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Individually and on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

JESUS MENDEZ, individually and on
behalf of all others similarly situated

Plaintiff,

vs.

ECLARO, INTERNATIONAL, INC.;
NEW YORK LIFE INSURANCE
COMPANY; and DOES 1 through 20,
inclusive,

Defendants.

Case No. 20CV366918

Honorable Patricia M. Lucas – Dept. 3

[Filed as a matter of right pursuant to Labor Code
§ 2699.3(a)(2)(C)]

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

1. Failure to Pay Wages Each Week;
2. Failure to Pay Minimum Wages;
3. Failure to Pay Overtime Wages;
4. Failure to Timely Pay All Earned Wages;
5. Failure to Permit Rest Breaks;
6. Failure to Provide Accurate Itemized Wage Statements;
7. Failure to Pay All Wages Due Upon Separation of Employment and Within the Required Time; and
8. Violation of Business and Professions Code §§ 17200, *et seq*; and

9. Enforcement of Labor Code § 2698 et. seq.
("PAGA")

Jury Trial Demanded

Plaintiff Jesus Mendez, individually and on behalf of others similarly situated, alleges as follows:

NATURE OF ACTION AND INTRODUCTORY STATEMENT

1. Plaintiff Jesus Mendez ("Plaintiff") brings this putative class action against Defendants Eclaro International, Inc., ("Defendant Eclaro"), New York Life Insurance Company ("Defendant New York Life"), and DOES 1 through 20, inclusive (collectively, "Defendants"), on behalf of himself individually and a putative class of non-exempt employees employed by Defendants in California.

2. Defendant Eclaro is a temporary services employer which provides temporary service workers to companies.

3. Defendant New York Life provides life insurance services.

4. Through this action, Plaintiff alleges that Defendants have engaged in a systematic pattern of wage and hour violations under the California Labor Code and Industrial Welfare Commission ("IWC") Wage Orders, all of which contribute to Defendants' deliberate unfair competition.

5. Plaintiff is informed and believes, and thereon alleges, that Defendants have increased their profits by violating state wage and hour laws by, among other things:

- (a) Failing to pay wages each week;
- (b) Failing to pay minimum wages;
- (c) Failing to pay overtime wages;
- (d) Failure to permit rest breaks;
- (e) Failing to timely pay all earned wages;
- (f) Failing to provide accurate itemized wage statements; and
- (g) Failing to pay all wages due upon separation of employment;

1 6. Plaintiff brings this lawsuit seeking monetary relief against Defendants on behalf
2 of himself and all others similarly situated in California to recover, among other things, unpaid
3 wages and benefits, interest, attorneys' fees, costs and expenses and penalties pursuant to Labor
4 Code §§ 201, 201.3, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12,
5 1194, 1194.2, 1197, 1197.1, and 1198.

6 **JURISDICTION AND VENUE**

7 7. This is a class action, pursuant to California Code of Civil Procedure § 382. The
8 monetary damages and restitution sought by Plaintiff exceeds the minimal jurisdictional limits
9 of the Superior Court and will be established according to proof at trial.

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

14 9. This Court has jurisdiction over all Defendants because, upon information and
15 belief, they are citizens of California, have sufficient minimum contacts in California or
16 otherwise intentionally avail themselves of the California market so as to render the exercise of
17 jurisdiction over them by the California courts consistent with traditional notions of fair play and
18 substantial justice.

19 10. Venue is proper in this Court because, upon information and belief, Defendants
20 reside, transact business or have offices in this county and the acts and omissions alleged herein
21 took place in this county.

22 **THE PARTIES**

23 11. Plaintiff is a citizen of California. Plaintiff was employed by Defendants during
24 the Class Period in California.

25 12. Plaintiff is informed and believes, and thereon alleges, that Defendants at all times
26 hereinafter mentioned, were and are employers as defined in and subject to the Labor Code and
27 IWC Wage Orders, whose employees were and are engaged throughout this county and the State
28 of California.

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

5 14. Plaintiff is informed and believes, and thereon alleges, that each defendant acted
6 in all respects pertinent to this action as the agent of the other defendant, carried out a joint
7 scheme, business plan or policy in all respects pertinent hereto, and the acts of each defendant
8 are legally attributable to the other defendant. Furthermore, defendants in all respects acted as
9 the employer and/or joint employer of Plaintiff and the class members.

10 15. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts
11 and omissions alleged herein were performed by, or are attributable to, Defendants and/or DOES
12 1 through 20, acting as the agent or alter ego for the other, with legal authority to act on the
13 other's behalf. The acts of any and all Defendants were in accordance with, and represent, the
14 official policy of Defendants.

15 16. At all relevant times, Defendants, and each of them, acted within the scope of such
16 agency or employment, or ratified each and every act or omission complained of herein. At all
17 relevant times, Defendants, and each of them, aided and abetted the acts and omissions of each
18 and all the other Defendants in proximately causing the damages herein alleged.

19 17. Plaintiff is informed and believes, and thereon alleges, that each of said
20 Defendants is in some manner intentionally, negligently or otherwise responsible for the acts,
21 omissions, occurrences and transactions alleged herein.

22 **CLASS ACTION ALLEGATIONS**

23 18. Plaintiff brings this action under Code of Civil Procedure § 382 on behalf of
24 himself and all others similarly situated who were affected by Defendants' Labor Code, Business
25 and Professions Code §§ 17200 and IWC Wage Order violations.

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

28 20. Plaintiff's proposed Class consists of and is defined as follows:

1 Class

2 All current or former non-exempt California employees of Defendants from April
3 6, 2016 to the date the class is certified.¹

4 21. Plaintiff also seeks to certify the following Subclass of employees:

5 Waiting Time Subclass

6 All members of the Class who separated their employment from Defendants from
7 April 6, 2017 to the date the class is certified.

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

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

- 16 (a) Whether Defendants failed to compensate Plaintiff and class members who were
17 temporary employees with an assignment of less than ninety (90) days each week
18 as required by Labor Code § 201.3;
- 19 (b) Whether Defendants failed to compensate Plaintiff and class members to work off-
20 the-clock, resulting in a failure to pay all minimum wages and overtime wages;
- 21 (c) Whether Defendants failed to timely pay all wages earned by Plaintiff and class
22 members;
- 23 (d) Whether Defendants deprived Plaintiff and class members of compliant rest breaks;
- 24 (e) Whether Defendants failed to timely pay Plaintiff and former class members all
25 accrued PTO due upon termination or within 72 hours of resignation;
- 26 (f) Whether Defendants failed to timely pay Plaintiff and former class members all
27 wages due upon termination or within 72 hours of resignation;
- 28 (g) Whether Defendants failed to furnish Plaintiff and class members with accurate,

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

1 itemized wage statements;

2 (h) Whether Defendants engaged in unfair business practices in violation of Business
3 & Professions Code §§ 17200, *et seq.*

4 24. There is a well-defined community of interest in this litigation and the Class is
5 readily ascertainable:

6 (a) Numerosity: The members of the Class are so numerous that joinder of all
7 members is impractical. Although the members of the Class are unknown to
8 Plaintiff at this time, on information and belief, the Class is estimated to be
9 greater than 100 individuals. The identity of the class members are readily
10 ascertainable by inspection of Defendants' employment and payroll records.

11 (b) Typicality: The claims (or defenses, if any) of Plaintiff are typical of the
12 claims (or defenses, if any) of the Class because Defendants' failure to
13 comply with the provisions of California wage and hour laws entitled each
14 class member to similar pay, benefits and other relief. The injuries sustained
15 by Plaintiff are also typical of the injuries sustained by the Class because
16 they arise out of and are caused by Defendants' common course of conduct
17 as alleged herein.

18 (c) Adequacy: Plaintiff is qualified to, and will fairly and adequately represent
19 and protect the interests of all members of the Class because it is in his best
20 interest to prosecute the claims alleged herein to obtain full compensation
21 and penalties due to him and the Class. Plaintiff's attorneys, as proposed
22 class counsel, are competent and experienced in litigating large employment
23 class actions and are versed in the rules governing class action discovery,
24 certification and settlement. Plaintiff has incurred and, throughout the
25 duration of this action, will continue to incur attorneys' fees and costs that
26 have been and will be necessarily expended for the prosecution of this action
27 for the substantial benefit of each class member.

28 (d) Superiority: The nature of this action makes the use of class action

1 adjudication superior to other methods. A class action will achieve
2 economies of time, effort and expense as compared with separate lawsuits,
3 and will avoid inconsistent outcomes because the same issues can be
4 adjudicated in the same manner and at the same time for each Class. If
5 appropriate this Court can, and is empowered to, fashion methods to
6 efficiently manage this case as a class action.

7 (e) Public Policy Considerations: Employers in the State of California and
8 other states violate employment and labor laws every day. Current
9 employees are often afraid to assert their rights out of fear of direct or
10 indirect retaliation. Former employees are fearful of bringing actions
11 because they believe their former employers might damage their future
12 endeavors through negative references and/or other means. Class actions
13 provide the class members who are not named in the complaint with a type
14 of anonymity that allows for the vindication of their rights at the same time
15 as affording them privacy protections.

16 **GENERAL ALLEGATIONS**

17 25. At all relevant times mentioned herein, Defendants employed Plaintiff and other
18 persons as non-exempt employees as temporary service workers.

19 26. Plaintiff was employed in a non-exempt position by Defendants in California.

20 27. Defendants continue to employ non-exempt employees throughout California.

21 28. Plaintiff is informed and believes, and thereon alleges, that at all times herein
22 mentioned, Defendants were advised by skilled lawyers, employees and other professionals who
23 were knowledgeable about California's wage and hour laws, employment and personnel
24 practices and the requirements of California law.

25 29. Plaintiff is informed and believe, and thereon allege, that Defendants knew or
26 should have known that Plaintiff and class members who were assigned to an assignment which
27 was to last fewer than ninety (90) days were entitled to receive wages each week. However, in
28

1 violation of the Labor Code, Plaintiff and class members did not receive their wages each week,
2 and instead, Defendants paid Plaintiff and class members their wages bi-weekly.

3 30. Plaintiff is informed and believe, and thereon allege, that Defendants knew or
4 should have known that Plaintiffs and class members were entitled to receive wages for all hours
5 worked and that they were not receiving all wages earned for work that was required to be
6 performed. In violation of the Labor Code and IWC Wage Orders, Plaintiff and class members
7 were not paid wages (including minimum wages and overtime wages) when Defendants required
8 Plaintiff and class members to work off-the-clock, for example, after the end of their scheduled
9 shifts.

10 31. Plaintiff is informed and believes, and thereon alleges, Defendants failed to
11 provide Plaintiff and class members timely, uninterrupted, on-the-clock rest period of no less
12 than ten minutes for every four hours worked, or every major fraction thereof. Instead,
13 Defendants would often require Plaintiff and class members to work through their rest periods,
14 or otherwise deny Plaintiff and class members their second rest break during shifts which lasted
15 longer than six hours. These policies, among others, have resulted in a denial of these employees'
16 rights to a ten-minute rest period in violation of California law.

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

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

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

FIRST CAUSE OF ACTION

FAILURE TO PAY WAGES EACH WEEK

(Violation of Labor Code §§ 201.3 and 210)

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

37. Defendants are temporary services employers that contracts with clients or customers to supply workers to perform services for clients or customers as defined in Labor Code§ 201.3(a)(l).

38. Defendants, as temporary services employers, have a duty to pay their temporary service employees on a weekly basis.

39. Plaintiff is informed and believes and thereon alleges Defendants willfully failed to pay employees all wages due on a weekly basis. Instead, Defendants paid Plaintiff and members of the class their wages on a bi-weekly basis.

40. Plaintiff and class members have been deprived of their rightfully earned wages as a direct and proximate result of Defendants' failure to pay said compensation. Plaintiff and class members are entitled to recover such amounts, the civil penalties provided for in Section 203 for each violation, and any other penalties available at law, plus interest thereon, attorney's fees and costs.

1 41. In addition, Plaintiff and class members are entitled to penalties pursuant to Labor
2 Code § 210 as follows: (1) for Defendants' initial violation, \$100 for each failure to pay each
3 class member; and (2) for each of Defendants' subsequent violations, or any willful or intentional
4 violation, \$200 for each failure to pay each class member, plus 25 percent of the amount
5 unlawfully held.

6 **SECOND CAUSE OF ACTION**

7 **FAILURE TO PAY MINIMUM WAGES**

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

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

12 43. Labor Code §§ 1194 and 1197 provide that the minimum wage for employees
13 fixed by the IWC is the minimum wage to be paid to employees, and the payment of a lesser
14 wage than the minimum so fixed is unlawful.

15 44. During the relevant time period, Defendants paid Plaintiffs and class members
16 less than minimum wages when Defendants required Plaintiffs and class members to work off-
17 the-clock, for example, after the end of their scheduled shift.

18 45. During the relevant time period, Defendants regularly failed to pay at least
19 minimum wages to Plaintiffs and class members for all hours worked pursuant to Labor Code
20 §§ 1194 and 1197.

21 46. Defendants' failure to pay Plaintiffs and class members the required minimum
22 wages violates Labor Code §§ 1194 and 1197. Pursuant to these sections, Plaintiffs and class
23 members are entitled to recover the unpaid balance of their minimum wage compensation as well
24 as interest, costs and attorneys' fees.

25 47. Pursuant to Labor Code § 1194.2, Plaintiffs and class members are entitled to
26 recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest
27 thereon.

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1 **THIRD CAUSE OF ACTION**

2 **FAILURE TO PAY OVERTIME WAGES**

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

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

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

10 50. Pursuant to Labor Code §§ 510 and 1194, during the relevant time period,
11 Defendants were required to compensate Plaintiff and class members for all overtime hours
12 worked, calculated at one and one-half (1½) times the regular rate of pay for hours worked in
13 excess of eight (8) hours per day and/or forty (40) hours per week and for the first eight (8) hours
14 of the seventh consecutive work day.

15 51. Plaintiff and class members were non-exempt employees entitled to the
16 protections of Labor Code §§ 510 and 1194.

17 52. During the relevant time period, Defendants failed to pay Plaintiff and class
18 members overtime wages when Defendants required Plaintiffs and class members to work off-
19 the-clock. Because Plaintiff and class members worked shifts of eight hours or more, this unpaid
20 time qualified for overtime premium payment.

21 53. In violation of state law, Defendants have knowingly and willfully refused to
22 perform their obligations and compensate Plaintiff and class members for all wages earned as
23 alleged above.

24 54. Defendants' failure to pay Plaintiff and class members the unpaid balance of
25 overtime compensation, as required by California law, violates the provisions of Labor Code §§
26 510 and 1198, and is therefore unlawful.

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

1 **FOURTH CAUSE OF ACTION**

2 **FAILURE TO TIMELY PAY ALL EARNED WAGES**

3 **(Violation of Labor Code §§ 204 and 210; Violation of IWC Wage Order)**

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

6 57. Labor Code § 204 provides that all wages earned by an employee are due and
7 payable twice during each calendar month.

8 58. Defendants failed to timely pay Plaintiff and class members all of their earned
9 wages as required by Labor Code Section 204.

10 59. Plaintiff and class members have been deprived of their rightfully earned wages as
11 a direct and proximate result of Defendants' failure to pay said compensation. Plaintiff and class
12 members are entitled to recover such amounts, plus interest thereon, attorney's fees and costs.

13 60. In addition, Plaintiff and class members are entitled to penalties pursuant to Labor
14 Code § 210 as follows: (1) for Defendants' initial violation, \$100 for each failure to pay each class
15 member; and (2) for each of Defendants' subsequent violations, or any willful or intentional
16 violation, \$200 for each failure to pay each class member, plus 25 percent of the amount unlawfully
17 held.

18 **FIFTH CAUSE OF ACTION**

19 **FAILURE TO PERMIT REST BREAKS**

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

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

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

25 63. Section 12 of the applicable IWC Wage Order states "every employer shall
26 authorize and permit all employees to take rest periods, which insofar as practicable shall be in
27 the middle of each work period" and the "authorized rest period time shall be based on the total
28 hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction

thereof” unless the total daily work time is less than three and one-half (3½) hours.

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

65. Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order requires an employer to pay an employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the rest period is not provided.

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

67. As a result of Defendants’ failure to pay Plaintiff and class members an additional hour of pay for each day a rest period was not provided, Plaintiff and class members suffered and continue to suffer a loss of wages and compensation.

SIXTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

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

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

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

1 70. During the relevant time period, Defendants have knowingly and intentionally
2 failed to comply with Labor Code § 226(a) on wage statements that were provided to Plaintiff
3 and class members. The deficiencies include, among other things, the failure to correctly state
4 the gross and net wages earned, and all applicable hourly rates in effect and the number of hours
5 worked at each hourly rate by Plaintiff and class members.

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

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

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

26 74. Plaintiff and class members are also entitled to injunctive relief under Labor Code
27 § 226(h), compelling Defendants to comply with Labor Code § 226, and seek the recovery of
28 attorneys' fees and costs incurred in obtaining this injunctive relief.

SEVENTH 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)

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

76. 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.

77. During the relevant time period, Defendants 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 Defendants' employ.

78. Defendants' 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 Defendants' employ is in violation of Labor Code §§ 201 and 202.

79. 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.

80. Plaintiff and Waiting Time Subclass members are entitled to recover from Defendants 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 **EIGHTH CAUSE OF ACTION**

2 **VIOLATION OF BUSINESS AND PROFESSIONS CODE §§ 17200, *Et Seq.***

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

5 82. Defendants' 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 83. Defendants' 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 84. A violation of Business and Professions Code §§ 17200, *et seq.* may be predicated
12 on the violation of any state or federal law.

13 85. Defendants' policies and practices have violated state law in at least the following
14 respects:

15 (a) Failing to pay wages each week to Plaintiff and class members in violation of
16 Labor Code §§ 201.3, and 210.

17 (b) Failing to pay all minimum wages to Plaintiff and class members in violation of
18 Labor Code §§ 1194, 1194.2, and 1197;

19 (c) Failing to pay all overtime wages to Plaintiff and class members in violation of
20 Labor Code §§ 510, 1194 and 1198;

21 (d) Failing to timely pay all earned wages to Plaintiff and class members in violation
22 of Labor Code §§ 204, and 210;

23 (e) Failing to authorize or permit rest breaks without paying Plaintiff and class
24 members premium wages for every day said rest breaks were not authorized or permitted in
25 violation of Labor Code § 226.7;

26 (f) Failing to provide Plaintiff and class members with accurate itemized wage
27 statements in violation of Labor Code § 226; and

28 (e) Failing to timely pay all earned wages to Plaintiff and Waiting Time Subclass

1 members upon separation of employment in violation of Labor Code §§ 201, 202 and 203.

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

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

10 NINTH CAUSE OF ACTION

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

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

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

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

22 (a) Violation of Labor Code §§ 201, 201.3, 202, 203, 204, 210, 510, 558,
23 1182.12, 1194, 1197 and 1198 for failure to timely pay all earned wages (including
24 minimum wages and overtime wages) and to timely pay all earned wages each week owed
25 to Plaintiff and other aggrieved employees during employment and upon separation of
26 employment as herein alleged;

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

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

7 (d) Violation of Labor Code §§ 226 and 226.3 for failure to provide accurate
8 itemized wage statements to Plaintiff and other aggrieved employees as herein alleged;

9 (e) Violation of Labor Code §§ 1174 and 1174.5 for failure to maintain
10 accurate records.

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

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

17 93. PAGA imposes a penalty of one hundred dollars (\$100.00) for each aggrieved
18 employee per pay period for the initial violation and two hundred dollars (\$200.00) for each
19 aggrieved employee per pay period for each subsequent violation.

20 94. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiffs are entitled to
21 recover civil penalties, in addition to other remedies, for violations of the Labor Code sections
22 cited above.

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

25 **PRAYER FOR RELIEF**

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

28 1. For certification of this action as a class action, including certifying the Class and

Subclass alleged by Plaintiff;

2. For appointment of Jesus Mendez as the class representative;

3. For appointment of Lebe Law, APLC, and Aegis Law Firm, PC as class counsel for all purposes;

4. For compensatory damages in an amount according to proof with interest thereon;

5. For economic and/or special damages in an amount according to proof with interest thereon;

6. For reasonable attorneys' fees, costs of suit and interest to the extent permitted by law, including pursuant to Code of Civil Procedure § 1021.5 Labor Code §§ 226(e) and 1194;

7. For statutory penalties to the extent permitted by law, including those pursuant to the Labor Code and IWC Wage Orders;

8. For restitution as provided by Business and Professions Code §§ 17200, *et seq.*;

9. For an order requiring Defendants to restore and disgorge all funds to each employee acquired by means of any act or practice declared by this Court to be unlawful, unfair or fraudulent and, therefore, constituting unfair competition under Business and Professions Code §§ 17200, *et seq.*;

10. For an award of damages in the amount of unpaid compensation including, but not limited to, unpaid wages, benefits and penalties, including interest thereon;

11. For pre-judgment interest;

12. For civil penalties; and

13. For such other relief as the Court deems just and proper.

Dated: August 20, 2020

LEBE LAW, APLC

By: Zachary Gershman
Zachary T. Gershman
Attorney for Plaintiff Jesus Mendez
Individually and on behalf of all others similarly
situated

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial with respect to all issues triable of right by jury.

Dated: August 20, 2020

LEBE LAW, APLC

By: Zachary Gershman
Zachary T. Gershman
Attorney for Plaintiff Jesus Mendez
Individually and on behalf of all others similarly
situated

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 August 24, 2020, I served the foregoing document entitled:

5 • **FIRST AMENDED CLASS ACTION AND REPRESENTATIVE 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 Adam Y. Siegel
Savada M. Panosian
9 **JACKSON LEWIS P.C.**
725 South Figueroa Street, Suite 2500
10 Los Angeles, California 90017-5408
Telephone: (213) 689-0404
11 Facsimile: (213) 689-0430
Adam.Siegel@jacksonlewis.com
12 Savada.Panosian@jacksonlewis.com

13 *Attorneys for Defendant:*
14 ECLARO INTERNATIONAL, INC.

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).)

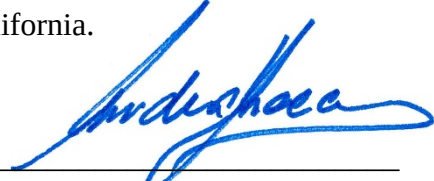
26 ///

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 August 24, 2020, at Irvine, California.

4 
5 _____
6 Andrea Drocco
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