Division of Labor Standards and Enforcement. Defendants have also violated these provisions by
24 requiring Plaintiff and other similarly situated non-exempt employees to work through meal
25 periods when they were required to be clocked out or to otherwise work off the clock to complete
26 their daily job duties or while remaining under Defendants' control. Therefore, Employees were
27 not properly compensated, nor were they paid overtime rates for hours worked in excess of eight
28 hours in a given day, and/or forty hours in a given week. Based on information and belief,

1 Defendants did not make available to Employees a reasonable protocol for correcting time records
2 when Employees worked overtime hours or to fix incorrect time entries or those that Defendants
3 unlawfully under-recorded to the Employee's detriment. Defendants also under-paid Plaintiff and
4 the putative Class members all wages by systematically miscalculating and underpaying overtime
5 wages they earned, as detailed above.

6 68. Defendants' failure to pay Plaintiff and the Class members the unpaid balance of
7 regular wages owed and overtime compensation for all hours worked, as required by California
8 law, violates the provisions of Labor Code §§ 510 and 1198 and paragraph 3(A) of the applicable
9 IWC Wage Order, and is therefore unlawful.

10 69. Additionally, Labor Code § 558(a) provides "any employer or other person acting
11 on behalf of an employer who violates, or causes to be violated, a section of this chapter or any
12 provisions regulating hours and days of work in any order of the IWC shall be subject to a civil
13 penalty as follows: (1) For any violation, fifty dollars (\$50) for each underpaid employee for each
14 pay period for which the employee was underpaid in addition to an amount sufficient to recover
15 underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each
16 underpaid employee for each pay period for which the employee was underpaid in addition to an
17 amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall
18 be paid to the affected employee." Labor Code § 558(c) states, "the civil penalties provided for in
19 this section are in addition to any other civil or criminal penalty provided by law." Defendants
20 have violated provisions of the Labor Code regulating hours and days of work as well as the IWC
21 Wage Orders. Accordingly, Plaintiff and the Class members seek the remedies set forth in Labor
22 Code § 558.

23 70. Defendants' failure to pay compensation in a timely fashion also constituted a
24 violation of California Labor Code § 204, which requires that all wages shall be paid
25 semimonthly. In direct violation of that provision of the California Labor Code, Defendants have
26 failed to pay all wages and overtime compensation earned by Employees twice monthly in the
27 wage statements provided for regular hours and only paid hours clocked into the Overtime Clock
28 once monthly, without including overtime premiums. Each such failure to make a timely

1 payment to Employees constitutes a separate violation of California Labor Code § 204.

2 71. Employees have been damaged by these violations of California Labor Code §§
3 204 and 510 (and the relevant orders of the Industrial Welfare Commission). Additionally, under
4 Labor Code § 1199(a)-(c), it is a misdemeanor and Defendants are subject to a fine of not less
5 than \$100 for causing Employees “to work for longer hours than those fixed, or under conditions
6 of labor prohibited by an order of the commission” or if the employer pays “a wage less than the
7 minimum fixed by an order of the commission” or “violates...any provision of this chapter or
8 any order or ruling of the commission.”

9 72. Consequently, pursuant to the California Labor Code, including Labor Code §§
10 204, 510, 558, 1174, 1194, 1198, 1199, and the relevant paragraphs of the IWC Wage Orders,
11 including paragraphs 2(K), 2(S), 3(A), 4, and 20, Defendants are liable to Employees for the full
12 amount of all their unpaid wages and overtime compensation for all their hours worked, with
13 interest, plus their reasonable attorneys’ fees and costs, as well as the assessment of any statutory
14 penalties against Defendants, and each of them, and any additional sums as provided by the Labor
15 Code and/or other statutes.

16 **THIRD CAUSE OF ACTION**

17 **MISCLASSIFICATION OF EMPLOYEES UNDER LABOR CODE §§ 226.8, 2750.3**

18 **(Against All Defendants)**

19 73. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in
20 full herein.

21 74. For the separate hours employees were required to enter on the Overtime Clock,
22 Defendants paid Plaintiff and the Class members as if they were exempt from overtime, and
23 issued them 1099 forms, thus evidencing a specific intent to willfully misclassify the Class
24 members for significant portions of their daily work hours. Under Labor Code § 2750.3, “a
25 person providing labor or services for remuneration shall be considered an employee rather than
26 an independent contractor unless the hiring entity demonstrates that all of the following
27 conditions are satisfied: (A) The person is free from the control and direction of the hiring entity
28 in connection with the performance of the work, both under the contract for the performance of

1 the work and in fact. (B) The person performs work that is outside the usual course of the hiring
2 entity's business. (C) The person is customarily engaged in an independently established trade,
3 occupation, or business of the same nature as that involved in the work performed." Labor Code
4 § 2750.3 expands and codifies the presumption that workers are "employees" and expressly
5 adopts the "ABC" test for classifying employees as independent contractors for the purposes of
6 the IWC Wage Orders and Labor Code. Defendants cannot satisfy the requirements for
7 establishing that Plaintiff and the Class members were exempt from overtime under Labor Code
8 § 2750.3. Nevertheless, Defendants paid them as if they were for a substantial portion of their
9 hours worked.

10 75. Misclassified Employees are entitled to minimum wage and overtime
11 compensation under California Labor Code §§ 510 and 1194. Additionally, pursuant to California
12 Labor Code § 226.8, it is unlawful for an employer to willfully misclassify an employee as an
13 independent contractor. "Willful misclassification" is defined as "voluntarily and knowingly
14 misclassifying that individual as an independent contractor." In addition to liability exposure for
15 wage and hour violations for misclassification of employees as independent contractors, Section
16 226.8 imposes penalties against an employer if the Labor and Workforce Development Agency or
17 court determines the misclassifications were willful.

18 76. Under Labor Code § 226.8(b), an employer may be subject to a civil penalty of at
19 least \$5,000 and up to \$15,000 for each misclassification. Per Section 226.8(c), if the LWDA or
20 court finds that the employer misclassified their employees, the employer is subject to a civil
21 penalty of at least \$10,000 and up to \$25,000 for each violation. Additionally, under Labor Code
22 § 558.1, Employees who have had their rights violated under Labor Code, including Sections
23 203, 226, 226.7 1193.6 1194, or 2802, may seek to hold liable any person acting on behalf of an
24 employer who might be the owner, director, officer, or managing agent of the employer.

25 77. Because Plaintiff is non-exempt, or should have been classified as such, regardless
26 of his title of employment, due to the non-exempt status of his job duties, Plaintiff is entitled to
27 receive proper wages and overtime compensation under the Labor Code and applicable Wage
28 Orders. However, Defendants voluntarily and knowingly misclassified Plaintiff and the Class

1 members for a substantial portion of their hours worked in order to avoid payment of wages and
2 other benefits in violation of the Labor Code and applicable Wage Orders.

3 78. Defendants also violated Labor Code § 226.8 by willfully misclassifying Plaintiff
4 as an independent contractor for a substantial portion of the hours he worked, and upon
5 information and belief did the same with the other Class members. Defendants have engaged in a
6 pattern and practice of misclassifying Plaintiff and the Class members as independent contractors
7 for a substantial portion of their hours worked in order to avoid paying the overtime premium
8 wages that must be provided to non-exempt Employees.

9 79. Upon information and belief, Defendants' wrongful acts against Plaintiff and the
10 Class members were carried out, authorized, or ratified by Defendants' directors, officers and/or
11 managing agents, acting with malice, oppression or fraud, or were deliberate, willful, and in
12 conscious disregard of the probability of causing injury to Plaintiff and the Class members.

13 80. Due to Defendants' policy and practice of misclassification, Plaintiff and the Class
14 members are entitled to all expenses and damages incurred because they were in fact non-exempt
15 instead of exempt employees, as categorized by Defendants, such as overtime wages. Due to
16 Defendants' misclassification, Plaintiff and the Class members are entitled to initiate an action
17 for civil penalties under Labor Code § 226.8 and for unpaid overtime wages and for other
18 damages and relief available thereunder and for injunctive relief and other relief available under
19 Labor Code § 2750.3 according to proof, along with the recovery of attorneys' fees and costs.

20 **FOURTH CAUSE OF ACTION**

21 **MEAL-PERIOD LIABILITY UNDER LABOR CODE § 226.7**

22 **(Against All Defendants)**

23 81. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in
24 full herein.

25 82. Employees regularly worked shifts greater than five hours and in some instances,
26 greater than ten hours. Pursuant to Labor Code § 512, and paragraph 11 of the applicable IWC
27 Wage Order, an employer may not employ someone for a shift of more than five hours without
28 providing him or her with a meal period of not less than thirty minutes or for a shift of more than

1 ten hours without providing him or her with a second meal period of not less than thirty minutes.

2 83. Defendants failed to provide Employees with meal periods as required under the
3 Labor Code and paragraph 11 of the applicable IWC Wage Order. Employees were often required
4 to work or to otherwise remain under Defendants' control during meal periods, or Defendants
5 provided them after Employees worked beyond the fifth hour of their shifts or Employees
6 otherwise had them shortened and interrupted by work demands and requirements to remain under
7 Defendants' control during off the clock time unpaid by Defendants. Furthermore, upon
8 information and belief, on the occasions when Employees worked more than ten hours in a given
9 shift, they did so without receiving a second uninterrupted thirty minute meal period as required
10 by law.

11 84. Defendants thus failed to provide Plaintiff and the Class members with meal
12 periods as required by the Labor Code and paragraph 11 of the applicable IWC Wage Order,
13 including by not providing them with the opportunity to take meal breaks, by providing them late
14 or for less than thirty minutes, or by requiring them to perform work during breaks.

15 85. Moreover, Defendants failed to compensate Employees for each meal period not
16 provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11 and
17 20 of the applicable IWC Wage Orders, which provide that, if an employer fails to provide an
18 employee a meal period in accordance with this section, the employer shall pay the employee one
19 (1) hour of pay at the employee's regular rate of compensation for each workday that the meal
20 period is not provided. Defendants failed to compensate the Employees in the Class for each meal
21 period not provided or inadequately provided, as required under Labor Code § 226.7 and
22 paragraphs 11 and 20 of the applicable IWC Wage Order.

23 86. Therefore, pursuant to Labor Code § 226.7 and paragraphs 11 and 20 of the
24 applicable IWC Wage Order, Employees in the Class are entitled to damages in an amount equal
25 to one hour of wages at their effective hourly rates of pay for each meal period not provided or
26 deficiently provided, a sum to be proven at trial, as well as the assessment of any statutory
27 penalties against the Defendants, and each of them, in a sum as provided by the Labor Code and
28 other statutes and applicable IWC Wage Order paragraphs.

1 **FIFTH CAUSE OF ACTION**

2 **REST-BREAK LIABILITY UNDER LABOR CODE § 226.7**

3 **(Against All Defendants)**

4 87. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in
5 full herein.

6 88. Labor Code §§ 226.7 and paragraph 12 of the applicable IWC Wage Orders
7 provide that employers must authorize and permit all employees to take rest periods at the rate of
8 ten minutes net rest time per four work hours.

9 89. Employees consistently worked consecutive four hour shifts and were generally
10 scheduled for shifts of greater than 3.5 hours total, thus requiring Defendants to authorize and
11 permit them to take rest periods. Pursuant to the Labor Code and paragraph 12 of the applicable
12 IWC Wage Order, Employees were entitled to paid rest breaks of not less than ten minutes for
13 each consecutive four hour shift, and Defendants failed to provide Employees with timely rest
14 breaks of not less than ten minutes for each consecutive four hour shift. Employees were often
15 required to work or to otherwise remain under Defendants' control during rest periods, and had
16 breaks provided untimely as a result of the above described off the clock work. Plaintiff and the
17 Class members were also not permitted to leave their work premises during rest breaks.

18 90. Labor Code §§ 226.7 and paragraphs 12 and 20 of the applicable IWC Wage
19 Orders provide that if an employer fails to provide an employee rest period in accordance with this
20 section, the employer shall pay the employee one hour of pay at the employee's regular rate of
21 compensation for each workday that the rest period is not provided.

22 91. Defendants, and each of them, have therefore intentionally and improperly denied
23 rest periods to Plaintiff and the Class members in violation of Labor Code §§ 226.7 and 512 and
24 paragraph 12 of the applicable IWC Wage Orders.

25 92. Defendants failed to authorize and permit Plaintiff and the Class members to take
26 rest periods, as required by the Labor Code. Moreover, Defendants did not compensate Employees
27 with an additional hour of pay at each Employee's hourly rate for each day that Defendants failed
28 to provide them with adequate rest breaks, as required under Labor Code § 226.7 and paragraphs

12 and 20 of the applicable IWC Wage Orders.

93. Therefore, pursuant to Labor Code § 226.7 and paragraphs 12 and 20 of the applicable IWC Wage Orders, Employees are entitled to damages in an amount equal to one hour of wages at their effective hourly rates of pay for each day worked without the required rest breaks, a sum to be proven at trial, as well as the assessment of any statutory penalties against Defendants, and each of them, in a sum as provided by the Labor Code and/or other statutes.

SIXTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 226(a)
(Against All Defendants)

94. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in full herein.

95. California Labor Code § 226(a) requires an employer to furnish each of his or her employees with an accurate, itemized statement in writing showing the gross and net earnings, total hours worked, and the corresponding number of hours worked at each hourly rate; these statements must be appended to the detachable part of the check, draft, voucher, or whatever else serves to pay the employee's wages; or, if wages are paid by cash or personal check, these statements may be given to the employee separately from the payment of wages; in either case the employer must give the employee these statements twice a month or each time wages are paid.

96. Defendants failed to provide Plaintiff and the similarly situated Employee Class members with accurate itemized wage statements in writing, as required by the Labor Code and paragraph 7 of the applicable IWC Wage Orders. Specifically, the wage statements given to Employees by Defendants failed to accurately account for wages, overtime, and premium pay, including by failing to pay for all hours worked, failure to pay for all overtime hours worked and for providing deficient meal periods and rest breaks, all of which Defendants knew or reasonably should have known were owed to the Employees, as alleged above.

97. Defendants also provided Plaintiff and the Class members with wage statements that failed to accurately report all hours worked and applicable hourly rates for all hours worked. If and when Defendants provided statements, or Time Cards, with 1099 payments once-monthly,

1 they failed to accurately list the applicable overtime rate required and therefore systematically
2 underpaid wages leading to inaccurate wage statements. Defendants have also made it difficult to
3 account with precision for the unlawfully withheld wages and meal and rest period compensation
4 owed to Plaintiff and the Class, during the liability period, because they did not implement and
5 preserve a record-keeping method as required for non-exempt employees by California Labor
6 Code §§ 226, 1174(d), and paragraph 7 of the applicable California Wage Orders. Upon
7 information and belief, time clock punches were not maintained or were not accurately maintained
8 for work shifts and meal periods, which were automatically presumed by Defendants to have been
9 lawfully provided when they were not. Defendants also failed to accurately record and pay for all
10 regular and overtime hours worked by Plaintiff and the Class members.

11 98. In addition to not paying for all hours worked off the clock and for all meal and rest
12 period premiums owed during a pay period, Defendants only made 1099 payments for hours
13 recorded on the Overtime Clock once monthly, which further directly violates Labor Code § 204
14 for failure to pay all wages owed twice monthly, and failure to provide accurate itemized wage
15 statements listing these hours worked and applicable rates. Plaintiff and the Employees in the
16 Class were unable to discern from their wage statements along the actual hours they worked in
17 total during a pay period.

18 99. Throughout the liability period, Defendants therefore intentionally failed to furnish
19 to Plaintiff and the Class members, upon each payment of wages, itemized statements accurately
20 showing: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-
21 rate units earned and any applicable piece rate paid on a piece-rate basis, (4) all deductions, (5) net
22 wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of
23 the employee and only the last four digits of his or her social security number or an employee
24 identification number other than a social security number, (8) the name and address of the legal
25 entity that is the employer and (9) all applicable hourly rates in effect during the pay period and
26 the corresponding number of hours worked at each hourly rate by the employee pursuant to Labor
27 Code § 226 and paragraph 7 of the applicable IWC Wage Orders, amongst other statutory
28 requirements. Defendants knowingly and intentionally failed to provide Plaintiff and the Class

1 members with such timely and accurate wage and hour statements.

2 100. Plaintiff and the Class members suffered injury as a result of Defendants' knowing
3 and intentional failure to provide them with the wage and hour statements as required by law and
4 are presumed to have suffered injury and entitled to penalties under Labor Code § 226(e), as the
5 Defendants have failed to provide an accurate wage statement, failed to provide accurate and
6 complete information as required by any one or more of items Labor Code § 226 (a)(1) to (9),
7 inclusive, and the Plaintiff and Class members cannot promptly and easily determine from the
8 wage statement alone one or more of the following: (i) The amount of the gross wages or net
9 wages paid to the employee during the pay period or any of the other information required to be
10 provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of
11 subdivision (a), (ii) Which deductions the employer made from gross wages to determine the net
12 wages paid to the employee during the pay period, (iii) The name and address of the employer
13 and, (iv) The name of the employee and only the last four digits of his or her social security
14 number or an employee identification number other than a social security number. For purposes
15 of Labor Code § 226(e) "promptly and easily determine" means a reasonable person [i.e. an
16 objective standard] would be able to readily ascertain the information without reference to other
17 documents or information.

18 101. Additionally, under paragraph 4(B) of the applicable IWC Wage Orders, employers
19 are required "to pay each employee, on the established payday for the period involved, not less
20 than the applicable minimum wage for all hours worked in the payroll period, ..." Under Labor
21 Code § 1198, "[t]he employment of any employee for longer hours than those fixed by the order
22 or under conditions of labor prohibited by the order is unlawful." Plaintiff and the Class members
23 may therefore pursue damages and penalties for violations of Labor Code § 204 and paragraph
24 4(B) of the applicable IWC Wage Orders, including penalties under paragraph 20 of the applicable
25 IWC Wage Orders.

26 102. Therefore, as a direct and proximate cause of Defendants' violation of Labor Code
27 § 226(a) and paragraphs 4(b), 7, and 20 of the applicable IWC Wage Orders, the Employees in the
28 Class suffered injuries, including among other things confusion over whether they received all

1 wages owed them, the difficulty and expense involved in reconstructing pay records, and forcing
2 them to make mathematical computations to analyze whether the wages paid in fact compensated
3 them correctly for all hours worked.

4 103. Pursuant to Labor Code §§ 226(a) and 226(e), and paragraph 20 of the applicable
5 IWC Wage Order, Plaintiff and the Employee Class members are entitled to recover the greater of
6 all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and
7 one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an
8 aggregate penalty of four thousand dollars (\$4,000) under Section 226(e), and are entitled to
9 recover further penalties pursuant to paragraphs 4(B) and 20 of the applicable IWC Wage Orders.
10 They are also entitled to an award of costs and reasonable attorneys' fees.

11 **SEVENTH CAUSE OF ACTION**
12 **VIOLATION OF LABOR CODE § 221**
13 **(Against All Defendants)**

14 104. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in
15 full herein.

16 105. Labor Code § 221 provides, "It shall be unlawful for any employer to collect or
17 receive from an employee any part of wages theretofore paid by said employer to said employee."
18 Additionally, pursuant to California Labor Code § 204, other applicable laws and regulations, and
19 public policy, an employer must timely pay its employees for all hours worked. Defendants failed
20 to do so.

21 106. Defendants unlawfully received and/or collected wages from the Employees in the
22 Class by implementing a policy understating the hours worked by Employees by requiring off the
23 clock work, by failing to pay overtime premium payments for all hours worked over eight in a
24 shift or over forty in a work week, and by not paying for meal periods when they were not
25 lawfully provided or by counting hours worked during meal periods as unpaid time, as alleged
26 above.

27 107. As a direct and proximate cause of the unauthorized deductions, Employees have
28 been damaged, in an amount to be determined at trial.

EIGHTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 204
(Against All Defendants)

108. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in full herein.

109. Labor Code § 204 instructs that: “All wages, ...earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month.” Additionally, the requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.” As detailed above, Defendants maintained a consistently applied policy and practice of not paying all wages earned between the 1st and 15th days of a month between the 16th and 26th day and failed to pay all wages earned between the 16th and the last day of the month between the 1st and 10th day of the following month. This included failing to pay all wages due and owing to Plaintiff and the Class members for all hours they worked and failing to pay all wages earned by not more than seven calendar days following the close of the payroll period. In addition to not paying for all hours worked off the clock and for all meal and rest period premiums owed during a pay period, Defendants only made 1099 payments for hours recorded on the Overtime Clock once monthly, which further directly violates Labor Code § 204 for failure to pay all wages owed twice monthly.

110. All wages due and owing to Plaintiff and the Class members, including as required under Labor Code § 510, were therefore not timely paid by Defendants. Additionally, wages required by Labor Code § 1194 and other sections became due and payable to each employee in each pay period that he or she was not provided with a meal period or rest period or paid straight or overtime wages to which he or she was entitled.

111. Defendants violated Labor Code § 204 by systematically refusing to timely pay wages due under the Labor Code, as addressed above. Additionally, under paragraph 4(B) of the applicable IWC Wage Orders, employers are required “to pay each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, ...” Under Labor Code § 1198, “[t]he employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Plaintiff and the Class members may therefore pursue damages and penalties for violations of Labor Code § 204 and paragraph 4(B) of the applicable IWC Wage Orders, including penalties under paragraph 20 of the applicable IWC Wage Orders.

112. As a result of the unlawful acts of Defendants, Plaintiff and the Class he seeks to represent have been deprived of wages in amounts to be determined at trial, and they are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys’ fees, and costs, pursuant to Labor Code § 210, 218.5, 1194 and 1198, and paragraphs 4(B) and 20 of the applicable IWC Wage Orders.

NINTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 203
(Against All Defendants)

113. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in full herein.

114. Plaintiff and numerous Class members are no longer employed by Defendants; they either quit Defendants’ employ or were fired therefrom.

115. Defendants failed to pay these Employees all wages due and certain at the time of termination or within seventy-two (72) hours of resignation, as addressed in detail above.

116. The wages withheld from these Employees by Defendants remained due and owing for more than thirty (30) days from the date of separation from employment.

117. Defendants failed to pay Plaintiff and the Class members without abatement, all wages as defined by applicable California law. Among other things, these Employees were not paid all regular and overtime wages, including by Defendants failing to pay for all hours worked

1 or requiring off the clock work or by unlawfully under-recording time entries or purposefully not
2 paying overtime premiums for overtime hours worked to the detriment of Employees, and
3 Defendants failed to pay premium wages owed for unprovided meal periods and rest periods, as
4 further detailed above. Defendants' failure to pay said wages within the required time was willful
5 within the meaning of Labor Code § 203.

6 118. Additionally, under paragraph 4(B) of the applicable IWC Wage Orders, employers
7 are required "to pay each employee, on the established payday for the period involved, not less
8 than the applicable minimum wage for all hours worked in the payroll period, ..." Under Labor
9 Code § 1198, "[t]he employment of any employee for longer hours than those fixed by the order
10 or under conditions of labor prohibited by the order is unlawful." Plaintiff and the Class members
11 may therefore pursue damages and penalties for violations of Labor Code § 203 and paragraph
12 4(B) of the applicable IWC Wage Orders, including penalties under paragraph 20 of the applicable
13 IWC Wage Orders. Also, under Labor Code § 1199(a)-(c), it is a misdemeanor and Defendants are
14 subject to a fine of not less than \$100 for causing Employees "to work for longer hours than those
15 fixed, or under conditions of labor prohibited by an order of the commission" or if the employer
16 pays "a wage less than the minimum fixed by an order of the commission" or "violates...any
17 provision of this chapter or any order or ruling of the commission."

18 119. Defendants' failure to pay wages, as alleged, entitles Plaintiff and these former
19 Employee Class members to penalties under Labor Code § 203 and the applicable paragraphs of
20 the IWC Wage Orders as addressed above, including the requirement that an employee's wages
21 shall continue until paid for up to thirty days from the date they were due.

22 **TENTH CAUSE OF ACTION**

23 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 *ET SEQ.***

24 **(Against All Defendants)**

25 120. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in
26 full herein.

27 121. Plaintiff, on behalf of himself, the Employees in the Class, and the general public,
28 brings this claim pursuant to Business & Professions Code § 17200 *et seq.* The conduct of

1 Defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and
2 harmful to Employees and the general public. Plaintiff seeks to enforce important rights affecting
3 the public interest within the meaning of Code of Civil Procedure § 1021.5.

4 122. Plaintiff is a “person” within the meaning of Business & Professions Code
5 § 17204, have suffered injury, and therefore has standing to bring this cause of action for
6 injunctive relief, restitution, and other appropriate equitable relief.

7 123. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair
8 business practices. By the conduct alleged herein, Defendants’ practices were deceptive and
9 fraudulent in that Defendants’ policy and practice failed to provide the required amount of
10 compensation for missed meal and rest breaks, and failed to adequately compensate Plaintiff and
11 Class members for all hours worked and willfully misclassified Employees in an effort to avoid
12 paying overtime premium wages, due to systematic business practices as alleged herein that
13 cannot be justified. Pursuant to the applicable California Labor Code and Industrial Welfare
14 Commission requirements, Defendants have thus committed violations of California Business and
15 Professions Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable
16 relief, pursuant to California Business & Professions Code § 17203, including restitution of wages
17 wrongfully withheld.

18 124. Wage-and-hour laws express fundamental public policies. Paying employees their
19 wages and overtime, providing them with meal periods and rest breaks, etc., are fundamental
20 public policies of California. Labor Code § 90.5(a) articulates the public policies of this State
21 vigorously to enforce minimum labor standards, to ensure that employees are not required or
22 permitted to work under substandard and unlawful conditions, and to protect law-abiding
23 employers and their employees from competitors who lower costs to themselves by failing to
24 comply with minimum labor standards.

25 125. Defendants have violated statutes and public policies. Through the conduct alleged
26 in this Complaint, Defendants have acted contrary to these public policies, have violated specific
27 provisions of the Labor Code, and have engaged in other unlawful and unfair business practices in
28 violation of Business & Professions Code § 17200 *et seq.*; which conduct has deprived Plaintiff,

1 and all persons similarly situated, and all interested persons, of the rights, benefits, and privileges
2 guaranteed to all employees under the law.

3 126. Defendants' conduct, as alleged above, constitutes unfair competition in violation
4 of the Business & Professions Code § 17200 *et seq.*

5 127. Defendants, by engaging in the conduct herein alleged, by failing to pay wages and
6 overtime, failing to provide meal periods and rest breaks, etc., either knew or in the exercise of
7 reasonable care should have known that their conduct was unlawful; therefore their conduct
8 violates the Business & Professions Code § 17200 *et seq.*

9 128. By the conduct alleged herein, Defendants have engaged and continue to engage in
10 a business practice which violates California and federal law, including but not limited to, the
11 applicable Industrial Wage Order(s), the California Code of Regulations, and the California Labor
12 Code including Sections 204, 226, 226.7, 510, 512, 1194, 1197, and 1198 for which this Court
13 should issue declaratory and other equitable relief pursuant to California Business & Professions
14 Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair
15 competition, including restitution of wages wrongfully withheld.

16 129. As a proximate result of the above-mentioned acts of Defendants, Employees have
17 been damaged, in a sum to be proven at trial.

18 130. Unless restrained by this Court, Defendants will continue to engage in the unlawful
19 conduct as alleged above. Pursuant to the Business & Professions Code, this Court should make
20 such orders or judgments, including the appointment of a receiver, as may be necessary to prevent
21 the use by Defendants or their agents or employees of any unlawful or deceptive practice
22 prohibited by the Business & Professions Code, including but not limited to the disgorgement of
23 such profits as may be necessary to restore Employees to the money Defendants have unlawfully
24 failed to pay.

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ELEVENTH CAUSE OF ACTION
PENALTIES PURSUANT TO LABOR CODE § 2698, *ET SEQ.*
(Against All Defendants)

131. Plaintiff realleges and incorporate all preceding paragraphs, as though set forth in full herein.

132. Plaintiff and the Employees in the Class are also aggrieved employees as defined under Labor Code § 2699(c) in that they suffered the violations alleged in this Complaint and either were or are employed by the alleged violators, Defendants.

133. In failing to pay Aggrieved Employees minimum wages and overtime, not providing proper meal and rest periods, failing to provide accurate itemized wage statements, and failing to pay Employees wages upon termination or timely upon resignation, all discussed above, Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required under Labor Code § 204. Defendants also failed to maintain records showing accurate hours worked daily and the wages paid to Aggrieved Employees, as required by Labor Code § 1174 and paragraph 7 of the applicable IWC Wage Orders.

134. As such, Employees seek wages and penalties under Labor Code §§ 2698 and 2699 for Defendants' violation of Labor Code provisions included under Labor Code § 2699.5, including the penalty provisions, without limitation, based, inter alia, on the following California Labor Code sections: 201, 202, 203, 204, 226, 226.2, 226.7, 510, 512, 558, 1174, 1174.5, 1185, 1194, 1194.1, 1194.2, 1197, 1197.1, 1198, 1199, 2802, and 2698 *et seq.*

135. More specifically, after complying with the notice procedures of Labor Code § 2699.3, Plaintiff asserts, as a representative action on behalf of the California Attorney General and the other similarly Aggrieved Employees, a PAGA claim for violations of the above addressed underlying claims and seeking penalties as specified by the applicable corresponding provisions, including as follows:

(a) Wage Claims: For failure to provide Plaintiff and the Aggrieved Employees all earned regular pay and minimum wages for regular hours worked and for failure to pay overtime premium wages for overtime hours worked under Labor Code §§ 226.2, 510, 1194(a), 1197, and

1 1198, and paragraphs 2(K), 3(A), 4(A), 4(B) and 20 of the applicable IWC Wage Order(s) seeking
2 all civil and statutory penalties available and applicable, and wages, under Labor Code §§ 510,
3 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant
4 to Labor Code § 2699(g)(1);

5 (b) Meal and Rest Period Claims: For failure to provide Plaintiff and the Aggrieved
6 Employees off-duty, timely, and unpaid meal periods and failure to authorize and permit them to
7 take off-duty, timely, and paid rest periods, or pay one hour of regular pay in lieu thereof, under
8 Labor Code §§ 512, 1198, and 226.7, and Sections 11, 12(A), and 12(B) of the applicable IWC
9 Wage Order(s) seeking all civil and statutory penalties available and applicable, including under
10 paragraph 20 of the applicable IWC Wage Orders, and wages under Labor Code §§ 226.7, 512,
11 558, including sections 558(a)(1)-(3), 1199 and 2699(f)(2), and also for attorneys' fees and costs
12 pursuant to Labor Code § 2699(g)(1);

13 (c) Inaccurate Wage Statements and Failure to Maintain Records: For failure to provide
14 Plaintiff and the Aggrieved Employees with accurate, itemized wage statements and failure to
15 maintain employment records for Plaintiff and Aggrieved Employees under Labor Code §§ 226,
16 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking
17 all civil and statutory penalties and wages available and applicable under Labor Code §§ 226(e),
18 226.3, 558, 1174.5, 1199, and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order,
19 and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by
20 providing inaccurate wage statements and failing to maintain records as required under Labor
21 Code § 226(a), Defendants committed ongoing violations giving rise to civil penalties under Labor
22 Code §226.3, which in addition to other penalties provided by law, subjects Defendants to "a
23 penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial
24 citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent
25 citation, ...";

26 (d) Failure to Timely Pay Wages: For failure to timely pay all wages owed, including at
27 least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204,
28 226.2, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable, and wages,

1 under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20
2 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code
3 § 2699(g)(1);

4 (e) Willful Misclassification: For willfully misclassifying Plaintiff and the aggrieved
5 employees to avoid paying them overtime premium wages in violation of Labor Code §§ 2750.3,
6 226.8, 1194, 558, and 510, and seeking all wages owed and available and all civil penalties and
7 other relief available and applicable under Labor Code §§ 226.8(a)(1), 226.8(c), 226.8(e), 558, and
8 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

9 (f) All Alleged Violations of the IWC Wage Orders and Other Labor Code Sections:
10 For any above addressed violation of the applicable provisions of the IWC Wage Orders, each of
11 which constitute separate violations of Labor Code § 1198 and Labor Code § 2699.5, and seeking
12 penalties available and applicable under Labor Code § 2699(f)(2) and paragraph 20 of the
13 applicable IWC Wage Orders, and for attorneys' fees and costs pursuant to Labor Code §
14 2699(g)(1).

15 136. As also addressed above, Plaintiff, on behalf of the Aggrieved Employees,
16 also seek the penalties and remedies set forth in Labor Code § 558, which states:

17 (a) Any employer or other person acting on behalf of an employer who violates, or
18 causes to be violated, a section of this chapter or any provision regulating hours and days of work
19 in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1)
20 For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for
21 which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.
22 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for
23 each pay period for which the employee was underpaid in addition to an amount sufficient to
24 recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected
25 employee.

26 (b) If upon inspection or investigation the Labor Commissioner determines that a
27 person had paid or caused to be paid a wage for overtime work in violation of any provision of this
28 chapter, or any provision regulating hours and days of work in any order of the Industrial Welfare
Commission, the Labor Commissioner may issue a citation. The procedures for issuing, contesting,
and enforcing judgments for citations or civil penalties issued by the Labor Commissioner for a
violation of this chapter shall be the same as those set out in Section 1197.1.

(c) The civil penalties provided for in this section are in addition to any other civil or
criminal penalty provided by law.

137. Plaintiff has exhausted his administrative remedies by sending a certified letter to
the LWDA and Defendants postmarked on **April 9, 2020** addressing in detail the specific

provisions of the Labor Code Defendants have violated and addressing the facts and legal theories to support the alleged violations and requested penalties. The LWDA has not provided notice of its intent to investigate the alleged violations within 65 calendar days of the postmark date of the letter, and Plaintiff adds this claim seeking penalties under the PAGA for the violations addressed herein and in the PAGA Notice letter and the original Complaint.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For an order certifying this action as a class action;
2. For compensatory damages in the amount of the unpaid minimum wages for work performed by Employees and unpaid overtime compensation from at least four years prior to the filing of this action, as may be proven;
3. For liquidated damages in the amount equal to the unpaid minimum wage and interest thereon, from at least four years prior to the filing of this action, according to proof;
4. For compensatory damages in the amount of all unpaid wages, including overtime and double-time pay, as may be proven;
5. For compensatory damages in the amount of the hourly wage made by Employees for each missed or deficient meal period where no premium pay was paid therefor from four years prior to the filing of this action, as may be proven;
6. For compensatory damages in the amount of the hourly wage made by Employees for each day requisite rest breaks were not provided or were deficiently provided where no premium pay was paid therefor from at least four years prior to the filing of this action, as may be proven;
7. For civil penalties and other relief as authorized under Labor Code 226.8 for Defendants' willful misclassification to avoid paying overtime premiums, as may be proven;
8. For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven;
9. For restitution and/or damages and penalties for Defendants' failure to pay all wages due twice monthly under Labor Code § 204, as may be proven;

10. For restitution and/or damages for all amounts unlawfully withheld from the wages for all class members in violation of Labor Code § 221, as may be proven;

11. For penalties pursuant to Labor Code § 203 for all Employees who quit or were fired in an amount equal to their daily wage times thirty (30) days, as may be proven;

12. For damages and restitution for failure to reimburse all reasonable and necessary business expenses incurred by Employees as required by Labor Code § 2802, as may be proven;

13. For liquidated damages pursuant to California Labor Code 1194.2(a) for failure to pay minimum wages;

14. For restitution for unfair competition pursuant to Business & Professions Code § 17200 *et seq.*, including disgorgement or profits, as may be proven;

15. For an order enjoining Defendants and their agents, servants, and employees, and all persons acting under, in concert with, or for them, from acting in derogation of any rights or duties adumbrated in this Complaint;

16. For penalties pursuant to Labor Code § 2698 *et seq.*, as may be proven;

17. For wages and penalties under Labor Code § 558, as may be proven;

18. For other wages and penalties under the Labor Code as may be proven;

19. For all general, special, and incidental damages as may be proven;

20. For an award of pre-judgment and post-judgment interest;

21. For an award providing for the payment of the costs of this suit;

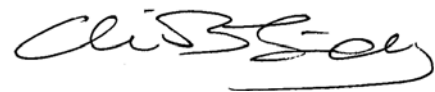
22. For an award of attorneys' fees; and

23. For such other and further relief as this Court may deem proper and just.

DATED: August 3, 2020

DAVID YEREMIAN & ASSOCIATES, INC.

By



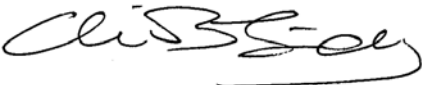
David Yeremian
Alvin B. Lindsay
Attorneys for Plaintiff HAROUTYOUN
KIOUDJIAN, on behalf of himself and all
others similarly situated

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial of his claims by jury to the extent authorized by law.

DATED: August 3, 2020

DAVID YEREMIAN & ASSOCIATES, INC.

By 

David Yeremian
Alvin B. Lindsay
Attorneys for Plaintiff HAROUTYOUN
KIOUDJIAN, on behalf of himself and all
others similarly situated

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I am employed in the aforesaid county, State of California; I am over the age of 18 years and not a party to the within action; my business address is 535 N. Brand, Blvd. Suite 705, Glendale CA 91203.

Steven M. Kroll
skroll@bcklegal.com
BENT CARYL & KROLL, LLP
 6300 Wilshire Boulevard, Suite 1415
 Los Angeles, California 90048

[] (BY OVERNIGHT DELIVERY) I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the address above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

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Executed on August 3, 2020, at Glendale, California.

Natalia Bermudes