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individually and on behalf of all others similarly
7 situated

8 [ADDITIONAL COUNSEL LISTED ON NEXT PAGE]

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF LOS ANGELES**

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13 GIOVANNI MITCHELL, AMMON
MENDES, MACKENZIE HERNANDEZ and
14 ELORA DORN, individually and on behalf of
all others similarly situated,

15
16 Plaintiffs,

17 vs.

18 THE MADERA GROUP LLC, a Nevada
limited liability company; TOCAYA
19 ORGANICA, LLC, a California limited
liability company; TOCAYA
20 MANAGEMENT LLC, a Nevada limited
liability company; TOCA MADERA WEHO
21 LLC, a California limited liability company;
TOCA MADERA MANAGEMENT LLC, a
22 Nevada limited liability company; NOBLE
23 MANAGEMENT, LLC, a Nevada limited
liability company; and DOES 1 through 100,
24 inclusive

25 Defendants.
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CASE NO. 20STCV24075

[Assigned for all purposes to the
Hon. John P. Doyle, Dept. 58]

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages
2. Failure to Pay Overtime Wages
3. Meal Period Liability under Labor Code § 226.7
4. Rest Break Liability under Labor Code § 226.7
5. Failure to Provide Accurate Itemized Employee Wage Statements
6. Failure to Pay All Wages Owed Timely and Upon Separation of Employment
7. Failure to Reimburse for Business Expenses
8. Failure to Provide Split Shift Premium Pay
9. Failure to Provide Reporting-Time Pay
10. Violation of Labor Code § 1174(d)
11. Violation of Business & Professions Code §§ 17200, et seq.
12. Penalties Pursuant to Labor Code § 2699

DEMAND FOR JURY TRIAL

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Attorneys for Plaintiffs Ammon Mendes,
Mackenzie Hernandez and Elora Dorn,
individually and on behalf of all others similarly situated

1 Plaintiffs Giovanni Mitchell, Ammon Mendes, Mackenzie Hernandez and Elora Dorn
2 (collectively, “Plaintiffs”), on behalf of themselves, the State of California, and all others similarly
3 situated, allege and complain of defendants The Madera Group LLC, a Nevada limited liability
4 company; Tocaya Organica, LLC, a California limited liability company; Tocaya Management
5 LLC, a Nevada limited liability company; Toca Madera Weho LLC, a California limited liability
6 company; Toca Madera Management LLC, a Nevada limited liability company; Noble 33
7 Management, LLC, a Nevada limited liability company; and DOES 1 through 100, inclusive
8 (collectively, “Defendants”), and each of them, as follows:

9 **I. INTRODUCTION**

10 1. This is a class action pursuant to California Code of Civil Procedure section 382 on
11 behalf of Plaintiffs and the following class: *All current and former non-exempt employees who*
12 *worked for Defendants at Tocaya Organica and/or Toca Madera Restaurants in the State of*
13 *California from June 16, 2016, and continuing to final judgment* (the “Class” or “Class
14 Members”).

15 2. Throughout the time period involved in this case, Defendants willfully maintained
16 a policy and/or practice of failing to pay all wages, including minimum and overtime wages, for
17 all hours worked; failing to provide compliant duty-free meal periods; failing to authorize and
18 permit compliant duty-free rest breaks; failing to maintain and provide accurate itemized wage
19 statements; failing to reimburse business expenses; failing to pay all wages owed timely and upon
20 separation of employment; failing to provide split shift premium pay; and failing to provide
21 reporting-time pay. Defendants’ illegal conduct has also given rise to derivative claims for unfair
22 business practices and violation of the Private Attorneys General Act of 2004 (“PAGA”).

23 3. Plaintiffs, on behalf of themselves and all other similarly situated employees,
24 pursuant to California Business & Professions Code sections 17200 through 17208, also seek all
25 monies owed but withheld and retained by Defendants to which Plaintiffs and Class Members are
26 entitled. Plaintiffs seek an order by the Court awarding restitution, injunctive relief, and all other
27 legal and equitable relief allowed, plus interest, attorneys’ fees and costs.

1 4. Plaintiffs, on behalf of themselves and all other similarly situated aggrieved
2 employees (the “Aggrieved Employees”), also bring this representative action against Defendants
3 to recover wages and penalties owed pursuant to Labor Code section 2699. Plaintiffs were
4 compelled to retain the services of counsel to file this action to protect their interests and those of
5 Aggrieved Employees and have thereby incurred attorneys’ fees and costs, which they are entitled
6 to recover under Labor Code section 2699.

7 5. The relevant time period for the claims under the PAGA discussed herein is one
8 year prior to the date Plaintiff Mitchell filed his PAGA notice online with the California Labor &
9 Workforce Development Agency (“LWDA”) and sent a letter by certified mail to Defendants.¹

10 6. For purposes of the allegations set forth herein, Class Members, along with
11 Aggrieved Employees comprising the PAGA representative action, are collectively referred to as
12 “Employees” except as otherwise specified.

13 **II. JURISDICTION AND VENUE**

14 7. This Court has jurisdiction over this action pursuant to the California Constitution,
15 Article VI, Section 10, which grants the superior court “original jurisdiction in all other causes”
16 except those given by statute to other courts. The statutes under which this action is brought do not
17 specify any other basis for jurisdiction.

18 8. This Court has jurisdiction over Defendants because, upon information and belief,
19 Defendants have sufficient minimum contacts in California, or otherwise intentionally avail
20 themselves of the California market so as to render the exercise of jurisdiction over them by
21 California courts consistent with traditional notions of fair play and substantial justice.

22 9. Venue as to Defendants is proper in this judicial district pursuant to Code of Civil
23 Procedure section 395.5 because, upon information and belief, the obligations giving rise to
24 liability occurred in part in the County of Los Angeles, State of California.

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28 ¹ On March 6, 2020, Plaintiff Mitchell filed his PAGA notice online with the LWDA and sent a
letter by certified mail to Defendants.

III. PARTIES

10. Plaintiffs are residents of California. At all relevant times herein, Defendants employed Plaintiffs as non-exempt employees and subjected them to the same employment policies and/or practices that affected Employees.

11. Plaintiffs are informed and believe, and based thereon allege, that Defendants are registered to do business in the State of California.

12. Plaintiffs are informed and believe, and based thereon allege, that Defendants do business in the State of California and, at all times hereinafter mentioned, were and are employers as defined in and subject to the California Labor Code and California Industrial Welfare Commission (“IWC”) Occupational Wage Orders. During the relevant period, Defendants employed Plaintiffs and Employees within the State of California.

13. The true names and capacities, whether individual, corporate, associate, or otherwise, of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiffs, who therefore sue defendants by such fictitious names under Code of Civil Procedure section 474. Plaintiffs are informed and believe and based thereon allege that each of the defendants designated herein as DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiffs will seek leave of court to amend this Complaint to reflect the true names and capacities of the defendants designated hereinafter as DOES when such identities become known.

14. Whenever, heretofore or hereinafter, reference is made to “Defendants,” it shall include DOES 1 through 100 identified herein.

15. Plaintiffs are informed and believe, and based thereon allege, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to other Defendants. Plaintiffs are further informed and believe, and based thereon allege, that Defendants are joint employers in that they employed Plaintiffs and Employees, at the same time and were operating as a joint enterprise and single entity during the relevant time periods.

1 16. California courts have recognized that the definition of “employer” for purposes of
2 enforcement of the California Labor Code goes beyond the concept of traditional employment to
3 reach irregular working arrangements for the purpose of preventing evasion and subterfuge of
4 California’s labor laws. *Martinez v. Combs* (2010) 49 Cal.4th 35, 65. As such, anyone who
5 directly or indirectly, or through an agent or any other person, engages, suffers, or permits any
6 person to work or exercises control over the wages, hours, or working conditions of any person
7 may be liable for violations of the California Labor Code as to that person.

8 17. California law also permits and recognizes the piercing of a corporate veil between
9 sister companies under the single enterprise rule. *Hasso v. Hapke* (2014) 227 Cal.App.4th 107,
10 155; *Greenspan v. LADT, LLC* (2010) 191 Cal.App.4th 486, 512. The single enterprise rule
11 applies where “there are two or more personalities, there is but one enterprise; and that this
12 enterprise has been so handled that it should respond, as a whole, for the debts of certain
13 component elements of it.” *Hasso, supra*, 227 Cal.App.4th at p. 155; *Greenspan, supra*, 191
14 Cal.App.4th at p. 512.

15 18. At all times throughout their employment, Plaintiffs and Employees were regularly
16 and consistently subject to the common policies and/or practices utilized by Defendants.

17 19. Accordingly, all Defendants engaged, suffered, and permitted Plaintiffs and
18 Employees to perform services from which they benefitted. Moreover, the aforementioned entities
19 had the right to exercise control over the wages, hours, and/or working conditions over Plaintiffs
20 and Employees at all relevant times herein, so as to be considered joint employers.

21 **IV. FACTUAL BACKGROUND**

22 **Defendants Systematically Violated State Wage and Hour Laws**

23 20. Plaintiffs are informed and believe that there are more than 3,000 Class Members
24 employed by Defendants within the State of California during the class period. Defendants own
25 and/or operate fourteen (14) restaurants in California restaurants.

26 21. Upon information and belief, Plaintiffs and Employees are covered by IWC Wage
27 Order No. 5-2001.

1 22. Throughout the applicable period of time, Defendant did not pay Plaintiffs and
2 Employees at least the California minimum wage for all hours worked. Labor Code section 1197
3 states the California requirement that employees must be paid at least the minimum wage fixed by
4 the Commission, and any payment of less than the minimum wage is unlawful. Similarly, Labor
5 Code section 1194 entitles “any employee receiving less than the legal minimum wage...to
6 recover in a civil action the unpaid balance of the full amount of this minimum wage.” IWC Wage
7 Order No. 5-2001 also obligates employers to pay each employee minimum wages for all hours
8 worked.

9 23. These minimum wage standards apply to each hour employees work for which they
10 are not paid. Therefore, an employer’s failure to pay for any particular hour of time worked by an
11 employee is unlawful, even if averaging an employee’s total pay over all hours worked, paid or
12 not, results in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135
13 Cal.App.4th 314, 324.

14 24. Labor Code section 1194.2 authorizes employees to recover liquidated damages for
15 violations of Labor Code section 1194. Where an employee, like Plaintiffs and Employees, is not
16 paid for all hours worked under Labor Code section 1194, the employee may recover minimum
17 wages and liquidated damages for the time for which he or she received no compensation. *Sillah v.*
18 *Command Int’l Sec. Servs.* (N.D. Cal. 2015) 154 F.Supp.3d 891 [holding that employees suing for
19 failure to pay overtime could recover liquidated damages under § 1194.2 if they also showed they
20 were paid less than minimum wage]; accord *Andrade v. Arby’s Rest. Grp., Inc.* (N.D. Cal. Dec.
21 12, 2016) No. 15-cv-03175 NC, 2016 U.S. Dist. LEXIS 172319, at *20-21.

22 25. Labor Code section 1197.1 authorizes employees who are paid less than the
23 minimum wage fixed by an applicable state or local law, or by an order of the commission a civil
24 penalty, restitution of wages, and liquidated damages as follows: “(1) [f]or any initial violation
25 that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each
26 pay period for which the employee is underpaid....[and] (2) [f]or each subsequent violation for the
27 same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay
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1 period for which the employee is underpaid regardless of whether the initial violation is
2 intentionally committed.”

3 26. Labor Code section 510 requires an employer to compensate an employee who
4 works more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first
5 eight (8) hours worked on the seventh consecutive day no less than one and one-half times the
6 employee’s regular rate of pay. Further, Labor Code section 510 obligates an employer to
7 compensate an employee at no less than twice the regular rate of pay when the employee works
8 more than twelve (12) hours in a day or more than eight (8) hours on the seventh consecutive day
9 of work.

10 27. Throughout the applicable period of time, Defendants have had a policy and/or
11 practice of failing to pay overtime wages to Plaintiffs and Employees for all overtime hours they
12 worked. The work times of Plaintiffs and Employees have been, and continue to be, greater than
13 eight (8) hours per day and/or forty (40) hours per week. Yet, because Defendants did not pay
14 Plaintiffs and Employees wages for, *inter alia*, hours that were worked off the clock, Plaintiffs and
15 Employees were deprived wages at overtime premium amounts attributable to overtime hours.
16 Moreover, the overtime that was paid was short because Defendants incorrectly calculated the
17 regular rate for purposes of calculating overtime; Defendants failed to include non-discretionary
18 forms of pay in the regular rate calculations for Plaintiffs and Employees.

19 28. By their common policy and/or practice of requiring Plaintiffs and Employees to
20 work in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without
21 compensating them at the applicable overtime rate of pay, Defendants willfully violated the
22 provisions of Labor Code sections 510 and 1198, as well as the relevant IWC Wage Order(s).

23 29. Defendants failed to provide Plaintiffs and Employees with timely duty-free meal
24 periods. Labor Code sections 226.7, 512, and IWC Wage Order No. 5-2001 requires employers to
25 provide employees with a thirty (30) minute uninterrupted and duty-free meal period within the
26 first five (5) hours of work. *Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1042
27 [“Accordingly, first meal periods must start after no more than five hours.”]. Moreover, an
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1 employee who works more than ten (10) hours per day is entitled to receive a second thirty (30)
2 minute uninterrupted and duty-free meal period. *See* Labor Code § 512.

3 30. Defendants denied Plaintiffs and Employees meal periods that comply with Labor
4 Code sections 226.7, 512, and IWC Wage Order No. 5-2001. Plaintiffs and Employees suffered
5 late, short, interrupted, and/or missed first and second meal periods. *See Donohue v. AMN*
6 *Services, LLC* (2021) 11 Cal.5th 58 [the California Supreme Court reversed the Fourth Appellate
7 District and set forth two clear rules: (1) employers are not permitted to round time records when
8 determining if employees are entitled to meal premium pay, and (2) it is the employer's burden to
9 show that compliant meal periods were provided to employees if the time records show
10 otherwise]. Plaintiffs and Aggrieved Employees did not receive compliant meal periods within the
11 first five (5) hours of their work, and did not receive compliant second meal periods when working
12 shifts of ten (10) hours or more.

13 31. Defendants were also obligated but failed to provide Plaintiffs and Employees with
14 net ten (10) minute rest breaks for work shifts exceeding four (4) hours or a major fraction thereof
15 worked as required by Labor Code section 226.7 and IWC Wage Order No. 5-2001. The
16 California Supreme Court held in *Augustus v. ABM Security Services Inc.* (2016) 2 Cal. 5th 257
17 that employees must be relieved of all duties during rest breaks pursuant to Labor Code section
18 226.7 and Subdivision 12(A) of Wage Order No. 5-2001. The Court found that the Wage Orders
19 and the Labor Code require employers to “relinquish control over how employees spend their
20 time” and “relieve employees of all duties” during employees’ 10-minute rest periods. Plaintiffs
21 and Employees did not receive compliant rest breaks.

22 32. In addition to failing to authorize and permit compliant meal and rest breaks,
23 Plaintiffs and Employees were not compensated with one (1) hours’ worth of pay at their regular
24 rates of pay when they were not provided with compliant meal and rest breaks in accordance with
25 Labor Code section 226.7(b). *See Ferra v. Loews Hollywood Hotel* (2021) 11 Cal.5th 858.

26 33. Defendants violated Labor Code sections 2800 and 2802 by failing to pay and
27 indemnify Plaintiffs and Employees for their necessary business expenditures and losses incurred
28 in direct consequence of the discharge of their duties.

1 34. Plaintiffs and Employees occasionally worked split shifts. A split shift is a work
2 schedule that is interrupted by non-paid and non-working time periods established by the
3 employer. Employees are entitled to additional pay known as a split shift premium when their
4 schedule includes a split shift. The premium is equal to one hour of pay at the rate of the minimum
5 wage. Plaintiffs and Employees worked split shifts without receiving split shift premium pay from
6 Defendants.

7 35. Although that Plaintiffs and Employees showed up for work at their regularly
8 schedule times, some days there was insufficient work, and then they were sent home by their
9 supervisors. On such days, employees must be paid for at least half of the hours scheduled to
10 work, but in no case less than two (2) hours nor more than four (4) hours at the employee's regular
11 rate of pay; this is called reporting-time pay. Defendants did not pay Plaintiffs and Employees
12 sufficient reporting-time pay.

13 36. Labor Code section 203 provides "if an employer willfully fails to pay...any wages
14 of an employee who is discharged or who quits, the wages of the employee shall continue as a
15 penalty..." for up to 30 days. Labor Code § 203; *Mamika v. Barca* (1998) 68 Cal.App.4th 487,
16 492.

17 37. Due to Defendants' noncompliant policies and/or practices described herein,
18 Plaintiffs and Employees whose employment with Defendants concluded were not compensated
19 for, *inter alia*, all straight-time and overtime hours worked, and were not paid all meal and rest
20 break premiums owed at their regular rates of pay. Thus, Defendants have failed to pay Plaintiffs
21 and Employees all wages, whose sums were certain, at the time of termination or within seventy-
22 two (72) hours of their resignation and have failed to pay those sums for thirty (30) days thereafter
23 in violation of Labor Code section 203.

24 38. Labor Code section 204 expressly requires that "[a]ll wages...earned by any person
25 in any employment are due and payable twice during each calendar month, on days designated in
26 advance by the employer as the regular paydays." Pursuant to Labor Code section 204(d), these
27 requirements are "deemed satisfied by the payment of wages for weekly, biweekly or semimonthly
28 payroll if the wages are paid not more than seven calendar days following the close of the payroll

1 period.” Due to Defendants’ failure to pay Plaintiffs and Employees for, *inter alia*, all straight-
2 time and overtime hours worked, Defendants failed to timely pay Plaintiffs and Employees within
3 seven (7) days of the close of the payroll period in accordance with Labor Code section 204 on a
4 regular and consistent basis.

5 39. Through Labor Code section 210 and the PAGA, and to the extent permitted by
6 law, Plaintiffs and Employees are entitled to recover civil penalties for violations of Labor Code
7 section 204.

8 40. Plaintiffs and Employees were not furnished with accurate itemized wage
9 statements that accurately showed their gross wages earned, net wages earned, premium payments
10 at their regular rates of pay for noncompliant meal and rest breaks, all applicable hourly rates and
11 corresponding number of hours worked at each hourly rate in effect during each pay period, and
12 other information required by Labor Code section 226(a).

13 41. During the relevant period, Defendants have knowingly and intentionally failed to
14 provide Plaintiffs and Employees with the above-described writing through actions alleged herein
15 in violation of Labor Code section 226. Plaintiffs and Employees have been injured by
16 Defendants’ intentional violation of Labor Code section 226(a) because they were denied both
17 their legal right to receive, and their protected interest in receiving, accurate itemized wage
18 statements.

19 42. In addition, because Defendants failed to provide the accurate and mandated
20 information on the itemized wage statements, Plaintiffs and Employees have been prevented by
21 Defendants from determining, *inter alia*, if all hours worked were paid and the extent of the
22 underpayment. Plaintiffs had to file this lawsuit and perform computations in order to analyze
23 whether, and to what extent, Plaintiffs and Employees suffered underpayment, thereby causing
24 Plaintiffs to incur expenses and time lost. Thus, Plaintiffs and Employees are owed the greater of
25 all actual damages or fifty dollars (\$50.00) for the initial pay period in which a violation occurs
26 and one hundred dollars (\$100.00) per employee for each violation in a subsequent pay period, not
27 exceeding an aggregate penalty of four thousand dollars (\$4,000.00), as provided for in Labor
28 Code section 226(e).

43. Moreover, for the violations described above, Plaintiffs and Employees may also recover civil penalties pursuant to Labor Code section 226.3 and the PAGA for Defendants' violations of Labor Code section 226(a).

44. Further, Plaintiffs and Employees have been denied their legal right and protected interest in having available at a central location at the plant or establishment where they are employed, accurate and complete payroll records showing the hours worked daily by, and the wages paid to, Plaintiffs and Employees at those respective locations pursuant to Labor Code section 1174. Pursuant to Labor Code section 1174.5 and the PAGA, Plaintiffs and Employees may also recover civil penalties for violation of Labor Code section 1174(d).

45. Based on the foregoing, Defendants have also engaged in unlawful and unfair business practices in violation of California's Business and Professions Code sections 17200, *et seq.*, thereby entitling Plaintiffs and Class Members to restitution, disgorgement of profits, or other equitable remedies.

V. CLASS ACTION ALLEGATIONS

46. Plaintiffs bring this action on behalf of themselves and all others similarly situated, as a class action pursuant to Code of Civil Procedure section 382. Plaintiffs seek to represent a proposed class comprised of and defined as follows:

All current and former non-exempt employees who worked for Defendants at Tocaya Organica and/or Toca Madera Restaurants in the State of California from June 16, 2016, and continuing to final judgment (again, the “Class” or “Class Members”).

47. Plaintiffs reserve the right under California Rule of Court, Rule 3.765(b) to amend or modify the class description identified herein with greater specificity or further division into subclasses or limitation to particular issues.

48. This action has been brought and may properly be maintained as a class action under the provisions of Code of Civil Procedure section 382 because there is a well-defined community of interest in the litigation and the Class is easily ascertainable.

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1 **A. Numerosity**

2 48. The potential members of the Class as defined are so numerous that joinder of all
3 the members of the Class is not practicable. Plaintiffs are informed and believe that there are more
4 than three thousand Class Members employed by Defendants within the State of California during
5 the class period.

6 49. Plaintiffs allege Defendants' employment records would provide information as to
7 the number and location of all Class Members.

8 **B. Commonality**

9 50. There are questions of law and fact common to the Class that predominate over any
10 questions affecting only individual Class Members. These common questions of law and fact
11 include, without limitation:

12 a. Whether Defendants' failure to pay wages, without abatement or
13 reduction, in accordance with the California Labor Code, was willful;

14 b. Whether Defendants had a corporate policy and/or practice of failing to pay
15 Class Members for all hours worked in violation of California law;

16 c. Whether Defendants failed to pay at least the minimum wage to Class
17 Members for all hours worked;

18 d. Whether Defendants required Class Members to work over eight (8) hours
19 per day and/or over forty (40) hours per week and failed to pay the legally required overtime
20 compensation to Class Members;

21 e. Whether Defendants deprived Class Members of legally compliant meal
22 periods and rest breaks;

23 f. Whether Defendants had a corporate policy and/or practice of failing to pay
24 Class Members required premium payments for noncompliant (*e.g.*, short, late, interrupted, and/or
25 missed altogether) meal periods and rest breaks in violation of California law;

26 g. Whether Defendants failed to reimburse Class Members for necessary
27 business-related expenses and costs;

- 1 h. Whether Defendants failed to provide split shift premium pay to Class
2 Members;
- 3 i. Whether Defendants failed to provide sufficient reporting-time pay to Class
4 Members;
- 5 j. Whether Defendants failed to timely pay all wages due to Class Members
6 during their employment;
- 7 k. Whether Defendants failed to pay all wages due to Class Members within
8 the required time upon their discharge or resignation;
- 9 l. Whether Defendants complied with wage reporting as required by the
10 California Labor Code, including, *inter alia*, section 226;
- 11 m. Whether Defendants kept complete and accurate payroll records as required
12 by the California Labor Code, including, *inter alia*, section 1174(d);
- 13 n. Whether Defendants' conduct was willful or reckless;
- 14 o. Whether Defendants engaged in unfair business practices in violation of the
15 Unfair Competition Law, Business and Professions Code sections 17200, *et seq.*;
- 16 p. Whether Class Members are entitled to compensatory damages pursuant to
17 the California Labor Code;
- 18 q. The appropriate amount of damages, restitution, and/or monetary penalties
19 resulting from Defendants' violation of California law;
- 20 r. Whether Class Members are entitled to attorneys' fees and costs; and
- 21 s. Whether Class Members are entitled to interest.

22 **C. Typicality**

23 51. The claims of Plaintiffs are typical of the claims of the Class. Plaintiffs and Class
24 Members sustained injuries and damages arising out of and caused by Defendants' common
25 course of conduct in violation of laws and regulations that have the force and effect of law and
26 statutes, as alleged herein.

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56. Throughout the period of time applicable to this cause of action, Defendants did not pay Plaintiffs and Class Members at least the California minimum wage for all hours worked, thereby violating Labor Code section 1194 and the relevant IWC Wage Order(s). Plaintiffs and Class Members performed off-the-clock work pre- and post- shift that was not recorded by Defendants. In addition, Plaintiffs and Class Members were suffered to work during meal periods, which time was not compensated. Moreover, Defendants engaged in the practice of rounding Plaintiffs' and Class Members' work time such that they were not fully compensated for all hours worked.

57. Defendants' failure to pay Plaintiffs and Class Members the minimum wage as required is unlawful and violates Labor Code sections 1194, 1194.2, 1197, and 1197.1. As a result, Plaintiffs and Class Members are entitled to recover the unpaid balance of their minimum wage compensation, as well as interest, costs, and attorney's fees, and liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

SECOND CAUSE OF ACTION

FAILURE TO PAY OVERTIME WAGES

Cal. Labor Code §§ 510 and 1198 and the Relevant IWC Wage Orders

[On Behalf of Plaintiffs and the Class against All Defendants]

58. Plaintiffs, on behalf of themselves and the Class, re-allege and incorporate by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully alleged herein.

59. At all times relevant to this Complaint, Labor Code section 510(a) was in effect and provided: “Eight hours of labor constitutes a day’s work. Any work in excess of eight hours in one workday and any work in excess of forty hours in any one workweek...shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.”

60. Pursuant to the relevant IWC Wage Order(s), an employee shall not be employed more than eight (8) hours in any workday and/or more than forty (40) hours in any workweek unless the employee receives one and one-half (1 ½) times such employee's regular rate of pay for all hours worked over eight (8) hours in any workday and/or more than forty (40) hours in any

1 workweek. Further, an employer must compensate an employee at no less than twice the
2 employee's regular rate of pay when the employee works more than twelve (12) hours in a day or
3 more than eight (8) hours on the seventh consecutive day of work.

4 61. At all times mentioned, Plaintiffs and the Class regularly worked shifts that
5 consisted of more than eight (8) hours in a workday and/or more than forty (40) hours in a
6 workweek and were not paid proper overtime wages for all overtime hours worked as a result of,
7 but not limited to, Defendants' failure to pay for work performed off the clock, including pre- and
8 post-shift, and during meal periods. Defendant's practice of rounding Plaintiffs' and Class
9 Members' work time also resulted in the undercounting and ultimately underpayment of all
10 overtime hours worked. Moreover, the overtime that was paid was short as Defendants incorrectly
11 calculated the regular rate for purposes of calculating overtime; Defendants failed to include non-
12 discretionary forms of pay in the regular rate calculations for Plaintiffs and Class Members.

13 62. Accordingly, by requiring Plaintiffs and the Class to work in excess of eight (8)
14 hours per day and/or forty (40) hours per week without properly compensating them overtime
15 wages, as described above, Defendants willfully violated the provisions of Labor Code section
16 1194.

17 63. As a result of the unlawful acts of Defendants, Plaintiffs and the Class have been
18 deprived of overtime wages in amounts to be determined at trial, and are entitled to recovery of
19 such amounts, plus interest and penalties thereon, costs, and attorneys' fees.

20 **THIRD CAUSE OF ACTION**

21 **FAILURE TO PROVIDE MEAL PERIODS**

22 **Cal. Labor Code §§ 226.7, 512, and the Relevant IWC Wage Orders**

23 **[On Behalf of Plaintiffs and the Class against All Defendants]**

24 64. Plaintiffs, on behalf of themselves and the Class, re-allege and incorporate by
25 reference all of the allegations contained in the preceding paragraphs of this Complaint as though
26 fully alleged herein.

27 65. Labor Code section 226.7 provides "an employer shall not require an employee to
28 work during a meal or rest or recovery period mandated pursuant to an applicable statute, or

1 applicable regulation, standard, or order of the Industrial Welfare Commission (“IWC”).”
2 Similarly, Labor Code section 512 and the IWC Wage Orders require employers to provide
3 employees with thirty (30) minute uninterrupted and duty-free meal periods within the first five
4 (5) hours of work. *See Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1042
5 (“Accordingly, first meal periods must start after no more than five hours.”) Moreover, an
6 employee who works more than ten (10) hours per day is entitled to receive a second thirty (30)
7 minute uninterrupted and duty-free meal period. *See Labor Code § 512.*

8 66. Despite these legal requirements, Defendants failed to always provide meal periods
9 that comply with Labor Code sections 226.7, 512, and IWC Wage Order No. 5-2001. Plaintiffs
10 and Class Members experienced short, untimely and interrupted meal periods, and on occasion,
11 the demands of employee job duties were such that they were prevented from taking a meal period
12 altogether. Having been thus subjected to late, short, interrupted, and missed meal periods,
13 Plaintiffs and Class Members did not receive their statutorily mandated meal periods.

14 67. To the extent Defendants claim that Plaintiffs and Class Members waived their
15 rights to second meal periods for shifts worked in excess of ten (10) hours, the waivers are not
16 applicable to those occasions when Plaintiffs and Class Members worked shifts in excess of
17 twelve (12) hours a day and/or to the extent the waivers are ineffective on-duty meal period
18 agreements where the nature of the work does not prevent them from being relieved of all duties.

19 68. Under Labor Code section 226.7 and the relevant IWC Wage Order(s), Plaintiffs
20 and Class Members are entitled to be paid one (1) hour of additional wages at their regular rates of
21 pay for each day they were not provided with all required meal periods. *See Ferra v. Loews*
22 *Hollywood Hotel* (2021) 11 Cal.5th 858. Defendants failed to pay Plaintiffs and Class Members
23 the additional wages to which they were entitled for noncompliant meal periods.

24 69. As a result, Defendants are liable to Plaintiffs and each Class Member for one (1)
25 hour of additional wages at their regular rates of pay for each workday a compliant meal period
26 was not provided, in a sum to be proven at trial.

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1 **FOURTH CAUSE OF ACTION**

2 **FAILURE TO AUTHORIZE AND PERMIT REST BREAKS**

3 **Cal. Labor Code § 226.7 and the Relevant IWC Wage Orders**

4 **[On Behalf of Plaintiffs and the Class against All Defendants]**

5 70. Plaintiffs, on behalf of themselves and the Class, re-allege and incorporate by
6 reference all of the allegations contained in the preceding paragraphs of this Complaint as though
7 fully alleged herein.

8 71. Under the applicable IWC Wage Order(s), an employer must authorize and permit
9 all employees to take ten (10) minute duty free rest breaks for every major fraction of four hours
10 worked. Labor Code section 226.7 provides “an employer shall not require an employee to work
11 during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
12 regulation, standard, or order of the Industrial Welfare Commission.”

13 72. Defendants are required by California law to authorize and permit breaks of ten
14 (10) uninterrupted minutes for each four hours of work or major fraction thereof (*i.e.*, more than
15 two hours). That is, the required number of rest breaks is equal to the number of work hours
16 divided by four, and if the work time is not evenly divisible by four, any remainder of two hours
17 or less is rounded down and that which exceeds two hours is rounded up. For example, if a Class
18 Member’s work time is six hours and ten minutes, he or she is entitled to two rest breaks. If the
19 work time is nine hours, the employee is still entitled to only two rest breaks. (There is an
20 exception: if the shift is under three and one-half hours, no rest break is required.) Each failure to
21 authorize rest breaks as so required is itself a violation of California’s rest break laws.

22 73. Despite these legal requirements, Defendants failed to authorize and permit
23 Plaintiffs and Class Members to take timely, duty-free rest breaks. Plaintiffs and Class Members
24 were subject to policies and/or practices that prevented them from taking legally compliant rest
25 breaks. Defendants did not relieve Plaintiffs and Class Members of all duties during their rest
26 breaks and occasionally required them to be available to continue working—or, in fact, interrupted
27 them—during their rest breaks. Notwithstanding any formal written policy to the contrary,
28 Defendants’ actual custom and business practice was to undermine any formal policy of

1 permitting rest breaks by pressuring Class Members to perform their duties in a way that omitted
2 breaks, including, but not limited to, scheduling a heavy workload that made taking breaks
3 extremely difficult, maintaining an informal anti-rest break policy enforced through ridicule or
4 reprimand, and exerting coercion against the taking of, creating incentives to forego, or otherwise
5 encouraging the skipping of legally protected breaks. Here, as a companywide practice and in fact,
6 Defendants did not offer Plaintiffs and Class Members the opportunity to receive compliant off-
7 duty rest breaks and, thus, “the court may not conclude employees voluntarily chose to
8 skip...breaks.” *Alberts v. Aurora Behavioral Health Care* (2015) 241 Cal.App.4th 388, 410 (“[i]f
9 an employer fails to provide legally compliant meal or rest breaks, the court may not conclude
10 employees voluntarily chose to skip those breaks.”); *accord, Brinker, supra*, 53 Cal.4th at p. 1033
11 (“No issue of waiver ever arises for a rest break that was required by law but never authorized; if a
12 break is not authorized, an employee has no opportunity to decline to take it.”)

13 74. In *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, the court
14 expressly rejected the employer’s assertion that it could provide an on-duty rest break to
15 employees who worked as security guards and further explained “that employers [must] relinquish
16 any control over how employees spend their break time, and relieve their employees of all duties.”
17 *Id.* at 273. However, Defendants did not relieve Plaintiffs and Class Members of all duties and
18 relinquish control over how Plaintiffs and Class Members spend their time.

19 75. Plaintiffs and Class Members were not compensated with one (1) hours’ worth of
20 pay at their regular rates of pay when they were not provided with compliant rest breaks in
21 accordance with Labor Code section 226.7(b). *See Ferra v. Loews Hollywood Hotel* (2021) 11
22 Cal.5th 858.

23 76. As a result, Defendants are liable to Plaintiffs and Class Members for one (1) hour
24 of additional of pay at their regular rates of pay for each workday when a compliant rest break was
25 not provided, in a sum to be proven at trial.

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1 **FIFTH CAUSE OF ACTION**

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

3 **Cal. Labor Code §§ 226 and 226.3**

4 **[On Behalf of Plaintiffs and the Class against All Defendants]**

5 77. Plaintiffs, on behalf of themselves and the Class, re-allege and incorporate by
6 reference all of the allegations contained in the preceding paragraphs of this Complaint as though
7 fully alleged herein.

8 78. Labor Code section 226(a) requires employers, semi-monthly or at the time or each
9 payment of wages, to furnish employees an accurate itemized statement in writing showing:

- 10 (1) gross wages earned;
- 11 (2) total hours worked by the employee;
- 12 (3) the number of piece-rate units earned and any applicable piece rate if the
13 employee is paid on a piece rate;
- 14 (4) all deductions, provided that all deductions made on written orders of the
15 employee may be aggregated and shown as one item;
- 16 (5) net wages earned;
- 17 (6) the inclusive dates of the period for which the employee is paid;
- 18 (7) the name of the employee and only the last four digits of his or her social
19 security number or an employee identification number other than a social security number;
- 20 (8) the name and address of the legal entity that is the employer...; and
- 21 (9) all applicable hourly rates in effect during the pay period and the
22 corresponding number of hours worked at each hourly rate by the employee....

23 79. During the relevant time period, due to Defendants', *inter alia*, failure to provide
24 Plaintiffs and Class Members with lawful meal periods and rest breaks (or pay meal and rest break
25 premiums at the regular rates of pay thereon), along with the failure to pay minimum and overtime
26 wages, the wage statements issued by Defendants, at a minimum, do not indicate the correct
27 amount of gross wages earned, the correct total hours worked, the correct net wages earned, or the
28 applicable and/or correct hourly rates in effect during the pay period and the corresponding

1 number of hours worked at each hourly rate in violation of Labor Code section 226(a)(1), (2), (5),
2 and (9).

3 80. An employee suffering injury as a result of a knowing and intentional failure by an
4 employer to comply with Labor Code section 226(a) is entitled to recover the greater of all actual
5 damages or fifty dollars (\$50.00) for the initial pay period in which a violation occurs and one
6 hundred dollars (\$100.00) per employee for each violation in a subsequent pay period, not
7 exceeding an aggregate penalty of four thousand dollars (\$4,000.00), and is entitled to an award of
8 costs and reasonable attorneys' fees.

9 81. The absence of accurate information on their wage statements has delayed
10 challenge to Defendants' unlawful pay practices, requires discovery and mathematical
11 computations to determine the amount of wages owed, causes difficulty and expense in attempting
12 to reconstruct time and pay records, and led to submission of inaccurate information about wages
13 and amounts deducted from wages to state and federal governmental agencies. Plaintiffs would not
14 have had to engage in these efforts and incur these costs had Defendants provided accurate wage
15 statements. This also delayed Plaintiffs' ability to demand and recover the underpayment of wages
16 from Defendants.

17 82. Thus, Plaintiffs and Class Members have been injured by Defendants' violation of
18 Labor Code section 226(a) because they were denied both their legal right to receive, and their
19 protected interest in receiving, accurate itemized wage statements.

20 83. Plaintiffs and Class Members are thus entitled to recover from Defendants the
21 greater of their actual damages caused by Defendants' failure to comply with Labor Code section
22 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000.00) per employee
23 pursuant to Labor Code section 226(e), and any other allowable penalties including those pursuant
24 to Labor Code section 226.3.

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1 **SIXTH CAUSE OF ACTION**

2 **FAILURE TO PAY ALL WAGES WITHIN A TIMELY MANNER**

3 **AND UPON SEPARATION OF EMPLOYMENT**

4 **Cal. Labor Code §§ 201, 202, 203, 204, and 210**

5 **[On Behalf of Plaintiffs and the Class against All Defendants]**

6 84. Plaintiffs, on behalf of themselves and the Class, re-allege and incorporate by
7 reference all of the allegations contained in the preceding paragraphs of this Complaint as though
8 fully alleged herein.

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

15 86. Labor Code section 203 provides that if an employer willfully fails to pay
16 compensation promptly upon discharge or resignation, as required by sections 201 and 202, then
17 the employer is liable for penalties in the form of continued compensation up to thirty (30) days.

18 87. As alleged herein and above, Defendants' failure to pay wages was willful in that
19 Defendants knew wages (*e.g.*, for off-the-clock work, unpaid premiums) were owed to Plaintiffs
20 and Class Members, but failed to pay said wages, at the time of termination, or within 72 hours of
21 resignation, thus entitling Plaintiffs and Class Members to penalties under Labor Code section
22 203, which provides that an employee's wages shall continue as a penalty until paid for a period of
23 up to thirty (30) days from the time they were due.

24 88. Labor Code section 204 requires that all wages earned by any person in any
25 employment between the 1st and 15th day, inclusive, of any calendar month, other than those
26 wages due upon termination of an employee, are due and payable between the 16th and the 26th
27 day of the month during which the labor was performed, and that all wages earned by any person
28 in any employment between the 16th and the last day, inclusive, of any calendar month, other than

1 those wages due upon termination of an employee, are due and payable between the 1st and 10th
2 day of the following month. Section 204 also requires that all wages earned for labor in excess of
3 the normal work period shall be paid no later than the payday for the next regular payroll period.

4 89. The requirements of Labor Code section 204 shall be deemed satisfied by the
5 payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more
6 than seven calendar days following the close of the payroll period when the wages were earned.

7 90. During the relevant time period, Defendants failed to pay Plaintiffs and Class
8 Members all wages due to them within the time period specified by Labor Code section 204
9 including, but not limited to, unpaid minimum and overtime wages, along with unpaid meal and
10 rest break premiums.

11 91. Labor Code section 210 imposes upon Defendants a penalty of \$100.00 for each
12 violation of failing to pay the wages of each employee. Furthermore, Labor Code section 210
13 imposes upon Defendants for each subsequent violation, or any willful or intentional violation, of
14 failure to pay the wages of each employee a penalty of \$200.00, plus 25 percent of the amount
15 unlawfully withheld.

16 92. Pursuant to Labor Code sections 218.5 and 218.6, along with California Civil Code
17 sections 3287(b) and 3289, Plaintiffs request that the Court award reasonable attorneys' fees and
18 the costs incurred by them in this action, along with pre-judgment interest on all amounts
19 recovered herein, as well as any statutory penalties Defendants may owe under the California
20 Labor Code and/or any other statute.

21 **SEVENTH CAUSE OF ACTION**

22 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

23 **Cal. Labor Code §§ 2800 and 2802**

24 **[On Behalf of Plaintiffs and the Class against All Defendants]**

25 93. Plaintiffs, on behalf of themselves and the Class, re-allege and incorporate by
26 reference all of the allegations contained in the preceding paragraphs of this Complaint as though
27 fully alleged herein.

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1 94. Labor Code section 2802 provides that an employer shall indemnify his or her
2 employee for all necessary expenditures or losses incurred by the employee in direct consequence
3 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,
4 even though unlawful, unless the employee, at the time of obeying the directions, believed them to
5 be unlawful.

6 95. Defendants systematically failed to reimburse Plaintiffs and Class Members for
7 necessary business expenses incurred at the direction of Defendants.

8 96. For example, Defendants had a uniform policy and/or practice that required
9 Plaintiffs and Class Members to use their personal cell phone and cell phone data plan to carry out
10 their job duties. Plaintiffs and Class Members were required to download the HotSchedules,
11 Homebase and Radar Schedules (formerly Ctuit Schedules) mobile applications, among others, to
12 their personal cell phones and to access them frequently for scheduling and communication
13 purposes. Plaintiffs and Class Members were also required to respond to Defendants' work-related
14 messages; and Plaintiffs and Class Members used their personal cell phones to respond to such
15 messages. Although Defendants required Plaintiffs and Class Members to regularly use their
16 personal cell phones and cell phone data to carry out work-related responsibilities, Defendants
17 failed to reimburse Plaintiffs and Class Members for the reasonable costs of their personal cell
18 phones and cell phone data plans.

19 97. Additionally, during the relevant time period, Defendants had a policy and/or
20 practice that required Plaintiffs and Class Members to purchase certain mobile applications for the
21 benefit of Defendants.

22 98. These losses were incurred as a direct consequence of Plaintiffs' and Class
23 Members' duties and at the direction of Defendants.

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1 **EIGHTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE SPLIT SHIFT PREMIUM PAY**

3 **[On Behalf of Plaintiffs and the Class against All Defendants]**

4 99. Plaintiffs, on behalf of themselves and the Class, re-allege and incorporate by
5 reference all of the allegations contained in the preceding paragraphs of this Complaint as though
6 fully alleged herein.

7 100. Plaintiffs and Class Members occasionally worked split shifts. A split shift is a
8 work schedule that is interrupted by non-paid and non-working time periods established by the
9 employer.

10 101. Employees are entitled to additional pay known as a “split shift premium” when
11 their schedule includes a split shift. The premium is equal to one hour of pay at the rate of the
12 minimum wage.

13 102. Plaintiffs and Employees worked split shifts without receiving split shift premium
14 pay. As a result, Plaintiffs and Employees have been deprived of wages in a sum to be proven.
15 *See*, Section 4 (C) of IWC Wage Order No. 5-2001.

16 **NINTH CAUSE OF ACTION**

17 **FAILURE TO PROVIDE REPORTING-TIME PAY**

18 **[On Behalf of Plaintiffs and the Class against All Defendants]**

19 103. Plaintiffs, on behalf of themselves and the Class, re-allege and incorporate by
20 reference all of the allegations contained in the preceding paragraphs of this Complaint as though
21 fully alleged herein.

22 104. Although Plaintiffs and Class Members showed up for work at their regularly
23 schedule times, some days there was insufficient work, and then they were sent home by their
24 supervisors. Defendants did not pay Plaintiffs and Class Members sufficient reporting-time pay in
25 those instances.

26 105. More specifically, Plaintiffs and Class Members presented themselves at their
27 workplace, but there was no work to perform or they worked less than one-half their scheduled
28 shifts. On such days, Plaintiffs and Class Members must be paid for at least half of the hours

1 scheduled to work, but in no case less than two (2) hours at the Employee's regular rates of pay;
2 this is called reporting-time pay. *See, e.g.,* Section 5 (A) and (B) of IWC Wage Order No. 5-2001.

3 **TENTH CAUSE OF ACTION**

4 **VIOLATION OF LABOR CODE § 1174(d)**

5 **[On Behalf of Plaintiffs and the Class against All Defendants]**

6 106. Plaintiffs, on behalf of themselves and the Class, re-allege and incorporate by
7 reference all of the allegations contained in the preceding paragraphs of this Complaint as though
8 fully alleged herein.

9 107. Pursuant to Labor Code section 1174(d), an employer shall keep, at a central
10 location in the state or at the plants or establishments at which employees are employed, payroll
11 records showing the hours worked daily by and the wages paid to employees employed at the
12 respective plants or establishments. These records shall be kept in accordance with rules
13 established for this purpose by the commission, but in any case, shall be kept on file for not less
14 than three years.

15 108. Defendants have intentionally and willfully failed to keep accurate and complete
16 payroll records showing the hours worked daily by and the wages paid to Plaintiffs and Class
17 Members.

18 109. As a result of Defendants' violation of Labor Code section 1174(d), Plaintiffs and
19 Class Members have suffered injury and damage to their statutorily protected rights.

20 110. More specifically, Plaintiffs and Class Members have been injured by Defendants'
21 intentional and willful violation of Labor Code section 1174(d) because they were denied both
22 their legal right and protected interest in having available, accurate, and complete payroll records
23 pursuant to Labor Code section 1174(d).

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1 **ELEVENTH CAUSE OF ACTION**

2 **UNFAIR COMPETITION LAW VIOLATIONS**

3 **Cal. Business & Professions Code §§ 17200, *et seq.***

4 **[On Behalf of Plaintiffs and the Class against All Defendants]**

5 111. Plaintiffs, on behalf of themselves and the Class, re-allege and incorporate by
6 reference all of the allegations contained in the preceding paragraphs of this Complaint as though
7 fully alleged herein.

8 112. The Unfair Competition Law (“UCL”), California Business & Professions Code
9 sections 17200, *et seq.*, prohibits any unlawful, unfair, or fraudulent business practices. Business
10 & Professions Code section 17204 allows “any person who has suffered injury in fact and has lost
11 money or property” to prosecute a civil action for violation of the UCL. Such a person may bring
12 such an action on behalf of himself or herself and others similarly situated who are affected by the
13 unlawful, unfair, or fraudulent business practice.

14 113. The statute of limitations for a claim under the UCL is four years. Accordingly, the
15 actionable period for this cause of action is four years prior to the filing of this Complaint through
16 the present, and on-going until the violations are corrected and/or the Class is certified.

17 114. Labor Code section 90.5(a) states that it is the public policy of California to
18 vigorously enforce minimum labor standards in order to ensure employees are not required to
19 work under substandard and unlawful conditions, and to protect employers who comply with the
20 law from those who attempt to gain competitive advantage at the expense of their workers by
21 failing to comply with minimum labor standards.

22 115. A violation of Business and Professions Code sections 17200, *et seq.* may be
23 predicated upon the violation of any state or federal law. Defendants’ policies and/or practices
24 have violated state law in at least the following respects:

25 (a) Requiring Plaintiffs and Class Members to work without paying them the
26 minimum wage for all hours worked in violation of Labor Code sections 1194, 1194.2, 1197, and
27 the applicable IWC Wage Order(s);
28

(b) Requiring Plaintiffs and Class Members to work overtime without paying them the proper compensation in violation of Labor Code sections 510, 1198, and the applicable IWC Wage Order(s);

(c) Failing to provide compliant duty-free meal periods to Plaintiffs and Class Members and failing to authorize and permit compliant duty-free rest breaks to Plaintiffs and Class Members in violation of Labor Code sections 226.7, 512, and the applicable IWC Wage Order(s);

(d) Failing to provide Plaintiffs and Class Members split shift premium pay.

(e) Failing to provide Plaintiffs and Class Members reporting-time pay;

(f) Failing to reimburse Plaintiffs and Class Members for necessary business expenses incurred in performing their job duties, in violation of Labor Code section 2802;

(g) Failing to timely pay all wages to Plaintiffs and Class Members during their employment and upon separation of employment, in violation of Labor Code sections 201, 202, 203, 204, and 210; and

(h) Failing to maintain and provide Plaintiffs and Class Members with accurate itemized wage statements, in violation of Labor Code section 226(a).

Thus, Defendants engaged in unlawful competition in violation of sections 17200, *et seq.* of the California Business & Professions Code by violating, *inter alia*, sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 558, 512, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2800, and 2802 of the Labor Code and the applicable IWC Wage Order(s).

116. As a direct and proximate result of Defendants' unlawful business practices, Plaintiffs and Class Members have suffered economic injuries because Defendants' conduct has damaged Plaintiffs and Class Members by, *inter alia*, wrongfully denying them all wages, including minimum and overtime wages, failing to pay all meal and rest breaks premiums at the regular rate of pay, and neglecting to reimburse for necessary business expenses, along with the corresponding interest, in a timely manner and upon separation, and while supplying them inaccurate and misleading wage statements. Such conduct is substantially injurious to Plaintiffs and Class Members.

117. Additionally, Defendants intentionally avoided paying Plaintiffs and Class Members wages and monies, thereby creating for Defendants an artificially lower cost of doing business in order to undercut their competitors and establish a greater foothold in the marketplace. Through their actions alleged herein, Defendants have engaged in unfair competition within the meaning of section 17200 of the California Business & Professions Code.

118. Defendants have profited from their unlawful, unfair, and/or fraudulent acts and practices. Plaintiffs and Class Members are entitled to monetary relief pursuant to the California Business & Professions Code sections 17203 and 17208 from at least four years prior to the filing of this Complaint through the date of such restitution, at rates specified by law. Defendants should be required to disgorge all the profits and gains they have reaped and restore such profits and gains to Plaintiffs and Class Members, from whom they were unlawfully taken.

119. Defendants' course of conduct, acts, and practices in violation of the California laws mentioned above constitute independent violations of sections 17200, *et seq.* of the California Business & Professions Code.

120. Plaintiffs and Class Members are entitled to enforce all applicable penalty provisions of the California Labor Code pursuant to California Business & Professions Code section 17202.

121. Plaintiffs have assumed the responsibility of enforcement of the laws and public policies specified herein by suing on behalf of themselves and Class Members previously or presently employed by Defendants in California. Plaintiffs' success in this action will enforce important rights affecting the public interest. Plaintiffs will incur a financial burden in pursuing this action in the public interest. Therefore, an award of reasonable attorneys' fees to Plaintiffs is appropriate pursuant to Code of Civil Procedure section 1021.5.

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1 **TWELVETH CAUSE OF ACTION**

2 **PENALTIES PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF 2004**

3 **Cal. Labor Code §§ 2698, *et seq.***

4 **[On Behalf of Plaintiffs and Aggrieved Employees against All Defendants]**

5 122. Plaintiffs, on behalf of themselves and Aggrieved Employees, re-allege and
6 incorporate by reference all of the allegations contained in the previous paragraphs of this
7 Complaint as though fully set forth herein.

8 123. Plaintiffs, on behalf of themselves and Aggrieved Employees, bring this
9 representative action against Defendants to recover wages and penalties pursuant to the Private
10 Attorneys General Act of 2004 (“PAGA”), Labor Code sections 2698, *et seq.*

11 124. Based on the above allegations incorporated by reference, Defendants have violated
12 Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 558, 512, 1174, 1174.5,
13 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2800, and 2802 as well as the applicable IWC Wage
14 Order(s).

15 125. Under Labor Code sections 2699(f)(2) and 2699.5, Plaintiffs and Aggrieved
16 Employees are entitled to penalties in an amount to be shown at the time of trial subject to the
17 following formula:

18 \$100 for the initial violation per employee per pay period; and

19 \$200 for each subsequent violation per employee per pay period.

20 These penalties shall be allocated seventy-five percent (75%) to the LWDA and twenty-five
21 percent (25%) to the affected employees.

22 126. Defendants failed to provide Plaintiffs and Aggrieved Employees with accurate
23 itemized wage statements in compliance with Labor Code section 226(a). Plaintiffs seek separate
24 PAGA penalties for Defendants’ violations of Labor Code section 226(a) and (e). *Lopez v. Friant*
25 *& Assocs., LLC* (2017) 15 Cal.App.5th 773, 788; *Bell v. Home Depot U.S.A.* (E.D. Cal. Dec. 11,
26 2017) No. 2:12-cv-02499 JAM-CKD, 2017 U.S. Dist. LEXIS 204493, at *5 [finding after *Friant*
27 that “[t]o the extent the Court’s Order [granting summary judgment to *Home Depot*] was
28 ambiguous, the Court now clarifies that it granted summary judgment on Plaintiffs’ derivative

1 claim for [PAGA] penalties under section 226(e)...the Court's Order should not be read to grant
2 summary judgment on Plaintiffs' claim for PAGA penalties based on violation of section
3 226(a)."]]. For violations of Labor Code section 226(a), Plaintiffs seek the default penalty
4 provided by Labor Code section 226.3. Labor Code section 226.3 provides that "[a]ny employer
5 who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two
6 hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand
7 dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer
8 fails to provide the employee a wage deduction statement or fails to keep the required records in
9 subdivision (a) of Section 226." Accordingly, through PAGA and to the extent permitted by law
10 Plaintiffs and Aggrieved Employees are entitled to recover penalties for violations of Labor Code
11 section 226.3 and seek default PAGA penalties for each of Defendants' numerous violations of
12 Labor Code section 226(a).

13 127. Labor Code section 210 provides that "[i]n addition to, an entirely independent and
14 apart from, any other penalty provided in this article, every person who fails to pay the wages of
15 each employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1)
16 [f]or any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2)
17 [f]or each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200)
18 for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld." As a
19 result of the faulty compensation policies and/or practices, Plaintiffs and Aggrieved Employees
20 are also entitled to recover penalties under Labor Code section 210 through PAGA.

21 128. Labor Code section 1197.1 authorizes a civil penalty, restitution of wages, and
22 liquidated damages, in the amount of: "(1) [f]or any initial violation that is intentionally
23 committed, one hundred dollars (\$100) for each underpaid employee for each pay period for
24 which the employee is underpaid...[and] (2) [f]or each subsequent violation for the same specific
25 offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for
26 which the employee is underpaid regardless of whether the initial violation is intentionally
27 committed." Accordingly, through PAGA and to the extent permitted by law, Plaintiffs and
28 Aggrieved Employees are entitled to recover pursuant to Labor Code section 1197.1.

129. Plaintiffs have fully and completely exhausted their administrative remedies under PAGA prior to proceeding with the PAGA claim. On March 6, 2020, Plaintiff Giovanni Mitchell filed his PAGA Notice online with the LWDA and sent a letter by certified mail to Defendants setting forth the facts and theories of the violations alleged against Defendants, as prescribed by Labor Code sections 2698, *et seq.* On June 16, 2020, Plaintiff Ammon Mendes filed a PAGA Notice online with the LWDA and sent a letter by certified mail to Defendants setting forth the facts and theories of the violations alleged against Defendants, as prescribed by Labor Code sections 2698, *et seq.* As required by PAGA, Plaintiffs Mitchell and Mendes submitted the filing fee to the LWDA. Pursuant to Labor Code section 2699.3(a)(2)(A), no notice was received by Plaintiffs from the LWDA evidencing its intention to investigate within sixty-five (65) calendar days of the postmark date of the PAGA notices. Plaintiffs are therefore entitled to commence and proceed with a civil action pursuant to Labor Code section 2699.

130. Plaintiffs, as personal representatives of the general public, on behalf of Aggrieved Employees and the State of California, will and do seek to recover any and all penalties for each and every violation shown to exist or to have occurred during the PAGA period, in an amount according to proof, as to those penalties that are otherwise only available to public agency enforcement actions. Funds recovered will be distributed in accordance with the PAGA, with 75 percent of the penalties recovered being reimbursed to the State of California and the LWDA.

131. Plaintiffs were compelled to retain the services of counsel to file this action to protect their interests and those of Aggrieved Employees, and to assess and collect the wages and penalties owed by Defendants. Plaintiffs have thereby incurred attorneys' fees and costs, which they are entitled to recover under Labor Code section 2699(g)(1).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for the following relief:

1. For an order certifying this action as a class action;
2. For compensatory damages in the amount of the unpaid minimum wage and overtime compensation for work performed by Plaintiffs and Class Members, as may be proven;

3. For liquidated damages in the amount equal to the unpaid minimum wage and interest thereon, as may be proven;
4. For compensatory damages in the amount of the regular rate of pay made by Plaintiffs and Class Members for each noncompliant meal period for which premium pay was deficient, as may be proven;
5. For compensatory damages in the amount of the regular rate of pay made by Plaintiffs and Class Members for each day of noncompliant rest breaks for which premium pay was deficient, as may be proven;
6. For deficient split shift premium pay for Plaintiffs and Class Members, as may be proven;
7. For deficient reporting-time pay for Plaintiffs and Class Members, as may be proven;
8. For penalties pursuant to Labor Code section 203 for Plaintiffs and Class Members who quit or were fired in an amount equal to their daily wage multiplied by thirty (30) days, as may be proven;
9. For actual damages and/or penalties pursuant to Labor Code section 226(e) for Plaintiffs and Class Members, as may be proven;
10. For reimbursement of business expenditures, as may be proven;
11. For restitution for unfair competition pursuant to the California Business & Professions Code sections 17200, *et seq.*, including disgorgement of profits, as may be proven;
12. For a civil penalty in the amount of \$100.00 for the initial violation and \$200.00 for each subsequent violation as specified in section 2699(f)(2) of the Labor Code in the representative action brought on behalf of Plaintiffs and Aggrieved Employees pursuant to the Private Attorneys General Act of 2004;
13. For all civil penalties available under section 210 of the Labor Code and the Private Attorneys General Act of 2004;
14. For all civil penalties available under section 226.3 of the Labor Code and the Private Attorneys General Act of 2004;

15. For all civil penalties available under section 1174.5 of the Labor Code and the Private Attorneys General Act of 2004;

16. For all civil penalties available under section 1197.1 of the Labor Code and the Private Attorneys General Act of 2004;

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

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

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

20. For an award of attorneys' fees, to the extent provided by law; and

21. For such other and further relief as the Court may deem proper and just.

Respectfully submitted,

COUNSELONE, P.C.

By 
 Anthony J. Orshansky
 Jennifer L. Connor
 Attorneys for Plaintiffs, putative Class
 Members, and Aggrieved Employees

Dated: January 27, 2022

CUSTIS LAW, P.C.

By Keith Custis
Keith Custis
Attorneys for Plaintiffs, putative Class
Members, and Aggrieved Employees

1 **DEMAND FOR JURY TRIAL**

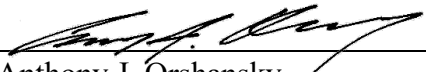
2 Plaintiffs hereby demand trial of their claims by jury to the extent authorized by law.

3
4 Respectfully submitted,

5 Dated: January 27, 2022

COUNSELONE, PC

6
7 By


Anthony J. Orshansky
Jennifer L. Connor
Attorneys for Plaintiffs, putative Class
Members, and Aggrieved Employees

8
9
10
11 Dated: January 27, 2022

CUSTIS LAW, P.C.

12
13 By


Keith Custis
Attorneys for Plaintiffs, putative Class
Members, and Aggrieved Employees

PROOF OF SERVICE
(CCP § 1013(a) and 2015.5)

I, the undersigned, am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; am employed with the law offices of Fisher & Phillips LLP and my business address is 2050 Main Street, Suite 1000, Irvine, California 92614.

On **February 3, 2022**, I served the foregoing document entitled **STIPULATION AND (PROPOSED) ORDER GRANTING PLAINTIFF LEAVE TO FILE FIRST AMENDED COMPLAINT** on all the appearing and/or interested parties in this action by placing ☐ the original ☒ a true copy thereof enclosed in sealed envelope(s) addressed as follows:

Anthony J. Orshansky Esq
Jennifer L. Connor, Esq.
Justin Kachadoorian, Esq.
COUNSELONE, P.C.
9301 Wilshire Blvd., Ste. 650
Beverly Hills, CA 90210

Attorneys for Plaintiff,
GIOVANNI MITCHELL, on behalf of
himself and all others similarly situated

T: (310) 277-9945 | F: (424) 277-3727
E: anthony@counselonegroup.com
E: jennifer@counselonegroup.com
E: justin@counselonegroup.com

- ☒ [by **ELECTRONIC SERVICE**] - Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification address listed above.
- ☐ [by **MAIL**] - I am readily familiar with the firm's practice of collection and processing 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 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 day after date of deposit for mailing this affidavit.
- ☐ [by **FEDERAL EXPRESS**] - I am readily familiar with the firm's practice for collection and processing of correspondence for overnight delivery by Federal Express. Under that practice such correspondence will be deposited at a facility or pick-up box regularly maintained by Federal Express for receipt on the same day in the ordinary course of business with delivery fees paid or provided for in accordance with ordinary business practices.
- ☐ [by **PERSONAL SERVICE**] - I caused to be delivered by messenger such envelope(s) by hand to the office of the addressee(s). Such messenger is over the age of eighteen years and not a party to the within action and employed with ASAP Legal Solution Attorney Services LLC, whose business address is 404 W. 4th Street, Suite B, Santa Ana, CA 92701.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed **February 3, 2022**, at Irvine, California.

DOROTHY MJ. WANG

Print Name

By:

Dorothy Mj. Wang
Signature