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**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego  
**08/12/2020** at 07:38:00 PM  
Clerk of the Superior Court  
By Regina Chanez, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

BRANDON FOX, Individually and on behalf  
of all similarly-situated employees of  
Defendants in the State of California,

Plaintiffs,

v.

PRIME ASSET MANAGEMENT, INC., a  
Corporation, and DOES 1 through 50,  
inclusive,

Defendants.

Case No.: 37-2020-00019317-CU-OE-CTL

Unlimited Civil - Amount Demanded  
Exceeds \$25,000.00

**IMAGED FILE**

**FIRST AMENDED COMPLAINT**

CLASS ACTION [CCP § 382]

1. Failure to Pay Minimum and Regular Wages
2. Failure to Pay Overtime Wages
3. Failure to Provide Meal Periods
4. Failure to Authorize and Permit Rest Periods
5. Failure to Indemnify/Reimburse Expenses
6. Failure to Provide and Maintain Accurate Itemized Wage Statements
7. Failure to Timely Pay Wages Due Upon Separation of Employment
8. Failure to Provide Requisite Writings
9. Unlawful Rent Charges in Excess of Amounts set by Section 10 (C) of the Applicable Wage Order
10. Unfair Business Practices (Violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*)
11. PAGA Claims for Civil Penalties

Date Complaint Filed: June 8, 2020  
Judge: Hon. Judge Joel R. Wohlfeil  
Dept.: C-73

Plaintiff BRANDON FOX on behalf of himself and all other current and former similarly-situated and aggrieved employees alleges as follows:

I.

**NATURE OF ACTION AND INTRODUCTORY STATEMENT**

1. Plaintiff BRANDON FOX (hereinafter “FOX”), brings this individual, representative PAGA and class action suit against Defendants PRIME ASSET MANAGEMENT, INC., and DOES 1 through 50, inclusive (collectively referred to herein as “Defendants”), on behalf of himself and all other current and former similarly-situated and aggrieved employees for engaging in a systemic pattern of wage and hour violations under California Labor Code and Industrial Welfare Commission (“IWC”) Wage Orders.

2. PRIME ASSET MANAGEMENT, INC., is a full-service real estate firm specializing in property management throughout San Diego County, California.

3. FOX, at times relevant, was employed by Defendants to work as an on-site residential property manager in San Diego County.

4. Plaintiff is informed and believes, and thereon alleges, that Defendants decreased their employment-related costs in order to increase their level of productivity and profits by systematically violating both state wage and hour laws and IWC Wage Orders including, but not limited to:

- a. Failing to pay for minimum, regular and overtime wages for all hours worked;
- b. Failing to provide compliant meal and rest breaks;
- c. Failing to provide and maintain accurate records and itemized wage statements;
- d. Charging rent in amounts exceeding that permitted by law; and
- e. Failing to timely pay wages due during and upon termination of employment.

5. Plaintiff brings this lawsuit seeking injunctive, restitution and monetary relief against Defendants, and each of them, on behalf of Plaintiff individually and on behalf of all similarly-situated employees to recover, among other things, unpaid wages and benefits, interest, penalties, liquidated damages, attorney’s fees and costs pursuant to California Labor Code §§ 201, 202, 203, 204, 210, 218, 218.5, , 223, 218.6, 226(a), 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1,

1 1198, 2751, 2802, 2810.5, Labor Code § 2698 et seq., and California Code of Civil Procedure 1021.5, and  
2 provisions of applicable IWC Wage Order.. Plaintiff reserves the right to name additional representatives  
3 throughout the State of California.

4 **II.**

5 **PARTIES, JURISDICTION AND VENUE**

6 6. Plaintiff FOX is and at all relevant times was a resident of the County of San Diego, State  
7 of California, and at all relevant times was employed by Defendants in San Diego County, California.

8 7. Defendant PRIME ASSET MANAGEMENT, INC., is a California Corporation which has  
9 offices and conducts business in County of San Diego, California

10 8. Plaintiff is informed and believes, and thereon alleges, that at times relevant PRIME  
11 ASSET MANAGEMENT, INC., and Does 1 through 50 are the alter egos of each other and directly or  
12 indirectly, or through agents or other persons, employed Plaintiff and all other similarly-situated and  
13 aggrieved employees, and exercised control over their wages, hours, and/or working conditions. Plaintiff  
14 is informed and believes, and thereon alleges, that each Defendant directly or indirectly, or through agents  
15 or other persons, acted and/or ratified in all respects pertinent to this action as the agent of the other  
16 Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts  
17 of each Defendant is legally attributable to the other Defendants.

18 9. Plaintiff was, at times relevant, employed by Defendants in San Diego city and county as  
19 an on-site residential property manager and was subject to the employment policies, procedures and  
20 practices implemented by Defendants which applied to all of their employees throughout the State of  
21 California, including in San Diego City and County.

22 10. Defendants, at all relevant times, conducted business in the State of California and were  
23 employers who violated, or caused to be violated, a section of Part 2, Chapter 1, of the California Labor  
24 Code or any provision regulating hours and days of work in any order of the Industrial Welfare  
25 Commission and, as such, are subject to penalties for each underpaid employee as set forth in Labor Code  
26 § 558 and or 558.1.

27 ///

11. The true names and capacities of the Defendants named as DOES 1 through 50, inclusive, are presently unknown to Plaintiff. Plaintiff will amend this Complaint setting forth the true names and capacities of these fictitious defendants when they are ascertained. Plaintiff is informed and believes, and on that basis, alleges that each of the fictitious Defendants have participated in the acts alleged in this Complaint.

12. Jurisdiction and venue are proper for San Diego County Superior Court because Defendants maintain offices, transact business, and/or have an agent in San Diego County and some of the acts and events complained of herein occurred in the judicial district of San Diego County and the State of California.

### III.

#### **GENERAL ALLEGATIONS**

13. Plaintiff FOX commenced his employment as an on-site residential property manager with Defendants on November 1, 2018 and worked for Defendants until May 8, 2020 when he was terminated.

14. Defendant PRIME ASSET MANAGEMENT, INC. is an employer doing business in the State of California and, according to its website manages multiple residential properties throughout San Diego city and county.

15. At all relevant times, Plaintiff and all other current and former similarly-situated and aggrieved employees of Defendants worked, on information and belief, under similar policies, practices, and procedures relating to wage statements, recordkeeping, and payment of wages.

16. At all relevant times, Plaintiff and, on information and belief, all other current and former similarly-situated and aggrieved employees were required to live on premises as part of their job duties. Defendants had a common practice to charge Plaintiff, and all other current and former similarly-situated and aggrieved residential managers rent in excess of the amounts permitted under Section 10(C) of the relevant Wage Order. Plaintiff, who was required to live on the premises as a condition of his employment and was not paid at least a minimum wages for all hours worked, was charged about \$866.00 a month for the rent since 2018, although the maximum amounts of the rent permitted under the law were: \$621.29 in 2018, \$677.75 in 2019, and \$734.21 in 2020. As result of this business practice, Plaintiff and, on

1 information and belief, all other current and former similarly-situated and aggrieved employees were  
2 charged more than the statutory maximum rent in violation of the California law.

3 17. At all relevant times, Defendants failed to pay Plaintiff and all other current and former  
4 similarly-situated and aggrieved employees for all time suffered or permitted to work. Defendants had a  
5 common policy and practice of failing to pay all minimum and regular and overtime wages to Plaintiff  
6 and all other current and former similarly-situated and aggrieved employees. Prime Asset Management,  
7 Inc. instructed Plaintiff and, on information and belief, all other current and former similarly-situated and  
8 aggrieved employees to record only the number of hours set under their employment contract. This policy  
9 was strictly imposed by Defendants. It was commonly known that Prime Asset Management, Inc.'s  
10 management required employees to work in excess of the contracted hours, knew that such hours were  
11 worked by employees, but discouraged employees from submitting time in excess of the contracted hours  
12 despite knowing that such hours were being worked. It was also a common practice of Defendants to alter  
13 the timecards completed by their employees by removing the hours worked over the contracted time and  
14 already entered by the employees into the timekeeping system. Therefore, despite the fact that Plaintiff  
15 and, on information and belief, all other current and former similarly and aggrieved employees often  
16 needed more time to complete their job duties, and Defendants knew that employees worked additional  
17 time to complete their requisite duties, per Prime Asset Management, Inc.'s policy and practices of  
18 discouraging any overtime, they recorded only the scheduled number of hours and not the actual number  
19 of hours they worked. As a result, Plaintiff and other employees were not paid for all actual hours worked  
20 as required under the California law – despite Defendants being fully-aware that employees worked  
21 additional time.

22 18. At all times relevant, Defendants did not maintain compliant meal period policies for  
23 Plaintiff as required by the California Labor Code, nor did they provide meal periods compliant under  
24 California law, to Plaintiff and other employees. Defendants failed to adequately inform Plaintiff and all  
25 other current and former similarly-situated and aggrieved employees of their rights to take meal periods.

26 19. Throughout his employment, Plaintiff and all other current and former similarly-situated  
27 and aggrieved employees were not provided compliant 30 minute, uninterrupted off-duty meal periods  
28 when they worked more than 5 hours in one day. Plaintiff and all other current and former similarly-

1 situated and aggrieved employees were routinely required to work through their shifts without being  
2 provided a compliant off-duty 30 minute meal period. The nature of his work did not require Plaintiff to  
3 remain on-duty.

4 20. Plaintiff and all other current and former similarly-situated and aggrieved employees were  
5 regularly prevented from taking timely meal periods and/or was required to miss their meal periods  
6 completely due to the working conditions imposed by Defendants. Even when Plaintiff was able to take a  
7 meal period, he was not afforded a full, timely 30 minutes of uninterrupted time in which he could leave  
8 the premises and was relieved of all duties. Defendants required Plaintiff to be “on-duty” for his meal  
9 periods. This was a common practice applicable to Plaintiff and all other current and former similarly-  
10 situated and aggrieved employees.

11 21. Defendants failed to pay Plaintiff and all other current and former similarly-situated and  
12 aggrieved employees meal period premium wages at the appropriately-calculated regular rate of pay for  
13 each day in which they did not provide Plaintiff an opportunity to take a compliant meal period.

14 22. At all times relevant, Defendants did not maintain compliant rest period policies for  
15 Plaintiff as required by the California Labor Code, nor did they provide rest periods compliant under  
16 California law, to Plaintiff and all other current and former similarly-situated and aggrieved employees.  
17 During Plaintiff’s employment, Defendants had a common pattern and practice of failing to properly  
18 authorize and permit compliant off-duty rest periods to Plaintiff and all other current and former similarly-  
19 situated and aggrieved employees when they worked greater than 3.5 hours in a workday.

20 23. Defendants had a common policy and practice of requiring Plaintiff and all other current  
21 and former similarly-situated and aggrieved employees to remain on-call at all times throughout their shift,  
22 ready and prepared to return to work. A result, Plaintiff and other employees were never relieved of all  
23 duty, and therefore were not authorized to take compliant duty-free rest periods.

24 24. Defendants failed to pay Plaintiff and all other current and former similarly-situated and  
25 aggrieved employees rest period premium wages at the appropriately-calculated regular rate of pay for  
26 each day in which they did not authorize or permit them to take compliant rest periods.

27 25. At all times relevant, Plaintiff, and on information and belief all other current and former  
28 similarly-situated and aggrieved employees were using their personal computers with access to

1 printer/Internet/email to complete their job duties as the equipment provided to them by Defendants was  
2 malfunctioning. Although Defendants were aware Plaintiff and all other current and former similarly-  
3 situated and aggrieved employees were using their personal equipment to complete their job duties, they  
4 failed to reimburse their employees for all their expenses associated with usage of their own equipment,  
5 office supplies, internet access as required under the relevant provisions of the California Labor Code.

6 26. Defendants maintained a practice and policy of failing to provide, and did indeed fail to  
7 provide to Plaintiff and all other current and former similarly-situated and aggrieved employees written  
8 notice at the time of hiring pursuant to Cal. Labor Code section 2810.5 setting forth the rates of pay and  
9 basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise,  
10 including any rates for overtime, as applicable, regular payday designated by the employer, the name of  
11 the employer, the physical address of the employer's main office or principal place of business, and/or  
12 mailing address, the telephone number of the employer, worker's compensation information and  
13 information communicating the right of an employee to accrue and use sick leave.

14 27. Defendants failed to provide Plaintiff and all other current and former similarly-situated  
15 and aggrieved employees with wage statements accurately itemizing information required by Labor Code  
16 § 226(a) and Section 7 of the applicable Wage Order including. The wages statements that were provided  
17 did not include all the items required by law and the little information they did contain was inaccurate.  
18 The wage statements provided did not list the correct legal name of the employer, all the accurate number  
19 of hours worked and the wages earned. On information and belief, other similar-situated employees were  
20 subject to the same policy and practice concerning wage statements and receive similarly deficient wage  
21 statements.

22 28. As a result of these deficiencies and inaccuracies, Plaintiff and all other current and former  
23 similarly-situated and aggrieved employees were not able to promptly and easily determine from these  
24 wage statements their total number of hours worked and/or wages earned.

25 29. Defendants failed to maintain accurate records reflecting the beginning and ending time of  
26 each shift, including meal periods, and all wages earned as required by law. Defendants instructed Plaintiff  
27 and all other current and former similarly-situated and aggrieved employees to record inaccurate hours  
28 worked and not the true and correct time worked.

30. Defendants failed to pay Plaintiff and all other current and former similarly-situated and aggrieved employees for all wages due and owing and by the times required by law in the time periods set forth by Labor Code § 204 and Section 4 of the applicable Wage Order in that Defendants failed to properly compensate said employees for all hours worked.

31. Defendants failed to pay Plaintiff FOX and all other current and former similarly-situated and aggrieved employees all wages due and owing at the time of termination of employment as required by Labor Code §§ 201(a) and 202(a), as applicable, because Plaintiff FOX and all other current and former similarly-situated and aggrieved employees were not properly compensated for all hours worked. On information and belief, Defendants willingly withheld wages including, but not limited to, minimum wages, regular wages, and overtime wages.

32. Defendants have engaged in unfair business practices in California and willingly and knowingly have practiced, employed, and utilized the employment patterns and practices alleged in this complaint in violation of Business & Professions Code §§ 17200, *et seq.*

#### IV.

#### **CLASS ACTION DESIGNATION**

33. Plaintiff brings this class action pursuant to Code of Civil Procedure § 382 on behalf of all current and former similarly-situated employees. The Class that Plaintiff seeks to represent is defined as follows:

“All non-exempt employees who worked as residential managers (or otherwise similar job duties and/or title) for Defendants in the State of California at any time since four years of the filing of this Action.”

34. As to Causes of Action One through Ten Plaintiff seeks to recover on behalf of the Class all remedies available to the extent permitted by law including, but not limited to, wages, damages, penalties, liquidated damages, interest, attorney’s fees, costs, other monies due and owing, and injunctive relief.

35. Causes of Action One through Ten are appropriately suited for a class action under Code of Civil Procedure § 382 because:

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1           a.     Numerosity: The potential Class as defined is significant in size because Plaintiff  
2 is informed and believes and thereon alleges that at all relevant times, Defendants employed over 30  
3 similarly-situated current and former employees who were affected by the unlawful employment  
4 practices alleged herein. Based on the potential class size, joinder of all employees individually would  
5 be impractical. Plaintiff also believes that there are more than 30 people that are members of the Class.

6           b.     Commonality: This action involves common questions of law and fact particular  
7 to the putative Class because the action focuses on Defendants' systematic course of illegal conduct  
8 with respect to violating the Labor Code and the relevant IWC Wage Orders and implementing  
9 company-wide policies uniformly applied to all members of the putative Class.

10          c.     Typicality: Plaintiff's claims as alleged herein are typical of the claims of each  
11 of the putative Class because Plaintiff was subjected to the same violations of his rights under California  
12 law and seeks the same types of damages, restitution, and other relief on the same theories and legal  
13 grounds as those of the members of the putative Class he seeks to represent.

14          d.     Adequacy of Representation: Plaintiff is able to fairly and adequately protect the  
15 interests of all members of the putative Class because it is in his best interest to prosecute the claims  
16 alleged herein to obtain full compensation due to him for all pay, benefits and other relief afforded under  
17 the Labor Code and IWC Wage Orders. Plaintiff's interest is not in conflict with those of the putative  
18 class members. Plaintiff's counsel are competent and experienced in litigating large employment class  
19 actions including wage and hour cases such as this case.

20          e.     Superiority of Class Action: Class certification is appropriate because a class  
21 action is superior to other available means for the fair and efficient adjudication of these claims. Each  
22 putative class member has been damaged and is entitled to recovery by reason of Defendants' illegal  
23 policies, and/or practices as alleged herein. Class action treatment will allow those similarly-situated  
24 persons to litigate his/her claims in the manner that is most efficient and economical for the parties and  
25 the judicial system.

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V.

**PRIVATE ATTORNEYS GENERAL ACT OF 2004 DESIGNATION**

36. The Causes of Action alleged herein are appropriately suited for a Labor Code Private Attorneys General Act of 2004 (hereinafter referred to as "PAGA") representative action because:

- a. This action involves allegations of violations of provisions of the California Labor Code that either do not provide for a civil penalty or provide for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency (hereinafter referred to as "LWDA") or any departments, divisions, commissions, boards, agencies or employees;
- b. Plaintiff FOX is an "aggrieved employee" because he is employed by the alleged violators and had one or more of the alleged violations committed against him and, therefore, is properly suited to represent the interests of all other current and former aggrieved employees of Defendants;
- c. Plaintiff FOX seeks to recover all applicable penalties under PAGA on behalf of himself and all other aggrieved employees including, but not limited to, an amount sufficient to recover underpaid wages including all unpaid and/or underpaid wages pursuant to Labor Code § 558.
- d. Pursuant to Labor Code § 2698, et seq., Plaintiff FOX has complied with his notice requirements by serving via certified mail, return receipt requested, the LWDA and PRIME ASSET MANAGEMENT, INC., a notice with his claims for wage and hour violations and penalties. The PAGA claims have been tolled during the pendency of the notice period to the LWDA. The statutory period expired, and the LWDA did not serve Plaintiff FOX with a notice of intent to assume jurisdiction over the applicable penalty claims. Therefore, Plaintiff FOX has satisfied and exhausted the procedural notice requirement to pursue penalties against Defendants pursuant to Labor Code § 2698, et seq.

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VI.

**CAUSES OF ACTION**

**FIRST CAUSE OF ACTION**

**FAILURE TO PAY MINIMUM AND REGULAR WAGES**

(Violation of Labor Code §§ 1197, 1198 and the Applicable Wage Order)  
(Alleged by Plaintiff Individually and On Behalf of the Class Against Defendants)

37. Plaintiff realleges and incorporates by reference the foregoing allegations, as though set forth herein.

38. Plaintiff and members of the Class are/were “non-exempt” employees of Defendants in the State of California within the meaning of the Labor Code and the applicable Wage Order.

39. Labor Code § 1197 states “The minimum wage for employees fixed by the commission or by any state or local law, is the minimum wage to be paid to employees, and the payment of a less wage than minimum wage so fixed is unlawful.”

40. Labor Code § 1198 states “The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

41. IWC Wage Order 5-2001 § 4 provides that an employer may not pay employees less than the applicable minimum wage for all hours worked.

42. Labor Code § 1194 states “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of his minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees and costs of suit.”

43. As set forth above, members of the class were not paid all minimum and regular wages for all hours worked. At all relevant times, Prime Asset Management, Inc. instructed its employees, including Plaintiff, to record only the number of hours set under their employment contract. It was also a common practice of Defendants to alter the timecards completed by their employees by removing the hours worked over the contracted time and already entered by the employees into the timekeeping system. Therefore, despite the fact that Plaintiff and other employees often needed more time to complete their job duties,

1 and worked in excess of the contracted hours with Defendants' knowledge, they were not paid for all  
2 actual hours worked as required under the California law.

3 44. At all material times, Defendants were and/or are Plaintiff's and all other current and  
4 former similarly-situated and aggrieved employees' employers and/or persons acting on behalf of  
5 Defendants within the meaning of Labor Code § 558/558.1, who violated or caused to be violated, a  
6 section of Part 2, Chapter 1, of the California Labor Code or any provision regulating hours and days of  
7 work in any Order of the Industrial Welfare Commission and, as such, are subject to penalties for each  
8 underpaid employee as set forth in Labor Code § 558/558.1 including the payment of the underpaid wages  
9 to affected employees.

10 45. Pursuant to California Labor Code § 558.1, Defendants are sued collectively and  
11 individually as employers of Plaintiff, and/or a person acting on behalf of Plaintiff's employer, who  
12 violated, or caused to be violated, any provision regulating minimum wages or hours and days of work  
13 in the applicable order of the Industrial Welfare Commission, as well as the California Labor Code  
14 Sections 203, 226, 226.7, 1193.6, 1194 and 2802, and as such, are liable as an employer of Plaintiff for  
15 such violations pursuant to California Labor Code § 558.1.

16 46. As a direct result of Defendants' violations alleged herein, Plaintiff and Class Members  
17 have suffered and continue to suffer, substantial losses related to the use and enjoyment of such wages,  
18 including lost interest on such monies and expenses and attorney's fees in seeking to compel Defendants  
19 to fully perform their obligation under state law, all to their respective damage in amounts according to  
20 proof at trial and within the jurisdictional limitations of this Court.

21 47. Plaintiff seeks to recover in a civil action the unpaid balance of the full amount of the  
22 unpaid wages resulting from Defendants' minimum wage violations including interest thereon, reasonable  
23 attorney's fees and costs of suit, penalties, and liquidated damages to the fullest extent permissible  
24 including those permitted pursuant to Labor Code §§ 558, 1194 and 1194.2 and Code of Civil Procedure  
25 § 1021.5.

26 WHEREFORE, Plaintiff prays for relief as hereinafter requested.

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**SECOND CAUSE OF ACTION**  
**FAILURE TO PAY OVERTIME WAGES**

(Violation of Labor Code §§ 510, 1198 and the Applicable Wage Order)  
(Alleged by Plaintiff Individually and On Behalf of the Class Against Defendants)

48. Plaintiff realleges and incorporates by reference the foregoing allegations, as though set forth herein.

49. Plaintiff and members of the Class are/were “non-exempt” employees of Defendants in the State of California within the meaning of the Labor Code and the applicable Wage Order.

50. Labor Code § 510 provides in pertinent part: “Eight hours of labor constitutes a day’s work. Any work in excess of 8 hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work 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. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.”

51. Labor Code § 1198 states “The maximum hours of work and the standard conditions of labor fixed by the Commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

52. IWC Wage Order 5-2001 § 3 provides that an employer may not pay non-exempt employees less than the applicable overtime rate for all overtime hours worked.

53. Through Defendants’ conduct during the applicable statutory period including, but not limited to, the conduct alleged herein, including that alleged on information and belief, Defendants failed to pay all Plaintiff and Class Members all overtime wages for all overtime worked and recorded, all in violation of Labor Code §§ 510, 1198 and the applicable Wage Order.

54. At all material times, Defendants were and/or are Plaintiff’s and all other current and former similarly-situated and aggrieved employees’ employers and/or persons acting on behalf of Defendants within the meaning of Labor Code § 558/558.1, who violated or caused to be violated, a section of Part 2, Chapter 1, of the California Labor Code or any provision regulating hours and days of work in any Order of the Industrial Welfare Commission and, as such, are subject to penalties for each

1 underpaid employee as set forth in Labor Code § 558/558.1 including the payment of the underpaid wages  
2 to affected employees.

3 55. Pursuant to California Labor Code § 558.1, Defendants are sued collectively and  
4 individually as employers of Plaintiff, and/or a person acting on behalf of Plaintiff's employer, who  
5 violated, or caused to be violated, any provision regulating minimum wages or hours and days of work  
6 in the applicable order of the Industrial Welfare Commission, as well as the California Labor Code  
7 Sections 203, 226, 226.7, 1193.6, 1194 and 2802, and as such, are liable as an employer of Plaintiff for  
8 such violations pursuant to California Labor Code § 558.1.

9 56. As a direct result of Defendants' violations alleged herein, Plaintiff and Class Members  
10 have suffered and continue to suffer substantial losses related to the use and enjoyment of such wages,  
11 including lost interest on such monies and expenses and attorney's fees in seeking to compel Defendants  
12 to fully perform their obligation under state law, all to their respective damage in amounts according to  
13 proof at trial and within the jurisdictional limitations of this Court.

14 57. Plaintiff seeks to recover in a civil action the unpaid balance of the full amount of the  
15 unpaid wages resulting from Defendants' overtime wage violations including interest thereon, reasonable  
16 attorney's fees and costs of suit, and penalties, to the fullest extent permissible including those permitted  
17 pursuant to Labor Code §§ 510, 558, 1194 and 1194.2 and Code of Civil Procedure §1021.5.

18 WHEREFORE, Plaintiff prays for relief as hereinafter requested.

19  
20 **THIRD CAUSE OF ACTION**  
21 **FAILURE TO PROVIDE MEAL PERIODS**

(Violation of Labor Code §§ 226.7(b), 512(a), 1198 and the "Meal Period" Section of the Applicable  
Wage Order)

(Alleged by Plaintiff Individually and On Behalf of the Class Against Defendants)

23 58. Plaintiff realleges and incorporates by reference the foregoing allegations, as though set  
24 forth herein.

25 59. At all times relevant, Plaintiff was a "non-exempt" employee of Defendants in the State of  
26 California within the meaning of the Labor Code and the applicable Wage Order.

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60. Labor Code § 226.7(b) provides: “No employer shall require any employee to work during any meal or rest or recovery period mandated by an applicable order of the Industrial Welfare Commission.”

61. Labor Code § 512(a) provides: “An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes.”

62. Labor Code § 1198 states “The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

63. Section 11 of the applicable IWC Wage Order provides, in part, that no employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee. An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived. Subsection D of the applicable IWC Wage Order § 11 provides that if an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal period is not provided.

64. Through Defendants’ conduct during the applicable statutory period including, but not limited to, the conduct alleged herein, including that alleged on information and belief, Defendants violated Labor Code §§ 226.7(b), 512(a), 1198, and the applicable Wage Order when they failed to provide a 30-minute uninterrupted, duty-free meal period no later than the start of the sixth hour of work during

1 work periods in excess of five consecutive hours and, when applicable, when it failed to provide a second  
2 30-minute uninterrupted, duty-free meal period no later than the start of the eleventh hour of work.

3 65. Labor Code § 226.7(c) and IWC Wage Order § 11(D), provides that the employer shall pay  
4 an employee one hour of pay at the employee's regular rate of compensation for each workday that the  
5 meal period is not provided. Defendants have not paid the appropriate meal premium wages to Plaintiff  
6 and other similarly-situated and aggrieved employees.

7 66. At all material times, Defendants were and/or are Plaintiff's and all other current and  
8 former similarly-situated and aggrieved employees employers and/or persons acting on behalf of  
9 Defendants within the meaning of Labor Code § 558/558.1, who violated or caused to be violated, a  
10 section of Part 2, Chapter 1, of the California Labor Code or any provision regulating hours and days of  
11 work in any Order of the Industrial Welfare Commission and, as such, are subject to penalties for each  
12 underpaid employee as set forth in Labor Code § 558/558.1 including the payment of the underpaid wages  
13 to affected employees.

14 67. Pursuant to California Labor Code § 558.1, Defendants a person acting on behalf of  
15 Plaintiff's employer, who violated, or caused to be violated, any provision regulating minimum wages or  
16 hours and days of work in the applicable order of the Industrial Welfare Commission, as well as the  
17 California Labor Code Sections 203, 226, 226.7, 1193.6, 1194 and 2802, and as such, are liable as an  
18 employer of Plaintiff for such violations pursuant to California Labor Code § 558.1.

19 68. As a direct result of Defendants' violations alleged herein, Plaintiff and all other current  
20 and former similarly-situated and aggrieved employees have suffered and continue to suffer substantial  
21 losses related to the use and enjoyment of such wages, including lost interest on such monies and expenses  
22 and attorney's fees in seeking to compel Defendants to fully perform their obligations under state law, all  
23 to the respective damage in amounts according to proof at trial and within the jurisdictional limitations of  
24 this Court.

25 69. Plaintiff seeks to recover in a civil action the unpaid balance of the full amount of the  
26 unpaid wages resulting from Defendants' meal period violations including interest thereon, reasonable  
27 attorney's fees and costs of suit, and penalties to the fullest extent permissible including those permitted  
28 pursuant to Labor Code §§ 226.7, 512, 558, 558.1, and Code of Civil Procedure § 1021.5.

WHEREFORE, Plaintiff prays for relief as hereinafter requested.

**FOURTH CAUSE OF ACTION**  
**FAILURE TO PROVIDE REST PERIODS**

(Violation of Labor Code §§ 226.7(b), 1198,  
and the “Rest Period” Section of the Applicable Wage Order)  
(Alleged by Plaintiff Individually and On Behalf of the Class Against Defendants)

70. Plaintiff realleges and incorporates by reference the foregoing allegations, as though set forth herein.

71. At all times relevant, Plaintiff is and/or was a “non-exempt” employee of Defendants in California within the meaning of the Labor Code and the applicable Wage Order.

72. Labor Code § 1198 makes the employment of any employee under conditions of labor prohibited by a Wage Order unlawful.

73. By Order of the Industrial Welfare Commission, every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period shall be based on the total hours worked daily at the rate of ten (10) minutes rest time per four (4) hours or major fraction thereof. Authorized rest period time shall be counted, as hours worked, for which there shall be no deduction from wages as provided in the applicable IWC Wage Order.

74. Pursuant to Labor Code § 226.7(c) and the applicable IWC Wage Order, Defendants shall pay Plaintiff one additional hour of pay at the employees’ regular rate of compensation for each day that the rest period is not authorized and permitted.

75. Through Defendants’ conduct during the applicable statutory period including the conduct alleged herein, Defendants violated Labor Code §§ 226.7 and 1198 and the IWC Wage Order when they failed to authorize and permit full 10-minute, uninterrupted, duty-free rest periods for every four hours worked (or major fraction thereof) to Plaintiff during the time period each employee worked for Defendants.

76. Defendants further have failed to pay to Plaintiff the rest period wage premiums pursuant to Section 226.7. Defendants’ omissions in failing to pay the applicable wages set forth in Section 226.7

1 are not in good faith, and further, Defendants had no reasonable grounds for believing the omissions are  
2 not in violation of the Labor Code relating to an order of the Commission.

3 77. At all material times, Defendants were and/or are Plaintiff's and all other current and  
4 former similarly-situated and aggrieved employees' employers or persons acting on behalf of their  
5 employer, within the meaning of California Labor Code § 558, who violated or caused to be violated, a  
6 section of Part 2, Chapter 1 of the California Labor Code or any provision regulating hours and days of  
7 work in any Order of the Industrial Welfare Commission and, as such, are subject to penalties for each  
8 underpaid employee as set for in Labor Code § 558 including the payment of the underpaid wages to  
9 affected employees.

10 78. Pursuant to California Labor Code § 558.1, Defendants are sued collectively and  
11 individually as employers of Plaintiff and all other current and former similarly-situated and aggrieved  
12 employees, and/or a person acting on behalf of Plaintiff and all other current and former similarly-situated  
13 and aggrieved employees employer, who violated, or caused to be violated, any provision regulating  
14 minimum wages or hours and days of work in the applicable order of the Industrial Welfare Commission,  
15 as well as the California Labor Code Sections 203, 226, 226.7, 1193.6, 1194 and 2802, and as such, are  
16 liable as an employer of Plaintiff for such violations pursuant to California Labor Code § 558.1.

17 79. As a direct result, Plaintiff and all other current and former similarly-situated and aggrieved  
18 employees have suffered and continue to suffer, substantial losses related to the use and enjoyment of  
19 such wages, including lost interest on such monies and expenses and attorney's fees in seeking to compel  
20 Defendants to fully perform their obligations under state law, all to the respective damage in amounts  
21 according to proof at trial and within the jurisdictional limitations of this Court.

22 80. Pursuant to the Labor Code, Plaintiff seeks to recover in a civil action the unpaid balance  
23 of the full amount of the unpaid wages including interest thereon, reasonable attorney's fees and costs of  
24 suit to the fullest extent permissible including those permitted pursuant to Labor Code §§ 226.7, 558,  
25 558.1, and Code of Civil Procedure § 1021.5.

26 WHEREFORE, Plaintiff prays for relief as hereinafter requested.

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28 ///

**FIFTH CAUSE OF ACTION**  
**FAILURE TO INDEMNIFY PLAINTIFF EXPENSES**  
**AND LOSSES IN DISCHARGING HER DUTIES**

(Violation of Labor Code § 2802)

(Alleged by Plaintiff Individually and On Behalf of the Class Against Defendants)

82. Plaintiff realleges and incorporates by reference the foregoing allegations, as though set forth herein.

83. At all times relevant herein, Plaintiff and all other current and former similarly-situated and aggrieved employees were required to utilize their own supplies, including computer and printer to perform their job duties.

84. Labor Code § 2802(a) states “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.”

85. At all relevant times herein, Defendants failed to reimburse Plaintiff and similarly situated employees for necessary expenditures and losses incurred in direct consequence to the discharge of their duties in violation of Labor Code § 2802. For instance, Plaintiff was not reimbursed for the costs related to the maintenance and usage of his personal computer, printer, and internet and other expenses incurred as a result of completion of his job duties. Consequently, Plaintiff and, on information and belief, all other current and former similarly-situated and aggrieved employees are entitled to reimbursement for all expenses which were necessary to perform their job duties. Defendants, and each of them, derived and continue to derive an unjust and inequitable economic benefit by failing to comply with the sections alleged herein.

86. Pursuant to California Labor Code § 558.1, Defendants are sued collectively and individually as employers of Plaintiff and all other current and former similarly-situated and aggrieved employees, and/or a person acting on behalf of Plaintiff’s and all other current and former similarly-situated and aggrieved employees’ employer, who violated, or caused to be violated, any provision regulating minimum wages or hours and days of work in the applicable order of the Industrial Welfare Commission, as well as the California Labor Code Sections 203, 226, 226.7, 1193.6, 1194 and 2802,

1 and as such, are liable as an employer of Plaintiff for such violations pursuant to California Labor Code  
2 § 558.1.

3 87. As a direct result of violating Labor Code § 2802(a), Plaintiff and all other current and  
4 former similarly-situated and aggrieved employees have suffered and continue to suffer, substantial  
5 losses related to such incurred but unpaid expenses, lost interest on such expenses and attorney's fees in  
6 seeking to compel Defendants to fully perform their obligations under the law, all in an amount to be  
7 proved at time of trial.

8 88. Labor Code § 2802(b) states "All awards made by a Court or by the Division of Labor  
9 Standards Enforcement for reimbursement of necessary expenditures under this section shall carry  
10 interest at the same rate as judgments in civil actions. Interest shall accrue from the date on which the  
11 employee incurred the necessary expenditure or loss." The exact amount of interest is in an amount to  
12 be proven at time of trial.

13 89. Furthermore, Labor Code §2802(c) states "For the purposes of this section, the term  
14 'necessary expenditures or losses' shall include all reasonable costs, including, but not limited to,  
15 attorney's fees incurred by the employee in enforcing the rights granted by this section." Therefore,  
16 Plaintiff will seek to recover the amounts unreimbursed, interest, and the costs and attorney's fees he  
17 will necessarily incur in pursuing same. The exact amount of reimbursements, interest, costs and  
18 attorney's fees will be in an amount to be proved at time of trial.

19 WHEREFORE, Plaintiff prays for relief as hereinafter requested.  
20

21 **SIXTH CAUSE OF ACTION**  
22 **FAILURE TO PROVIDE AND MAINTAIN ACCURATE ITEMIZED WAGE STATEMENTS**  
23 (Violation of Labor Code §§ 226(a), 1198 and the Applicable Wage Order)  
(Alleged by Plaintiff Individually and On Behalf of the Class Against Defendants)

24 90. Plaintiff realleges and incorporates by reference the foregoing allegations, as though set  
25 forth herein.

26 91. Plaintiff and members of the Class are employees of Defendants within the meaning of the  
27 Labor Code and the applicable Wage Order.  
28

1           92. Labor Code § 226(a) states in pertinent part “Every employer shall, semimonthly or at the  
2 time of each payment of wages, furnish each of his or her employees, either as a detachable part of the  
3 check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal  
4 check or cash, an accurate itemized statement in writing showing”:

5           (1) gross wages earned;

6           (2) total hours worked by the employee, except for any employee whose compensation is  
7 solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section  
8 515 or any applicable order of the Industrial Welfare Commission;

9           (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid  
10 on a piece-rate basis;

11           (4) all deductions, provided that all deductions made on written orders of the employee may  
12 be aggregated and shown as one item,

13           (5) net wages earned;

14           (6) the inclusive dates of the period for which the employee is paid;

15           (7) the name of the employee and only the last four digits of his or her social security number  
16 or an employee identification number other than a social security number;

17           (8) the name and address of the legal entity that is the employer...;

18           (9) all applicable hourly rates in effect during the pay period and the corresponding number of  
19 hours worked at each hourly rate by the employee, and, beginning July 1, 2013, if the employer is a  
20 temporary services employer as defined in Section 201.3, the rate of pay and the total hours worked for  
21 each temporary services assignment. The deductions made from payment of wages shall be recorded in  
22 ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement  
23 and the record of the deductions shall be kept on file by the employer for at least three years at the place  
24 of employment or at a central location within the State of California.

25           93. At all relevant times, Defendants failed to issue proper wage statements to Plaintiff and the  
26 members of the proposed Class as the statements did not set forth the accurate information as required by  
27 law, including the correct total hours worked and total wages earned. Additionally, the wage statements  
28

1 inaccurately stated the name of the legal entity that is the employer; it only stated “Prime Asset  
2 Management” rather than “Prime Asset Management, Inc.”

3 94. Labor Code § 1198 states “The maximum hours of work and the standard conditions of  
4 labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor  
5 for employees. The employment of any employee for longer hours than those fixed by the order or under  
6 conditions of labor prohibited by the order is unlawful.”

7 95. Through Defendants’ conduct during the applicable statutory period including, but not  
8 limited to, the conduct alleged herein, including that alleged on information and belief, Defendants failed  
9 to provide accurate wage statements including, but not limited to, all hours worked and all wages earned.  
10 Defendants further failed to maintain accurate records of hours worked.

11 96. Plaintiff and members of the Class suffered injuries because of Defendants’ intentional and  
12 knowing failure to provide to Plaintiff and Members of the Class and maintain the writings required by  
13 Labor Code § 226(a). Defendants’ failure to provide and maintain accurate statements left Plaintiff and  
14 members of the Class without the ability to know, understand and question the hours worked and wage  
15 earned and due. As a direct result, Plaintiff and members of the Class have suffered and continue to suffer  
16 substantial injuries, losses and actual damages related to Defendants’ violations, including lost wages, lost  
17 interest on such wages, and expense and attorney’s fees in seeking to compel Defendants to fully perform  
18 its obligations.

19 97. Labor Code § 226(e) states “An employee suffering injury as a result of a knowing and  
20 intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all  
21 actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred  
22 dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate  
23 penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s  
24 fees.” Labor Code § 226(e)(2)(B) states “An employee is deemed to suffer injury for purposes of this  
25 subdivision if the employer fails to provide accurate and complete information as required by any one or  
26 more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and easily  
27 determine from the wage statement alone one or more of the following: (i) The amount of gross wages or  
28 net wages paid to the employee during the pay period or any other information required to be provided on

1 the itemized wage statement pursuant to items (2) to (4), inclusive, (6) and (9) of subdivision (a)...(iii)The  
2 name and address of the employer..." Because Plaintiff and Class Members' wage statements did not  
3 include, among other things, the name of the legal entity that was the employer or an accurate accounting  
4 of gross wages earned or total hours worked they are deemed to have suffered injury.

5 98. Labor Code § 226(h) states "An employee may also bring an action for injunctive relief to  
6 ensure compliance with this section and is entitled to an award of costs and reasonable attorney's fees."

7 99. At all material times, Defendants were and/or are Plaintiff's and/or other similarly-  
8 situated employees' employers and/or persons acting on behalf of Defendants within the meaning of Labor  
9 Code § 558/558.1, who violated or caused to be violated, a section of Part 2, Chapter 1, of the California  
10 Labor Code or any provision regulating hours and days of work in any Order of the Industrial Welfare  
11 Commission and, as such, are subject to penalties for each underpaid employee as set forth in Labor Code  
12 § 558/558.1 including the payment of the underpaid wages to affected employees.

13 100. Pursuant to California Labor Code § 558.1, Defendants are sued collectively and  
14 individually as employers of Plaintiff and all other current and former similarly-situated and aggrieved  
15 employees, and/or a person acting on behalf of Plaintiff's and all other current and former similarly-  
16 situated and aggrieved employees' employer, who violated, or caused to be violated, any provision  
17 regulating minimum wages or hours and days of work in the applicable order of the Industrial Welfare  
18 Commission, \ as well as the California Labor Code Sections 203, 226, 226.7, 1193.6, 1194 and 2802, and  
19 as such, are liable as an employer of Plaintiff for such violations pursuant to California Labor Code §  
20 558.1.

21 101. As a direct result of Defendants' violations alleged herein, Plaintiff and members of the  
22 Class have suffered and continue to suffer injury including substantial losses related to the use and  
23 enjoyment of such wages, lost interest on such monies and expenses and attorney's fees in seeking to  
24 compel Defendants to fully perform their obligation under state law, all to their respective damage in  
25 amounts according to proof at trial and within the jurisdictional limitations of this Court.

26 102. Plaintiff seeks to recover in a civil action all remedies including damages, unpaid wages,  
27 penalties, attorney's fees and costs, and injunctive relief to the fullest extent permissible including those  
28 permitted pursuant to Labor Code §§ 226(e) and (h), 558 and 558.1, and Code of Civil Procedure § 1021.5.

WHEREFORE, Plaintiff prays for relief as hereinafter requested.

**SEVENTH CAUSE OF ACTION**  
**FAILURE TO TIMELY PAY WAGES DUE UPON SEPARATION OF EMPLOYMENT**  
(Violation of Labor Code §§ 201(a) and 202(a))

(Alleged by Plaintiff Individually and On Behalf of the Class Against Defendants)

103. Plaintiff realleges and incorporates by reference the foregoing allegations, as though set forth herein.

104. Plaintiff and members of the Class are/were “non-exempt” employees of Defendants within the meaning of the Labor Code and the applicable Wage Order.

105. Labor Code § 201(a) states “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”

106. Labor Code § 202(a) states “If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting.”

107. Defendants did not provide Plaintiff his final paycheck containing all of his wages earned and due on the date of this termination. Additionally, through Defendants’ conduct during the applicable statutory period including, but not limited to, the conduct alleged herein, including that alleged on information and belief, Defendants willfully failed to provide all Plaintiff and members of the Class with all wages due and owing, including minimum wages, overtime wages, regular wages, by the time specified by Labor Code §§ 201(a) and 202(a), as applicable.

108. Labor Code § 203(a) states, in relevant part, “If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the

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

3 109. At all material times, Defendants were and/or are Plaintiff’s and/or all other current and  
4 former similarly-situated and aggrieved employees’ ’ employers and/or persons acting on behalf of  
5 Defendants within the meaning of Labor Code § 558/558.1, who violated or caused to be violated, a  
6 section of Part 2, Chapter 1, of the California Labor Code or any provision regulating hours and days of  
7 work in any Order of the Industrial Welfare Commission and, as such, are subject to penalties for each  
8 underpaid employee as set forth in Labor Code § 558/558.1 including the payment of the underpaid wages  
9 to affected employees.

10 110. Pursuant to California Labor Code § 558.1, Defendants are sued collectively and  
11 individually as employers of Plaintiff, and/or a person acting on behalf of Plaintiff’s employer, who  
12 violated, or caused to be violated, any provision regulating minimum wages or hours and days of work  
13 in the applicable order of the Industrial Welfare Commission, as well as the California Labor Code  
14 Sections 203, 226, 226.7, 1193.6, 1194 and 2802, and as such, are liable as an employer of Plaintiff for  
15 such violations pursuant to California Labor Code § 558.1.

16 111. As a direct result of Defendants’ violations alleged herein, Plaintiff and members of the  
17 Class have suffered and continue to suffer substantial losses related to the use and enjoyment of such  
18 wages, including lost interest on such monies and expenses and attorney’s fees in seeking to compel  
19 Defendants to fully perform their obligation under state law, all to their respective damage in amounts  
20 according to proof at trial and within the jurisdictional limitations of this Court.

21 112. Plaintiff seeks to recover in a civil action all remedies to the fullest extent permissible  
22 including those permitted pursuant to Labor Code § 203.

23 WHEREFORE, Plaintiff prays for relief as hereinafter requested.

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**EIGHTH CAUSE OF ACTION**  
**FAILURE TO TIMELY PROVIDE REQUISITE WRITINGS**

(Violation of Labor Code §§ 2751 and 2810.5)

(Alleged by Plaintiff Individually and On Behalf of the Class Against Defendants)

113. Plaintiff realleges and incorporates by reference the foregoing allegations, as though set forth herein.

114. Labor Code section 2810.5(a) states in pertinent part:

“(a) (1) At the time of hiring, an employer shall provide to each employee a written notice, in the language the employer normally uses to communicate employment-related information to the employee, containing the following information:

(A) The rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, as applicable.

(B) Allowances, if any, claimed as part of the minimum wage, including meal or lodging allowances.

(C) The regular payday designated by the employer in accordance with the requirements of this code.

(D) The name of the employer, including any “doing business as” names used by the employer.

(E) The physical address of the employer’s main office or principal place of business, and a mailing address, if different.

(F) The telephone number of the employer.

(G) The name, address, and telephone number of the employer’s workers’ compensation insurance carrier.

(H) That an employee: may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

(I) Any other information the Labor Commissioner deems material and necessary.

115. Plaintiff and all other current and former similarly-situated and aggrieved employees were not provided with the above written notice at the time of hiring.

116. Plaintiff and all other current and former similarly-situated and aggrieved employees suffered a loss of wages, interest and attorney's fees as a result of Defendants' failure to provide this notice. Defendants' failure to provide this information resulted in the underpayment and late payment of wages. In addition, Plaintiff suffered an actual loss of damages due to his inability to properly determine his correct rate of pay, his regular payday, and the correct legal entity that was the employer and the correct legal address of that entity in a reasonably efficient manner.

117. Labor Code section 2751 states in pertinent part:

(a) Whenever an employer enters into a contract of employment with an employee for services to be rendered within this state and the contemplated method of payment of the employee involves commissions, the contract shall be in writing and shall set forth the method by which the commissions shall be computed and paid.

(b) The employer shall give a signed copy of the contract to every employee who is a party thereto and shall obtain a signed receipt for the contract from each employee. In the case of a contract that expires and where the parties nevertheless continue to work under the terms of the expired contract, the contract terms are presumed to remain in full force and effect until the contract is superseded or employment is terminated by either party.

118. As set forth above, Defendants failed to provide Plaintiff and members of the Class the requisite writing describing the method by which the commission shall be computed and paid.

119. Plaintiff and all other current and former similarly-situated and aggrieved employees suffered a loss of wages, interest and attorney's fees as a result of Defendants' failure to provide this notice. Defendants' failure to provide this information resulted in the underpayment and late payment of wages. In addition, Plaintiff suffered an actual loss of damages due to his inability to properly determine his correct rate of pay in a reasonably efficient manner.

120. Pursuant to the Labor Code, Plaintiff seeks to recover in a civil action damages incurred as a result of this failure, including unpaid balance of the full amount of the unpaid wages including interest thereon, reasonable attorney's fees and costs of suit to the fullest extent permissible including those permitted pursuant to Labor Code and Code of Civil Procedure § 1021.5.

WHEREFORE, Plaintiff prays for relief as hereinafter requested.

**NINTH CAUSE OF ACTION**  
**UNLAWFUL RENT CHARGES IN EXCESS OF AMOUNTS SET BY**  
**SECTION 10 (C) OF THE APPLICABLE WAGE ORDER**

(Alleged by Plaintiff Individually and On Behalf of the Class Against Defendants)

121. Plaintiff realleges and incorporates by reference the foregoing allegations, as though set forth herein.

122. The “Meals and Lodging” Section 10 (E) of the applicable IWC wage order sets forth the maximum amount of the rent an employer may charge an employee who, as a condition of employment, must live at the place of employment or occupy quarters owned or under the control of the employer.

123. Labor Code § 1198 states “The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

124. At all relevant times, Plaintiff and, on information and belief, all other current and former similarly-situated and aggrieved employees were required to live on premises as part of their job duties. Defendants had a common practice to charge Plaintiff, and all other current and former similarly-situated and aggrieved residential managers rent in excess of the amounts permitted under Section 10 (C) of the relevant Wage Order although Plaintiff, and on information and belief, other current and former similarly-situated and aggrieved employees were not paid at least a minimum wages for all hours worked as required under the California law. Plaintiff, who was required to live on the premises as a condition of his employment, was charged about \$866.00 a month of the rent since 2018, although the maximum amounts of the rent permitted under the law were: \$621.29/2018, \$677.75/2019, and \$734.21/2020, respectively. As result of this business practice, Plaintiff and, on information and belief, all other current and former similarly-situated and aggrieved employees were overcharged in violation of the California law.

125. Through Defendants’ conduct during the applicable statutory period including, but not limited to, the conduct alleged herein, including that alleged on information and belief, Defendants overcharged their employees for the rent in violation of Labor Code § 1198 and Section 10(C) of the applicable Wage Order.

126. As a direct result of Defendants' violations alleged herein, Plaintiff and members of the Class have suffered and continue to suffer injury including substantial monetary losses related to the use and enjoyment, and lost interest on the overcharged monies and expenses and attorney's fees spent on pursuing all remedies available under the law while seeking restitution of the money lost in amounts according to proof at trial and within the jurisdictional limitations of this Court.

127. Plaintiff is entitled and seeks any and all available remedies including restitution and recovery of reasonable attorney's fees pursuant to California Code of Civil Procedure §1021.5, Business and Professions Code § 17200, *et seq.*, the substantial benefit doctrine, and/or the common fund doctrine.

WHEREFORE, Plaintiff prays for relief as hereinafter requested.

**TENTH CAUSE OF ACTION**

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

(Alleged by Plaintiff Individually and On Behalf of the Class Against Defendants)

128. Plaintiff realleges and incorporates by reference the foregoing allegations, as though set forth herein.

129. Business & Professions Code § 17200 states "As used in this chapter, unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code."

130. Through Defendants' conduct during the applicable statutory period including, but not limited to, the conduct alleged herein, including that alleged on information and belief, Defendants have engaged in business practices in California by practicing, employing, and utilizing, the employment practices outlined in the preceding paragraphs all in violation of California law and the Industrial Welfare Commission Wage Orders. Defendants' use of such practices constitutes an unfair business practice, unfair competition, and provides an unfair advantage over Defendants' competitors doing business in the State of California that comply with their obligations to properly provide employment conditions in compliance with the law and pay employees for all earned wages and compensation as required by law.

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131. Defendants' violations of the Labor Code and the Industrial Welfare Commission Wage Orders and their scheme to lower payroll costs as alleged herein constitute unlawful business practices because these actions were done in a systematic manner over a period of time to the detriment of Plaintiff and the Class. The acts complained of herein occurred within the last four (4) years preceding the filing of this complaint and include, but are not limited to, failure to (i) pay proper minimum, overtime, and regular wages; (ii) pay timely wages during and upon separation of employment; (iii) maintain accurate records and provide and maintain accurate itemized wage statements; (iv) provide compliant meal and rest breaks; (v) provide proper hiring documents to employees during their employment; and (vi) charging rent in excess of the amounts set by the applicable Wage Order.

132. Plaintiff is informed and believes and on that basis alleges that, at all times herein mentioned, Defendants have engaged in the above-mentioned acts of unlawful, deceptive, and unfair business practices prohibited by California Business and Professions Code §§ 17200, *et seq.*, including those set forth in the preceding paragraph, thereby depriving Plaintiff and the Class the minimum working condition standards and conditions due, including those under California Labor Code and Wage Order of the Industrial Welfare Commission.

133. As a result of Defendants' unfair competition as alleged herein, Plaintiff has suffered injury in fact and lost money or property. Plaintiff has been deprived of the rights to wages and benefits due as alleged herein.

134. Pursuant to California Business & Professions Code § 17203, Plaintiff is entitled to seek restitution of all wages and other monies owed on behalf of himself and the represented employees belonging to them, including interest thereon, which Defendants wrongfully withheld from them and retained for themselves by means of its unlawful and unfair business practices.

135. Plaintiff is entitled to an injunction and other declaratory and equitable relief against such practices to prevent future damage for which there is no adequate remedy at law, and to avoid a multiplicity of lawsuits.

136. Plaintiff is informed and believes, and on that basis, alleges, that the illegal conduct alleged herein is continuing and there is no indication that Defendants will not continue such activity into the future. Plaintiff alleges that if Defendants are not enjoined from the conduct set forth in this Complaint,

1 they will continue to fail to pay the wage and compensation required to be paid and will fail to comply  
2 with other requirements of the California Labor Code and Wage Order of the Industrial Welfare  
3 Commission.

4 137. As a direct and proximate result of Defendants' conduct, Defendants have received and  
5 will continue to receive monies that rightfully belong to members of the general public who have been  
6 adversely affected by Defendants' conduct, as well as to Plaintiff by virtue of unpaid wages and other  
7 monies.

8 138. Plaintiff is entitled and seeks any and all available remedies including restitution and  
9 recovery of reasonable attorney's fees pursuant to California Code of Civil Procedure §1021.5, Business  
10 and Professions Code § 17200, *et seq.*, the substantial benefit doctrine, and/or the common fund doctrine.

11 WHEREFORE, Plaintiff prays for relief as hereinafter requested.

12 **ELEVENTH CAUSE OF ACTION**  
13 **PRIVATE ATTORNEY GENERAL ACT (PAGA)**

14 (Violation of Labor Code § 2699, *et seq.*)

15 (Alleged by Plaintiff Individually and On Behalf of all current and former Aggrieved Employees  
16 Against All Defendants)

17 139. Plaintiff realleges and incorporates by reference the foregoing allegations, as though set  
18 forth herein.

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

24 141. Plaintiff FOX is an "aggrieved employee" because he was employed by the alleged violator  
25 and had one or more of the alleged violations committed against him, and therefore is properly suited to  
26 represent the interests of other current and former aggrieved employees of Defendants.

27 142. On or about June 1, 2020 pursuant to Labor Code § 2698, *et seq.*, Plaintiff FOX served via  
28 certified mail, return receipt requested, the LWDA, and DEFENDANT with his claims for wage and hour  
violations and penalties. The statutory period expired, and the LWDA did not serve Plaintiff with a notice

1 of intent to assume jurisdiction over the applicable penalty claims. Therefore, Plaintiff has satisfied and  
2 exhausted the procedural notice requirement to pursue penalties against Defendants pursuant to Labor  
3 Code §2698, *et seq.*

4 143. Labor Code § 1198 states “The maximum hours of work and the standard conditions of  
5 labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor  
6 for employees. The employment of any employee for longer hours than those fixed by the order or under  
7 conditions of labor prohibited by the order is unlawful.”

8 144. Defendants violated Labor Code §§ 226.7, 512, and 1198 by failing to provide Plaintiff  
9 and current and former aggrieved employees lawfully complaint meal periods and by failing to pay them  
10 wages for each day a meal period was not provided. Under Labor Code § 2699 (f)(2) Defendants are  
11 subject to a civil penalty of \$100 for each aggrieved employee per pay period for an initial violation and  
12 \$200 for each aggrieved employee per pay period for each subsequent violation.

13 145. Defendants violated Labor Code §§ 226.7 and 1198 by failing to provide Plaintiff and  
14 current and former aggrieved employees duty-free rest periods and by failing to pay them premium wages  
15 for each day a rest period was not provided. Under Labor Code § 2699 (f)(2) Defendants are subject to a  
16 civil penalty of \$100 for each aggrieved employee per pay period for an initial violation and \$200 for each  
17 aggrieved employee per pay period for each subsequent violation.

18 146. Defendants violated Labor Code §§ 1194, 1197, and 1198 by failing to pay Plaintiff and  
19 current and former aggrieved employees at least minimum and regular wages for the time permitted to  
20 work, engaged in work, and/or under Defendants’ control as alleged herein. Under Labor Code § 2699  
21 (f)(2) Defendants are subject to a civil penalty of \$100 for each aggrieved employee per pay period for an  
22 initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation.

23 147. Defendants violated Labor Code §§ 510 and 1198 by failing to pay Plaintiff and current  
24 and former aggrieved employees overtime wages for the time permitted to work, engaged in work, and/or  
25 under Defendants’ control as alleged herein. On information and belief, at all relevant times, Plaintiff and  
26 other current and former aggrieved employees were not paid overtime wages when they worked in excess  
27 of eight (8) hours a day or forty (40) hours within a workweek. Therefore, under Labor Code § 2699 (f)(2)  
28 Defendants are subject to a civil penalty of \$100 for each aggrieved employee per pay period for an initial

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

148. Defendants violated Labor Code §§ 226(a), 1174(d), and 1198 and Section 6 of the applicable IWC Wage Order by failing to maintain records detailing the start and end times of work shifts and meal periods, and knowingly and intentionally failing to maintain and provide Plaintiff and other current and former aggrieved employees of Defendants with accurate wage statements itemizing all information required by Labor Code § 226(a), as alleged herein, including the correct total hours worked, all regular hours worked, overtime hours worked, the correct applicable hourly rate per hour worked, the and the correct total wages earned. Thus, under Labor Code § 2699(f)(2), Defendants are subject to a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation of Labor Code §§ 226(a) and 1198, and \$200 for each aggrieved employee per pay period for each subsequent violation.

149. Alternatively, Labor Code § 226.3 provides for a civil penalty in the amount of \$250 per violation in an initial citation and \$1,000 for each violation in a subsequent citation for failure to provide accurate itemized wage statements.

150. Under Labor Code § 1174.5 an employer who willfully fails to maintain the records by Labor Code § 1174 is a subject to a civil penalty of \$500.

151. Defendants violated Labor Code §§ 201, 202, 203, and 1198 by failing to pay Plaintiff and other current and former aggrieved employees all minimum, regular, and overtime wages owed, and all meal and rest premiums wages owed by the time set forth by law upon their separation of employment as alleged herein. Thus, under Labor Code § 2699(f)(2), Defendants are subject to a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation of Labor Code §§ 201, 202, 203, and 1198, and \$200 for each aggrieved employee per pay period for each subsequent violation.

152. Defendants violated Labor Code §§ 204 and 1198 by failing to pay Plaintiff and other current and former aggrieved employees all minimum, regular, and overtime wages owed, and all meal and rest premiums wages owed by the time set forth by law upon during their employment as alleged herein. Thus, under Labor Code § 2699(f)(2), Defendants are subject to a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation of Labor Code §§ 204 and 1198, and \$200 for each aggrieved employee per pay period for each subsequent violation.

153. As set forth herein, Defendants violated Labor Code sections 201, 202, 203, 204, 223, 226,

226.7, 510, 511, 512, 1174, 1197, 1198, 2802, and Labor Code § 2699, *et seq.*, imposes upon Defendants, and each of them, penalties for violating the Labor Code, including those penalties set forth in 210, 226.3, 558, 1174.5, 1197.1, 1194.2 and 2698, *et seq.*

154. Pursuant to Labor Code § 2699, Plaintiff FOX seeks to recover civil penalties on behalf of himself and other current and former aggrieved employees of Defendants who suffered one or more the labor code violations described herein. The exact amount of the applicable penalty is all in an amount to be shown according to proof at trial.

155. For bringing this action, Plaintiff FOX is entitled to attorney's fees and costs incurred herein.

WHEREFORE, Plaintiff FOX prays for relief as hereinafter requested.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for damages for judgment against Defendants, jointly and severally, as applicable, as follows:

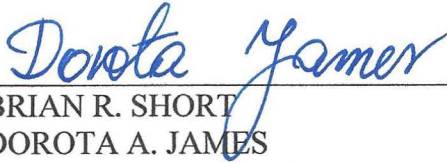
- a. For injunctive relief as provided by the Labor Code and to the extent permitted by law including, but not limited to, pursuant to § 226(h) and Business and Professions Code §17200, *et seq.* and including injunctive relief to compel Defendants to produce all records as required by § 226(h) and the "Records" section of the applicable IWC wage order;
- b. For restitution as provided by Business and Professions Code §§ 17200, *et seq.*;
- c. For an order requiring Defendants to restore and disgorge all funds to each affected person acquired by means of any act or practice declare by this Court to be unlawful, unfair or fraudulent and, therefore, constituting unfair competition under Business and Professions Code §§ 17200, *et seq.*;
- d. For penalties to the extent permitted pursuant to the Labor Code, Orders of the Industrial Welfare Commission including, but not limited to, waiting time penalties under Labor Code § 203, penalties under Labor Code §§ 226(e), 226.3, 210, 226.8, 558, 1174.5, and PAGA penalties pursuant to Labor Code §2698 *et seq.*;
- e. For an award of unpaid wages, including regular wages, minimum and overtime wages, to the extent permissible by law to each affected person;

- 1 f. For penalties to the extent permitted pursuant to the Labor Code, Orders of the Industrial  
2 Welfare Commission including, but not limited to, waiting time penalties under Labor  
3 Code § 203, penalties under Labor Code §§ 226(e), and 558.1 penalties;  
4 g. For an award of actual damages to the extent permissible by the Labor Code including  
5 Labor Code § 226(e);  
6 h. For an award of liquidated damages to the extent permissible by Labor Code §1194.2;  
7 i. For pre- and post-judgment interest to the extent permitted by law including, but not  
8 limited to, Labor Code §§ 218.6 and 1194;  
9 j. For reasonable attorney's fees and cost of suit and, to the extent permitted by law,  
10 including pursuant to Labor Code §§ 218.5, 226, 1194, 2698 et seq. and Code of Civil  
11 Procedure § 1021.5; and  
12 k. An award of such other and further relief as this Court deems proper and just.

13  
14 Dated: August 12, 2020

ShortLegal, APC

15  
16 By:

  
BRIAN R. SHORT  
DOROTA A. JAMES  
Attorneys for Plaintiff BRANDON FOX

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18  
19 **DEMAND FOR JURY TRIAL**

20 Plaintiff hereby demands trial by jury to the extent authorized by law.

21  
22 Dated: August 12, 2020

ShortLegal, APC

23  
24 By:

  
BRIAN R. SHORT  
DOROTA A. JAMES  
Attorneys for Plaintiff BRANDON FOX