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8 individually and on behalf of all others similarly situated

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF ALAMEDA**

11 ZACHARY MURPHY, individually and on
12 behalf of all others similarly situated

13 Plaintiff,

14 vs.

15 THE FINISH LINE, INC., WHICH WILL
16 DO BUSINESS IN CALIFORNIA AS
THE INDIANA FINISH LINE, INC.; and
17 DOES 1 through 20, inclusive,

18 Defendant.

Case No. RG20061596

**AMENDED AS A MATTER OF RIGHT
PURSUANT TO CAL. LAB. CODE §
2699.3(a)(2)(C)**

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

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

**ENDORSED
FILED
ALAMEDA COUNTY**

JUL 23 2020

CLERK OF THE SUPERIOR COURT
By *[Signature]* Deputy

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

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiff Zachary Murphy (“Plaintiff”) brings this putative class action, pursuant
5 to California Code of Civil Procedure section 382, and representative action, pursuant to
6 Private Attorneys General Act of 2004, Cal. Lab. Code section 2698, *et seq.*, against defendant
7 The Finish Line, Inc., Which Will Do Business In California As The Indiana Finish Line, Inc.,
8 and DOES 1 through 20, inclusive (collectively, “Defendant”), on behalf of himself
9 individually, other aggrieved employees, and a putative class of non-exempt employees
10 employed by Defendant in California.

11 2. Defendant is in the business of athletic shoe and apparel retail.

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

16 4. Plaintiff is informed and believes, and thereon alleges, that Defendant has
17 increased their profits by violating state wage and hour laws by, among other things:

18 (a) Failing to pay minimum wages;

19 (b) Failing to pay overtime wages at the proper rates;

20 (c) Failing to provide meal periods or compensation in lieu thereof;

21 (d) Failing to authorize or permit rest breaks or provide compensation in lieu thereof;

22 (e) Failing to provide accurate itemized wage statements; and

23 (f) Failing to pay all wages due upon separation of employment.

24 5. Plaintiff brings this lawsuit seeking monetary relief against Defendant on behalf
25 of himself and all others similarly situated in California to recover, among other things, unpaid
26 wages and benefits, interest, attorneys’ fees, costs and expenses and penalties pursuant to Labor
27 Code §§ 201-203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1194,
28 1194.2, 1197, 1197.1, 1198, 2698, *et seq.*, and Code of California Civil Procedure § 1021.5.

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

9. Venue is proper in this Court because, upon information and belief, Defendant resides, transacts business or has offices in this county, or the acts and omissions alleged herein took place in this county.

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

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

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1 in all respects pertinent to this action as the agent of the other defendant, carried out a joint
2 scheme, business plan or policy in all respects pertinent hereto, and the acts of each defendant
3 are legally attributable to the other defendant. Furthermore, defendant in all respects acted as
4 the employer and/or joint employer of Plaintiff and the class members.

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

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

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

17 **CLASS ACTION ALLEGATIONS**

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

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

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

24 Class

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

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

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

2 Waiting Time Subclass

3 All Class Members who separated their employment with Defendants at any time
4 between April 6, 2017 and the date of class certification.

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

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

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

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

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

1 be greater than 100 individuals. The identity of the class members are
2 readily ascertainable by inspection of Defendant's employment and payroll
3 records.

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

11 (c) Adequacy: Plaintiff is qualified to, and will fairly and adequately represent
12 and protect the interests of all members of the Class because it is in his best
13 interest to prosecute the claims alleged herein to obtain full compensation
14 and penalties due to him and the Class. Plaintiff's attorneys, as proposed
15 class counsel, are competent and experienced in litigating large
16 employment class actions and are versed in the rules governing class action
17 discovery, certification and settlement. Plaintiff has incurred and,
18 throughout the duration of this action, will continue to incur attorneys' fees
19 and costs that have been and will be necessarily expended for the
20 prosecution of this action 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 lawsuits,
24 and will avoid inconsistent outcomes because the same issues can be
25 adjudicated in the same manner and at the same time for each Class. If
26 appropriate this Court can, and is empowered to, fashion methods to
27 efficiently manage this case as a class action.

28 (e) Public Policy Considerations: Employers in the State of California and

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

9 **GENERAL ALLEGATIONS**

10 24. At all relevant times mentioned herein, Defendant employed Plaintiff and other
11 persons as non-exempt employees at their California locations.

12 25. Plaintiff was employed in a non-exempt position at Defendant's California
13 location(s).

14 26. Defendant continues to employ non-exempt employees at their California
15 locations.

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

20 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
21 should have known that Plaintiff and Class Members were entitled to receive wages for all time
22 worked (including minimum wages and overtime wages) and that they were not receiving all
23 wages earned for work that was required to be performed due to off-the-clock security checks.
24 In violation of the Labor Code and IWC Wage Orders, Plaintiff and Class Members were not
25 paid all wages (including minimum wages and overtime wages) for all hours worked.

26 29. Upon information and belief, Defendant failed to provide Plaintiff and class
27 members timely, uninterrupted, off-duty meal periods of no less than thirty minutes before their
28 fifth hour of work. Based on the lack of proper coverage and scheduling of meal periods

1 during these employees' shifts, Plaintiff and class members were not able to take required off-
2 duty meal periods at the appropriate intervals during their shifts. Defendant also interrupted
3 meal periods with "on duty" security checks. These policies, among others, have resulted in a
4 denial of these employees' rights to 30-minute meal periods in violation of California law.

5 30. Plaintiff is informed and believes, and thereon alleges, that Defendant knew or
6 should have known that Plaintiff and class members were entitled to receive all required meal
7 periods or payment of one (1) additional hour of pay at Plaintiff and class members' regular
8 rate of pay when they did not receive a timely meal period. In violation of the Labor Code and
9 IWC Wage Orders, Plaintiff and class members did not receive all timely meal periods or
10 payment of one (1) additional hour of pay at Plaintiff and class members' regular rate of pay
11 when they did not receive a timely, uninterrupted meal periods.

12 31. Upon information and belief, Defendant failed to provide Plaintiff and class
13 members timely, uninterrupted, on-the-clock rest period of no less than ten minutes for every
14 four hours worked, or every major fraction thereof. These policies, among others, have
15 resulted in a denial of these employees' rights to a ten-minute rest period in violation of
16 California law.

17 32. Plaintiff is informed and believes, and thereon alleges, that Defendant knew or
18 should have known that Plaintiff and class members were entitled to receive all rest breaks or
19 payment of one (1) additional hour of pay at Plaintiff and class members' regular rate of pay
20 when a rest break was missed. In violation of the Labor Code and IWC Wage Orders, Plaintiff
21 and class members did not receive all rest breaks or payment of one (1) additional hour of pay
22 at Plaintiff and class members' regular rate of pay when a rest break was missed.

23 33. Plaintiff is informed and believes, and thereon alleges, that Defendant knew or
24 should have known that Plaintiff and class members were entitled to receive itemized wage
25 statements that accurately showed their employer's legal name, gross and net wages earned,
26 inclusive dates of pay periods, total hours worked and all applicable hourly rates in effect and
27 the number of hours worked at each hourly rate in accordance with California law. In violation
28 of the Labor Code, Plaintiff and class members were not provided with accurate itemized wage

1 statements.

2 34. Plaintiff is informed and believes, and thereon alleges, that Defendant knew or
3 should have known that Plaintiff and Waiting Time Subclass members were entitled to timely
4 payment of wages due upon separation of employment. In violation of the Labor Code,
5 Plaintiff and Waiting Time Subclass members did not receive payment of all wages within
6 permissible time periods.

7 35. Plaintiff is informed and believes, and thereon alleges, that Defendant knew or
8 should have known they had a duty to compensate Plaintiff and class members, and Defendant
9 had the financial ability to pay such compensation but willfully, knowingly and intentionally
10 failed to do so all in order to increase Defendant's profits.

11 **FIRST CAUSE OF ACTION**

12 **FAILURE TO PAY MINIMUM WAGES**

13 **(Violation of Labor Code §§ 1182.12, 1194, 1194.2, and 1197; Violation of Wage Order)**

14 36. Plaintiff hereby re-allege and incorporate by reference all paragraphs above as
15 though fully set forth herein.

16 37. Labor Code §§ 1194 and 1197 provide that the minimum wage for employees
17 fixed by the IWC is the minimum wage to be paid to employees, and the payment of a lesser
18 wage than the minimum so fixed is unlawful.

19 38. During the relevant time period, Defendant paid Plaintiff and class members less
20 than minimum wages when, for example, Defendant required Plaintiff and class members to
21 work off-the-clock during security checks under Defendant's control. To the extent these hours
22 do not qualify for the payment of overtime, Plaintiff and class members were not being paid at
23 least minimum wage for their work.

24 39. During the relevant time period, Defendant regularly failed to pay at least
25 minimum wage to Plaintiff and class members for all hours worked pursuant to Labor Code
26 §§ 1182.12, 1194, and 1197.

27 40. Defendant's failure to pay Plaintiff and class members the minimum wage as
28 required violates Labor Code §§ 1182.12, 1194, and 1197. Pursuant to these sections, Plaintiff

1 and class members are entitled to recover the unpaid balance of their minimum wage
2 compensation as well as interest, costs and attorney's fees.

3 41. Pursuant to Labor Code § 1194.2, Plaintiff and class members are entitled to
4 recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest
5 thereon.

6 **SECOND CAUSE OF ACTION**

7 **FAILURE TO PAY OVERTIME WAGES**

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

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

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

15 44. Pursuant to California Labor Code §§ 510 and 1194, during the relevant time
16 period, Defendant was required to compensate Plaintiff and class members for all overtime
17 hours worked, calculated at one and one-half (1½) times the regular rate of pay for hours
18 worked in excess of eight (8) hours per day and/or forty (40) hours per week and for the first
19 eight (8) hours of the seventh consecutive work day, with doubletime after eight (8) hours on
20 the seventh day of any work week, or after twelve (12) hours in any work day.

21 45. Plaintiff and class members were non-exempt employees entitled to the
22 protections of California Labor Code §§ 510 and 1194.

23 46. During the relevant time period, Defendant failed to pay Plaintiff and class
24 members overtime wages because they required Plaintiff and class members to work off-the-
25 clock during mandatory security checks, which caused Plaintiff and Class Members to not be
26 paid all overtime wages owed.

27 47. In violation of state law, Defendant has knowingly and willfully refused to
28 perform their obligations and compensate Plaintiff and class members for all wages earned as

1 alleged above.

2 48. Defendant's failure to pay Plaintiff and class members the unpaid balance of
3 overtime compensation, as required by California law, violates the provisions of Labor Code
4 §§ 510 and 1198, and is therefore unlawful.

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

7 **THIRD CAUSE OF ACTION**

8 **FAILURE TO PROVIDE MEAL PERIODS**

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

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

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

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

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

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

1 55. During the relevant time period, Plaintiff and class members did not receive
2 compliant meal periods for each five hours worked per day as a result of, among other things,
3 lack of proper coverage and scheduling of meal periods during these employees' shifts and
4 interrupted meal periods during mandatory security checks.

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

8 57. At all relevant times, Defendant failed to pay Plaintiff and class members all
9 meal period premiums due for meal period violations pursuant to Labor Code § 226.7(b) and
10 section 11 of the applicable IWC Wage Order.

11 58. As a result of Defendant's failure to pay Plaintiff and class members an
12 additional hour of pay for each day a meal period was not provided, Plaintiff and class members
13 suffered and continue to suffer a loss of wages and compensation.

14 **FOURTH CAUSE OF ACTION**

15 **FAILURE TO PERMIT REST BREAKS**

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

17 59. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
18 though fully set forth herein.

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

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

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

28 63. Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order

1 requires an employer to pay an employee one additional hour of pay at the employee's regular
2 rate of compensation for each workday that the rest period is not provided.

3 64. At all relevant times, Defendant failed to pay Plaintiff and class members all rest
4 period premiums due for rest period violations pursuant to Labor Code § 226.7(b) and section
5 12 of the applicable IWC Wage Order.

6 65. As a result of Defendant's failure to pay Plaintiff and class members an
7 additional hour of pay for each day a rest period was not provided, Plaintiff and class members
8 suffered and continue to suffer a loss of wages and compensation.

9 **FIFTH CAUSE OF ACTION**

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

11 **(Violation of Labor Code § 226; Violation of IWC Wage Order)**

12 66. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
13 though fully set forth herein.

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

25 68. During the relevant time period, Defendant has knowingly and intentionally
26 failed to comply with Labor Code § 226(a) on wage statements that were provided to Plaintiff
27 and class members. The deficiencies include, among other things, the failure to correctly state
28 the employer's entity name, gross and net wages earned, and all applicable hourly rates in

1 effect and the number of hours worked at each hourly rate by Plaintiff and class members.

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

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

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

23 72. Plaintiff and class members are also entitled to injunctive relief under California
24 Labor Code § 226(h), compelling Defendant to comply with California Labor Code § 226, and
25 seek the recovery of attorneys' fees and costs incurred in obtaining this injunctive relief.

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SIXTH CAUSE OF ACTION
FAILURE TO PAY ALL WAGES DUE UPON SEPARATION OF EMPLOYMENT AND
WITHIN THE REQUIRED TIME

(Violation of Labor Code §§ 201, 202 and 203; Violation of IWC Wage Order)

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

74. California Labor Code §§ 201 and 202 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 employment, his 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 intention to quit, in which case the employee is entitled to his wages at the time of quitting.

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

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

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

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

1 **SEVENTH CAUSE OF ACTION**

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

3 79. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
4 though fully set forth herein.

5 80. Defendant's conduct, as alleged herein, has been and continues to be unfair,
6 unlawful and harmful to Plaintiff and class members. Plaintiff seek to enforce important rights
7 affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

8 81. Defendant's activities, as alleged herein, violate California law and constitute
9 unlawful business acts or practices in violation of California Business and Professions Code
10 §§ 17200, *et seq.*

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

13 83. Defendant's policies and practices have violated state law in at least the
14 following respects:

- 15 (a) Failing to pay all minimum wages owed to Plaintiff and class members
16 in violation of Labor Code §§ 1182.12, 1194, and 1197;
- 17 (b) Failing to pay all overtime wages owed to Plaintiff and class members in
18 violation of Labor Code §§ 510, 1194 and 1198;
- 19 (c) Failing to provide timely meal periods without paying Plaintiff and class
20 members premium wages for every day said meal periods were not
21 provided in violation of Labor Code §§ 226.7 and 512;
- 22 (d) Failing to authorize or permit rest breaks without paying Plaintiff and
23 class members premium wages for every day said rest breaks were not
24 authorized or permitted in violation of Labor Code § 226.7;
- 25 (e) Failing to provide Plaintiff and class members with accurate itemized
26 wage statements in violation of Labor Code § 226; and
- 27 (e) Failing to timely pay all earned wages to Plaintiff and Waiting Time
28 Subclass members upon separation of employment in violation of Labor

Code §§ 201, 202 and 203.

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

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

EIGHTH CAUSE OF ACTION

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

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

87. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency ("LWDA") or any of its departments, divisions, commissions, boards, agencies or employees for violation of the code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself and other current or former employees pursuant to the procedures specified in Labor Code § 2699.3.

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

89. Defendants' conduct violates numerous Labor Code sections including, but not limited to, the following:

- (a) Violation of Labor Code §§ 201, 202, 203, 204, 510, 1194, 1197 and 1198 for failure to timely pay all earned wages (including minimum wages and overtime

1 wages) owed to Plaintiff and other aggrieved employees during employment and
2 upon separation of employment as herein alleged;

3 (b) Violation of Labor Code §§ 226.7 and 512 for failure to provide meal periods to
4 Plaintiff and other aggrieved employees and failure to pay premium wages for
5 missed meal periods as herein alleged;

6 (c) Violation of Labor Code § 226.7 for failure to permit rest breaks to Plaintiff and
7 other aggrieved employees and failure to pay premium wages for missed rest
8 periods as herein alleged;

9 (d) Violation of Labor Code § 226 for failure to provide accurate itemized wage
10 statements to Plaintiff and other aggrieved employees as herein alleged.

11 90. As set forth above, Defendants have violated numerous provisions of the Labor
12 Code regulating hours and days of work as well as the IWC Wage Orders. Accordingly, Plaintiff
13 seeks the civil penalties set forth in Labor Code § 558 for himself, the underpaid employees, and
14 the State of California.

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

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

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

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

26 **PRAYER FOR RELIEF**

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

1 **CERTIFICATE OF SERVICE**

2 I, the undersigned, am employed in the County of Orange, State of California. I am over
3 the age of 18 and not a party to the within action; am employed with Aegis Law Firm PC and
my business address is 9811 Irvine Center Drive, Suite 100, Irvine, California 92618.

4 On July 23, 2020, I served the foregoing document entitled:

- 5 • **AMENDED AS A MATTER OF RIGHT PURSUANT TO CAL. LAB. CODE §
2699.3(a)(2)(C) FIRST AMENDED CLASS ACTION COMPLAINT**

6 on all the appearing and/or interested parties in this action by delivering ☐ *the original*
7 ☒ *a true copy* thereof on the party(ies) addressed below as follows:

8 Brooke Purcell
9 Amanda Beckwith
10 Andrea Isaacs
11 SHEPPARD, MULLIN, RICHTER & HAMTON LLP
12 Four Embarcadero Center, 17th Floor
13 San Francisco, CA 94111-4109
14 Telephone: 415.434.9100
Facsimile: 415.434.3947
bpurcell@sheppardmullin.com
abeckwith@sheppardmullin.com
aisaacs@sheppardmullin.com

15 ☐ **(BY MAIL)** I am readily familiar with the firm's practice of collection and processing
16 correspondence for mailing. Under that practice it would be deposited with the U.S.
Postal Service on that same day with postage thereon fully prepaid at Irvine, California
17 in the ordinary course of business. I am aware that on motion of the party served, service
is presumed invalid if postage cancellation date or postage meter date is more than one
18 day after date of deposit for mailing this affidavit. (*Cal Code Civ. Proc.* § 1013(a); *Fed.*
R. Civ. Proc. 5(a); *Fed. R. Civ. Proc.* 5(c).)

19 ☐ **(BY OVERNIGHT MAIL)** I am personally and readily familiar with the business
20 practice of Aegis Law Firm PC for collection and processing correspondence for
overnight delivery, and I caused such document(s) described herein to be deposited for
21 delivery to a facility regularly maintained Federal Express for overnight delivery. (*Cal*
Code Civ. Proc. § 1013(c); *Fed. R. Civ. Proc.* 5(c).)

22 ☒ **(BY ELECTRONIC TRANSMISSION)** I caused said document(s) to be served via
23 electronic transmission via the above listed email addresses on the date below. (*Cal.*
Code Civ. Proc. § 1010.6(6); *Fed. R. Civ. Proc.* 5(b)(2)(E); *Fed. R. Civ. Proc.* 5(b)(3).)

24 ☐ **(BY PERSONAL SERVICE)** I delivered the foregoing document by hand delivery to
25 the addressed named above. (*Cal Code Civ. Proc.* § 1011; *Fed. R. Civ. Proc.*
5(b)(2)(A).)

26 ///

27 ///

28 ///

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

3 Executed on July 23, 2020, at Irvine, California.

4 

5
6 Andrea Drocco