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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SOLANO

MARIBEL BITAL, individually, and on
behalf of other members of the general
public similarly situated,

Plaintiff,

vs.

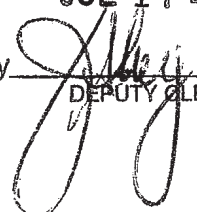
SIMONTON INDUSTRIES, INC., a
California corporation; PLY GEM
PACIFIC WINDOWS CORPORATION, a
Delaware corporation; and DOES 1 through
10, inclusive,

Defendants.

Case No.: FCS054728

**FIRST AMENDED CLASS ACTION
COMPLAINT & ENFORCEMENT
ACTION UNDER THE PRIVATE
ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698, *ET
SEQ.***

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
- (3) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
- (4) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
- (5) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (6) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);
- (7) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, *et seq.*;
- (8) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and

FILED/ENDORSED
Clerk of the Superior Court
JUL 17 2020
By  DEPUTY CLERK

File By Fax

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(9) Violation of California Business &
Professions Code §§ 17200, *et seq.* (Unfair
Business Practices)

Jury Trial Demanded

1 Plaintiff Maribel Bital, individually and on behalf of all other members of the public
2 similarly situated, and as an aggrieved employee and on behalf of all other aggrieved
3 employees, alleges as follows:

4 JURISDICTION AND VENUE

5 1. This class action is brought pursuant to California Code of Civil Procedure
6 section 382 and California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil
7 penalties and any other available relief on behalf of Plaintiff, the State of California, and other
8 current and former employees who worked for Defendants in California as non-exempt,
9 hourly paid employees and received at least one wage statement and against whom one or
10 more violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any
11 provision regulating hours and days of work in the applicable Industrial Welfare Commission
12 (“IWC”) Wage Order were committed, as set forth in this complaint. The monetary damages,
13 penalties, and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the
14 Superior Court and will be established according to proof at trial. This Court has jurisdiction
15 over this action pursuant to the California Constitution, Article VI, section 10. The statutes
16 under which this action is brought do not specify any other basis for jurisdiction. Plaintiff’s
17 share of damages, penalties, and other relief sought in this action does not exceed \$75,000.

18 2. This Court has jurisdiction over Defendants because Defendants are either
19 citizens of California, have sufficient minimum contacts in California, or otherwise
20 intentionally avail themselves of the California market so as to render the exercise of
21 jurisdiction over them by the California courts consistent with traditional notions of fair play
22 and substantial justice. There is no basis for federal diversity jurisdiction in this action
23 because there is no complete diversity, and this case falls within the statutory exceptions to
24 “minimal diversity” jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(4).
25 Upon information and belief, two-thirds or more of the class members and Defendants are
26 citizens of California and/or (a) two-thirds of the class members and Defendants are citizens
27 of California; (b) the alleged wage and hour violations occurred in California; (c) significant
28 relief is being sought against Defendants whose violations of California wage and hour laws

1 form a significant basis for Plaintiff's claims; and (d) no other class action has been filed
2 within the past three (3) years on behalf of the same proposed class against Defendants
3 asserting the same or similar factual allegations.

4 3. Venue is proper in this Court because Defendants employ persons in this county,
5 and employed Plaintiff this county, and thus a substantial portion of the transactions and
6 occurrences related to this action occurred in this county.

7 **THE PARTIES**

8 4. Plaintiff Maribel Bital is a resident of Vacaville, in Solano County, California.
9 Defendants employed Plaintiff as an hourly paid, non-exempt Machine Operator from
10 September 2004 to October 2019. Plaintiff worked for Defendants at their manufacturing
11 plant located in Vacaville, California. During her employment, Plaintiff typically worked
12 seven (7) to eleven (11) hours or more per day, five (5) days per week, and 35-45 hours per
13 week. Plaintiff's primary job duties included, without limitation, operating machinery and
14 measuring and inspecting window glass.

15 5. SIMONTON INDUSTRIES, INC. was and is, upon information and belief, a
16 California corporation, and at all times hereinafter mentioned, an employer whose employees
17 are engaged throughout this county, the State of California, or the various states of the United
18 States of America.

19 6. PLY GEM PACIFIC WINDOWS CORPORATION was and is, upon
20 information and belief, a Delaware corporation, and at all times hereinafter mentioned, an
21 employer whose employees are engaged throughout this county, the State of California, or the
22 various states of the United States of America.

23 7. Plaintiff is unaware of the true names or capacities of the Defendants sued
24 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to
25 amend the complaint and serve such fictitiously named Defendants once their names and
26 capacities become known.

27 8. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
28 were the partners, agents, owners, or managers of SIMONTON INDUSTRIES, INC. and PLY

1 GEM PACIFIC WINDOWS CORPORATION at all relevant times.

2 9. Plaintiff is informed and believes, and thereon alleges, that each and all of the
3 acts and omissions alleged herein was performed by, or is attributable to, SIMONTON
4 INDUSTRIES, INC.; PLY GEM PACIFIC WINDOWS CORPORATION; and/or DOES 1
5 through 10 (collectively, “Defendants” or “SIMONTON”), each acting as the agent,
6 employee, alter ego, and/or joint venturer of, or working in concert with, each of the other co-
7 Defendants and was acting within the course and scope of such agency, employment, joint
8 venture, or concerted activity with legal authority to act on the others’ behalf. The acts of any
9 and all Defendants were in accordance with, and represent, the official policy of Defendants.

10 10. At all relevant times, Defendants, and each of them, ratified each and every act
11 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
12 and abetted the acts and omissions of each and all the other Defendants in proximately causing
13 the damages herein alleged.

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

17 12. Under California law, Defendants are jointly and severally liable as employers
18 for the violations alleged herein because they have each exercised sufficient control over the
19 wages, hours, working conditions, and employment status of Plaintiff and class members.
20 Each Defendant had the power to hire and fire Plaintiff and class members, supervised and
21 controlled their work schedule and/or conditions of employment, determined their rate of pay,
22 and maintained their employment records. Defendants suffered or permitted Plaintiff and
23 class members to work and/or “engaged” Plaintiff and class members so as to create a
24 common-law employment relationship. As joint employers of Plaintiff and class members,
25 Defendants are jointly and severally liable for the civil penalties available to Plaintiff and
26 class members under the law.

27 13. Plaintiff is informed and believes, and thereon alleges, that at all relevant times,
28 Defendants, and each of them, have acted as joint employers with respect to Plaintiff and class

1 members because Defendants have:

- 2 (a) jointly exercised meaningful control over the work performed by
- 3 Plaintiff and class members;
- 4 (b) jointly exercised meaningful control over Plaintiff's and class members'
- 5 wages, hours, and working conditions, including the quantity, quality
- 6 standards, speed, scheduling, and operative details of the tasks
- 7 performed by Plaintiff and class members;
- 8 (c) jointly required that Plaintiff and class members perform work which is
- 9 an integral part of Defendants' businesses; and
- 10 (d) jointly exercised control over Plaintiff and class members as a matter of
- 11 economic reality in that Plaintiff and class members were dependent on
- 12 Defendants, who shared the power to set the wages of Plaintiff and class
- 13 members and determined their working conditions, and who jointly
- 14 reaped the benefits from the underpayment of their wages and
- 15 noncompliance with other statutory provisions governing their
- 16 employment.

17 14. Plaintiff is informed and believes, and thereon alleges, that at all relevant times
18 there has existed a unity of interest and ownership between Defendants such that any
19 individuality and separateness between the entities has ceased.

20 15. SIMONTON INDUSTRIES, INC.; PLY GEM PACIFIC WINDOWS
21 CORPORATION; and DOES 1 through 10 are therefore alter egos of each other.

22 16. Adherence to the fiction of the separate existence of Defendants would permit
23 an abuse of the corporate privilege, and would promote injustice by protecting Defendants
24 from liability for the wrongful acts committed by them under the name SIMONTON.

25 17. Plaintiff further alleges, upon information and belief, that Defendants
26 SIMONTON INDUSTRIES, INC. and PLY GEM PACIFIC WINDOWS CORPORATION
27 are alter egos of each other for the following reasons:

- 28 (a) On the California Secretary of State's website

(<https://businesssearch.sos.ca.gov/>), SIMONTON INDUSTRIES, INC. and PLY GEM PACIFIC WINDOWS CORPORATION share the same entity address and mailing address, “5020 WESTON PARKWAY, SUITE 400, CARY NC 27513;”

(b) According to their most recent “Statement of Information” forms filed with the California Secretary of State, SIMONTON INDUSTRIES, INC. and PLY GEM PACIFIC WINDOWS CORPORATION share the same Chief Financial Officer and Secretary, Jeffrey Lee;

(c) On information and belief, SIMONTON INDUSTRIES, INC. and PLY GEM PACIFIC WINDOWS CORPORATION share the same agent for service of process, “CORPORATION SERVICE COMPANY WHICH WILL DO BUSINSS IN CALIFORNIA AS CSC – LAWYERS INCORPORATING SERVICE (C1592199);” and

(d) On information and belief, SIMONTON INDUSTRIES, INC. and PLY GEM PACIFIC WINDOWS CORPORATION utilize the same standardized employment forms and issue the same employment policies, including, but not limited to, employee disciplinary forms which bear a single logo containing both “Simonton” and “PlyGem” in the logo and wage statements that list both “Simonton Industries Inc.” and “Plygem” as the employer.

GENERAL ALLEGATIONS

18. Defendants are leading manufacturers of exterior building windows and doors in North America. Defendants own and operate manufacturing facilities in several locations in California, including Carson, Clayton, Vacaville, and West Sacramento, California. Upon information and belief, Defendants maintain a single, centralized Human Resources (“HR”) department at their company headquarters in Cary, North Carolina, which is responsible for recruiting and hiring of new employees, and communicating and implementing Defendants’ company-wide policies, including timekeeping policies and meal and rest period policies, to

1 employees throughout California.

2 19. In particular, Plaintiff and class members, on information and belief, received
3 the same standardized documents and/or written policies. Upon information and belief, the
4 usage of standardized documents and/or written policies, including new-hire documents,
5 indicate that Defendants dictated policies at the corporate level and implemented them
6 company-wide, regardless of their employees' assigned locations or positions. Upon
7 information and belief, Defendants set forth uniform policies and procedures in several
8 documents provided at an employee's time of hire and throughout their employment.

9 20. Upon information and belief, Defendants maintain a centralized Payroll
10 department at their company headquarters in Cary, North Carolina, which processes payroll
11 for all non-exempt, hourly paid employees working for Defendants at their various locations
12 and jobsites in California, including Plaintiff and class members. Based upon information and
13 belief, Defendants issue the same formatted wage statements to all non-exempt, hourly paid
14 employees in California, irrespective of their work locations. Upon information and belief,
15 Defendants process payroll for departing employees in the same manner throughout the State
16 of California, regardless of the manner in which each employee's employment ends.

17 21. Defendants continue to employ non-exempt or hourly paid employees in
18 California.

19 22. Plaintiff is informed and believes, and thereon alleges, that at all times herein
20 mentioned, Defendants were advised by skilled lawyers and other professionals, employees
21 and advisors knowledgeable about California labor and wage law, employment and personnel
22 practices, and about the requirements of California law.

23 23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
24 should have known that Plaintiff and/or class members were entitled to receive certain wages
25 for overtime compensation and that they were not receiving certain wages for overtime
26 compensation.

27 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
28 should have known that Plaintiff and class members were entitled to be paid at a regular rate

1 of pay, and corresponding overtime rate of pay, that included as eligible income all
2 remuneration required by law, including but not limited to, all income derived from shift
3 differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of compensation.

4 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
5 should have known that Plaintiff and/or class members were entitled to receive at least
6 minimum wages for compensation and that they were not receiving at least minimum wages
7 for work that was required to be done off-the-clock. In violation of the California Labor
8 Code, Plaintiff and/or class members were not paid at least minimum wages for work done
9 off-the-clock.

10 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
11 should have known that Plaintiff and class members were entitled to meal periods in
12 accordance with the Labor Code or payment of one (1) additional hour of pay at their regular
13 rates of pay when they were not provided with timely, uninterrupted, thirty (30) minute meal
14 periods and that Plaintiff and class members were not provided with all meal periods or
15 payment of one (1) additional hour of pay at their regular rates of pay when they did not
16 receive a timely, uninterrupted, thirty (30) minute meal period.

17 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
18 should have known that Plaintiff and class members were entitled to rest periods in
19 accordance with the Labor Code and applicable IWC Wage Order or payment of one (1)
20 additional hour of pay at their regular rates of pay when they were not authorized and
21 permitted to take a compliant rest period. In violation of the California Labor Code, Plaintiff
22 and class members were not authorized and permitted to take compliant rest periods, nor did
23 Defendants provide Plaintiff and class members with payment of one (1) additional hour of
24 pay at their regular rates of pay when they were not authorized and permitted to take a
25 compliant rest period.

26 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
27 should have known that Plaintiff and class members were entitled to receive complete and
28 accurate wage statements in accordance with California law. In violation of the California

1 Labor Code, Plaintiff and class members were not provided complete and accurate wage
2 statements.

3 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
4 should have known that they had a duty to maintain accurate and complete payroll records in
5 accordance with the Labor Code and applicable IWC Wage Order, but willfully, knowingly,
6 and intentionally failed to do so.

7 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
8 should have known that Plaintiff and class members were entitled to timely payment of all
9 wages earned upon termination of employment. In violation of the California Labor Code,
10 Plaintiff and/or class members did not receive payment of all wages due, including, but not
11 limited to, overtime wages, minimum wages, and/or meal and rest period premiums, within
12 permissible time periods.

13 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
14 should have known that Plaintiff and class members were entitled to timely payment of wages
15 during their employment. In violation of the California Labor Code, Plaintiff and/or class
16 members did not receive payment of all wages, including, but not limited to, overtime wages,
17 minimum wages, and/or meal and rest period premiums, within permissible time periods.

18 32. Plaintiff is informed and believes, and thereon alleges, that at all times herein
19 mentioned, that Defendants knew or should have known that they had a duty to cover the costs
20 and expenses Plaintiff and/or class members incurred obtaining mandatory physical
21 examinations and/or drug tests, but willfully, knowingly, and intentionally failed to do so.

22 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
23 should have known that Plaintiff and/or class members were entitled to receive full
24 reimbursement for all business-related expenses and costs they incurred during the course and
25 scope of their employment and that they did not receive full reimbursement of applicable
26 business-related expenses and costs incurred.

27 34. Plaintiff is informed and believes, and thereon alleges, that at all times herein
28 mentioned, Defendants knew or should have known that Defendants had a duty to provide

1 Plaintiff and/or class members with written notice of the material terms of their employment
2 with Defendants as required by the California Wage Theft Prevention Act, but willfully,
3 knowingly, and intentionally failed to do so.

4 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
5 should have known that they had a duty to provide Plaintiff and/or class members with safety
6 devices and safeguards, such as personal protective equipment, to protect their life, safety, and
7 health in the workplace, but willfully, knowingly, and intentionally failed to do so.

8 36. Plaintiff is informed and believes, and thereon alleges, that at all times herein
9 mentioned, Defendants knew or should have known that they had a duty to compensate
10 Plaintiff and class members for all hours worked, and that Defendants had the financial ability
11 to pay such compensation, but willfully, knowingly, and intentionally failed to do so, and
12 falsely represented to Plaintiff and class members that they were properly denied wages, all in
13 order to increase Defendants' profits.

14 **PAGA REPRESENTATIVE ALLEGATIONS**

15 37. At all times herein set forth, PAGA provides that any provision of law under
16 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be
17 assessed and collected by the LWDA for violations of the California Labor Code and
18 applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a
19 civil action brought on behalf of themselves and other current or former employees pursuant
20 to procedures outlined in California Labor Code section 2699.3.

21 38. PAGA defines an "aggrieved employee" in Labor Code section 2699(c) as "any
22 person who was employed by the alleged violator and against whom one or more of the
23 alleged violations was committed."

24 39. Plaintiff and other current and former employees of Defendants are "aggrieved
25 employees" as defined by Labor Code section 2699(c) in that they are all Defendants' current
26 or former employees and one or more of the alleged violations were committed against them.

27 40. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
28 employee, including Plaintiff, may pursue a civil action arising under PAGA after the

1 following requirements have been met:

- 2 (a) The aggrieved employee or representative shall give written notice by
3 online filing with the LWDA and by certified mail to the employer of
4 the specific provisions of the California Labor Code alleged to have
5 been violated, including the facts and theories to support the alleged
6 violation.
- 7 (b) An aggrieved employee's notice filed with the LWDA pursuant to
8 2699.3(a) and any employer response to that notice shall be
9 accompanied by a filing fee of seventy-five dollars (\$75).
- 10 (c) The LWDA shall notify the employer and the aggrieved employee or
11 representative by certified mail that it does not intend to investigate the
12 alleged violation ("LWDA's Notice") within sixty (60) calendar days of
13 the postmark date of the aggrieved employee's notice. Upon receipt of
14 the LWDA Notice, or if no LWDA Notice is provided within sixty-five
15 (65) calendar days of the postmark date of the aggrieved employee's
16 notice, the aggrieved employee may commence a civil action pursuant
17 to California Labor Code section 2699 to recover civil penalties.

18 41. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees,
19 through Plaintiff, may pursue a civil action arising under PAGA for violations of any
20 provision other than those listed in Section 2699.5 after the following requirements have been
21 met:

- 22 (a) The aggrieved employee or representative shall give written notice by
23 online filing with the LWDA and by certified mail to the employer of
24 the specific provisions of the California Labor Code alleged to have
25 been violated (other than those listed in Section 2699.5), including the
26 facts and theories to support the alleged violation.
- 27 (b) An aggrieved employee's notice filed with the LWDA pursuant to
28 2699.3(c) and any employer response to that notice shall be

1 accompanied by a filing fee of seventy-five dollars (\$75).

2 (c) The employer may cure the alleged violation within thirty-three (33)
3 calendar days of the postmark date of the notice sent by the aggrieved
4 employee or representative. The employer shall give written notice
5 within that period of time by certified mail to the aggrieved employee or
6 representative and by online filing with the LWDA if the alleged
7 violation is cured, including a description of actions taken, and no civil
8 action pursuant to Section 2699 may commence. If the alleged violation
9 is not cured within the 33-day period, the aggrieved employee may
10 commence a civil action pursuant to Section 2699.

11 42. On May 11, 2020, Plaintiff provided written notice by online filing to the
12 LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor
13 Code alleged to have been violated, including facts and theories to support the alleged
14 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
15 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
16 LWDA PAGA Administrator confirmed receipt of Plaintiff's written notice and assigned
17 Plaintiff PAGA Case Number LWDA-CM-786156-20. A true and correct copy of Plaintiff's
18 written notice to the LWDA and Defendants is attached hereto as "Exhibit 1."

19 43. As of the filing date of this complaint, over 65 days have passed since Plaintiff
20 sent the notice described above to the LWDA, and the LWDA has not responded that it
21 intends to investigate Plaintiff's claims and Defendants have not cured the violations.

22 44. Thus, Plaintiff has satisfied the administrative prerequisites under California
23 Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
24 violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510,
25 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, 2810.5, 6401, and 6403.

26 45. Labor Code section 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 any
28 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 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid” Labor Code section 558(c) provides “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.”

46. Defendants, at all times relevant to this complaint, were employers or persons acting on behalf of an employer(s) who violated Plaintiff’s and other aggrieved employees’ rights by violating various sections of the California Labor Code as set forth above.

47. As set forth below, Defendants have violated numerous provisions of both the Labor Code sections regulating hours and days of work as well as the applicable IWC Wage Order.

48. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all other aggrieved employees, and the State of California against Defendants for violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, 2810.5, 6401, and 6403.

CLASS ACTION ALLEGATIONS

49. Plaintiff brings this action on her own behalf, as well as on behalf of each and all other persons similarly situated, and thus seeks class certification under California Code of Civil Procedure section 382.

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

51. Plaintiff’s proposed class consists of and is defined as follows:

All persons who worked for Defendants as non-exempt, hourly paid employees in California, within four years prior to the filing of the initial complaint until the date of trial (“Class”).

52. Plaintiff’s proposed Overtime Wages & Meal Periods subclass consists of and

1 is defined as follows:

2 All persons who worked for Defendants as non-exempt, hourly
3 paid employees in California at any time from February 2, 2017,
4 until the date of trial (“Overtime Wages & Meal Periods
Subclass”).

5 53. Plaintiff’s proposed Wage Statement subclass consists of and is defined as
6 follows:

7 All persons who worked for Defendants as non-exempt, hourly
8 paid employees in California and who received at least one wage
9 statement within one (1) year prior to the filing of the initial
complaint until the date of trial (“Wage Statement Subclass”).

10 54. Members of the Class and Subclasses are referred to herein as “class members.”

11 55. Plaintiff reserves the right to redefine the Class and Subclasses and to add
12 additional subclasses as appropriate based on further investigation, discovery, and specific
13 theories of liability.

14 56. There are common questions of law and fact as to class members that
15 predominate over questions affecting only individual members, including, but not limited to:

- 16 (a) Whether Defendants required Plaintiff and/or class members to work
17 over eight (8) hours per day, over twelve (12) hours per day, or over
18 forty (40) hours per week and failed to pay all legally required overtime
19 compensation to Plaintiff and/or class members;
- 20 (b) Whether Defendants failed to properly calculate the “regular rate” of
21 pay on which Plaintiff’s and Overtime Wages & Meal Periods Subclass
22 members’ overtime rate of pay was based;
- 23 (c) Whether Defendants failed to pay Plaintiff and/or class members at least
24 minimum wages for all hours worked;
- 25 (d) Whether Defendants failed to provide Plaintiff and Overtime Wages &
26 Meal Periods Subclass members with meal periods;
- 27 (e) Whether Defendants failed to authorize and permit Plaintiff and class
28 members to take rest periods;

- 1 (f) Whether Defendants provided Plaintiff and Wage Statement Subclass
2 members with complete and accurate wage statements as required by
3 California Labor Code section 226(a);
- 4 (g) Whether Defendants failed to pay earned overtime wages, minimum
5 wages, and/or meal and rest period premiums due to Plaintiff and/or
6 class members upon their discharge;
- 7 (h) Whether Defendants failed timely to pay overtime wages, minimum
8 wages, and/or meal and rest period premiums to Plaintiff and/or
9 Overtime Wages & Meal Periods Subclass members during their
10 employment;
- 11 (i) Whether Defendants failed to pay Plaintiff and/or class members for the
12 costs of mandatory physical examinations and/or drug testing;
- 13 (j) Whether Defendants failed to reimburse Plaintiff and/or class members
14 for necessary and required business-related expenditures and/or losses
15 incurred by them in the scope of their employment;
- 16 (k) Whether Defendants failed to provide written notice of information
17 material to Plaintiff's and/or class members' employment with
18 Defendants;
- 19 (l) Whether Defendants failed to provide Plaintiff and/or class members
20 with safety devices and safeguards;
- 21 (m) Whether Defendants engaged in unlawful and unfair business practices
22 in violation of California Business & Professions Code sections 17200,
23 *et seq.*; and
- 24 (n) The appropriate amount of damages, restitution, or monetary penalties
25 resulting from Defendants' violations of California law.

26 57. There is a well-defined community of interest in the litigation and the class
27 members are readily ascertainable:

- 28 (a) Numerosity: The class members are so numerous that joinder of all

1 members would be unfeasible and impractical. The membership of the
2 entire class is unknown to Plaintiff at this time; however, the class is
3 estimated to be greater than one hundred (100) individuals and the
4 identity of such membership is readily ascertainable by inspection of
5 Defendants' employment records.

6 (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately
7 protect the interests of each class member with whom she has a well-
8 defined community of interest, and Plaintiff's claims (or defenses, if
9 any) are typical of all class members as demonstrated herein.

10 (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately
11 protect the interests of each class member with whom she has a well-
12 defined community of interest and typicality of claims, as demonstrated
13 herein. Plaintiff acknowledges that she has an obligation to make
14 known to the Court any relationship, conflicts or differences with any
15 class member. Plaintiff's attorneys, the proposed class counsel, are
16 versed in the rules governing class action discovery, certification, and
17 settlement. Plaintiff has incurred, and throughout the duration of this
18 action, will continue to incur costs and attorneys' fees that have been,
19 are, and will be necessarily expended for the prosecution of this action
20 for the substantial benefit of each class member.

21 (d) Superiority: The nature of this action makes the use of class action
22 adjudication superior to other methods. A class action will achieve
23 economies of time, effort, and expense as compared with separate
24 lawsuits, and will avoid inconsistent outcomes because the same issues
25 can be adjudicated in the same manner and at the same time for the
26 entire class.

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

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

8 **FIRST CAUSE OF ACTION**

9 **Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime** 10 **(Against all Defendants)**

11 58. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
12 and every allegation set forth above.

13 59. Labor Code section 1198 makes it illegal to employ an employee under
14 conditions of labor that are prohibited by the applicable wage order. California Labor Code
15 section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall
16 be the . . . standard conditions of labor for employees. The employment of any employee . . .
17 under conditions of labor prohibited by the order is unlawful.”

18 60. California Labor Code section 1198 and the applicable IWC Wage Order
19 provide that it is unlawful to employ persons without compensating them at a rate of pay
20 either time-and-one-half or two-times that person’s regular rate of pay, depending on the
21 number of hours worked by the person on a daily or weekly basis.

22 61. Specifically, the applicable IWC Wage Order provides that Defendants are and
23 were required to pay Plaintiff and Overtime Wages & Meal Periods Subclass members
24 working more than eight (8) hours in a day or more than forty (40) hours in a workweek, at
25 the rate of time and one-half (1½) for all hours worked in excess of eight (8) hours in a day or
26 more than forty (40) hours in a workweek.

27 62. The applicable IWC Wage Order further provides that Defendants are and were
28 required to pay Plaintiff and Overtime Wages & Meal Periods Subclass members working

1 more than twelve (12) hours in a day, overtime compensation at a rate of two (2) times their
2 regular rate of pay. An employee's regular rate of pay includes all remuneration for
3 employment paid to, or on behalf of, the employee, including shift differential pay,
4 nondiscretionary bonuses, and incentive pay.

5 63. California Labor Code section 510 codifies the right to overtime compensation
6 at one and one-half (1½) times the regular rate of pay for hours worked in excess of eight (8)
7 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
8 seventh (7th) day of work, and to overtime compensation at twice the employee's regular rate
9 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
10 in a day on the seventh (7th) day of work.

11 64. During the relevant time period, Defendants did not pay Plaintiff and Overtime
12 Wages & Meal Periods Subclass members the correct overtime rate for the recorded overtime
13 hours that they generated. In addition to an hourly wage, Defendants paid Plaintiff and
14 Overtime Wages & Meal Periods Subclass members shift differential pay, incentive pay,
15 nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the
16 California Labor Code, Defendants failed to incorporate all compensation, including but not
17 limited to, all shift differential pay, incentive pay, nondiscretionary bonuses, and/or other
18 forms of remuneration, into the calculation of the regular rate of pay for purposes of
19 calculating the overtime wage rate. Therefore, during times when Plaintiff and Overtime
20 Wages & Meal Periods Subclass members worked overtime and received these other forms of
21 pay, Defendants failed to pay all overtime wages by paying a lower overtime rate than
22 required.

23 65. Specifically, Defendants paid Plaintiff and Overtime Wages & Meal Periods
24 Subclass members nondiscretionary bonuses for when a department was under a certain
25 threshold of safety incidents in a month. On information and belief, these nondiscretionary
26 bonuses were listed on Plaintiff's and Overtime Wages & Meal Periods Subclass members'
27 wage statements as "Bonus." Additionally, Plaintiff and Overtime Wages & Meal Periods
28 Subclass members were eligible for and earned shift differential pay. During pay periods that

1 Plaintiff and Overtime Wages & Meal Periods Subclass members were paid overtime wages,
2 Defendants failed to incorporate the nondiscretionary bonus and/or shift differential pay into
3 Plaintiff's and Overtime Wages & Meal Periods Subclass members' regular rate of pay and, as
4 a result, paid them at incorrect and lower rates of pay for overtime hours worked.
5 Specifically, Defendants paid Plaintiff and Overtime Wages & Meal Periods Subclass
6 members 1.5 times their hourly rate of pay instead of 1.5 times their regular rate of pay. For
7 example, on April 4, 2018 and August 31, 2018, Plaintiff earned safety bonuses of \$138.51
8 and \$86.66, respectively, but was only paid an overtime rate of \$26.1750, which is 1.5 times
9 her hourly rate of pay of \$17.45. Defendants' failure to properly calculate the overtime rates
10 of pay based on all remuneration paid has resulted in an underpayment of overtime wages to
11 Plaintiff and Overtime Wages & Meal Periods Subclass members on a company-wide basis.

12 66. Defendants' failure to pay Plaintiff and Overtime Wages & Meal Periods
13 Subclass members the balance of overtime compensation as required by California law,
14 violates the provisions of California Labor Code sections 510 and 1198. Pursuant to
15 California Labor Code section 1194, Plaintiff and Overtime Wages & Meal Periods Subclass
16 members are entitled to recover their unpaid overtime compensation, as well as interest, costs,
17 and attorneys' fees.

18 **SECOND CAUSE OF ACTION**

19 **Violations of California Labor Code, §§ 226.7, 512(a), 516, and 1198—Meal Period**

20 **Violations**

21 **(Against all Defendants)**

22 67. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
23 and every allegation set forth above.

24 68. At all relevant times herein set forth, California Labor Code section 512(a)
25 provides that an employer may not require, cause, or permit an employee to work for a period
26 of more than five (5) hours per day without providing the employee with a meal period of not
27 less than thirty (30) minutes, except that if the total work period per day of the employee is
28 not more than six (6) hours, the meal period may be waived by mutual consent of both the

1 employer and the employee. Under California law, first meal periods must start after no more
2 than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal.
3 2012).

4 69. At all relevant times herein set forth, California Labor Code sections 226.7,
5 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
6 meal period mandated by an applicable order of the IWC.

7 70. At all relevant times herein set forth, Labor Code sections 226.7 and 512(a) and
8 the applicable IWC Wage Order also require employers to provide a second meal period of
9 not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an
10 employee one (1) additional hour of pay at the employee's regular rate, except that if the total
11 hours worked is no more than twelve (12) hours, the second meal period may be waived by
12 mutual consent of the employer and the employee only if the first meal period was not waived.

13 71. First, Defendants had, and continue to have, a company-wide policy and/or
14 practice of understaffing their facilities while pressuring Plaintiff and Overtime Wages &
15 Meal Periods Subclass members to meet a quota of completing a certain number of units per
16 hour. Defendants' understaffing of their facilities, along with the pressure Defendants placed
17 on employees to meet hourly quotas prevented Plaintiff and Overtime Wages & Meal Periods
18 Subclass members from taking all timely, uninterrupted meal periods to which they were
19 entitled. Defendants, on a company-wide basis, also failed to a schedule meal periods or to
20 adhere to a schedule of meal periods, which further caused Plaintiff and Overtime Wages &
21 Meal Periods Subclass members to not be relieved of their duties for compliant meal periods.

22 72. As a result of these policies and/or practices, Plaintiff and Overtime Wages &
23 Meal Periods Subclass members were left without adequate meal period coverage and were
24 instead required to take their meal periods after the end of their fifth hour of work and/or work
25 through second meal periods (*see infra*), in order to complete their assigned tasks. For
26 example, when a department fell behind their targeted number of units to complete, Plaintiff
27 and Overtime Wages & Meal Periods Subclass members were required to keep working until
28 they were caught up, and, as a result, Plaintiff and Overtime Wages & Meal Periods Subclass

1 members took their meal periods late. Specifically, Plaintiff was assigned to work morning
2 shifts starting around June 4, 2018. Although Plaintiff and Overtime Wages & Meal Periods
3 Subclass members started their shifts at 5:00 a.m., Defendants' management did not release
4 them to take their meal periods until 10:00 a.m., after the end of their fifth hour of work. In
5 addition, Plaintiff was sometimes not provided with a meal period until 11:00 a.m., after
6 working six (6) hours. According to Defendants' records, during the time period between
7 June 4, 2018 and January 3, 2019, Plaintiff did not receive her meal period until after the end
8 of her fifth hour of work on approximately 103 occasions.

9 73. Second, Defendants did not provide Plaintiff and Overtime Wages & Meal
10 Periods Subclass members with second 30-minute meal periods on days that they worked in
11 excess of ten (10) hours in one day. During her employment, Plaintiff worked shifts in excess
12 of ten (10) or more hours per day, but was rarely provided a second 30-minute meal period.
13 For example, on November 8, 2018 and November 9, 2018, Plaintiff worked 12.15 and 12.05
14 hours, respectively, and was not provided with a second meal period for those shifts. In fact,
15 Defendants required Plaintiff to sign a meal waiver form for those days, even though under
16 California law an employee cannot waive second meal periods on days they work twelve
17 hours or more.

18 74. Third, Defendants implemented a company-wide policy of requiring all
19 employees, including Plaintiff and Overtime Wages & Meal Periods Subclass members, to
20 sign blanket meal period waivers. Defendants took the position that employees working six
21 (6) hour shifts had waived their rights to take a 30-minute meal period on these particular
22 shifts, for the entirety of their employment. Defendants similarly took the position that
23 employees working in excess of ten (10) hours per day, but no more than twelve (12), waived
24 their right to a second 30-minute meal period, for the entirety of their employment.
25 Defendants only permitted Plaintiff and Overtime Wages & Meal Periods Subclass members
26 to revoke the waiver by providing one day's advance written notice.

27 75. Defendants' imposition of the burden on employees to revoke the meal period
28 waiver in writing and one day in advance of their shift discouraged and prevented Plaintiff

1 and/or Overtime Wages & Meal Periods Subclass members from taking meal periods. And
2 Defendants' presumption that second meal periods would not be provided for shifts in excess
3 of ten (10) hours but less than twelve (12) hours due to blanket second meal period waivers
4 discouraged Plaintiff and Overtime Wages & Meal Periods Subclass members from taking
5 second meal periods.

6 76. In addition, an employer's obligation to provide a meal period is only
7 "triggered" when the employer "employs an employee for a work period of more than five
8 hours per day." *Brinker*, 53 Cal. 4th at 1039 ("If an employer engages, suffers, or permits
9 anyone to work for a full five hours, its meal break obligation is triggered.").

10 [A]fter the meal break obligation is triggered . . . an employer is put to a
11 choice: it must (1) afford an off-duty meal period; (2) consent to a
12 mutually agreed-upon waiver if one hour or less will end the shift; or (3)
13 obtain written agreement to an on-duty meal period if circumstances
14 permit. Failure to do one of these will render the employer liable for
15 premium pay. *Id.* (citing Cal. Labor Code § 226.7; Wage Order No. 5,
16 subd. 11(A), (B)).

17 77. That Defendants require employees to sign meal period waivers in advance (as
18 opposed to on a specific work day) renders them invalid and unenforceable, because
19 Defendants' obligation to provide Plaintiff and Overtime Wages & Meal Periods Subclass
20 members with meal periods did not arise until Defendants had employed them for a full five
21 (5) hours.

22 78. Moreover, Defendants engaged in a company-wide practice and/or policy of
23 not paying all meal period premiums owed when compliant meal periods are not provided.
24 Because of Defendants' practices and/or policies, Plaintiff and Overtime Wages & Meal
25 Periods Subclass members have not received premium pay for all missed, late, and interrupted
26 meal periods. Alternatively, to the extent that Defendants did pay Plaintiff and Overtime
27 Wages & Meal Periods Subclass members premium pay for missed, late, and interrupted meal
28 periods, Defendants did not pay Plaintiff and Overtime Wages & Meal Periods Subclass
members at the correct rate of pay for premium wages because Defendants systematically
failed to include all forms of compensation, such as shift differential pay, incentive pay,
nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay. As a

1 result, Defendants failed to provide Plaintiff and Overtime Wages & Meal Periods Subclass
2 members compliant meal periods in violation of California Labor Code sections 226.7, 512,
3 and 516 and failed to pay the full meal period premiums due.

4 79. Defendants' conduct violates the applicable IWC Wage Order, and California
5 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and Overtime Wages & Meal
6 Periods Subclass members are therefore entitled to recover from Defendants one (1) additional
7 hour of pay at the employee's regular rate of compensation for each work day that the meal
8 period was not provided.

9 **THIRD CAUSE OF ACTION**

10 **Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations** 11 **(Against all Defendants)**

12 80. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
13 and every allegation set forth above.

14 81. At all relevant times herein set forth, the applicable IWC Wage Order and
15 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff's and class
16 members' employment by Defendants.

17 82. At all relevant times, the applicable IWC Wage Order provides that "[e]very
18 employer shall authorize and permit all employees to take rest periods, which insofar as
19 practicable shall be in the middle of each work period" and that the "rest period time shall be
20 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
21 hours or major fraction thereof" unless the total daily work time is less than three and one-half
22 (3½) hours.

23 83. At all relevant times, California Labor Code section 226.7 provides that no
24 employer shall require an employee to work during any rest period mandated by an applicable
25 order of the California IWC. To comply with its obligation to authorize and permit rest
26 periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an
27 employer must "relinquish any control over how employees spend their break time, and
28 relieve their employees of all duties — including the obligation that an employee remain on

1 call. A rest period, in short, must be a period of rest.” *Augustus v. ABM Security Services,*
2 *Inc.*, 2 Cal. 5th 257, 269-270 (2016). Pursuant to the applicable IWC Wage Order and
3 California Labor Code section 226.7(b), Plaintiff and class members are entitled to recover
4 from Defendants one (1) additional hour of pay at their regular rates of pay for each work day
5 that a required rest period was not authorized and permitted.

6 84. During the relevant time period, Defendants regularly failed to authorize and
7 permit Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour
8 period worked or major fraction thereof. As with meal periods, Defendants’ company-wide
9 policy and practice of understaffing while simultaneously pressuring employees to meet
10 hourly productivity quotas, prevented Plaintiff and class members from being relieved of all
11 duty to take compliant rest periods. Defendants also failed to schedule rest periods, which,
12 coupled with Defendants’ failure to provide adequate rest period coverage, further led to
13 Plaintiff and class members not being authorized and permitted to take compliant rest periods.

14 85. Additionally, upon information and belief, during the relevant time period,
15 Defendants implemented a company-wide on-premises rest period policy, which mandated
16 that Plaintiff and class members remain on Defendants’ premises during their rest periods.
17 Because Plaintiff and class members were restricted from leaving the premises during rest
18 periods, they were denied the ability to use their rest periods freely for their own purposes.
19 Thus, Defendants effectively maintained control over Plaintiff and class members during rest
20 periods.

21 86. As a result of Defendants’ practices and policies, Plaintiff and class members
22 worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without
23 receiving all uninterrupted 10-minute rest periods to which they were entitled. For example,
24 during her employment, Plaintiff was not authorized or permitted to take her third rest periods
25 when she worked shifts in excess of ten (10) hours.

26 87. Defendants have also engaged in a systematic, company-wide practice and/or
27 policy of not paying rest period premiums owed when rest periods are not authorized and
28 permitted. Alternatively, to the extent that Defendants did pay Plaintiff and class members

one (1) additional hour of premium pay for missed rest periods, Defendants did not pay Plaintiff and class members at the correct rate of pay for premium wages because Defendants failed to include all forms of compensation, such as shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay. As a result, Defendants denied Plaintiff and class members rest periods and failed to pay them rest period premium wages due, in violation of Labor Code section 226.7, 516, and the applicable IWC Wage Order.

88. Defendants' conduct violates the applicable IWC Wage Order and California Labor Code sections 226.7, 516, and 1198. Plaintiff and class members are therefore entitled to recover from Defendants one (1) additional hour of pay at the employee's regular rate of compensation for each work day that a compliant rest period was not authorized and permitted.

FOURTH CAUSE OF ACTION

Violation of California Labor Code §§ 226(a), and 1198—Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records (Against all Defendants)

89. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

90. At all relevant times herein set forth, California Labor Code section 226(a) provides that every employer shall furnish each of his or her employees an accurate and complete itemized wage statement in writing, including, but not limited to, the name and address of the legal entity that is the employer, the inclusive dates of the pay period, total hours worked, and all applicable rates of pay.

91. At all relevant times, Defendants have knowingly and intentionally provided Plaintiff and Wage Statement Subclass members with uniform, incomplete, and inaccurate wage statements. For example, Defendants issued uniform wage statements to Plaintiff and Wage Statement Subclass members that fail to correctly list: gross wages earned; net wages earned; and all applicable hourly rates in effect during the pay period, including overtime rates

of pay, and the corresponding number of hours worked at each hourly rate. Specifically, Defendants violated sections 226(a)(1), 226(a)(5), and 226(a)(9).

92. Because Defendants did not calculate Plaintiff's and Wage Statement Subclass members' regular rate of pay correctly for purposes of paying overtime, Defendants did not list the correct amount of gross wages earned by Plaintiff and Wage Statement Subclass members in compliance with section 226(a)(1). For the same reason, Defendants failed to list the correct amount of net wages earned by Plaintiff and Wage Statement Subclass members in violation of section 226(a)(5). Defendants also failed to correctly list the applicable hourly rates of pay in effect during the pay period, namely, correct overtime rates of pay and correct rates of pay for premium wages, in violation of section 226(a)(9).

93. The wage statement deficiencies also include, without limitation, failing to list all hours worked; failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list 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; failing to list the name and address of the legal entity that is the employer; failing to list the inclusive dates of the period for which Wage Statement Subclass members were paid; and/or failing to state all hours worked as a result of not recording or stating hours worked off-the-clock.

94. California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Orders. Section 1198 further provides that "[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful." Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, Defendants failed, on a company-wide basis, to keep accurate records of meal period start and stop times for Plaintiff and Wage Statement Subclass members, in violation of section 1198. Furthermore, in light of Defendants' failure to provide Plaintiff and Wage

1 Statement Subclass members with second 30-minute meal periods to which they were entitled,
2 Defendants kept no records of meal start and end times for second meal periods.

3 95. Plaintiff and Wage Statement Subclass members are entitled to recover from
4 Defendants the greater of their actual damages caused by Defendants' failure to comply with
5 California Labor Code section 226(a), or an aggregate penalty not exceeding four thousand
6 dollars (\$4,000) per employee.

7 **FIFTH CAUSE OF ACTION**

8 **Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid**

9 **Upon Termination**

10 **(Against all Defendants)**

11 96. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
12 and every allegation set forth above.

13 97. This cause of action is dependent upon, and wholly derivative of, the overtime
14 wages, minimum wages, and/or meal and rest period premium wages that were not timely paid
15 to Plaintiff and those class members no longer employed by Defendants upon their
16 termination.

17 98. At all times relevant herein set forth, Labor Code sections 201 and 202 provide
18 that if an employer discharges an employee, the wages earned and unpaid at the time of
19 discharge are due and payable immediately, and that if an employee voluntarily leaves his or
20 her employment, his or her wages shall become due and payable not later than seventy-two
21 (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of
22 his or her intention to quit, in which case the employee is entitled to his or her wages at the
23 time of quitting.

24 99. Defendants willfully failed to pay Plaintiff and/or class members who are no
25 longer employed by Defendants the earned and unpaid wages set forth above, including but
26 not limited to, overtime wages, minimum wages, and/or meal and rest period premium wages,
27 either at the time of discharge, or within seventy-two (72) hours of their leaving Defendants'
28 employ.

100. Defendants' failure to pay Plaintiff and class members who are no longer employed by Defendants their wages earned and unpaid at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201 and 202. Plaintiff and class members are therefore entitled to recover from Defendants the statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a thirty (30) day maximum pursuant to California Labor Code section 203.

SIXTH CAUSE OF ACTION

Violation of California Labor Code § 204—Failure to Timely Pay Wages During Employment

(Against all Defendants)

101. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

102. This cause of action is dependent upon, and wholly derivative of, the overtime wages, minimum wages, and/or meal and rest period premium wages that were not timely paid to Plaintiff and class members during their employment.

103. At all times relevant herein set forth, Labor Code section 204 provides that all wages earned by any person in any employment between the first (1st) and the fifteenth (15th) days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of the month during which the labor was performed.

104. At all times relevant herein, Labor Code section 204 provides that all wages earned by any person in any employment between the sixteenth (16th) and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the first (1st) and the tenth (10th) day of the following month.

105. At all times relevant herein, Labor Code section 204 provides that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, at all times relevant herein, Labor Code section

204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

106. During the relevant time period, Defendants willfully failed to pay Plaintiff and/or class members all wages due including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premium wages, within the time periods specified by California Labor Code section 204.

107. Defendants' failure to pay Plaintiff and class members all wages due violates Labor Code section 204. Plaintiff and class members are therefore entitled to recover from Defendants the statutory penalty wages pursuant to California Labor Code section 210.

SEVENTH CAUSE OF ACTION

For Civil Penalties Pursuant to California Labor Code §§ 2698, *et seq.*

(Against all Defendants)

108. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

109. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil penalties for violations of those Labor Code sections not found in section 2699.5, including sections 516, 1182.12, 2810.5, 6401, and 6403.

110. Defendants' conduct, as alleged herein, violates numerous sections of the California Labor Code, including, but not limited to, the following:

- (a) Violation of Labor Code sections 510, 1198, and the applicable IWC wage order for Defendants' failure to compensate Plaintiff and/or other aggrieved employees with all required overtime pay and failure to properly calculate the overtime rates paid to Plaintiff and other

aggrieved employees, as set forth below;

- (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, 1198, and the applicable IWC wage order for Defendants' failure to compensate other aggrieved employees with at least minimum wages for all hours worked, as set forth below;
- (c) Violation of Labor Code sections 226.7, 512, 516, 1198, and the applicable IWC wage order for Defendants' failure to provide Plaintiff and other aggrieved employees with meal periods, as alleged herein;
- (d) Violation of Labor Code sections 226.7, 516, 1198, and the applicable IWC wage order for Defendants' failure to authorize and permit Plaintiff and other aggrieved employees to take rest periods, as alleged herein;
- (e) Violation of Labor Code sections 226(a), 1198, and the applicable IWC wage order for failure to provide accurate and complete wage statements to Plaintiff and other aggrieved employees, as alleged herein;
- (f) Violation of Labor Code sections 1174(d), 1198, and the applicable IWC wage order for failure to maintain payroll records as alleged herein;
- (g) Violation of Labor Code sections 201, 202, and 203 for failure to pay all earned wages upon termination, as alleged herein;
- (h) Violation of Labor Code section 204 for failure to pay all earned wages during employment, as alleged herein;
- (i) Violation of Labor Code section 222.5 for failure to compensate other aggrieved employees for mandatory physical examinations and/or drug testing as set forth below;
- (j) Violation of Labor Code section 2802 for failure to reimburse other aggrieved employees for all business expenses necessarily incurred, as set forth below;

- 1 (k) Violation of Labor Code section 2810.5(a)(1)(A)-(C) for failure to
2 provide written notice of information material to other aggrieved
3 employees' employment with Defendants, as set forth below; and
4 (l) Violation of Labor Code sections 6401 and 6403 for failure to provide
5 safety devices and safeguards, such as personal protective equipment, to
6 other aggrieved employees, as set forth below.

7 111. At all relevant times, California Labor Code sections 510 and 1198 and the
8 applicable Industrial Welfare Commission ("IWC") Wage Order require employers to pay
9 employees working more than eight (8) hours in a day or more than forty (40) hours in a
10 workweek at the rate of time-and-one-half (1½) times the regular rate of pay for all hours
11 worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The
12 applicable IWC Wage Order further provides that employers are required to pay employees
13 working more than twelve (12) hours in a day overtime compensation at a rate of two (2)
14 times their regular rate of pay. An employee's regular rate of pay includes all remuneration
15 for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses
16 and incentive pay.

17 112. Defendants willfully failed to pay all overtime wages owed to Plaintiff and
18 other aggrieved employees. During the relevant time period, other aggrieved employees were
19 not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a
20 day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week,
21 because all hours that they worked were not recorded.

22 113. As set forth above, as a result of Defendants' company-wide policy of
23 understaffing while simultaneously pressuring employees to meet hourly productivity quotas,
24 and resultant lack of meal period coverage, other aggrieved employees were forced to forego
25 meal periods and/or had their meal periods interrupted by work.

26 114. Moreover, Defendants also had a company-wide policy and/or practice of
27 requiring other aggrieved employees to carry company-issued radios and respond to any calls
28 at all times during their shifts. Defendants required that other aggrieved employees be

1 available via radio at all times, including during their unpaid meal periods.

2 115. Defendants knew or should have known that, as a result of these company-wide
3 practices and/or policies, other aggrieved employees were performing their assigned duties
4 during their meal periods, and were suffered or permitted to perform work for which they
5 were not paid. Defendants also knew, or should have known, that it did not compensate other
6 aggrieved employees applicable overtime rates of pay for overtime hours that they worked.

7 116. Because other aggrieved employees regularly worked shifts of eight (8) hours a
8 day or more or forty (40) hours a week or more, some of this off-the-clock work qualified for
9 overtime premium pay. Therefore, other aggrieved employees were not paid overtime wages
10 for all of the overtime hours they actually worked. Defendants' failure to pay other aggrieved
11 employees the balance of overtime compensation, as required by California law, violates the
12 provisions of California Labor Code sections 510 and 1198. Other aggrieved employees are
13 therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and
14 (g).

15 117. At all relevant times, California Labor Code sections 1182.12, 1194, 1197,
16 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the
17 minimum wage to be paid to employees, and the payment of a wage less than the minimum so
18 fixed is unlawful. Compensable work time is defined in Wage Order No. 1 as "the time
19 during which an employee is subject to the control of an employer, and includes all the time
20 the employee is suffered or permitted to work, whether or not required to do so." Cal. Code.
21 Regs. tit. 8, § 11010(2)(G) (defining "Hours Worked").

22 118. As set forth above, as a result of Defendants' company-wide policy of
23 understaffing while simultaneously pressuring employees to meet hourly productivity quotas,
24 and resultant lack of meal period coverage, other aggrieved employees were forced to forego
25 meal periods and/or had their meal periods interrupted by work. Defendants also required that
26 other aggrieved employees carry radios on their persons at all times while on Defendants'
27 premises, including during unpaid meal periods.

28 119. Further, Defendants maintained and implemented a company-wide policy of

1 requiring all employees to travel to a medical facility on their own time and using their own
2 personal vehicles to undergo mandatory physical examinations and/or drug testing. At all
3 times, Defendants were in control of scheduling the date and time for the testing and/or
4 physical examinations, selecting the provider or facility where the testing and/or physical
5 examinations were to take place, and determining the scope of the testing and/or physical
6 examinations. Defendants gave other aggrieved employees strict instructions to obtain drug
7 testing and physical examinations, and other aggrieved employees underwent the testing and
8 examination for the sole benefit of Defendants. However, Defendants did not compensate
9 other aggrieved employees for the time they spent traveling to and undergoing the mandatory
10 physical examinations and/or drug testing.

11 120. Defendants did not pay minimum wages for off-the-clock hours that class
12 members worked through that qualified for overtime premium payment. To the extent that
13 these off-the-clock hours did not qualify for overtime premium payment, Defendants did not
14 pay at least minimum wages for those hours worked off-the-clock in violation of California
15 Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

16 121. Defendants' failure to pay other aggrieved employees minimum wages violates
17 California Labor Code sections 1182.12, 1194, 1197, and 1198. Other aggrieved employees
18 are therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f),
19 and (g).

20 122. At all relevant times herein, California Labor Code section 222.5 requires
21 employers to pay for the costs an employee incurs for obtaining any medical or physical
22 examination taken.

23 123. At all times relevant herein, Defendants implemented, on a company-wide
24 basis, an employer-imposed requirement that other aggrieved employees undergo a mandatory
25 physical examination and/or drug test, but required them to do so at their own expense. As
26 stated, Defendants had a company-wide policy requiring that all employees, including other
27 aggrieved employees, travel to a specified medical clinic on their own time and using their
28 own personal vehicles to undergo physical examinations and/or drug testing. At all times,

1 Defendants were in control of scheduling the date and time for the examination and/or testing,
2 selecting the provider/clinic where the examination and/or testing was to take place, and
3 determining the scope of the examination and/or testing.

4 124. Other aggrieved employees were required to travel in their own personal
5 vehicles and spend time undergoing Defendants' mandatory drug test and/or physical
6 examination. However, Defendants did not compensate other aggrieved employees for the
7 time they spent traveling to and from their drug tests and/or physical examinations, or for the
8 time they spent undergoing the testing and/or examinations, or reimburse them for the travel
9 expenses they incurred getting to and from the medical facilities. Defendants' policy and/or
10 practice of not paying for all costs other aggrieved employees incurred obtaining mandatory
11 drug tests and/or physical examinations violates California Labor Code section 222.5. Other
12 aggrieved employees are therefore entitled to recover civil penalties pursuant to Labor Code
13 sections 2699(a), (f), and (g).

14 125. At all times herein set forth, California Labor Code section 2802 provides that
15 an employer must reimburse employees for all necessary expenditures and losses incurred by
16 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
17 to prevent employers from passing off their cost of doing business and operating expenses on
18 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
19 (2014). The applicable wage order, IWC Wage Order 1-2001, provides that: "[w]hen the
20 employer requires the use of tools or equipment or they are necessary to the performance of a
21 job, such tools and equipment shall be provided and maintained by the employer, except that
22 an employee whose wages are at least two (2) times the minimum wage may provide and
23 maintain hand tools and equipment customarily required by the particular trade or craft."

24 126. As stated, Defendants had a company-wide policy of requiring other aggrieved
25 employees to travel in their own personal vehicles to medical facilities to undergo mandatory
26 drug testing and/or physical examinations, but did not reimburse them for their travel
27 expenses, including mileage. Defendants maintained and implemented a company-wide
28 policy of requiring employees to travel to a medical facility on their own time and using their

own personal vehicles to undergo mandatory drug testing and/or physical examinations. At all times, Defendants were in control of scheduling the date and time for the testing and/or physical examinations, selecting the provider or facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations. Defendants gave other aggrieved employees strict instructions to obtain drug testing and physical examinations, and other aggrieved employees underwent the testing and examination for the sole benefit of Defendants. Other aggrieved employees followed Defendants' instructions, traveled in their personal vehicles to medical facilities, and underwent Defendants' drug testing, but were not reimbursed for their mileage to and from the medical facilities. Thus, although Defendants required other aggrieved employees to undergo drug testing and/or physical examinations, Defendants failed to reimburse them for their travel expenses.

127. Additionally, Defendants, on a company-wide basis, mandated that Plaintiff and other aggrieved employees purchase special safety shoes such as steel-toed boots, which they were required to wear while at work. Other aggrieved employees purchased steel-toed boots to wear inside Defendants' facilities, but were not reimbursed fully for these costs.

128. Defendants' could have provided other aggrieved employees with the actual tools for use on the job, such as steel-toed boots and company vehicles or other paid transportation to be used for fulfilling work-related tasks, or, Defendants could have reimbursed employees for their boot expenses, travel expenses, and mileage. Instead, Defendants passed these operating costs off onto other aggrieved employees. Thus, Defendants had, and continue to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred.

129. Defendants' company-wide policy and/or practice of passing on their operating costs to other aggrieved employees violates California Labor Code section 2802. Defendants have intentionally and willfully failed to reimburse other aggrieved employees for necessary business-related expenses and costs. Other aggrieved employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

1 130. California's Wage Theft Prevention Act was enacted to ensure that employers
2 provide employees with basic information material to their employment relationship at the
3 time of hiring, and to ensure that employees are given written and timely notice of any
4 changes to basic information material to their employment. Codified at California Labor
5 Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an
6 employer must provide written notice to employees containing basic and material payroll
7 information, including, among other things, the rate(s) of pay and basis thereof, whether paid
8 by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for
9 overtime, the regular payday designated by the employer, and any allowances claims as part
10 of the minimum wage, including meal or lodging allowances. Labor Code section
11 2810.5(a)(1)(A)-(C).

12 131. During the relevant time period, Defendants failed to provide other aggrieved
13 employees with written notice that lists all the requisite information set forth in Labor Code
14 section 2810.5(a)(1)(A)-(C). Defendants' failure to provide other aggrieved employees with
15 written notice of basic information regarding their employment with Defendants is in violation
16 of Labor Code section 2810.5. Other aggrieved employees are therefore entitled to recover
17 civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

18 132. At all times herein set forth, California Labor Code section 6401 provides that
19 employers must furnish and use safety devices and safeguards, and adopt and use practices,
20 means, methods, operations, and processes which are reasonably adequate to render the
21 employment and place of employment safe and healthy. California Labor Code Section 6401
22 further provides that an employer must to everything reasonably necessary to protect the life,
23 safety and health of its employees. California Labor Code section 6403(a) requires that
24 employers provide and use safety devices and safeguards reasonably adequate to render the
25 employment and place of employment safe.

26 133. Defendants, on a company-wide basis, failed to provide other aggrieved
27 employees with safety devices and safeguards, including personal protective equipment such
28 as steel-toed boots, to keep them safe in the workplace. Despite the fact that Defendants

1 required employees to wear certain personal protective equipment, including steel-toed boots,
2 Defendants failed to provide such reasonably necessary equipment to other aggrieved
3 employees to keep them safe.

4 134. Defendants' failure to provide other aggrieved employees with safety devices
5 and safeguards for the workplace violates Labor Code sections 6401 and 6403. Other
6 aggrieved employees are therefore entitled to recover civil penalties pursuant to Labor Code
7 sections 2699(a), (f), and (g).

8 **EIGHTH CAUSE OF ACTION**

9 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

10 **Unlawful Business Practices**

11 **(Against all Defendants)**

12 135. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
13 and every allegation set forth above.

14 136. Defendants are "persons" as defined by California Business & Professions
15 Code sections 17201, as they are corporations, firms, partnerships, joint stock companies,
16 and/or associations.

17 137. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
18 unlawful and harmful to Plaintiff, class members, and to the general public. Plaintiff has
19 suffered injury in fact and has lost money as a result of Defendants' unlawful business
20 practices. Plaintiff seeks to enforce important rights affecting the public interest within the
21 meaning of Code of Civil Procedure section 1021.5.

22 138. Defendants' activities, as alleged herein, are violations of California law, and
23 constitute unlawful business acts and practices in violation of California Business &
24 Professions Code sections 17200, *et seq.*

25 139. A violation of California Business & Professions Code sections 17200, *et seq.*
26 may be predicated on the violation of any state or federal law. In the instant case, Defendants'
27 policies and practices have violated state law in at least the following respects:

28 (a) Paying Plaintiff and class members overtime at a lower rate than

1 required by law by failing to properly calculate the regular rate of pay
2 for purposes of overtime in violation of California Labor Code sections
3 510 and 1198 and the applicable IWC Order, as alleged herein;

4 (b) Failing to provide uninterrupted meal periods to Plaintiff and class
5 members in violation of California Labor Code sections 226.7, 512(a),
6 516, 1198, and the applicable IWC Order, as alleged herein;

7 (c) Failing to authorize and permit Plaintiff and class members to take
8 uninterrupted rest periods in violation of California Labor Code sections
9 226.7, 516, 1198, and the applicable IWC Order, as alleged herein;

10 (d) Failing to provide Plaintiff and class members with accurate wage
11 statements and failing to maintain accurate payroll records in violation
12 of California Labor Code sections 226(a), 1198, and the applicable IWC
13 Order, as alleged herein; and

14 (e) Failing timely to pay all earned wages to Plaintiff and class members in
15 violation of California Labor Code section 204 and the applicable IWC
16 Order, as alleged herein.

17 140. As a result of the violations of California law herein described, Defendants
18 unlawfully gained an unfair advantage over other businesses. Plaintiff and class members
19 have suffered pecuniary loss by Defendants' unlawful business acts and practices alleged
20 herein.

21 141. Pursuant to California Business & Professions Code sections 17200 *et seq.*,
22 Plaintiff and class members are entitled to restitution of the wages withheld and retained by
23 Defendants during a period that commences four years prior to the filing of this complaint; a
24 permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and
25 class members; and an award of attorneys' fees pursuant to California Code of Civil
26 Procedure section 1021.5 and other applicable laws; and an award of costs.

27 //

28 //

1 **NINTH CAUSE OF ACTION**

2 **Violation of California Business & Professions Code §§ 17200, et seq. –**

3 **Unfair Business Practices**

4 **(Against all Defendants)**

5 142. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
6 and every allegation set forth above.

7 143. Defendants are “persons” as defined by California Business & Professions
8 Code sections 17201, as they are corporations, firms, partnerships, joint stock companies,
9 and/or associations.

10 144. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair,
11 and harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered
12 injury in fact and has lost money as a result of Defendants’ unfair business practices. Plaintiff
13 seeks to enforce important rights affecting the public interest within the meaning of Code of
14 Civil Procedure section 1021.5.

15 145. Defendants’ activities, namely Defendants’ company-wide practice and/or
16 policy of not paying Plaintiff and class members all meal and rest period premium wages due
17 to them under Labor Code section 226.7, deprived Plaintiff and class members of the
18 compensation guarantee and enhanced enforcement implemented by section 226.7. The
19 statutory remedy provided by section 226.7 is a “‘dual-purpose’ remedy intended primarily to
20 compensate employees, and secondarily to shape employer conduct. *Safeway, Inc. v. Superior*
21 *Court*, 238 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7 were
22 guaranteed to Plaintiff and class members as part of their employment with Defendants, and
23 thus Defendants’ practice and/or policy of denying these statutory benefits constitutes an
24 unfair business practice in violation of California Business & Professions Code sections
25 17200, *et seq.* (Id.)

26 146. A violation of California Business & Professions Code sections 17200, *et seq.*
27 may be predicated on any unfair business practice. In the instant case, Defendants’ policies
28 and practices have violated the spirit of California’s meal and rest break laws and constitute

1 acts against the public policy behind these laws.

2 147. Pursuant to California Business & Professions Code sections 17200 *et seq.*,
3 Plaintiff and class members are entitled to restitution for the class-wide loss of the statutory
4 benefits implemented by section 226.7 withheld and retained by Defendants during a period
5 that commences four years prior to the filing of this complaint; a permanent injunction
6 requiring Defendants to pay all statutory benefits implemented by section 226.7 due to
7 Plaintiff and class members; an award of attorneys' fees pursuant to California Code of Civil
8 Procedure section 1021.5 and other applicable laws; and an award of costs.

9 **REQUEST FOR JURY TRIAL**

10 Plaintiff requests a trial by jury.

11 **PRAYER FOR RELIEF**

12 Plaintiff, on behalf of all others similarly situated, prays for relief and judgment
13 against Defendants, jointly and severally, as follows:

14 1. For damages, unpaid wages, penalties, injunctive relief, and attorneys' fees in
15 excess of twenty-five thousand dollars (\$25,000), exclusive of interest and costs. Plaintiff
16 reserves the right to amend her prayer for relief to seek a different amount.

17 **Class Certification**

- 18 2. That this case be certified as a class action;
19 3. That Plaintiff be appointed as the representative of the Class and Subclasses;
20 4. That counsel for Plaintiff be appointed as class counsel.

21 **As to the First Cause of Action**

22 5. That the Court declare, adjudge, and decree that Defendants violated California
23 Labor Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to
24 pay all overtime wages due to Plaintiff and Overtime Wages & Meal Periods Subclass
25 members;

26 6. For general unpaid wages at overtime wage rates and such general and special
27 damages as may be appropriate;

28 7. For pre-judgment interest on any unpaid overtime compensation commencing

1 from the date such amounts were due, or as otherwise provided by law;

2 8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
3 California Labor Code section 1194(a); and

4 9. For such other and further relief as the Court may deem equitable and
5 appropriate.

6 **As to the Second Cause of Action**

7 10. That the Court declare, adjudge, and decree that Defendants violated California
8 Labor Code sections 226.7, 512(a), 516, and 1198 and applicable IWC Wage Order(s) by
9 willfully failing to provide all meal periods to Plaintiff and Overtime Wages & Meal Periods
10 Subclass members;

11 11. That the Court make an award to the Plaintiff and Overtime Wages & Meal
12 Periods Subclass members of one (1) hour of pay at each employee's regular rate of pay for
13 each workday that a meal period was not provided;

14 12. For all actual, consequential, and incidental losses and damages, according to
15 proof;

16 13. For premiums pursuant to California Labor Code section 226.7(b);

17 14. For pre-judgment interest on any unpaid meal period premiums from the date
18 such amounts were due, or as otherwise provided by law;

19 15. For attorneys' fees pursuant to California Code of Civil Procedure section
20 1021.5, or as otherwise provided by law; and

21 16. For such other and further relief as the Court may deem equitable and
22 appropriate.

23 **As to the Third Cause of Action**

24 17. That the Court declare, adjudge and decree that Defendants violated California
25 Labor Code sections 226.7, 516, and 1198 and applicable IWC Wage Orders by willfully
26 failing to authorize and permit Plaintiff and class members to take all rest periods;

27 18. That the Court make an award to the Plaintiff and class members of one (1) hour
28 of pay at each employee's regular rate of pay for each workday that a rest period was not

1 authorized and permitted;

2 19. For all actual, consequential, and incidental losses and damages, according to
3 proof;

4 20. For premiums pursuant to California Labor Code section 226.7(b);

5 21. For pre-judgment interest on any unpaid rest period premiums from the date
6 such amounts were due, or as otherwise provided by law;

7 22. For attorneys' fees pursuant to California Code of Civil Procedure section
8 1021.5, or as otherwise provided by law; and

9 23. For such other and further relief as the Court may deem equitable and
10 appropriate.

11 **As to the Fourth Cause of Action**

12 24. That the Court declare, adjudge and decree that Defendants violated the
13 recordkeeping provisions of California Labor Code section 226(a) and applicable IWC Wage
14 Orders as to Plaintiff and Wage Statement Subclass members, and willfully failed to provide
15 accurate itemized wage statements thereto;

16 25. For all actual, consequential, and incidental losses and damages, according to
17 proof;

18 26. For injunctive relief pursuant to California Labor Code section 226(h);

19 27. For statutory penalties pursuant to California Labor Code section 226(e);

20 28. For attorneys' fees and costs pursuant to California Labor Code section
21 226(e)(1); and

22 29. For such other and further relief as the Court may deem equitable and
23 appropriate.

24 **As to the Fifth Cause of Action**

25 30. That the Court declare, adjudge and decree that Defendants violated California
26 Labor Code sections 201 and 202 by willfully failing to pay overtime wages, minimum wages,
27 and/or meal and rest period premiums owed at the time of termination of the employment of
28 Plaintiff and/or other terminated class members;

31. For all actual, consequential and incidental losses and damages, according to proof;

32. For waiting time penalties according to proof pursuant to California Labor Code section 203 for all employees who have left Defendants' employ;

33. For pre-judgment interest on any unpaid wages from the date such amounts were due, or as otherwise provided by law;

34. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

35. For such other and further relief as the Court may deem equitable and appropriate.

As to the Sixth Cause of Action

36. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 204 by willfully failing to timely pay Plaintiff and/or class members overtime wages, minimum wages, and/or meal and rest period premiums during their employment;

37. For all actual, consequential and incidental losses and damages, according to proof;

38. For statutory penalties according to proof pursuant to California Labor Code section 210;

39. For pre-judgment interest on any unpaid wages from the date such amounts were due, or as otherwise provided by law;

40. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

41. For such other and further relief as the Court may deem equitable and appropriate.

As to the Seventh Cause of Action

42. That the Court declare, adjudge and decree that Defendants violated the following California Labor Code provisions as to Plaintiff and/or other aggrieved employees:

1 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, 1197.1, and
2 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512, 516, and
3 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and
4 permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
5 statements and maintain accurate payroll records); 201, 202, and 203 (by failing timely to pay
6 all earned wages upon termination); 204 (by failing timely to pay all earned wages during
7 employment); 222.5 (by failing to pay the costs of mandatory drug testing and/or physical
8 examinations); 2802 (by failing to reimburse business expenses); 2810.5 (by failing to provide
9 written notice of information material to employment); 6401 and 6403 (by failing to provide
10 safety devices and safeguards);

11 43. For civil penalties pursuant to California Labor Code sections 210, 226.3, 256,
12 558, 1174.5, 1197.1, and/or 2699(a), (f) and (g), for violations of California Labor Code
13 sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194,
14 1197, 1197.1, 1198, 2802, 2810.5, 6401, and 6403;

15 44. For attorneys' fees and costs pursuant to California Labor Code section
16 2699(g)(1), and any and all other relevant statutes, for Defendant's violations of California
17 Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d),
18 1182.12, 1194, 1197, 1197.1, 1198, 2802, 2810.5, 6401, and 6403;

19 45. For pre-judgment and post-judgment interest as provided by law; and

20 46. For such other and further relief as the Court may deem equitable and
21 appropriate.

22 **As to the Eighth Cause of Action**

23 47. That the Court declare, adjudge and decree that Defendants' conduct of failing
24 to provide Plaintiff and class members all overtime wages due to them, failing to provide
25 Plaintiff and class members all meal periods, failing to authorize and permit Plaintiff and class
26 members to take all rest periods, failing to provide Plaintiff and Wage Statement Subclass
27 members accurate and complete wage statements, failing to maintain accurate payroll records
28 for Plaintiff and Wage Statement Subclass members, and failing timely to pay Plaintiff and

1 class members all earned wages during employment, constitutes an unlawful business practice
2 in violation of California Business and Professions Code sections 17200, *et seq.*;

3 48. For restitution of unpaid wages to Plaintiff and all class members and
4 prejudgment interest from the day such amounts were due and payable;

5 49. For the appointment of a receiver to receive, manage and distribute any and all
6 funds disgorged from Defendants and determined to have been wrongfully acquired by
7 Defendants as a result of violations of California Business & Professions Code sections 17200
8 *et seq.*;

9 50. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
10 California Code of Civil Procedure section 1021.5; and

11 51. For such other and further relief as the Court may deem equitable and
12 appropriate.

13 **As to the Ninth Cause of Action**

14 52. That the Court declare, adjudge and decree that Defendants' conduct of denying
15 Plaintiff and class members the statutory benefits guaranteed under section 226.7 constitutes
16 an unfair business practice in violation of California Business and Professions Code sections
17 17200, *et seq.*;

18 53. For restitution of the statutory benefits under section 226.7 unfairly withheld
19 from Plaintiff and class members and prejudgment interest from the day such amounts were
20 due and payable;

21 54. For the appointment of a receiver to receive, manage and distribute any and all
22 funds disgorged from Defendants and determined to have been wrongfully acquired by
23 Defendants as a result of violations of California Business & Professions Code sections 17200
24 *et seq.*;

25 55. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
26 California Code of Civil Procedure section 1021.5;

27 56. For pre-judgment and post-judgment interest as provided by law; and

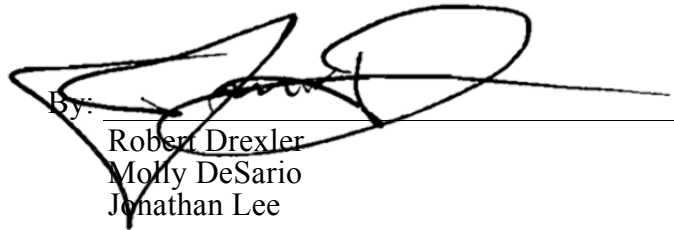
28 //

1 57. For such other and further relief as the Court may deem equitable and
2 appropriate.

3
4 Dated: July 16, 2020

Respectfully submitted,

Capstone Law APC

6
7  By: _____
8 Robert Drexler
9 Molly DeSario
Jonathan Lee

Attorneys for Plaintiff Maribel Bital

Exhibit 1



1875 Century Park East, Suite 1000
Los Angeles, California 90067
310.556.4811 Main | 310.943.0396 Fax

ANTHONY CASTILLO
310.712.8169 Direct
Anthony.Castillo@capstonelawyers.com

May 11, 2020

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/266>)

Subject: *Maribel Bital v. Simonton Industries, Inc., et al.*

Dear PAGA Administrator:

This office represents Maribel Bital in connection with her claims under the California Labor Code. Ms. Bital was an employee of SIMONTON INDUSTRIES, INC. and/or PLY GEM PACIFIC WINDOWS CORPORATION. For the purpose of this letter, Ms. Bital collectively refers to these entities as "SIMONTON."

The employers may be contacted directly at the address below:

SIMONTON INDUSTRIES, INC.
5020 WESTON PARKWAY, SUITE 400
CARY NC 27513

PLY GEM PACIFIC WINDOWS CORPORATION
5020 WESTON PARKWAY, SUITE 400
CARY NC 27513

Ms. Bital intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Ms. Bital seeks relief on behalf of herself, the State of California, and other persons who are or were employed by SIMONTON in California as a non-exempt, hourly paid employee and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

SIMONTON employed Ms. Bital as a non-exempt, hourly paid Machine Operator from September 2004 to October 2019. Ms. Bital worked for SIMONTON at its manufacturing plant located in Vacaville, California. During her employment, Ms. Bital typically worked seven (7) to eleven (11) hours or more per day, five (5) days per week, and 35-45 hours per week. At the time her employment ended, Ms. Bital was compensated approximately \$18.10 per hour. Ms. Bital's primary

job duties included, without limitation, operating machinery and measuring and inspecting window glass.

SIMONTON has committed one or more of the following Labor Code violations against Ms. Bital, the facts and theories of which follow, making her an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

SIMONTON’s Company-Wide and Uniform Payroll and HR Practices

SIMONTON INDUSTRIES, INC. and PLY GEM PACIFIC WINDOWS CORPORATION; are California and Delaware corporations, respectively, and are a leading manufacturer of exterior building windows and doors in North America. SIMONTON owns and operates manufacturing facilities in several locations in California, including Carson, Clayton, Vacaville, and West Sacramento, California. Upon information and belief, SIMONTON maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Cary, North Carolina, for all non-exempt, hourly paid employees working for SIMONTON in California, including Ms. Bital and other aggrieved employees. At all relevant times, SIMONTON issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Bital and other aggrieved employees, regardless of their location or position.

Upon information and belief, SIMONTON maintains a centralized Payroll department at its corporate headquarters in Cary, North Carolina, which processes payroll for all non-exempt, hourly paid employees working for SIMONTON in California, including Ms. Bital and other aggrieved employees. Further, SIMONTON issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Ms. Bital and other aggrieved employees, irrespective of their location, position, or manner in which each employee’s employment ended. In other words, SIMONTON utilized the same methods and formulas when calculating wages due to Ms. Bital and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

¹ These facts, theories, and claims are based on Ms. Bital’s experience and counsel’s review of those records currently available relating to Ms. Bital’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Ms. Bital reserves the right to supplement this letter with additional facts, theories, and claims if she becomes aware of them subsequent to the submission of this letter.

SIMONTON willfully failed to pay all overtime wages owed to Ms. Bital and other aggrieved employees. During the relevant time period, Ms. Bital and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

During the relevant period, SIMONTON had, and continues to have, a company-wide policy and/or practice of understaffing its facilities while pressuring employees to meet a quota of completing a certain number of units per hour. SIMONTON's company-wide understaffing of its facilities, along with the pressure SIMONTON placed on employees to meet hourly quotas, prevented Ms. Bital and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. SIMONTON, on a company-wide basis, also failed to schedule meal periods or to adhere to a schedule of meal periods, which further caused Ms. Bital and other aggrieved employees to not be relieved of their duties for compliant meal periods. As a result, other aggrieved employees missed meal periods and/or had their meal periods interrupted, but were not compensated for this time.

Moreover, SIMONTON also had a company-wide policy and/or practice of requiring other aggrieved employees to carry company-issued radios and respond to any calls at all times during their shifts. SIMONTON required that other aggrieved employees be available via radio at all times, including during their unpaid meal periods.

SIMONTON knew or should have known that, as a result of these company-wide practices and/or policies, other aggrieved employees were performing their assigned duties during their meal periods, and were suffered or permitted to perform work for which they were not paid. SIMONTON also knew, or should have known, that it did not compensate other aggrieved employees applicable overtime rates of pay for overtime hours that they worked.

Because other aggrieved employees regularly worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked. SIMONTON's failure to pay other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198.

Furthermore, SIMONTON did not pay Ms. Bital and other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, SIMONTON paid Ms. Bital and other aggrieved employees shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, SIMONTON failed to incorporate all compensation, including but not limited to, all shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when Ms. Bital and other aggrieved employees worked overtime and received these other forms of pay, SIMONTON failed to pay all overtime wages by paying a lower overtime rate than required.

Specifically, SIMONTON paid Ms. Bital and other aggrieved employees nondiscretionary bonuses for when a department was under a certain threshold of safety incidents in a month. On information and belief, these nondiscretionary bonuses were listed on Ms. Bital's and other aggrieved employees' wage statements as "Bonus." Additionally, Ms. Bital and other aggrieved employees were eligible

for and earned shift differential pay. During pay periods that Ms. Bital and other aggrieved employees were paid overtime wages, SIMONTON failed to incorporate the nondiscretionary bonus and/or shift differential pay into Ms. Bital's and other aggrieved employees' regular rate of pay and, as a result, paid them at incorrect and lower rates of pay for overtime hours worked. Specifically, SIMONTON paid Ms. Bital and other aggrieved employees 1.5 times their hourly rate of pay instead of 1.5 times their regular rate of pay. For example, during her employment, Ms. Bital earned safety bonuses of \$138.51 and \$86.66, respectively, but was only paid an overtime rate of \$26.1750, which is 1.5 times her hourly rate of pay of \$17.45. SIMONTON's failure to properly calculate the overtime rates of pay based on all remuneration paid has resulted in an underpayment of overtime wages to Ms. Bital and other aggrieved employees on a company-wide basis.

Ms. Bital and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 1 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work for the employer, whether or not required to do so, as interpreted in accordance with the provisions of the Fair Labor Standards Act." Cal. Code. Regs. tit. 8, § 11010(2)(G) (defining "Hours Worked").

As set forth above, due to SIMONTON's company-wide understaffing while simultaneously pressuring employees to meet hourly productivity quotas, and resultant lack of meal period coverage, other aggrieved employees were forced to forego meal periods and/or had their meal periods interrupted by work. As also stated, SIMONTON required that other aggrieved employees carry radios on their persons at all times while on SIMONTON's premises, including during unpaid meal periods.

Furthermore, during the relevant time period, on information and belief, SIMONTON also maintained and implemented a company-wide policy of requiring employees to travel to a medical facility on their own time and using their own personal vehicles to undergo mandatory drug tests and/or physical examinations. At all times, upon information and belief, SIMONTON was in control of scheduling the date and time for the testing and/or physical examination, selecting the provider/facility where the testing and/or physical examination was to take place, and determining the scope of the testing and/or physical examination. However, SIMONTON did not compensate other aggrieved employees for the time they spent traveling to and from the medical facilities and undergoing the mandatory drug testing and/or physical examinations.

Thus, SIMONTON did not pay minimum wages for all hours worked by other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, SIMONTON did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Accordingly, SIMONTON regularly failed to pay at least minimum wages to other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, and 1198 and the applicable IWC Wage Order require employers to provide meal and rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal. 2012).

Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived. The applicable IWC Wage Order further provides that employees in the health care industry who work shifts in excess of eight (8) hours in a workday may waive one of their two meal periods, if the waiver is signed by both the employee and employer. Cal. Code. Regs. tit. 8, § 11050(11)(D).

First, during the relevant period, as stated, SIMONTON's company-wide policies and/or practices of understaffing its facilities, while pressuring Ms. Bital and other aggrieved employees to meet a quota of completing a certain number of units per hour, and lack of adequate meal period coverage, prevented Ms. Bital and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. SIMONTON also failed to schedule meal periods or to adhere to a schedule of meal periods, which further exacerbated the lack of adequate meal period coverage. As a result, Ms. Bital and other aggrieved employees would be forced to work in excess of five (5) hours before taking a meal period. For example, when a department fell behind their targeted number of units to complete, Ms. Bital and other aggrieved employees were required to keep working until they were caught up, and, as a result, Ms. Bital and other aggrieved employees took their meal periods late. For the same reasons, other aggrieved employees also had their meal periods interrupted and/or had to forgo their meal periods altogether.

Second, as stated, SIMONTON did not provide Ms. Bital and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. During her employment, Ms. Bital worked shifts in excess of ten (10) or more hours per day, but was rarely provided a second 30-minute meal period. For example, on information and belief, SIMONTON required Ms. Bital and/or other aggrieved employees to sign a meal waiver form for days they worked twelve (12) hours or more, even though under California law an employee cannot waive second meal periods on days they work twelve (12) hours or more.

Third, SIMONTON implemented a company-wide policy of requiring all employees, including Ms. Bital and other aggrieved employees, to sign blanket meal period waivers. SIMONTON took the

position that employees working six (6) hour shifts had waived their rights to take a 30-minute meal period on these particular shifts, for the entirety of their employment. SIMONTON similarly took the position that employees working in excess of ten (10) hours per day, but no more than twelve (12), had waived their right to a second 30-minute meal period, for the entirety of their employment. SIMONTON only permitted Ms. Bital and other aggrieved employees to revoke the waiver by providing one day's advance written notice.

SIMONTON's imposition of the burden on employees to revoke the meal period waiver in writing and one day in advance of their shift discouraged and prevented Ms. Bital and/or other aggrieved employees from taking meal periods. And SIMONTON's presumption that second meal periods would not be provided for shifts in excess of ten (10) hours but less than twelve (12) hours due to blanket second meal period waivers discouraged Ms. Bital and other aggrieved employees from taking second meal periods.

In addition, an employer's obligation to provide a meal period is only "triggered" when the employer "employs an employee for a work period of more than five hours per day." *Brinker*, 53 Cal. 4th at 1039 ("If an employer engages, suffers, or permits anyone to work for a full five hours, its meal break obligation is triggered.").

[A]fter the meal break obligation is triggered . . . an employer is put to a choice: it must (1) afford an off-duty meal period; (2) consent to a mutually agreed-upon waiver if one hour or less will end the shift; or (3) obtain written agreement to an on-duty meal period if circumstances permit. Failure to do one of these will render the employer liable for premium pay. *Id.* (citing Cal. Labor Code § 226.7; Wage Order No. 5, subd. 11(A), (B)).

That SIMONTON require employees to sign meal period waivers in advance (as opposed to on a specific work day) renders them invalid and unenforceable, because SIMONTON's obligation to provide Ms. Bital and other aggrieved employees with meal periods did not arise until SIMONTON had employed them for a full five (5) hours.

SIMONTON also has engaged in a company-wide practice and/or policy of not paying meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Ms. Bital and other aggrieved employees have not received premium pay for missed, late, and interrupted meal periods. Alternatively, to the extent that SIMONTON did pay meal period premium wages to Ms. Bital and other aggrieved employees, it did so at the incorrect rates. Because SIMONTON did not properly calculate Ms. Bital's and other aggrieved employees' regular rates of pay by including all remunerations, such as shift differential pay, incentive pay, and/or nondiscretionary bonuses, any premiums paid for meal period violations were also paid at an incorrect rate and resulted in an underpayment of meal period premium wages.

Accordingly, SIMONTON failed to provide all meal periods in violation of California Labor Code sections 226.7, 512, 516, and 1198. Ms. Bital and other aggrieved employees are therefore entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period” and that the “rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof” unless the total daily work time is less than three and one-half (3½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must “relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest.” *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

During the relevant time period, SIMONTON regularly failed to authorize and permit Ms. Bital and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, SIMONTON’s company-wide policy and practice of understaffing while simultaneously pressuring employees to meet hourly productivity quotas, prevented Ms. Bital and other aggrieved employees from being relieved of all duty to take compliant rest periods. SIMONTON also failed to schedule rest periods, which, coupled with SIMONTON’s failure to provide adequate rest period coverage, further led to Ms. Bital and other aggrieved employees not being authorized and permitted to take compliant rest periods.

Furthermore, upon information and belief, during the relevant time period, SIMONTON implemented a company-wide on-premises rest period policy, which mandated that Ms. Bital and other aggrieved employees remain on SIMONTON’s premises during their rest periods. Because Ms. Bital and other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes. Thus, SIMONTON effectively maintained control over Ms. Bital and other aggrieved employees during rest periods.

As a result of SIMONTON’s practices and policies, Ms. Bital and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, during her employment, Ms. Bital was not authorized or permitted to take her third rest periods when she worked shifts in excess of ten (10) hours.

SIMONTON also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Ms. Bital and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that SIMONTON did pay Ms. Bital and other aggrieved employees one (1) additional hour of premium pay for missed rest periods, SIMONTON did not pay Ms. Bital and other aggrieved employees at the correct rate of pay for premium wages because SIMONTON failed to include all forms of compensation, such as shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, SIMONTON failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Ms. Bital and other aggrieved employees are therefore entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. SIMONTON has not provided Ms. Bital and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wages statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50.00 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, SIMONTON has knowingly and intentionally provided Ms. Bital and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, SIMONTON issued uniform wage statements to Ms. Bital and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including overtime rates of pay, and the corresponding number of hours worked at each hourly rate. Specifically, SIMONTON violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

First, because SIMONTON did not calculate Ms. Bital's and other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages, SIMONTON did not list the correct amount of gross wages earned by Ms. Bital and other aggrieved employees in compliance with section 226(a)(1) and did not list the correct amount of net wages earned by Ms. Bital and other aggrieved employees in violation of section 226(a)(5). SIMONTON also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct overtime rates of pay and correct rates of pay for premium wages, in violation of section 226(a)(9).

Second, because SIMONTON did not record the time other aggrieved employees spent working off-the-clock, SIMONTON did not list the correct amount of gross wages and net wages earned by other aggrieved employees, in compliance with section 226(a)(1) and 226(a)(5), respectively. For the same reason, SIMONTON failed to accurately list the total number of the hours worked by other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

The wage statement deficiencies also include, without limitation, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list 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; failing to list the name and address of the legal entity that is the employer; failing to list the inclusive

dates of the period for which aggrieved employees were paid; and/or failing to state all hours worked as a result of not recording or stating hours worked off-the-clock.

California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall ... [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments...” Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), SIMONTON willfully failed to maintain accurate payroll records for other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, SIMONTON failed, on a company-wide basis, to keep accurate records of work and/or meal period start and stop times for Ms. Bital and other aggrieved employees, in violation of section 1198. Furthermore, in light of SIMONTON’s failure to provide Ms. Bital and other aggrieved employees with second 30-minute meal periods to which they were entitled, SIMONTON kept no records of meal start and end times for second meal periods.

Because SIMONTON failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Ms. Bital and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Ms. Bital and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Ms. Bital and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are

deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, SIMONTON failed to pay Ms. Bital and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premium wages, within any time period specified by California Labor Code section 204.

Ms. Bital and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201, 202, and 203 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201, 202, and 203 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

SIMONTON willfully failed to pay Ms. Bital and other aggrieved employees who are no longer employed by SIMONTON all their earned wages, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premium wages, either at the time of discharge, or within seventy-two (72) hours of their leaving SIMONTON's employ in violation of California Labor Code sections 201, 202, and 203.

Ms. Bital and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 222.5 – Failure to Pay for Costs of Mandatory Physical Exams and/or Drug Testing

At all times herein set forth, California Labor Code section 222.5 requires employers to pay for the costs an employee incurs for obtaining any required medical or physical examination.

During the relevant time period, SIMONTON implemented, on a company-wide basis, an employer-imposed requirement that other aggrieved employees undergo mandatory drug tests and/or physical examinations, but required them to do so at their own expense. As stated, SIMONTON had a company-wide policy requiring that other aggrieved employees travel to a specified medical facility on their own time and use their own means of transportation to undergo drug testing and/or physical examinations. At all times, SIMONTON was in control of scheduling the date and time for the drug testing and/or physical examinations, selecting the provider/facility where the drug testing and/or physical examinations were to take place, and determining the scope of the drug test and/or physical examinations.

However, SIMONTON did not compensate other aggrieved employees for the time they spent traveling to and from their drug tests and/or physical examinations, or for the time they spent undergoing the testing and/or examinations, or reimburse them for the travel expenses they incurred

getting to and from the medical facilities. SIMONTON's policy and/or practice of not paying for all costs other aggrieved employees incurred obtaining mandatory drug tests and/or physical examinations violates California Labor Code section 222.5.

Other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft."

During the relevant time period, as stated, SIMONTON had a company-wide policy and/or practice of requiring other aggrieved employees to travel in their own personal vehicles to medical facilities to undergo mandatory drug testing and/or physical examinations, but did not reimburse them for their travel expenses. Although SIMONTON required other aggrieved employees to undergo drug testing and/or physical examinations, SIMONTON failed to reimburse them for these expenses.

Additionally, SIMONTON, on a company-wide basis, mandated that Ms. Bital and other aggrieved employees purchase special safety shoes such as steel-toed boots, which they were required to wear while at work. Other aggrieved employees purchased steel-toed boots to wear inside SIMONTON's facilities, but were not reimbursed fully for these costs.

SIMONTON could have provided other aggrieved employees with the actual tools for use on the job, such as steel-toed boots and company vehicles or other paid transportation to be used for fulfilling work-related tasks, or, SIMONTON could have reimbursed employees for the costs of their boot expenses, travel expenses, and mileage. Instead, SIMONTON passed these operating costs off onto other aggrieved employees.

Thus, SIMONTON had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the

rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

SIMONTON failed to provide other aggrieved employees written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). SIMONTON's failure to provide other aggrieved employees with written notice of basic information regarding their employment with SIMONTON is in violation of Labor Code section 2810.5.

Other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

Violation of California Labor Code §§ 6401 and 6403 – Failure to Provide Personal Protective Equipment

California Labor Code section 6401 provides that employers must furnish and use safety devices and safeguards, and adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render the employment and place of employment safe and healthy. California Labor Code Section 6401 further provides that an employer must do everything reasonably necessary to protect the life, safety and health of its employees. California Labor Code section 6403(a) requires that employers provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe.

SIMONTON, on a company-wide basis, failed to provide other aggrieved employees with personal protective equipment, such as steel-toed boots, to keep them safe in the workplace. Despite the fact that SIMONTON required employees to wear certain personal protective equipment, including steel-toed boots, SIMONTON failed to provide such reasonably necessary equipment to other aggrieved employees to keep them safe.

SIMONTON's failure to provide other aggrieved employees with basic personal protective equipment for the workplace violates Labor Code sections 6401 and 6403. Other aggrieved employees are therefore entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or 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 . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid . . ." Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law."

SIMONTON, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Ms. Bital's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Ms. Bital seeks the remedies set forth in Labor Code section 558 for herself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Ms. Bital, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all other aggrieved employees, and the State of California against SIMONTON for violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512, 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, 2810.5, 6401, and 6403.

Therefore, on behalf of all aggrieved employees, Ms. Bital seeks all applicable penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Anthony Castillo
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,



Anthony Castillo

Copy: SIMONTON INDUSTRIES, INC. (via U.S. Certified Mail); PLY GEM PACIFIC
WINDOWS CORPORATION (via U.S. Certified Mail)

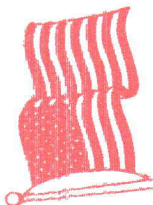
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PLY GEM PACIFIC WINDOWS CORPORATION
5020 WESTON PARKWAY, SUITE 400
CARY NC 27513



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PS Form 3811, July 2015 PSN 7530-02-000-9053

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A. Signature

X

☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
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- ☒ Certified Mail®
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- ☐ Return Receipt for Merchandise
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Domestic Return Receipt

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For delivery information, visit our website at www.usps.com®.

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Extra Services & Fees (check box, add fee as appropriate)

- ☒ Return Receipt (hardcopy) \$ 2.80
- ☐ Return Receipt (electronic) \$
- ☐ Certified Mail Restricted Delivery \$
- ☐ Adult Signature Required \$
- ☐ Adult Signature Restricted Delivery \$

Postage

\$ 1.63

Total Postage and Fees

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Sent To

PLY GEM PACIFIC WINDOWS
CORPORATION

Street and Apt. No., or PO Box No.

5020 WESTON PARKWAY, SUITE 400

City, State, ZIP+4®

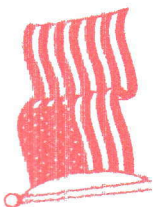
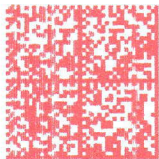
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Bital v. Ply Gem
Pacific Windows
Corporation



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- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
SIMONTON INDUSTRIES, INC.
5020 WESTON PARKWAY, SUITE
400
CARY NC 27513



9590 9402 4882 9032 7443 11

2. Article Number (Transfer from service label)

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PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X☐ Agent☐ Addressee

B. Received by (Printed Name)

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D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
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- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
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- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over \$500)

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- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

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5020 WESTON PARKWAY, SUITE 400
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SIMONTON INDUSTRIES, INC.

Street and Apt. No., or PO Box No.

5020 WESTON PARKWAY, SUITE

400

City, State, ZIP+4®

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Postmark
HereBital V. Simanton
Industries, Inc.

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

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I am employed in the County of Los Angeles. I declare that I am over the age of eighteen (18) and not a party to this action. My business address is: Capstone Law APC, 1875 Century Park East, Suite 1000, Los Angeles, California 90067.

**FIRST AMENDED CLASS ACTION COMPLAINT & ENFORCEMENT ACTION
UNDER THE PRIVATE ATTORNEYS GENERAL ACT, CALIFORNIA LABOR
CODE §§ 2698, *ET SEQ.***

Martin D. Bern
C. Hunter Hayes
David W. Moreshead
Munger, Tolles & Olson LLP
350 South Grand Avenue, Fiftieth Floor
Los Angeles, California 90071-3426
martin.bern@mto.com
hunter.hayes@mto.com
david.moreshead@mto.com

- () **MAIL:** I deposited such envelope in the mail at Los Angeles, California. The envelopes were mailed with postage thereon fully prepaid.
- () **PERSONAL:** I caused such envelope to be delivered by hand to the individuals at the address listed above.
- (X) **E-MAIL:** Due to the National Emergency and public health orders in California related to the coronavirus and COVID-19 pandemic, Capstone Law APC attorneys and staff are working remotely and therefore have limited capabilities to send physical mail in the normal course of business. On this date, I personally transmitted the foregoing document(s) using electronic mail to the e-mail address(es) of the person(s) listed above.
- () **OVERNIGHT COURIER:** I caused the above-referenced document(s) to be delivered via overnight courier service (FedEx) to the individuals at the address listed above.
- () **FACSIMILE:** I caused the above-referenced document(s) to be transmitted to the above-named person at the telephone numbers above.
- (X) **(STATE)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.


Sandy S. Acevedo