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KIRSTIE PORTER and DEVON SOBIERAY

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

KIRSTIE PORTER, an individual, and on
behalf of all aggrieved employees, and DEVON
SOBIERAY, an individual, and on behalf of all
aggrieved employees

Plaintiffs,

vs.

JOSHUA WAYNE ROSS, an individual; and
DOES 1 through 50 inclusive.

Defendants.

Case No. 20STCV22856

Hon. Stuart M. Rice, Dept. 49

**FIRST AMENDED COMPLAINT FOR
DAMAGES AND INJUNCTIVE
RELIEF:**

1. **FAILURE TO PAY OVERTIME
COMPENSATION AND
LIQUIDATED DAMAGES [CAL.
LAB. CODE §§ 510, 1194, 1194.2,
and 1198];**
2. **FAILURE TO PAY MINIMUM
WAGES, SPLIT SHIFT
PREMIUMS AND LIQUIDATED
DAMAGES [CAL. LAB. CODE §§
1182.12, 1194; 1194.2; 1197; 1197.1;
and 1198 and 8 CAL. CODE REGS. §§
11020 and 11040];**
3. **FAILURE TO PROVIDE MEAL
PERIODS [CAL. LAB. CODE §§
226.7 and 512, and 8 CAL. CODE
REGS. §§ 11020 and 11040];**
4. **FAILURE TO PROVIDE REST
PERIODS [CAL. LAB. CODE §§
226.7 and 512, and 8 CAL. CODE
REGS. §§ 11020 and 11040];**
5. **FAILURE TO PROVIDE
ITEMIZED STATEMENTS AND
MAINTAIN ACCURATE
PAYROLL RECORDS [CAL. LAB.
CODE §§ 226(a), 1174(d), and
1198];**
6. **FAILURE TO REIMBURSE
BUSINESS EXPENSES [CAL. LAB.**

7. **CODE §§ 2800, 2802];
FAILURE TO PAY WAGES
UPON TERMINATION OF
EMPLOYMENT [CAL. LAB. CODE
§ 203];**
8. **VIOLATION OF CALIFORNIA
LABOR CODE § 558;**
9. **UNFAIR COMPETITION [CAL.
BUS. & PROF. CODE §§ 17200 *et*
seq.];**
10. **INTRUSION INTO PRIVATE
MATTERS;**
11. **DISCRIMINATION / HOSTILE
ENVIRONMENT SEXUAL
HARASSMENT [CAL. GOVT. CODE
§§ 12900, *et seq.*];**
12. **FAILURE TO PREVENT
DISCRIMINATION / HOSTILE
ENVIRONMENT SEXUAL
HARASSMENT [CAL. GOVT. CODE
§§ 12900, *et seq.*];**
13. **VIOLATION OF CALIFORNIA
CIVIL CODE § 51.9;**
14. **VIOLATION OF CALIFORNIA
CIVIL CODE § 52.4;**
15. **INTENTIONAL INFLECTION OF
EMOTIONAL DISTRESS; and**
16. **NEGLIGENT INFLECTION OF
EMOTIONAL DISTRESS**
17. **PENALTIES PURSUANT TO THE
PRIVATE ATTORNEYS
GENERAL ACT [CAL. LAB. CODE
§§ 2698, *et seq.*]**

DEMAND FOR A JURY TRIAL

Complaint filed: June 17, 2020

Trial Date: None Set

All allegations in this First Amended Complaint are based upon information and belief except for those allegations which pertain to the Plaintiffs named herein and their counsel. Each allegation has evidentiary support, or is likely to have evidentiary support, after a reasonable opportunity for further investigation and discovery.

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1 I.

2 **JURISDICTION AND VENUE**

3 1. The court has jurisdiction over this Complaint under CAL. CIV. PROC. CODE §
4 410.10. The Plaintiffs bring this First Amended Complaint on their own behalf and on
5 behalf of all aggrieved employees.

6 2. Venue is proper in the Court pursuant to CAL. CIV. PROC. CODE §§ 395 and
7 395.5 because the claims made, and the CAL. LAB. CODE violations as against the persons
8 identified herein, occurred in the County of Los Angeles. Further, each of the Defendants
9 owned and operated their businesses in the County of Los Angeles.

10 II.

11 **THE PARTIES**

12 **PLAINTIFFS**

13 3. KIRSTIE PORTER (“PORTER”) is, and at all material times mentioned was:

- 14 (a) An individual who resides in the County of Los Angeles, California;
15 (b) Formerly jointly employed as an hourly paid employee by JOSHUA
16 WAYNE ROSS, and / or DOES 1 through 50 (“DEFENDANTS”),
17 from on or about July 2019 to on or about December 2019;
18 (c) Was misclassified as an “exempt” employee;
19 (d) Was not properly paid for overtime hours worked;
20 (e) Was not properly paid for hours worked and split shifts worked;
21 (f) Did not receive meal or rest periods or meal or rest period premiums;
22 (g) Did not receive accurate itemized wage statements;
23 (h) Did not receive proper reimbursements for business expenses;
24 (i) When terminated from her employment, was not paid for hours
25 worked and meal and rest period wages due within the time limits
26 prescribed by CAL. LABOR CODE § 201; and,
27 (j) Was the victim of a campaign of intrusions into private matters by
28 JOSHUA WAYNE ROSS.

1 4. DEVON SOBIERAY (“SOBIERAY”) is, and at all material times mentioned
2 was:

- 3 (a) An individual who resides in the County of Los Angeles, California;
4 (b) Jointly employed as an hourly paid employee by JOSHUA WAYNE
5 ROSS, and/or DOES 1 through 50 (“DEFENDANTS”), from on or
6 about April 2019 to March 2020;
7 (c) Was misclassified as an “independent contractor”;
8 (d) Was not properly paid for overtime hours worked;
9 (e) Was not properly paid for hours worked and split shifts worked;
10 (f) Did not receive meal or rest periods or meal or rest period premiums;
11 (g) Did not receive accurate itemized wage statements;
12 (h) Did not receive proper reimbursements for business expenses;
13 (i) When terminated from her employment, was not paid for hours
14 worked and meal and rest period wages due within the time limits
15 prescribed by CAL. LABOR CODE § 201;
16 (j) Was the victim of a campaign of harassment, obscene physical
17 touching, and sexist remarks by JOSHUA WAYNE ROSS, who
18 created a hostile work environment; and,
19 (k) Was the victim of discrimination by DEFENDENTS based on her sex,
20 gender, gender identity, gender expression, and/or sexual orientation.

21 5. KIRSTIE PORTER and DEVON SOBIERAY are collectively referred to as
22 “PLAINTIFFS” throughout this Complaint.

23 **DEFENDANTS**

24 6. PLAINTIFFS are informed and believe, and based upon that information and
25 belief alleges, that Defendant JOSHUA WAYNE ROSS (“ROSS”), is, and at all times
26 mentioned was:

- 27 (a) An individual who resides in the County of Los Angeles, California;
28

- 1 (b) Along with DOES 1 through 50, inclusive, was the former joint
2 employer of PLAINTIFFS, and all aggrieved employees, as JOSHUA
3 WAYNE ROSS, and DOES 1 through 50 controlled PLAINTIFFS',
4 and all aggrieved employees', wages, hours, working conditions, and
5 how PLAINTIFFS, and all aggrieved employees, were paid;
- 6 (c) Failed to properly pay PLAINTIFFS, and all aggrieved employees, for
7 overtime wages, for all hours worked, for split shifts, and for missed
8 meal and rest periods, failed to provide PLAINTIFFS, and all
9 aggrieved employees, with accurate itemized wage statements, failed
10 to reimburse PLAINTIFFS, and all aggrieved employees, for business
11 expenses incurred in the course of their employment, and failed to pay
12 PLAINTIFFS, and all aggrieved employees, for wages due upon
13 termination. Each of these transgressions violated the CAL. LAB.
14 CODE.
- 15 (d) Intruded into PORTER's private matters;
- 16 (a) Created a discriminatory and hostile work environment through a
17 campaign of harassment, obscene physical touching, and sexist
18 remarks to SOBIERAY

19 7. JOSHUA WAYNE ROSS; and, DOES 1 through 50 are collectively referred to
20 as "DEFENDANTS" throughout this Complaint.

21 8. The true names and capacities, whether individual, corporate, subsidiary,
22 partnership, associate or otherwise of Defendant DOES 1 through 50, inclusive, are
23 unknown to the PLAINTIFFS, who therefore sue these Defendants by such fictitious names
24 pursuant to CAL. CIV. PROC. § 474. PLAINTIFFS will seek leave to amend their Complaint
25 to allege the true names and capacities of DOES 1 through 50, inclusive, when they are
26 ascertained.

27 9. PLAINTIFFS are informed and believe, and based upon that information and
28 belief allege, that Defendant DOES 1 through 50 are persons, corporations or other entities

1 which reside in, or are otherwise doing business in the State of California. Each of the
2 Defendant DOES 1 through 50 was the managerial agent, employee, predecessor,
3 successor, joint-venturer, co-conspirator, alter ego and/or representative of one or more of
4 the other Defendants named herein, and acted with permission, authorization and/or
5 ratification and consent of other Defendants.

6 10. PLAINTIFFS are informed and believe, and based upon that information and
7 belief allege, that the Defendants named in this Complaint, including DOES 1 through 50,
8 inclusive, are responsible in some manner for one or more of the events and happenings
9 that proximately caused the injuries and damages hereinafter alleged.

10 11. PLAINTIFFS are informed and believe, and based upon that information and
11 belief allege, that the Defendants named in this Complaint, including DOES 1 through 50,
12 inclusive, are, and at all times mentioned herein were, the agents, servants, and/or
13 employees of each of the other Defendants, and that each Defendant was acting within the
14 course of scope of his, hers, or its authority as the agent, servant and/or employee of each
15 of the other Defendants. Consequently, all the Defendants are jointly and severally liable to
16 PLAINTIFFS for their damages sustained as a proximate result of Defendants' conduct.

17 12. PLAINTIFFS are informed and believe, and based upon that information and
18 belief allege, that the Defendants named in this Complaint, including DOES 1 through 50,
19 inclusive, knowingly and willfully acted in concert, conspired and agreed together among
20 themselves and entered into a combination and systemized campaign of activity to *inter*
21 *alia* damage PLAINTIFFS and to otherwise consciously and/or recklessly act in derogation
22 of PLAINTIFFS' rights, and the trust reposed by PLAINTIFFS, in each of the Defendants,
23 the acts being negligently and/or intentionally inflicted. Their conspiracy, and Defendants'
24 concerted actions, were such that, to PLAINTIFFS' information and belief, and to all
25 appearances, Defendants represented a unified body so that the actions of one Defendant
26 were accomplished in concert with, and with the knowledge, ratification, authorization and
27 approval of each of the other Defendants.

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1 **ALTER EGO ALLEGATIONS**

2 13. PLAINTIFFS are informed and believe, and based upon that information and
3 belief allege, that:

4 (a) DOES 1 through 50, are, and at all relevant times were, mere shells without
5 capital, assets, stock or stockholders;

6 (b) Defendants DOES 1 through 50 are, and at all relevant times were, the alter
7 ego of Defendants JOSHUA WAYNE ROSS, and DOES 1 through 50, inclusive, and each
8 of them, who were the controlling shareholders, officers, and directors DOES 1 through 50;

9 (c) There is, and at all relevant times was, a unity of interest and/or ownership
10 between all of these Defendants so that any individuality or separateness between them has
11 ceased to exist in that DOES 1 through 50, inclusive were and are under their control and
12 domination; and,

13 (d) DOES 1 through 50, inclusive are, and at all relevant times were, completely
14 controlled, dominated, managed and operated by JOSHUA WAYNE ROSS, and
15 Defendants DOES 1 through 50, inclusive, and each of them, so that DOES 1 through 50
16 were mere shells, instrumentality and/or conduit through which each of these Defendants
17 conducted some or all of their/its business. Adherence to the fiction of the separate
18 existence of DOES 1 through 50, inclusive as entities distinct from JOSHUA WAYNE
19 ROSS, Defendants DOES 1 through 50, inclusive, or any of them, would permit an abuse
20 of the corporate privilege and sanction fraud or promote injustice in that, among other
21 things, it would enable each of these Defendants to avoid liability and to defraud his, her or
22 its creditors, the effect of which would be to render each Defendant financially unable to
23 respond to a monetary judgment awarded against each or any of them in the action.

24 14. PLAINTIFFS and all persons employed by DEFENDANTS as hourly paid
25 employees, are “aggrieved employees” as defined by CAL. LAB. CODE § 2699 in that they are all
26 current or former employees of DEFENDANTS, and one or more of the alleged violations was
27 committed against them
28

III.
THE CONDUCT

15. DEFENDANTS operate a skin treatment facility in Los Angeles County, California.

16. DEFENDANTS' business requires the use of "non-exempt" employees as defined by the California Labor Code and IWC Wage Order No. 2-2001 (as amended) and 4-2001, including estheticians and receptionists.

17. DEFENDANTS employed PORTER as a receptionist from on or about July 2019 to on or about December 2019.

18. PORTER was misclassified by DEFENDANTS as an "exempt employee" and paid a salary of \$2,500 per month, regardless of the hours she worked. DEFENDANTS treated PORTER as a 24-hours, 7-days-a-week employee who was to be available at DEFENDANTS' every whim. ROSS told Ms. Porter that "you will stay until the work is done...you will work as much as I need you to." This included the requirement that PORTER remain on-call while she was at home on weekday nights and weekends. PORTER typically worked nine (9) hour shifts, and occasionally worked ten (10) hour shifts, Monday through Friday. Additionally, Monday through Friday, PORTER worked approximately one (1) to two (2) hours from home at the end of every week day. PORTER also worked at least one (1) hour every Saturday to perform tasks such as client scheduling. DEFENDANTS additionally made PORTER work three (3) weekend days during the move of DEFENDANTS' office.

19. DEFENDANTS employed SOBIERAY as an esthetician from on or about April 2019 to March 2020.

20. SOBIERAY was misclassified by DEFENDANTS as an "independent contractor." From on or about April 2019 through on or about July 2019, DEFENDANTS paid SOBIERAY \$500 per week, regardless of the hours she worked. On or about July 2019, DEFENDANTS began to pay SOBIERAY \$12.00 per hour, regardless of the hours she worked. On or about December 2019, DEFENDANTS began to pay SOBIERAY

1 \$18.00 per hour, regardless of the hours she worked. SOBIERAY typically worked nine (9)
2 hour shifts, and occasionally worked up to twelve (12) hour shifts, Tuesday through
3 Saturday.

4 21. During PLAINTIFFS', and all aggrieved employees', employment,
5 DEFENDANTS exercised complete and unfettered control over PLAINTIFFS', and all
6 aggrieved employees', work schedules; their hours worked; their rate of pay and method of
7 payment; dictated how PLAINTIFFS, and all aggrieved employees', would actually
8 perform their job; and, dictated when PLAINTIFFS, and all aggrieved employees, could or
9 could not take lunch or rest breaks. During PLAINTIFFS', and all aggrieved employees',
10 employment with DEFENDANTS, they could not exercise discretion and independent
11 judgment regarding the tasks they performed. PLAINTIFFS, and all aggrieved employees,
12 had to obtain approval on any action taken in the course of their employment. Additionally,
13 DEFENDANTS failed to pay PLAINTIFFS, and all aggrieved employees, a salary twice
14 the state minimum wage for full-time employment. As such, pursuant to CAL. CODE REGS.
15 §§ 11020(1)(A) and 11040(1)(A), the provisions of the applicable California Wage Orders
16 apply to PLAINTIFFS, and all aggrieved employees, and PLAINTIFFS, and all aggrieved
17 employees, were not exempt employees or independent contractors.

18 22. During PLAINTIFFS', and all aggrieved employees's employment,
19 DEFENDANTS failed to properly pay PLAINTIFFS, and all aggrieved employees, for
20 overtime hours worked.

21 23. CAL. LAB. CODE § 510 provides that employees in California shall not be
22 employed more than 8 hours in any workday or 40 hours in a workweek unless they receive
23 additional compensation beyond their regular wages in amounts specified by law.

24 24. During PLAINTIFFS', and all aggrieved employees' employment,
25 DEFENDANTS failed to properly pay PLAINTIFFS, and all aggrieved employees, for
26 hours worked.

27 25. CAL. LAB. CODE. §§ 1182.12, 1194, 1194.2, 1197, 1197.1, and 1198 require
28 employers to pay employees the minimum wage fixed by the California Industrial Welfare

Commission. The payment of a lesser wage than the minimum so fixed is unlawful.

26. DEFENDANTS refused to allow PLAINTIFFS, and all aggrieved employees, to take code-complaint meal periods.

27. DEFENDANTS typically completely failed to provide PLAINTIFFS, and all aggrieved employees, with code-compliant thirty (30) minute meal periods during shifts in excess of five (5) hours. Where meal periods were provided, they were shorter in duration than 30 minutes or were interrupted. Additionally, PLAINTIFFS, and all aggrieved employees, were not allowed to leave DEFENDANTS' premises during these times. As such, DEFENDANTS effectively maintained control over PLAINTIFFS, and all aggrieved employees, during the meal periods that were provided. On each day where a code-compliant thirty (30) minute meal period was not provided to PLAINTIFFS, and all aggrieved employees, DEFENDANTS failed to pay PLAINTIFFS, and all aggrieved employees, one additional hour of pay at their regular rate of pay.

28. DEFENDANTS refused to allow PLAINTIFFS, and all aggrieved employees, to take code-complaint rest periods.

29. DEFENDANTS did not provide PLAINTIFFS, and all aggrieved employees, a 10-minute net rest period for every four (4) hours or major fraction thereof worked. Where rest periods were provided, they were shorter in duration than 10 minutes, were interrupted, or were not provided every four (4) hours or major fraction thereof worked. Additionally, employees were not allowed to leave DEFENDANTS' premises during their rest periods. As such, DEFENDANTS effectively maintained control over PLAINTIFFS, and all aggrieved employees, during rest periods that were provided. On each day where code-compliant ten (10) minute rest periods were not provided to PLAINTIFFS, and all aggrieved employees, DEFENDANTS failed to pay PLAINTIFFS, and all aggrieved employees, one additional hour of pay at their regular rate of pay.

30. Under California law, an employee who works more than 4 hours or major fraction thereof, is entitled to a compensated rest period of 10 minutes. An employee who works more than 5 hours in a day is entitled to a meal period of at least 30 minutes, and a

1 second meal period of at least 30 minutes if he or she works more than 10 hours in a
2 workday. (*See*, CAL. LAB. CODE § 512(a).) An employer that fails to provide a rest or meal
3 period that satisfies the requirements of the applicable IWC Wage Order 2-2001 (as
4 amended) and 4-2001 (as amended) must pay a premium to the employee of one additional
5 hour of pay at the employee's regular rate for each day that a meal or rest period was not
6 provided. (*See*, CAL. LAB. CODE § 226.7(b).)

7 31. DEFENDANTS never provided PLAINTIFFS, and all aggrieved employees,
8 accurate itemized wage statements, in writing, showing any of the information required by
9 CAL. LAB. CODE § 226.

10 32. PLAINTIFFS, and all aggrieved employees, were not properly reimbursed by
11 DEFENDANTS for all necessary expenditures incurred in the course and scope of
12 PLAINTIFFS', and all aggrieved employees', employment, as required by CAL. LAB. CODE
13 §§ 2800 and 2802. Necessary business-related expenses and costs that were incurred by
14 PLAINTIFFS, but not fully reimbursed by DEFENDANTS, include, but were not limited to
15 PORTER's necessary use of a personal computer, internet, cell phone, cell phone plan, and
16 vehicle; and SOBIERAY's purchase of a uniform required by DEFENDANTS.

17 33. CAL. LAB. CODE § 201(a) provides that a discharged employee's unpaid wages
18 are due and payable immediately. Under CAL. LAB. CODE § 202(a), when an employee not
19 having a written contract for a definite period is terminated, his or her wages become
20 immediately due and payable. CAL. LAB. CODE § 203 (a) provides that "If an employer
21 willfully fails to pay, without abatement or reduction, in accordance with Sections [201 and
22 202], any wages of an employee who is discharged or who quits, the wages of the employee
23 shall continue as a penalty from the due date thereof at the same rate until paid or until an
24 action therefore is commenced; but the wages shall not continue for more than 30 days."

25 34. As a result, under CAL. LAB. CODE § 203, PLAINTIFFS, and all aggrieved
26 employees, are entitled to one day's wages for each day they were not timely paid all wages
27 due, up to a maximum of 30 days' wages. Because DEFENDANTS failed to pay overtime
28 wages, minimum wages, and meal and rest period wages to PLAINTIFFS, and all

1 aggrieved employees, PLAINTIFFS, and all aggrieved employees, are entitled to 30 days'
2 wages.

3 35. ROSS has engaged in a disturbing campaign of intruding into PORTER's
4 private matters by installing a time-clock application on PORTER's personal computer,
5 without disclosing to PORTER that this application took screen shots every ten (10)
6 minutes that the computer was turned on, and forwarded those screen shots to ROSS.

7 36. ROSS's conduct has penetrated a zone of privacy of PORTER's and is highly
8 offensive to PORTER.

9 37. ROSS has engaged in a disturbing campaign of sexual harassment, obscene
10 physical touching, and sexist remarks toward SOBIERAY. This conduct has continued
11 throughout SOBIERAY's tenure while working for DEFENDANTS.

12 38. DEFENDANTS engaged in a campaign of discrimination against SOBIERAY
13 based on SOBIERAY's sex, gender, gender identity, gender expression, and / or sexual
14 orientation.

15 39. While at DEFENDANTS' workplace, ROSS has slapped SOBIERAY on her
16 buttocks while stating "#me too."

17 40. While at DEFENDANTS' workplace, ROSS has slapped SOBIERAY on her
18 face while stating "OMG don't tell Nick."

19 41. While at DEFENDANTS' workplace, ROSS has touched SOBIERAY's lip and
20 then wiped her face.

21 42. While at DEFENDANTS' workplace, ROSS has stripped down to his
22 underwear while alone with SOBIERAY and asked for a facial.

23 43. While at DEFENDANTS' workplace, ROSS has stripped down to his
24 underwear while alone with SOBIERAY to change into his medical scrubs.

25 44. While at DEFENDANTS' workplace, ROSS has made numerous comments to
26 SOBIERAY of a sexual nature, including entering into a room where SOBIERAY and a
27 colleague were working and stating: "What's going on in here... are you going down on
28 one another."

1 45. ROSS has commented to SOBIERAY that a particular photo of her: "...looks
2 like child porn pic or something."

3 46. While at DEFENDANTS' workplace, ROSS has made numerous comments to
4 SOBERAY that were intended to degrade SOBIERAY as a woman, including calling
5 SOBIERAY a "crazy psycho bitch," and commenting on SOBIERAY's weight.

6 47. While at DEFENDANTS' workplace, ROSS has additionally made degrading
7 and threatening comments to SOBIERAY including, "I wish [SOBERAY] would quit," and
8 stating: "Oops, Devon fell" as SOBERAY was on a ledge cleaning a window.

9 48. ROSS demeaned and degraded SOBIERAY because he believed he could talk
10 to and treat her and other women in the workplace any way he wanted to, all of which were
11 discriminatory and created a hostile work environment.

12 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

13 49. On May 11, 2020, SOBIERAY filed a Complaint of Employment Discrimination
14 with the California Department of Fair Employment and Housing ("DFEH") against
15 DEFENDANTS. DFEH Complaint No. 202005-10131711 is attached hereto as "EXHIBIT 1."

16 50. On May 11, 2020, SOBIERAY received a "Right to Sue Letter" from the
17 DFEH regarding Complaint No. 202005-10131711. The May 11, 2020 DFEH Right to Sue
18 Letter is attached hereto as "EXBIBIT 2."

19 51. As a result, SOBIERAY has exhausted all requisite administrative remedies.

20 **FIRST CAUSE OF ACTION**
21 **FOR FAILURE TO PAY OVERTIME COMPENSATION AND LIQUIDATED**
22 **DAMAGES**

23 **[CAL. LAB. CODE §§ 510, 1194, 1194.2 and 1198]**

24 **(By PLAINTIFFS, on Their Own Behalf and On Behalf of All Aggrieved Employees,**
25 **and Against All DEFENDANTS)**

26 52. PLAINTIFFS repeat and re-allege paragraphs 1 through 51, inclusive, of this
27 Complaint and they are incorporated herein by this reference.
28

1 53. Pursuant to the applicable IWC Wage Order 2-2001 (as amended) and 4-2001
2 (as amended), DEFENDANTS were the joint employers of PLAINTIFFS, and all aggrieved
3 employees.

4 54. CAL. LAB. CODE § 510 provides that employees in California shall not be
5 employed more than 8 hours in any workday or 40 hours in a workweek unless they receive
6 additional compensation beyond their regular wages in amounts specified by law.

7 55. CAL. LAB. CODE § 1194 establishes an employee's right to recover unpaid
8 overtime compensation, interest thereon, together with the costs of suit, and attorneys' fees.
9 CAL. LAB. CODE § 1198 states that the employment of an employee for longer hours than
10 those fixed by the Industrial Welfare Commission is unlawful.

11 56. CAL. LAB. CODE § 1194.2 establishes an employee's right to recover liquidated
12 damages in an amount equal to the wages unlawfully unpaid and interest thereon in an
13 action for payment of a wage less than the minimum wage fixed by the Industrial Welfare
14 Commission or by statute.

15 57. At all times relevant hereto, PLAINTIFFS, and all aggrieved employees,
16 worked more than 8 hours in a workday and/or 40 hours in a workweek, as employees of
17 DEFENDANTS. Further, at all times relevant hereto, PLAINTIFFS, and all aggrieved
18 employees, were paid on an hourly basis.

19 58. At all times relevant hereto, DEFENDANTS failed to pay overtime
20 compensation to PLAINTIFFS, and all aggrieved employees, for the hours they worked in
21 excess of maximum hours permissible by law as required by CAL. LAB. CODE §§ 510, 1194,
22 and 1198.

23 59. DEFENDANTS acted intentionally, oppressively, and maliciously toward
24 PLAINTIFFS, and all aggrieved employees, with a conscious disregard of their rights, or
25 the consequences to them, with the intent of depriving them of property and legal rights and
26 otherwise causing them injury. By virtue of DEFENDANTS' unlawful failure to pay
27 overtime wages, PLAINTIFFS, and all aggrieved employees, have suffered, and will
28 continue to suffer, damages in the amounts which are presently unknown to them but which

1 exceed the jurisdictional limits of the court and which will be ascertained according to
2 proof at trial

3 60. PLAINTIFFS, on their own behalf and on behalf of all aggrieved employees,
4 request recovery of overtime wages according to proof, interest, as well as the assessment
5 of any statutory penalties against DEFENDANTS, in a sum as provided by the CAL. LAB.
6 CODE and/or other statutes. PLAINTIFFS, on their own behalf and on behalf of all
7 aggrieved employees, also request recovery of liquidated damages as provided by CAL.
8 LAB. CODE § 1194.2. PLAINTIFFS, on their own behalf and on behalf of all aggrieved
9 employees, additionally request reasonable attorneys' fees and costs.

10 **SECOND CAUSE OF ACTION**
11 **FOR FAILURE TO PAY MINIMUM WAGES, SPLIT SHIFT PREMIUMS, AND**
12 **LIQUIDATED DAMAGES**

13 [CAL. LAB. CODE §§ 1182.12, 1194; 1194.2; 1197; 1197.1; 1198]

14 **(By PLAINTIFFS, on Their Own Behalf and On Behalf of All Aggrieved Employees,**
15 **and Against All DEFENDANTS)**

16 61. PLAINTIFFS repeat and re-allege paragraphs 1 through 60, inclusive, of this
17 Complaint and they are incorporated herein by this reference.

18 62. Pursuant to the applicable IWC Wage Order 2-2001 (as amended) and 4-2001
19 (as amended), DEFENDANTS were the joint employers of PLAINTIFFS, and all aggrieved
20 employees.

21 63. CAL. LAB. CODE §§ 1182.12 1197, and 1197.1 require employers to pay
22 employees the minimum wage fixed by the California Industrial Welfare Commission. The
23 payment of a lesser wage than the minimum so fixed is unlawful.

24 64. Compensable work time is defined in Industrial Wage Order Nos. 2 and 4 as
25 "the time during which an employee is subject to the control of an employer, and includes
26 all the time the employee is suffered or permitted to work, whether or not required to do
27 so." 8 CAL. CODE REGS. §§ 11020(2)(K) and 11040(2)(K) (defining "Hours Worked").
28

1 65. CAL. LAB. CODE § 1194 establishes an employee's right to recover unpaid
2 wage compensation, interest thereon, together with the costs of suit, and attorneys' fees.

3 66. CAL. LAB. CODE § 1194.2 establishes an employee's right to recover liquidated
4 damages in an amount equal to the wages unlawfully unpaid and interest thereon in an
5 action for payment of a wage less than the minimum wage fixed by the Industrial Welfare
6 Commission or by statute.

7 67. 8 CAL. CODE REGS. §§ 11020(4)(C) and 11040(4)(C) additionally provide:
8 "When an employee works a split shift, one (1) hour's pay at the minimum wage shall be
9 paid in addition to the minimum wage for that workday, except when the employee resides
10 at the place of employment."

11 68. At all times relevant hereto, PLAINTIFFS, and all aggrieved employees, were
12 paid by DEFENDANTS on an hourly basis. Additionally, PLAINTIFFS, and all aggrieved
13 employees, did not reside at the place of employment.

14 69. During PLAINTIFFS', and all aggrieved employees', employment,
15 DEFENDANTS failed to properly pay PLAINTIFFS, and all aggrieved employees, for all
16 hours worked at the legal minimum wage.

17 70. During PLAINTIFFS', and all aggrieved employees', employment,
18 DEFENDANTS failed to properly pay PLAINTIFFS, and all aggrieved employees, one
19 hour's pay when split shifts were worked.

20 71. DEFENDANTS acted intentionally, oppressively, and maliciously toward
21 PLAINTIFFS, and all aggrieved employees, with a conscious disregard of them, or the
22 consequences to them, with the intent of depriving them of property and legal rights and
23 otherwise causing them injury. By virtue of DEFENDANTS' unlawful failure to pay
24 wages, PLAINTIFFS, and all aggrieved employees, have suffered, and will continue to
25 suffer damages in an amount which is presently unknown to them but which exceeds the
26 jurisdictional limits of the Court and which will be ascertained according to proof at trial.

27 72. PLAINTIFFS, on their own behalf and on behalf of all aggrieved employees,
28 request recovery of minimum wages according to proof, split shift premiums according to

1 proof, interest, as well as the assessment of any statutory penalties against DEFENDANTS,
2 in a sum as provided by the CAL. LAB. CODE and/or other statutes. PLAINTIFFS, on their
3 own behalf and on behalf of all aggrieved employees, also request recovery of liquidated
4 damages as provided by CAL. LAB. CODE § 1194.2. PLAINTIFFS, on their own behalf and
5 on behalf of all aggrieved employees, additionally request reasonable attorneys' fees and
6 costs.

7 **THIRD CAUSE OF ACTION**
8 **FOR FAILURE TO PROVIDE MEAL PERIODS**

9 **[CAL. LAB. CODE §§ 226.7 and 512, and 8 CAL. CODE REGS. §§ 11020 and 11040]**
10 **(By PLAINTIFFS, on Their Own Behalf and On Behalf of All Aggrieved Employees,**
11 **and Against All DEFENDANTS)**

12 73. PLAINTIFFS repeat and re-allege paragraphs 1 through 72, inclusive, of this
13 Complaint and they are incorporated herein by this reference.

14 74. Pursuant to the applicable IWC Wage Order 2-2001 (as amended) and 4-2001
15 (as amended), DEFENDANTS were the joint employers of PLAINTIFFS, and all aggrieved
16 employees.

17 75. CAL. LAB. CODE §§ 226.7 and 512, and 8 CAL. CODE REGS. §§ 11020(11)(A)
18 and 11040(11)(A) provide that no employer shall employ any person for a work period of
19 more than five (5) hours without a meal period of not less than 30 minutes.

20 76. CAL. LAB. CODE § 226.7 and 8 CAL. CODE REGS. §§ 11020(11)(D) and
21 11040(11)(D) provide that if an employer fails to provide an employee a meal period in
22 accordance with the section, the employer shall pay the employee one (1) hour of pay at the
23 employee's regular rate of compensation for each workday that the meal period is not
24 provided.

25 77. At all times relevant hereto, PLAINTIFFS, and all aggrieved employees, have
26 worked more than five (5) hours in a workday for DEFENDANTS.

27 78. DEFENDANTS typically completely failed to provide PLAINTIFFS, and all
28 aggrieved employees, with compliant thirty (30) minute meal periods during shifts in

1 excess of five (5) hours. Where meal periods were provided, they were shorter in duration
2 than 30 minutes or were interrupted. Additionally, PLAINTIFFS, and all aggrieved
3 employees, were not allowed to leave DEFENDANTS' premises during these times. As
4 such, DEFENDANTS effectively maintained control over PLAINTIFFS, and all aggrieved
5 employees, during the meal periods that were provided. On each day where a compliant
6 thirty (30) minute meal period was not provided to PLAINTIFFS, and all aggrieved
7 employees, DEFENDANTS failed to pay PLAINTIFFS, and all aggrieved employees, one
8 additional hour of pay at PLAINTIFFS', and all aggrieved employees', regular rate of pay.

9 79. DEFENDANTS have intentionally and improperly denied meal periods to
10 PLAINTIFFS, and all aggrieved employees, in violation of CAL. LAB. CODE §§ 226.7 and
11 512 and 8 CAL. CODE REGS. §§ 11020(11)(A) and 11040(11)(A) and other regulations and
12 statutes.

13 80. By virtue of the DEFENDANTS' unlawful failure to provide meal periods to
14 PLAINTIFFS, and all aggrieved employees, PLAINTIFFS, and all aggrieved employees,
15 have suffered, and will continue to suffer, damages in amounts which are presently
16 unknown to PLAINTIFFS, and all aggrieved employees, but which damages exceed the
17 jurisdictional limits of the Court and which will be ascertained according to proof at trial.

18 81. PLAINTIFFS are informed and believe, and based upon that information and
19 belief allege, that DEFENDANTS purposely elected not to provide meal periods to their
20 hourly paid employees. DEFENDANTS acted intentionally, oppressively and maliciously
21 toward PLAINTIFFS, and all aggrieved employees, with a conscious disregard of their
22 rights, or the consequences to PLAINTIFFS, and all aggrieved employees, with the intent
23 of depriving PLAINTIFFS, and all aggrieved employees, of property and legal rights and
24 otherwise causing PLAINTIFFS, and all aggrieved employees, injury.

25 82. PLAINTIFFS, on their own behalf and on behalf of all aggrieved employees,
26 request recovery of meal period compensation according to proof, interest, as well as the
27 assessment of any statutory penalties against DEFENDANTS, in a sum as provided by the
28

CAL. LAB. CODE and/or other statutes. PLAINTIFFS, on their own behalf and on behalf of all aggrieved employees, additionally request reasonable attorneys' fees and costs.

FOURTH CAUSE OF ACTION

FOR FAILURE TO PROVIDE REST PERIODS

[CAL. LAB. CODE §§ 226.7 and 512, and 8 CAL. CODE REGS. §§ 11020 and 11040]

**(By PLAINTIFFS, on Their Own Behalf and On Behalf of All Aggrieved Employees,
and Against All DEFENDANTS)**

83. PLAINTIFFS repeat and re-allege paragraphs 1 through 82, inclusive, of this Complaint and they are incorporated herein by this reference.

84. Pursuant to the applicable IWC Wage Order 2-2001 (as amended) and 4-2001 (as amended), DEFENDANTS were the joint employers of PLAINTIFFS, and all aggrieved employees.

85. CAL. LAB. CODE §§ 226.7 and 8 CAL. CODE REGS. §§ 11020 (12)(A) and 11040(12)(A) provide that employers shall authorize and permit all employees to take rest periods at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof, of work.

86. CAL. LAB. CODE §§ 226.7 and 8 CAL. CODE REGS. §§ 11020(12)(B) and 11040(12)(B) provide that if an employer fails to provide an employee with rest periods in accordance with those statutes, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period was not provided.

87. DEFENDANTS have intentionally and improperly denied rest periods to PLAINTIFFS, and all aggrieved employees, in violation of CAL. LAB. CODE §§ 226.7 and 512 and 8 CAL. CODE OF REGS. §§ 11020(12)(A) and 11040(12)(A).

88. At all times relevant hereto, PLAINTIFFS, and all aggrieved employees, have worked more than four hours in a workday for DEFENDANTS.

1 89. At all times relevant hereto, DEFENDANTS failed to provide rest periods to
2 PLAINTIFFS, and all aggrieved employees, as required by CAL. LAB. CODE §§ 226.7 and 8
3 CAL. CODE REGS. §§ 11020(12)(A) and 11040(12)(A).

4 90. DEFENDANTS did not provide PLAINTIFFS, and all aggrieved employees, a
5 10-minute net rest period for every four (4) hours or major fraction thereof worked. Where
6 rest periods were provided, they were shorter in duration than 10 minutes, were interrupted,
7 or were not provided every four (4) hours or major fraction thereof worked. Additionally,
8 employees were not allowed to leave DEFENDANTS' premises during their rest periods.
9 As such, DEFENDANTS effectively maintained control over PLAINTIFFS, and all
10 aggrieved employees, during rest periods that were provided. On each day where compliant
11 ten (10) minute rest periods were not provided to PLAINTIFFS, and all aggrieved
12 employees, DEFENDANTS failed to pay PLAINTIFFS, and all aggrieved employees, one
13 additional hour of pay at each employee's regular rate of pay.

14 91. By virtue of the DEFENDANTS' unlawful failure to provide rest periods to the
15 PLAINTIFFS, and all aggrieved employees, PLAINTIFFS, and all aggrieved employees,
16 have suffered, and will continue to suffer, damages in amounts which are presently
17 unknown to PLAINTIFFS, and all aggrieved employees, but which exceed the
18 jurisdictional limits of the Court and which will be ascertained according to proof at trial.

19 92. PLAINTIFFS are informed and believe, and based upon that information and
20 belief allege, that DEFENDANTS knew or should have known that PLAINTIFFS, and all
21 aggrieved employees, were entitled to rest periods and purposely elected not to provide rest
22 periods. DEFENDANTS acted intentionally, oppressively and maliciously toward
23 PLAINTIFFS, and all aggrieved employees, with a conscious disregard of their rights, or
24 the consequences to PLAINTIFFS, and all aggrieved employees, with the intent of
25 depriving PLAINTIFFS, and all aggrieved employees, of property and legal rights and
26 otherwise causing PLAINTIFFS, and all aggrieved employees, injury.

27 93. PLAINTIFFS, on their own behalf and on behalf of all aggrieved employees,
28 request recovery of rest period compensation according to proof, interest, as well as the

1 assessment of any statutory penalties against DEFENDANTS, in a sum as provided by the
2 CAL. LAB. CODE and/or other statutes. PLAINTIFFS, on their own behalf and on behalf of
3 all aggrieved employees, additionally request reasonable attorneys' fees and costs.

4 **FIFTH CAUSE OF ACTION**

5 **FOR FAILURE TO PROVIDE ITEMIZED STATEMENTS AND MAINTAIN**
6 **ACCURATE PAYROLL RECORDS**

7 [CAL. LAB. CODE §§ 226(a), 1174(d), and 1198]

8 **(By PLAINTIFFS, on Their Own Behalf and On Behalf of All Aggrieved Employees,**
9 **and Against All DEFENDANTS)**

10 94. PLAINTIFFS repeat and re-allege paragraphs 1 through 93, inclusive, of this
11 Complaint and they are incorporated herein by this reference.

12 95. Pursuant to the applicable IWC Wage Order 2-2001 (as amended) and 4-2001
13 (as amended), DEFENDANTS were the joint employers of PLAINTIFFS, and all aggrieved
14 employees.

15 96. CAL. LAB. CODE § 226(a) requires employers to provide non-exempt
16 employees with detailed and accurate wage statements (*i.e.* "pay stubs"). Specifically, the
17 statute provides:

18 Every employer shall, semimonthly or at the time of each payment of
19 wages, furnish each of his or her employees, either as a detachable
20 part of the check, draft, or voucher paying the employee's wages, or
21 separately when wages are paid by personal check or cash, an
22 accurate itemized statement in writing showing (1) gross wages
23 earned, (2) total hours worked by the employee, except for any
24 employee whose compensation is solely based on a salary and who is
25 exempt from payment of overtime under subdivision (a) of Section
26 515 or any applicable order of the Industrial Welfare Commission,
27 (3) the number of piece-rate units earned and any applicable piece
28 rate if the employee is paid on a piece-rate basis, (4) all deductions,
provided that all deductions made on written orders of the employee
may be aggregated and shown as one item, (5) net wages earned, (6)
the inclusive dates of the period for which the employee is paid, (7)
the name of the employee and only the last four digits of his or her
social security number or an employee identification number other
than a social security number, (8) the name and address of the legal
entity that is the employer and, if the employer is a farm labor
contractor, as defined in subdivision (b) of Section 1682, the name
and address of the legal entity that secured the services of the

1 employer, and (9) all applicable hourly rates in effect during the pay
2 period and the corresponding number of hours worked at each hourly
3 rate by the employee and, beginning July 1, 2013, if the employer is a
temporary services employer as defined in Section 201.3, the rate of
pay and total hours worked for each temporary services assignment.

4 97. If a violation of CAL. LAB. CODE § 226 occurs, CAL. LAB. CODE § 226(e)
5 provides that an employee: (a) is entitled to recover the greater of all actual damages or
6 minimum statutory damages of \$50 for the initial pay period in which a violation occurs
7 and \$100 for each subsequent violation, up to a maximum of \$4,000.

8 98. Additionally, CAL. LAB. CODE § 1174(d) provides that “[e]very person
9 employing labor in this state shall ... [k]eep a record showing the names and addresses of
10 all employees employed and the ages of all minors” and “[k]eep, at a central location in the
11 state or at the plants or establishments at which employees are employed, payroll records
12 showing the hours worked daily by and the wages paid to, and the number of piece-rate
13 units earned by and any applicable piece rate paid to, employees employed at the respective
14 plants or establishments...”

15 99. CAL. LAB. CODE § 1174.5 provides that employers are subject to a \$500 civil
16 penalty if they fail to maintain accurate and complete records as required by section
17 1174(d).

18 100. DEFENDANTS intentionally completely failed to furnish to PLAINTIFFS,
19 and all aggrieved employees, upon the payment of wages, itemized statements accurately
20 showing any of the information required by CAL. LAB. CODE § 226.

21 101. PLAINTIFFS, and all aggrieved employees, were damaged by these failures
22 because, among other things, the failures led PLAINTIFFS, and all aggrieved employees, to
23 believe that they were not entitled to be paid for all hours worked even though they were so
24 entitled, and because these failures hindered PLAINTIFFS, and all aggrieved employees,
25 from determining the amounts of wages owed to them.

26 102. Additionally, PLAINTIFFS are informed and believe, and based upon that
27 information and belief allege, that DEFENDANTS willfully failed to maintain accurate
28

1 payroll records showing the daily hours PLAINTIFFS, and all aggrieved employees,
2 worked and the wages paid thereto as a result of failing to record hours that PLAINTIFFS,
3 and all aggrieved employees, worked, as well as PLAINTIFFS', and all aggrieved
4 employees', missed meal periods and rest periods.

5 103. PLAINTIFFS, on their own behalf and on behalf of all aggrieved employees,
6 request recovery of damages, penalties, and interest pursuant to CAL. LAB. CODE §§ 226,
7 1174, and 1198. PLAINTIFFS, on their own behalf and on behalf of all aggrieved
8 employees, additionally request the recovery of reasonable attorneys' fees and costs.

9 **SIXTH CAUSE OF ACTION**
10 **FOR FAILURE TO REIMBURSE BUSINESS EXPENSES**

11 **[CAL. LAB. CODE §§ 2800 and 2802]**

12 **(By PLAINTIFFS, on Their Own Behalf and On Behalf of All Aggrieved Employees,**
13 **and Against All DEFENDANTS)**

14 104. PLAINTIFFS repeat and re-allege paragraphs 1 through 103, inclusive, of this
15 Complaint and they are incorporated herein by this reference.

16 105. Pursuant to the applicable IWC Wage Order 2-2001 (as amended) and 4-2001
17 (as amended), DEFENDANTS were the joint employers of PLAINTIFFS.

18 106. CAL. LAB. CODE §§ 2800 and 2802 provide that an employer must reimburse
19 employees for all necessary expenditures incurred in an employee's course and scope of
20 employment.

21 107. PLAINTIFFS, and all aggrieved employees, incurred necessary business-
22 related expenses and costs that were not fully reimbursed by DEFENDANTS.

23 108. Necessary business-related expenses and costs that were incurred by
24 PLAINTIFFS, but not fully reimbursed by DEFENDANTS, include, but were not limited to
25 PORTER's use of a personal computer, internet, cell phone, cell phone plan, and vehicle,
26 and SOBIERAY's purchase of a uniform required by DEFENDANTS.

27 109. DEFENDANTS have a policy of requiring their employees to use their
28 computer, internet, cell phone, cell phone plan, and vehicle, and wear a specific uniform.

1 DEFENDANTS, however, did not reimburse PLAINTIFFS, and all aggrieved employees,
2 for the cost of these necessary items.

3 110. DEFENDANTS have intentionally and willfully failed to fully reimburse
4 PLAINTIFFS, and all aggrieved employees, for necessary business-related expenses and
5 costs in violation of CAL. LAB. CODE §§ 2800 and 2802.

6 111. Pursuant to CAL. LAB. CODE §§ 2800 and 2802, PLAINTIFFS, on their own
7 behalf and on behalf of all aggrieved employees, request recovery from DEFENDANTS of
8 their business-related expenses incurred during the course and scope of their employment
9 with DEFENDANTS, plus interest and penalties. PLAINTIFFS, on their own behalf and on
10 behalf of all aggrieved employees, additionally request the recovery of reasonable
11 attorneys' fees and costs.

12 **SEVENTH CAUSE OF ACTION**

13 **FOR FAILURE TO PAY WAGES UPON TERMINATION**

14 **[CAL. LAB. CODE § 203]**

15 **(By PLAINTIFFS, on Their Own Behalf and On Behalf of Aggrieved Employees, and**
16 **Against All DEFENDANTS)**

17 112. PLAINTIFFS repeat and re-allege paragraphs 1 through 111, inclusive, of this
18 Complaint and they are incorporated herein by this reference.

19 113. Pursuant to the applicable IWC Wage Order 2-2001 (as amended) and 4-2001
20 (as amended), DEFENDANTS were the joint employers of PLAINTIFFS, and all aggrieved
21 employees.

22 114. CAL. LAB. CODE § 201(a) provides that a discharged employee's unpaid wages
23 are due and payable immediately. Under CAL. LAB. CODE § 202(a), when an employee not
24 having a written contract for a definite period is terminated, his or her wages become
25 immediately due and payable.

26 115. CAL. LAB. CODE § 203 (a) provides that "If an employer willfully fails to pay,
27 without abatement or reduction, in accordance with Sections [201 and 202], any wages of
28 an employee who is discharged or who quits, the wages of the employee shall continue as a

1 penalty from the due date thereof at the same rate until paid or until an action therefore is
2 commenced; but the wages shall not continue for more than 30 days.”

3 116. PLAINTIFFS, and all aggrieved employees, did not have a written contract for
4 definite terms of employment. PLAINTIFFS, and aggrieved employees, were discharged
5 from their employment with DEFENDANTS within the applicable statute of limitations.
6 DEFENDANTS willfully failed to pay PLAINTIFFS, and aggrieved employees, the wages
7 due to them—without abatement or reduction.

8 117. Under CAL. LAB. CODE § 203, PLAINTIFFS, and aggrieved employees, are
9 entitled to one day’s wages for each day they were not timely paid all wages due, up to a
10 maximum of 30 days’ wages. Because DEFENDANTS failed to pay overtime wages owed,
11 minimum wages owed, and never paid or meal and rest period wages owed, PLAINTIFFS,
12 are entitled to, and request, on their own behalf and on behalf of all aggrieved employees,
13 30 days’ wages, and applicable penalties. PLAINTIFFS, on their own behalf and on behalf
14 of aggrieved employees, additionally request the recovery of reasonable attorneys’ fees and
15 costs.

16 **EIGHTH CAUSE OF ACTION**
17 **FOR VIOLATION OF CALIFORNIA LABOR CODE SECTION 558**

18 **[CAL. LAB. CODE § 558]**

19 **(By PLAINTIFFS, on Their Own Behalf and On Behalf of All Aggrieved Employees,**
20 **and Against All DEFENDANTS)**

21 118. PLAINTIFFS repeat and re-allege paragraphs 1 through 117, inclusive, of this
22 Complaint and they are incorporated herein by this reference.

23 119. Pursuant to the applicable IWC Wage Order 2-2001 (as amended) and 4-2001
24 (as amended), DEFENDANTS were the joint employers of PLAINTIFFS, and all aggrieved
25 employees.

26 120. CAL. LAB. CODE § 558(a) provides “[a]ny employer or other person acting on
27 behalf of an employer who violates, or causes to be violated, a section of this chapter or
28 any provision regulating hours and days of work in any order of the Industrial Welfare

Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.” CAL. LAB. CODE § 558(a) also provides that “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.”

121. At all relevant times, DEFENDANTS violated the rights of PLAINTIFFS, and all aggrieved employees, by violating various sections of the CAL. LAB. CODE. As such, PLAINTIFFS, on their own behalf and on behalf of all aggrieved employees, seek the remedies set forth in CAL. LAB. CODE § 558.

NINTH CAUSE OF ACTION

FOR UNFAIR COMPETITION

[CAL. BUS. & PROF. CODE § 17200 *et seq.*]

**(By PLAINTIFFS, on Their Own Behalf and On Behalf of All Aggrieved Employees,
and Against All DEFENDANTS)**

122. PLAINTIFFS repeat and re-allege paragraphs 1 through 121, inclusive, of this Complaint and they are incorporated herein by this reference.

123. Pursuant to the applicable IWC Wage Order 2-2001 (as amended) and 4-2001 (as amended), DEFENDANTS were the joint employers of PLAINTIFFS, and all aggrieved employees. DEFENDANTS are also a “person” as that term is defined under CAL. BUS. & PROF. CODE § 17021.

124. CAL. BUS. & PROF. CODE section defines unfair competition as any unlawful, unfair, or fraudulent business act or practice. At all times relevant hereto, by and through the conduct described herein, DEFENDANTS have engaged in unfair and unlawful practices by, among other violations, failing to pay overtime wages to PLAINTIFFS, and all aggrieved employees, minimum wages to PLAINTIFFS, and all aggrieved employees,

1 split shift premiums to PLAINTIFFS, and all aggrieved employees, failing to provide meal
2 and rest breaks to PLAINTIFFS, and all aggrieved employees, failing to provide accurate
3 wage statements to PLAINTIFFS, and all aggrieved employees, and failing to provide
4 wages due upon termination of employment to PLAINTIFFS, and aggrieved employees,
5 pursuant to the applicable CAL. LAB. CODE, and Industrial Welfare Commission
6 requirements in violation of CAL. BUS. & PROF. CODE § 17200 *et seq.*, and have thereby
7 deprived PLAINTIFFS, and all aggrieved employees, of fundamental rights and privileges.

8 125. By and through the unfair and unlawful business practices described herein,
9 DEFENDANTS have obtained valuable property, money, and services from PLAINTIFFS
10 and have deprived her of valuable rights and benefits guaranteed by law, all to the
11 detriment of PLAINTIFFS.

12 126. All the acts described herein are violations of, among other things, the CAL.
13 LAB. CODE, CAL. CODE REGS., and Industrial Welfare Commission Wage Orders Two and
14 Four; are unlawful and in violation of public policy; and in addition are immoral, unethical,
15 oppressive, and unscrupulous, and thereby constitute unfair and unlawful business practices
16 in violation of CAL. BUS. & PROF. CODE § 17200 *et seq.*

17 127. PLAINTIFFS, and all aggrieved employees, are entitled to and seek such relief
18 as may be necessary to restore to them the money and property which DEFENDANTS have
19 acquired, or of which PLAINTIFFS, and all aggrieved employees, have been deprived, by
20 means of the above described unfair and unlawful business practices.

21 128. PLAINTIFFS, and all aggrieved employees, are further entitled to and seek a
22 declaration that the above described business practices are unfair and unlawful and that an
23 injunctive relief should be issued restraining DEFENDANTS from engaging in any of the
24 above described unfair and unlawful business practices in the future.

25 129. PLAINTIFFS, and all aggrieved employees, have no plain, speedy, and/or
26 adequate remedy at law to redress the injuries which they have suffered as a consequence
27 of the unfair and unlawful business practices of DEFENDANTS. As a result of the unfair
28 and unlawful business practices described above, PLAINTIFFS, and all aggrieved

1 employees, have suffered and will continue to suffer irreparable harm unless
2 DEFENDANTS are restrained from continuing to engage in these unfair and unlawful
3 business practices. In addition, DEFENDANTS should be required to disgorge the unpaid
4 moneys to PLAINTIFFS, and all aggrieved employees.

5 **TENTH CAUSE OF ACTION**
6 **FOR INTRUSION INTO PRIVATE MATTERS**

7 **(By PORTER, and Against ROSS)**

8 130. PORTER repeats and re-alleges Paragraphs 1 through 129, inclusive, of this
9 complaint and they are incorporated herein by this reference.

10 131. The right of privacy is guaranteed by Article I, Section 1 of the Constitution of
11 the State of California. (*Melvin v. Reid* (1931) 112 Cal.App. 285, 291.)

12 132. A court evaluating a claim for intrusion into private matters will consider: (1) the
13 nature of any intrusion upon reasonable expectations of privacy; and, (2) the offensiveness or
14 seriousness of the intrusion, including any justification and other relevant interests. (*Hernandez*
15 *v. Hillsides, Inc.* (2009) 47 Cal.4th 272, 288.)

16 133. Regarding the “nature of any intrusion upon reasonable expectations of privacy”
17

18 [T]he defendant must have ‘penetrated some zone of physical or
19 sensory privacy . . . or obtained unwanted access to data’ by
20 electronic or other covert means, in violation of the law or social
21 norms. In either instance, the expectation of privacy must be
22 ‘objectively reasonable.’ (*Hernandez, supra*, 47 Cal.4th at p. 286.)

23 134. The “offensiveness or seriousness of the intrusion” essentially involves
24 a policy determination as to whether the alleged intrusion is ‘highly offensive’ under
25 the particular circumstances. Relevant factors include the degree and setting of the
26 intrusion, and the intruder’s motives and objectives. (*Hernandez, supra*, 47 Cal. 4th
27 at p. 287.)

28 135. ROSS has engaged in a campaign of intrusion into PORTER’s private
matters by installing a time-clock application on PORTER’s personal computer,
without disclosing to PORTER that this application took screen shots every ten (10)

1 minutes that the computer was turned on, and forwarded those screen shots to
2 ROSS.

3 136. ROSS has penetrated PORTER's zone of privacy. This conduct was,
4 and is, highly offensive.

5 137. PORTER was, and is, offended by ROSS's conduct.

6 138. PORTER requests recovery from ROSS of her actual damages
7 including but not limited to, economic losses, and emotional distress and mental
8 anguish related to ROSS's intrusion into PORTER's private matters.

9 139. Additionally, ROSS acted intentionally, oppressively and maliciously
10 toward PORTER with a conscious disregard of PORTER's rights, or the
11 consequences to PORTER and with the intent of depriving PORTER of her rights.
12 As such, PORTER is entitled to and seeks punitive and/or exemplary damages as
13 well as treble damages related to ROSS's conduct.

14 **ELEVENTH CAUSE OF ACTION**
15 **FOR DISCRIMINATION/HOSTILE ENVIRONMENT**

16 **[CAL. GOVT. CODE §§ 12900, *et seq.*]**

17 **(By SOBIERAY, and Against All DEFENDANTS)**

18 140. SOBIERAY repeats and re-alleges Paragraphs 1 through 139, inclusive, of this
19 complaint and they are incorporated herein by this reference.

20 141. CAL. GOVT. CODE § 12940(a) provides that it shall be unlawful "[f]or an
21 employer, because of the race, religious creed, color, national origin, ancestry, physical
22 disability, mental disability, medical condition, genetic information, marital status, sex, gender,
23 gender identity, gender expression, age, sexual orientation, or military and veteran status of any
24 person, to refuse to hire or employ the person or to refuse to select the person for a training
25 program leading to employment, or to bar or to discharge the person from employment or from
26 a training program leading to employment, or to discriminate against the person in
27 compensation or in terms, conditions, or privileges of employment."
28

1 142. CAL. GOVT. CODE § 12940(j) provides that it shall be unlawful “[f]or an
2 employer, labor organization, employment agency, apprenticeship training program or any
3 training program leading to employment, or any other person, because of race, religious creed,
4 color, national origin, ancestry, physical disability, mental disability, medical condition, genetic
5 information, marital status, sex, gender, gender identity, gender expression, age, sexual
6 orientation, or military and veteran status, to harass an employee, an applicant, an unpaid intern
7 or volunteer, or a person providing services pursuant to a contract.”

8 143. The elements of a prima facie claim of hostile-environment sexual harassment in
9 the employment context are: [1] plaintiff belongs to a protected group; [2] plaintiff was subject
10 to unwelcome sexual harassment; [3] the harassment complained of was based on sex; [4] the
11 harassment complained of was sufficiently pervasive so as to alter the conditions of employment
12 and create an abusive working environment; and, [5] respondeat superior. (*Fisher v. San Pedro*
13 *Peninsula Hospital* (1989) 214 Cal.App.3d 590, 608.)

14 144. SOBIERAY was an employee of, or providing services to ROSS.

15 145. SOBIERAY was subjected to unwanted harassing conduct by ROSS based on
16 SOBIERAY’s sex, gender, gender identity, gender expression, and/or sexual orientation.

17 146. DEFENDANTS discriminated against SOBIERAY based on SOBIERAY’s sex,
18 gender, gender identity, gender expression, and/or sexual orientation.

19 147. ROSS’s harassing conduct was severe and/or pervasive.

20 148. A reasonable person in SOBIERAY’s circumstances would have considered the
21 work environment to be hostile and/or abusive.

22 149. SOBIERAY considered the work environment to be hostile and/or abusive.

23 150. ROSS was SOBIERAY’s immediate supervisor.

24 151. SOBIERAY was harmed by ROSS’s sexual harassment and discrimination, and
25 ROSS’s conduct was a substantial factor in causing SOBIERAY’s harm.

26 152. SOBIERAY requests recovery from DEFENDANTS of her actual damages
27 including but not limited to emotional distress and mental anguish related to ROSS’s severe and
28

1 pervasive sexual harassment and discrimination. Furthermore, SOBIERAY also requests
2 recovery of reasonable attorney's fees and costs, as well as expert witness fees, pursuant to CAL.
3 GOVT. CODE § 12965(b).

4 153. DEFENDANTS acted intentionally, oppressively and maliciously toward
5 SOBIERAY with a conscious disregard of SOBIERAY's rights, or the consequences to
6 SOBIERAY and with the intent of depriving SOBIERAY of her rights. As such, SOBIERAY is
7 entitled to and seeks punitive and/or exemplary damages as well as treble damages from
8 DEFENDANTS.

9
10 **TWELFTH CAUSE OF ACTION**
11 **FOR FAILURE TO PREVENT DISCRIMINATION / HOSTILE ENVIRONMENT**
12 **SEXUAL HARASSMENT**

13 **[Cal. Govt. Code §§ 12900, *et seq.*]**

14 **(By SOBIERAY, and Against All DEFENDANTS)**

15 154. SOBIERAY repeats and re-alleges Paragraphs 1 through 153, inclusive, of this
16 complaint and they are incorporated herein by this reference.

17 155. CAL. GOVT. CODE § 12940(a) provides that it shall be unlawful: "[f]or an
18 employer, labor organization, employment agency, apprenticeship training program, or any
19 training program leading to employment, to fail to take all reasonable steps necessary to prevent
20 discrimination and harassment from occurring."

21 156. DEFENDANTS knew of the sexual harassment and discrimination that
22 SOBIERAY was subjected to.

23 157. DEFENDANTS failed to take any steps to prevent or remedy the sexual
24 harassment and discrimination that SOBIERAY was subjected to.

25 158. SOBIERAY was injured by DEFENDANTS' failure to prevent sexual
26 harassment and discrimination based on her sex and gender.

27 159. SOBIERAY requests recovery from all DEFENDANTS of her actual damages
28 including but not limited to emotional distress and mental anguish related to ROSS's severe and

1 pervasive sexual harassment and discrimination against SOBIERAY. Furthermore, PLAINTIFF
2 also requests recovery of reasonable attorneys' fees and costs pursuant to CAL. GOVT. CODE §
3 12965(b).

4 160. Additionally, DEFENDANTS acted intentionally, oppressively and maliciously
5 toward SOBIERAY with a conscious disregard of SOBIERAY's rights, or the consequences to
6 SOBIERAY and with the intent of depriving SOBIERAY of her rights. As such, SOBIERAY is
7 entitled to and seeks punitive and/or exemplary damages as well as treble damages related to
8 DEFENDANTS' conduct.

9
10 **THIRTEENTH CAUSE OF ACTION**
11 **FOR VIOLATION OF CALIFORNIA CIVIL CODE § 51.9**

12 **(By SOBIERAY, and Against All DEFENDANTS)**

13 161. SOBIERAY repeats and re-alleges Paragraphs 1 through 160, inclusive, of this
14 complaint and they are incorporated herein by this reference.

15 162. CAL. CIV. CODE § 51.9 declares, in pertinent part, that a defendant is liable for
16 sexual harassment where a plaintiff proves there is a business, service, or professional
17 relationship between plaintiff and defendant, and where a defendant has made sexual advances,
18 solicitations, sexual requests, demands for sex, or engaged in other verbal, visual, or physical
19 conduct of a sexual nature or of a hostile nature based on gender, that were unwelcome and
20 severe or pervasive.

21 163. CAL. CIV. CODE § 52(b) declares that, whoever denies the rights provided by
22 CAL. CIV. CODE § 51.9, or aids, incites, or conspires in that denial, is liable for each and every
23 offence and for the actual damages suffered by any person denied that right.

24 164. As alleged herein, ROSS sexually harassed SOBIERAY.

25 165. As alleged herein, DEFENDANTS discriminated against SOBIERAY on the
26 basis of SOBIERAY's sex, gender, gender identity, gender expression, and/or sexual
27 orientation.
28

1 166. DEFENDANTS aided, incited, or conspired in the denial of SOBIERAY's right
2 to be free from ROSS's sexual harassment and DEFENDANTS' discrimination based on sex,
3 gender, gender identity, gender expression, and/or sexual orientation.

4 167. SOBIERAY has suffered and will suffer economic loss or disadvantage or
5 personal injury, including but not limited to, emotional distress and the violation of statutory or
6 constitutional rights, as a result of the conduct of DEFENDANTS set forth herein.

7 168. SOBIERAY requests damages pursuant to CAL. CIV. CODE § 52(b), including but
8 not limited to exemplary damages and reasonable attorney's fees and costs.

9 **FOURTEENTH CAUSE OF ACTION**
10 **FOR VIOLATION OF CALIFORNIA CIVIL CODE § 52.4**

11 **(By SOBIERAY, and Against All DEFENDANTS)**

12 169. SOBIERAY repeats and re-alleges Paragraphs 1 through 168, inclusive, of this
13 complaint and they are incorporated herein by this reference.

14 170. CAL. CIV. CODE § 52.4 declares, in pertinent part: "[a]ny person who has been
15 subjected to gender violence may bring a civil action for damages against any responsible party.
16 The plaintiff may seek actual damages, compensatory damages, punitive damages, injunctive
17 relief, any combination of those, or any other appropriate relief. A prevailing plaintiff may also
18 be awarded attorney's fees and costs.

19 171. CAL. CIV. CODE § 52.4 states that "gender violence" is a form of sexual
20 discrimination and defines "gender violence" as either of the following:
21

22 (1) One or more acts that would constitute a criminal offense under state
23 law that has as an element the use, attempted use, or threatened use of
24 physical force against the person or property of another, committed at least
25 in part based on the gender of the victim, whether or not those acts have
resulted in criminal complaints, charges, prosecution, or conviction.

26 (2) A physical intrusion or physical invasion of a sexual nature under
27 coercive conditions, whether or not those acts have resulted in criminal
28 complaints, charges, prosecution, or conviction.

172. As alleged herein, ROSS committed acts of gender violence against SOBIERAY.

173. As alleged herein, DEFENDANTS discriminated against SOBIERAY on the basis of SOBIERAY's sex, gender, gender identity, gender expression, and/or sexual orientation.

174. SOBIERAY has suffered and will suffer economic loss or disadvantage or personal injury, including but not limited to, emotional distress and the violation of statutory or constitutional rights, as a result of the conduct of DEFENDANTS set forth herein.

175. SOBIERAY requests damages pursuant to CAL. CIV. CODE § 52.4, including but not limited to actual damages, compensatory damages, punitive damages, injunctive relief, and attorney's fees and costs.

FIFTEENTH CAUSE OF ACTION
FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

(By PLAINTIFFS, and Against All DEFENDANTS)

176. PLAINTIFFS repeat and re-allege paragraphs 1 through 175, inclusive, of this Complaint and they are incorporated herein by this reference.

177. A cause of action for intentional infliction of emotional distress exists when there is: (1) extreme and outrageous conduct by a defendant with the intention of causing, or reckless disregard of the probability of causing, emotional distress; (2) the plaintiff's suffering severe or extreme emotional distress; and, (3) actual and proximate causation of the emotional distress by the defendant's outrageous conduct. (*Hughes v. Pair* (2009) 46 Cal.4th 1035, 1050.

178. A defendant's conduct is "outrageous" when it is so "extreme as to exceed all bounds of that usually tolerated in a civilized community." (*Hughes v. Pair, supra*, 46 Cal.4th at p. 1050.

179. As alleged herein, DEFENDANTS engaged in extreme and outrageous conduct against PLAINTIFFS, with the intent of causing, or reckless disregard of the probability of causing emotional distress.

1 180. DEFENDANTS' extreme and outrageous conduct proximately and actually
2 caused PLAINTIFFS' severe emotional suffering and distress.

3 181. PLAINTIFFS request recovery from all DEFENDANTS of their actual
4 damages including but not limited to emotional distress and mental anguish related to
5 ROSS's intrusion into PORTER's private matters, ROSS's sexual harassment of
6 SOBIERAY, and DEFENDANTS' discrimination against SOBIERAY based on her sex,
7 gender, gender identity, gender expression, and/or sexual orientation.

8 182. The foregoing conduct of DEFENDANTS individually, or by and through their
9 managing agents, was intended by the DEFENDANTS to cause injury to the PLAINTIFFS
10 or was despicable conduct carried on by the DEFENDANTS with a willful and conscious
11 disregard of the rights of PLAINTIFFS or subjected PLAINTIFFS to cruel and unjust
12 hardship in conscious disregard of PLAINTIFFS' right to be free from interference by
13 threats, intimidation, or coercion, or attempts to interfere by threats, intimidation, or
14 coercion, such as to constitute malice, oppression or fraud under California Civil Code
15 §3294, thereby entitling PLAINTIFFS to punitive damages in an amount appropriate to
16 punish or make an example of DEFENDANTS.

17 183. The foregoing conduct of DEFENDANTS individually, or by and through their
18 managing agents, was intended by the DEFENDANTS to cause injury to SOBIERAY or
19 was despicable conduct carried on by the DEFENDANTS with a willful and conscious
20 disregard of the rights of SOBIERAY or subjected SOBIERAY to cruel and unjust hardship
21 in conscious disregard of SOBIERAY's right to be free from gender violence, under
22 California Civil Code §52.4(a), thereby entitling SOBIERAY to punitive damages in an
23 amount appropriate to punish or make an example of DEFENDANTS.

24 **SIXTEENTH CAUSE OF ACTION**

25 **FOR NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

26 **(By PLAINTIFFS, and Against All DEFENDANTS)**

27 184. PLAINTIFFS repeat and re-allege paragraphs 1 through 183, inclusive, of this
28 Complaint and they are incorporated herein by this reference.

1 185. A claim of negligent infliction of emotional distress is not an independent tort
2 but the tort of negligence to which the traditional elements of (1) duty; (2) breach of duty;
3 (3) causation; and (4) damages apply. (*Wong v. Jing* (2010) 189 Cal.App.4th 1354, 1377.)

4 186. The direct victim theory involves a duty owed directly to the plaintiff that is
5 assumed by the defendant or imposed on the defendant as a matter of law, or that arises out
6 of a relationship between the two. (*Spates v. Dameron Hosp. Association* (2003) 114
7 Cal.App 4th 208, 213.)

8 187. DEFENDANTS as PLAINTIFFS' employers had a relationship with
9 PLAINTIFFS and thus owed PLAINTIFFS a duty to protect them from and/or prevent the
10 infliction of emotional distress on PLAINTIFF by themselves or those agents and/or
11 employees of DEFENDANTS.

12 188. DEFENDANTS breached their duty of care to PORTER by negligently
13 allowing ROSS to engage in a campaign of intrusion upon her private matters.

14 189. DEFENDANTS breached their duty of care to SOBIERAY by negligently
15 allowing ROSS to engage in a campaign of sexual harassment of SOBIERAY and by
16 allowing both themselves and ROSS to discriminate against SOBIERAY based on her sex,
17 gender, gender identity, gender expression, and/or sexual orientation.

18 190. The acts and/or omissions of DEFENDANTS and their agents and employees,
19 was extreme and outrageous. DEFENDANTS, and their agents and employees, engaged in
20 a course of conduct intended and designed to cause PLAINTIFFS severe emotional distress.

21 191. PLAINTIFFS request recovery from all DEFENDANTS of their actual
22 damages including but not limited to emotional distress and mental anguish related to
23 ROSS's intrusion into PORTER's private matters, ROSS's sexual harassment of
24 SOBIERAY, and DEFENDANTS' discrimination against SOBIERAY based on her sex,
25 gender, gender identity, gender expression, and/or sexual orientation.

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SEVENTEENTH CAUSE OF ACTION
FOR PENALTIES PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT
[California Labor Code § 2698, *et seq.*]
(By PLAINTIFFS, on Their Own Behalf and On Behalf of All Aggrieved Employees,
and Against All DEFENDANTS)

192. PLAINTIFFS repeat and re-allege paragraphs 1 through 191, inclusive, of this Complaint and they are incorporated herein by this reference.

193. CAL. LAB. CODE §§ 2698-2699, The Private Attorneys General Act of 2004 expressly establishes that any provision of the CAL. LAB. CODE which provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency (“LWDA”), or any of its departments, divisions, commissions, boards, agencies or employees for a violation of the CAL. LAB. CODE, may be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself, and other current or former employees.

194. Whenever the LWDA, or any of its departments, divisions, commissions, boards, agencies, or employees has discretion to assess a civil penalty, a court in a civil action is authorized to exercise the same discretion, subject to the same limitations and conditions, to assess a civil penalty.

195. PLAINTIFFS and all persons employed by DEFENDANTS as hourly paid employees, are “aggrieved employees” as defined by CAL. LAB. CODE § 2699 in that they are all current or former employees of DEFENDANTS, and one or more of the alleged violations was committed against them.

196. PLAINTIFFS assert all of their claims in this Complaint on behalf of themselves and on behalf of all aggrieved employees in their capacity as Private Attorney Generals, and seek all statutory penalties available under CAL. LAB. CODE §§ 2698-2699.

197. On May 11, 2020, PORTER gave written notice by certified mail to and Defendant JOSHUA WAYNE ROSS of the specific code provisions alleged to have been violated, as required by CAL. LAB. CODE § 2699.3. On the same date, PORTER submitted a

1 “PAGA Claim Notice” to the Labor and Workforce Development Agency (“LWDA”)
2 through its online portal. PORTER’s PAGA Notice Letter and LWDA Claim Submissions
3 indicated that she, “as an aggrieved employee, on her own behalf and on behalf of other
4 employees of Joshua Ross, Ross Skin Lab, LLC, and any other affiliated entity (“**Ross**”),
5 intends to seek civil penalties, attorneys’ fees, costs, and other available relief for
6 violations of the California Labor Code, which are recoverable under the CALIFORNIA
7 LABOR CODE PRIVATE ATTORNEY GENERAL ACT OF 2004 (“the Act”) (CAL.
8 LABOR CODE §2698 *et. seq.*.” The statutory waiting period for PORTER to add these
9 allegations to the Complaint has expired. As a result, pursuant to CAL. LAB. CODE § 2699.3,
10 PORTER, on behalf of herself and all aggrieved employees, may now commence a
11 representative civil action pursuant to CAL. LAB. CODE § 2699 as the proxy of the State of
12 California.

13 198. On May 11, 2020, SOBIERAY gave written notice by certified mail to and
14 Defendant JOSHUA WAYNE ROSS of the specific code provisions alleged to have been
15 violated, as required by CAL. LAB. CODE § 2699.3. On the same date, SOBIERAY
16 submitted a “PAGA Claim Notice” to the Labor and Workforce Development Agency
17 (“LWDA”) through its online portal. SOBIERAY’s PAGA Notice Letter and LWDA Claim
18 Submissions indicated that she, “as an aggrieved employee, on her own behalf and on
19 behalf of other employees of Joshua Ross, Ross Skin Lab, LLC, and any other affiliated
20 entity (“**Ross**”), intends to seek civil penalties, attorneys’ fees, costs, and other available
21 relief for violations of the California Labor Code, which are recoverable under the
22 CALIFORNIA LABOR CODE PRIVATE ATTORNEY GENERAL ACT OF 2004 (“the
23 Act”) (CAL. LABOR CODE §2698 *et. seq.*.” The statutory waiting period for SOBIERAY
24 to add these allegations to the Complaint has expired. As a result, pursuant to CAL. LAB.
25 CODE § 2699.3, SOBIERAY, on behalf of herself and all aggrieved employees, may now
26 commence a representative civil action pursuant to CAL. LAB. CODE § 2699 as the proxy of
27 the State of California.
28

199. The policies, acts and practices heretofore described were and are unlawful business acts or practices because DEFENDANTS (a) failed to properly record and compensate PLAINTIFFS, and other aggrieved employees for all hours worked including overtime hours; (b) failed to pay minimum wages and split shift premiums PLAINTIFFS and other aggrieved employees; (c) failed to provide meal periods to PLAINTIFFS, and other aggrieved employees; (d) failed to provide rest periods to PLAINTIFFS, and other aggrieved employees; (e) failed to provide accurate itemized wage statements to and maintain accurate payroll records for PLAINTIFFS, and other aggrieved employees; (f) failed to reimburse business expenses to PLAINTIFFS, and other aggrieved employees; and (g) failed to timely pay wages to PLAINTIFFS, and other aggrieved employees, all in violation of the applicable CAL. LAB. CODE sections listed in CAL. LAB. CODE § 2699.5, including but not limited to CAL. LAB. CODE §§ 201, 202, 203, 221, 226, 226.7, 227.3, 510, 512, 558, 1174, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802, which include penalties under CAL. LAB. CODE sections, 210, 225.5, 226.3, 558, 1174.5, 1197.1, 2699 and the applicable Wage Order(s), and thereby giving rise to statutory penalties as a result of such conduct.

200. PLAINTIFFS, on behalf of themselves, and all aggrieved employees, hereby seek recovery of civil penalties as prescribed by the CAL. LAB. CODE Private Attorney General Act of 2004 as the representatives of the State of California for the illegal conduct perpetrated on PLAINTIFFS, and all aggrieved employees by DEFENDANTS.

PRAYER

WHEREFORE, PLAINTIFFS, pray for judgment against each Defendant, jointly and severally, as follows:

1. ON THE FIRST CAUSE OF ACTION:

- (a) For overtime wage compensation and liquidated damages;
- (b) For an award of interest, including prejudgment interest at the legal rate; and,
- (c) For statutory penalties, interest, costs of suit and attorneys' fees.

1 **2. ON THE SECOND CAUSE OF ACTION:**

- 2 (a) For minimum wage compensation and liquidated damages;
- 3 (b) For split shift premium wage compensation and liquidated damages;
- 4 (c) For an award of interest, including prejudgment interest at the legal
- 5 rate; and,
- 6 (d) For statutory penalties, interest, costs of suit and attorneys' fees.

7 **3. ON THE THIRD, FOURTH, AND EIGHTH CAUSES OF ACTION:**

- 8 (a) For compensatory damages, including lost wages;
- 9 (b) For an award of interest, including prejudgment interest at the legal
- 10 rate; and,
- 11 (c) For statutory penalties, interest, costs of suit and attorneys' fees.

12 **4. ON THE SIXTH CAUSE OF ACTION:**

- 13 (a) For all unreimbursed business expenses and such general and special
- 14 damages as may be appropriate;
- 15 (b) For all actual, consequential and incidental losses and damages,
- 16 according to proof;
- 17 (c) For statutory penalties, interest, costs of suit and attorneys' fees; and,
- 18 (d) For such other and further relief the court may deem just and proper.

19 **5. ON THE FIFTH, SEVENTH, AND NINTH CAUSES OF ACTION:**

- 20 (a) For compensatory damages;
- 21 (b) For an award of interest, including prejudgment interest at the legal
- 22 rate; and,
- 23 (c) For statutory penalties, interest, costs of suit and attorneys' fees.

24 **6. ON THE TENTH CAUSE OF ACTION:**

- 25 (a) For restitution and disgorgement;
- 26 (b) For injunctive relief ordering the continuing unfair business acts and
- 27 practices to cease, or as the Court otherwise deems just and proper;
- 28 and,

- 1 (c) For other injunctive relief ordering DEFENDANTS to notify the
2 Plaintiff and the Class that they have not been paid the proper
3 amounts required in accordance with California law.

4 **7. ON THE FIFTEENTH CAUSE OF ACTION:**

- 5 (a) For special damages, including pain and suffering, mental anguish, and
6 emotional distress;
7 (b) For exemplary damages;
8 (c) For punitive damages; and,
9 (d) For treble damages.

10 **8. ON THE SIXTEENTH CAUSE OF ACTION:**

- 11 (a) For special damages, including pain and suffering, mental anguish, and
12 emotional distress.

13 **9. ON THE SEVENTEENTH CAUSE OF ACTION**

- 14 (a) For statutory penalties, interest, costs of suit, and attorneys' fees

15 **10. ON ALL CAUSES OF ACTION:**

- 16 (a) For reasonable attorneys' fees;
17 (b) For costs of suit;
18 (c) For prejudgment interest; and,
19 (d) For other and further relief their court deems just and proper.

20 WHEREFORE, PORTER, prays for judgment against ROSS, as follows:

21 **1. ON THE TENTH CAUSE OF ACTION:**

- 22 (a) For compensatory damages;
23 (b) For special damages, including pain and suffering, mental anguish, and
24 emotional distress;
25 (c) For exemplary damages;
26 (d) For punitive damages; and,
27 (e) For treble damages.
28

1 WHEREFORE, SOBIERAY, prays for judgment against each Defendant, jointly and
2 severally, as follows:

3 **1. ON THE ELEVENTH, TWELFTH, THIRTEENTH, AND FOURTEENTH**
4 **CAUSES OF ACTION:**

- 5 (a) For compensatory damages, including lost income;
6 (b) For special damages, including pain and suffering and emotional distress;
7 (c) For exemplary damages;
8 (d) For punitive damages;
9 (e) For treble damages; and,
10 (f) For statutory penalties, interest, costs of suit, and attorneys' fees and
11 costs.

12
13 Dated: July 16, 2020

LAW OFFICES OF DAVID R. GREIFINGER

14
15
16 By: 
17 DAVID R. GREIFINGER
Attorneys for Plaintiffs

18 **DEMAND FOR JURY TRIAL**

19 PLAINTIFFS demand a jury trial on issues triable to a jury.

20 Dated: July 16, 2020

LAW OFFICES OF DAVID R. GREIFINGER

21
22 By: 
23 DAVID R. GREIFINGER
Attorneys for Plaintiffs

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

3 I am employed in the State of California, County of Los Angeles. I am over the age of 18
4 and not a party to the within lawsuit; my business address is 15515 W. Sunset Boulevard,
Unit 214, Pacific Palisades, CA 90272.

5 On **July 16, 2020** I served the foregoing document described as **FIRST AMENDED**
6 **COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF** on the interested parties
in this action by placing ☒ a true copy thereof on:

7
8 Joshua Wayne Ross
327 South Meadows Ave.
9 Manhattan Beach, CA 90255

- 10
11 ☒ (BY MAIL): as follows: I deposited the envelopes for mailing in the ordinary
12 course of business at Los Angeles County, California. I am "readily familiar" with
13 this firm's practice of collection and processing correspondence for mailing. Under
14 that practice, the sealed envelopes are deposited with the U.S. Postal Service that
same day in the ordinary course of business, with postage thereon fully prepaid at
Los Angeles County, California.
- 15 ☐ (BY OVERNIGHT DELIVERY): as follows: I am "readily familiar" with this
16 firm's practice of collection and processing correspondence for overnight delivery.
Under that practice, overnight packages are enclosed in a sealed envelope with a
packing slip attached thereto fully prepaid. The packages are picked up by the
carrier at our offices or delivered by our office to a designated collection site.
- 17 ☐ BY E-MAIL: I hereby certify that this document was served from Los Angeles
18 County, California, by e-mail delivery on the parties listed herein at their most
recent known e-mail address or e-mail of record in this action.

19 I declare under penalty of perjury under the laws of the State of California that the
20 foregoing is true and correct.

21 Executed on **July 16, 2020** at Los Angeles County, California.

22
23 Calvin A. Marshall, Esq.

24 Type or Print Name



Signature