

LIDMAN LAW, APC
Scott M. Lidman (SBN 199433)
slidman@lidmanlaw.com
Elizabeth Nguyen (SBN 238571)
enguyen@lidmanlaw.com
Milan Moore (SBN 308095)
mmoore@lidmanlaw.com
Romina Tamiry (SBN 328420)
rtamiry@lidmanlaw.com
2155 Campus Drive, Suite 150
El Segundo, California 90245
Tel: (424) 322-4772
Fax: (424) 322-4775

Attorneys for Plaintiff
VICTOR TORRES

HAINES LAW GROUP, APC
Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
2155 Campus Drive, Suite 180
El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355

Attorneys for Plaintiff
VICTOR TORRES

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

VICTOR TORRES, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

GIBSON PERFORMANCE
CORPORATION, a California corporation;
and DOES 1 through 100, inclusive,

Defendants.

Case No. RIC2002842

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

- (1) **FAILURE TO PAY ALL MINIMUM
WAGES OWED (LABOR CODE §§
1194, 1194.2, 1197);**
- (2) **FAILURE TO PAY ALL OVERTIME
WAGES OWED (LABOR CODE §§
204, 510, 558, 1194, 1198);**
- (3) **FAILURE TO PROVIDE MEAL
PERIODS (LABOR CODE §§ 226.7,
512, 558);**
- (4) **FAILURE TO AUTHORIZE AND
PERMIT ALL PAID REST PERIODS
(LABOR CODE §§ 226.7, 516, 558);**

FILED
Superior Court of California
County of Riverside
10/5/2020
K. Thomsen
Electronically Filed

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(5) **FAILURE TO PROVIDE
ACCURATE, ITEMIZED WAGE
STATEMENTS (LABOR CODE § 226
et seq.);**

(6) **UNFAIR COMPETITION (BUS &
PROF CODE § 17200 *et seq.*); and**

(7) **CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 *et seq.*)**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Victor Torres also known as Victor Torrez (“Plaintiff”), on behalf of himself and
2 all others similarly situated, hereby brings this First Amended Class and Representative Action
3 Complaint (“FAC”) against Defendants Gibson Performance Corporation, a California
4 corporation and Does 1 through 100, inclusive (collectively “Defendants”), and on information
5 and belief alleges as follows:

6 **JURISDICTION**

7 1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this
8 FAC for recovery of unpaid wages and penalties under California Business & Professions Code
9 § 17200 *et. seq.*, Labor Code §§ 204, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1194, 1194.2, 1197,
10 1198, 2698, *et seq.*, and Industrial Welfare Commission Wage Order 1 (“Wage Order 1”), in
11 addition to seeking declaratory relief and restitution. This FAC is brought pursuant to California
12 Code of Civil Procedure § 382. This Court has jurisdiction over Defendants’ violations of the
13 California Labor Code because the amount in controversy exceeds this Court's jurisdictional
14 minimum.

15 **VENUE**

16 2. Venue is proper in this judicial district pursuant to Cal. Code of Civ. Proc. §§
17 395(a) and 395.5, as at least some of the acts and omissions complained of herein occurred in the
18 County of Riverside. Defendants own, maintain offices, transact business, have agent(s) within
19 the County of Riverside, and/or otherwise are found within the County of Riverside, and
20 Defendants are within the jurisdiction of this Court for purposes of service of process.

21 **PARTIES**

22 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
23 Plaintiff was and currently is, a California resident. During the four years immediately preceding
24 the filing of the lawsuit¹ in this action and within the statute of limitations periods applicable to
25

26
27 ¹ Pursuant to California Judicial Council Emergency Rule 9, statutes of limitations of more than
28 180 days are suspended from April 6, 2020 through October 1, 2020. Accordingly, the relevant

1 each cause of action pled herein, Plaintiff was employed by Defendants as a non-exempt
2 employee. Plaintiff was, and is, a victim of Defendants' policies and/or practices complained of
3 herein, lost money and/or property, and has been deprived of the rights guaranteed by Labor Code
4 §§ 204, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1194, 1194.2, 1197, 1198 2698, *et seq.*, California
5 Business & Professions Code § 17200 *et seq.* ("Unfair Competition Law"); and Wage Order 1,
6 which sets employment standards for occupations in the manufacturing industry, which includes
7 the industry in which Plaintiff works for Defendants.

8 4. Plaintiff is informed and believes, and based thereon alleges, that during the four
9 years preceding April 6, 2020 and continuing to the present, Defendants did (and continue to do)
10 business as a manufacturer of automotive exhaust systems. Defendants employed Plaintiff and
11 other, similarly-situated non-exempt employees within, among other counties, Riverside County
12 and the state of California and, therefore, were (and are) doing business in Riverside County and
13 the State of California.

14 5. Plaintiff does not know the true names or capacities, whether individual, partner,
15 or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said
16 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
17 amend this FAC when such true names and capacities are discovered. Plaintiff is informed, and
18 believes, and based thereon alleges, that each of said fictitious defendants, whether individual,
19 partners, or corporate, were responsible in some manner for the acts and omissions alleged
20 herein, and proximately caused Plaintiff and the Classes (as defined in Paragraph 16) to be
21 subject to the unlawful employment practices, wrongs, injuries and damages complained of
22 herein.

23 6. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
24 herein, Defendants were and are the employers of Plaintiff and all members of the Classes.

25 7. At all times herein mentioned, each of said Defendants participated in the doing
26

27 _____
28 time period for each cause of action pled herein have been calculated based on a filing date of
April 6, 2020. *See*, Cal. Rules of Court, emergency rule 9.

1 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
2 Defendants, and each of them, were the agents, servants, and employees of each and every one
3 of the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned
4 were acting within the course and scope of said agency and employment. Defendants, and each
5 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or
6 omissions complained of herein.

7 8. At all times mentioned herein, Defendants, and each of them, were members of
8 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
9 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
10 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all
11 members of the Classes.

12 **GENERAL FACTUAL ALLEGATIONS**

13 9. Plaintiff, a current employee, has been employed by Defendants as an hourly,
14 non-exempt employee from approximately October 17, 2011 through approximately September
15 30, 2019, at which time he commenced a medical leave of absence. Plaintiff worked at
16 Defendants' facility located in Corona, California as a Quality Control Inspector.

17 10. During his employment with Defendants, Plaintiff was generally scheduled to
18 work Monday through Friday and sometimes Saturdays, from approximately 6:00 a.m. to
19 approximately 2:30 p.m. Throughout Plaintiff's employment with Defendants, Defendants'
20 policies and/or practices would be to keep track of Plaintiff's time worked by having him clock
21 in and out on a timecard and Defendants' policies and/or practices would be to unlawfully shave
22 and/or round Plaintiff's work time such that Plaintiff would not be fully paid for all time worked.
23 This time-shaving and/or rounding practice utilized by Defendants was not even handed over
24 time and would almost exclusively round and shave in Defendants' favor such that Plaintiff was
25 routinely unpaid for his time worked. As a result, Defendants failed to pay Plaintiff all required
26 minimum and overtime wages.

27 11. Throughout Plaintiff's employment with Defendants, Plaintiff was not provided
28 with all required meal periods in compliance with California law due to Defendants' unlawful

meal period policies/practices. Specifically, during portions of the relevant time period, Defendants' meal period policies/practices failed to require employees to record the start and stop time for all meal periods. Plaintiff is informed and believes that, during this time period, Defendants unlawfully automatically deducted thirty (30) minutes from Plaintiff's work time each shift for his meal break regardless of if a meal period was taken or not. Further, during portions of the relevant time period, Defendants' timekeeping policies and/or practices required Plaintiff and other non-exempt employees to stand in line prior to starting the meal period in order to clock out on their timecards. This policy and/or practice resulted in systematically short or otherwise unlawful meal periods. In addition, Defendants' meal period policies and/or practices coupled with its timekeeping policies and/or practices failed to provide Plaintiff and other non-exempt employees with timely meal periods in violation of California law.

12. Although Plaintiff was not provided with all legally-compliant meal periods to which he was entitled, Defendants failed to compensate Plaintiff with the required meal period premium for each workday in which he experienced a meal period violation as mandated by Labor Code § 226.7. Upon information and belief during at least a portion of the class period, Defendants maintained no payroll code or other mechanism for the payment of meal period premium payments under Labor Code § 226.7 in the event that a legally compliant meal period was not provided to Plaintiff and their non-exempt employees.

13. Plaintiff was also not authorized and permitted to take all legally required paid rest periods due to Defendants' unlawful rest period policies and practices. Specifically, Defendants maintain unlawful rest period policies and practices that require employees to remain on premises for rest periods. Accordingly, Defendants' rest period policies and practices fail to authorize and permit duty-free rest periods for every four hours worked, *or major fraction thereof*.

14. Although Plaintiff was not provided with all legally-compliant rest periods to which he was entitled, Defendants failed to compensate Plaintiff with the required rest period premium for each workday in which he experienced a rest period violation as mandated by Labor Code § 226.7. Upon information and belief during at least a portion of the class period,

Defendants maintained no payroll code or other mechanism for the payment of rest period premium payments under Labor Code § 226.7 in the event that a legally compliant rest period was not provided to Plaintiff and their non-exempt employees.

15. As a result of Defendants' failure to pay all minimum wages, overtime wages, as well as meal and rest period premium wages, Defendants maintained inaccurate payroll records and issued inaccurate wage statements to Plaintiff.

CLASS ACTION ALLEGATIONS

16. **Class Definitions:** Plaintiff brings this action on behalf of himself and the following Classes pursuant to § 382 of the Code of Civil Procedure:

a. The Minimum Wage Class consists of all of Defendants' current and former non-exempt employees in California who were subject to Defendants' timekeeping policies/practices, during the four years preceding April 6, 2020 and continuing through the present.

b. The Overtime Class consists of all of Defendants' current and former non-exempt employees in California who worked more than eight hours per day and/or forty hours per week, were subjected to Defendants' timekeeping policies and practices during the four years immediately preceding April 6, 2020 and continuing through the present.

c. The Meal Period Class consists of all of Defendants' current and former non-exempt employees who worked at least one shift in excess of 5.0 hours during the four years immediately preceding April 6, 2020 and continuing through the present.

17. The Rest Period Class consists of all of Defendants' current and former non-exempt employees in California who worked at least one shift of 3.5 hours or more, during the four years immediately preceding April 6, 2020 and continuing through the present. The Wage Statement Class consists of members of the (i) Minimum Wage Class; (ii) Overtime Class (iii) Meal Period Class; and/or (iv) Rest Period Class, during the one year immediately preceding April 6, 2020 and continuing through the present. The UCL Class consists of members of the:

(i) Minimum Wage Class; (ii) Overtime Class; (iii) Meal Period Class; (iv) Rest Period Class; and (v) Wage Statement Class, during the four years immediately preceding April 6, 2020 and continuing through the present. Plaintiff reserves the right under Rule 3.765(b) of the California Rules of Court, to amend or modify the description of the various classes with greater specificity or further division into subclasses or limitation to particular issues.

18. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the Classes is unknown to Plaintiff at this time; however, it is estimated that the members of the Classes number greater than one hundred (100) individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

19. **Common Questions of Law and Fact Predominate/Well Defined Community of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated employees, which predominate over questions affecting only individual members. Those common questions include, without limitation:

- i. Whether Defendants' properly paid all minimum wages and/or overtime wages at the correct regular rate of pay and/or paid for all hours worked to members of the Minimum Wage Class and Overtime Class pursuant to Labor Code §§ 204, 510, 558, 1194, 1194.2, 1197, and 1198;
- ii. Whether Defendants provided all legally compliant meal periods to members of the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;
- iii. Whether Defendants authorized and permitted all legally compliant rest periods to members of the Rest Period Class pursuant to Labor Code §§ 226.7 and 516;
- iv. Whether Defendants provided accurate, itemized wage statements to members of the Wage Statement Class pursuant to Labor Code 226; and
- v. Whether Defendants engaged in unlawful, unfair, illegal, and/or deceptive business practices by and through the wage and hour policies and practices described above, and whether as a result Defendants owe the classes restitution.

20. **Predominance of Common Questions:** Common questions of law and fact

predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendants' policies and/or practices applicable to each individual class member, such as Defendants' uniform timekeeping, minimum wage payment, overtime wage payment, and meal and rest period policies/practices. As such, the common questions predominate over individual questions concerning each individual class member's showing as to their eligibility for recovery or as to the amount of their damages.

21. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s) of limitations period applicable to each cause of action pled in the lawsuit. As alleged herein, Plaintiff, like the members of the Classes, was not provided all legally required minimum and overtime wages, was not provided with all required meal periods, was not authorized and permitted to take all required rest periods, did not receive meal and rest period premium wages when he was not provided compliant meal and rest periods, and was not provided with accurate, itemized wage statements.

22. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiff's attorneys are ready, willing and able to fully and adequately represent the members of the Classes and Plaintiff. Plaintiff's attorneys have prosecuted and defended numerous wage-and-hour class actions in state and federal courts in the past and are committed to vigorously prosecuting this action on behalf of the members of the Classes.

23. **Superiority:** The California Labor Code is broadly remedial in nature and serves an important public interest in establishing minimum working conditions and standards in California. These laws and labor standards protect the average working employee from exploitation by employers who have the responsibility to follow the laws and who may seek to take advantage of superior economic and bargaining power in setting onerous terms and conditions of employment. The nature of this action and the format of laws available to Plaintiff and members of the Classes make the class action format a particularly efficient and appropriate

1 procedure to redress the violations alleged herein. If each employee were required to file an
2 individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they
3 would be able to exploit and overwhelm the limited resources of each individual plaintiff with
4 their vastly superior financial and legal resources. Moreover, requiring each member of the
5 Classes to pursue an individual remedy would also discourage the assertion of lawful claims by
6 employees who would be disinclined to file an action against their former and/or current
7 employer for real and justifiable fear of retaliation and permanent damages to their careers at
8 subsequent employment. Further, the prosecution of separate actions by the individual class
9 members, even if possible, would create a substantial risk of inconsistent or varying verdicts or
10 adjudications with respect to the individual class members against Defendants herein; and which
11 would establish potentially incompatible standards of conduct for Defendants; and/or legal
12 determinations with respect to individual class members which would, as a practical matter, be
13 dispositive of the interest of the other class members not parties to adjudications or which would
14 substantially impair or impede the ability of the class members to protect their interests. Further,
15 the claims of the individual members of the Classes are not sufficiently large to warrant vigorous
16 individual prosecution considering all of the concomitant costs and expenses attending thereto.
17 As such, the Classes identified in Paragraph 16 are maintainable as a Class under § 382 of the
18 Code of Civil Procedure.

19 **FIRST CAUSE OF ACTION**

20 **FAILURE TO PAY ALL MINIMUM WAGES OWED**

21 **(AGAINST ALL DEFENDANTS)**

22 24. Plaintiff re-alleges and incorporates by reference all previous paragraphs as
23 though fully set forth herein.

24 25. This cause of action is brought pursuant to Labor Code §§ 204, 558, 1194 and
25 1198 which provide that all non-exempt employees are entitled to all minimum wages for all
26 hours worked, and provide a private right of action for the failure to pay all minimum wage
27 compensation for all work performed.

28 26. At all times relevant herein, Defendants were required to properly compensate

1 Plaintiff and the members of the Minimum Wage Class for all hours worked pursuant to
2 California Labor Code §§ 1194, 1197 and 1198, and Wage Order 1. Wage Order 1, Section 4
3 requires an employer to pay to every employee on the established payday for the period involved
4 not less than the applicable minimum wage for all hours worked in the payroll period.
5 Defendants caused Plaintiff and the members of the Minimum Wage Class to work hours in a
6 workweek but did not properly compensate Plaintiff and the members of the Minimum Wage
7 Class at least minimum wages for such hours.

8 27. At all times relevant herein, Defendants lacked good faith and had no reasonable
9 grounds for believing that their practices in failing to pay all minimum wages owed at the
10 applicable rate was not a violation of any provision of the Labor Code relating to minimum wage,
11 or an order of the Industrial Welfare Commission. Defendants therefore, in addition to owing
12 minimum wages to Plaintiff and the members of the Minimum Wage Class, also owe liquidated
13 damages in an amount equal to the wages unlawfully unpaid, and interest thereon, pursuant to
14 Labor Code § 1194.2.

15 28. The foregoing practices and policies are unlawful and create entitlement to
16 recovery by Plaintiff and the members of the Minimum Wage Class in a civil action for the
17 unpaid amount of minimum wages owing, including interest thereon, as well as statutory
18 penalties, liquidated damages, civil penalties, and attorneys' fees and costs of suit, pursuant to
19 Labor Code §§ 204, 218.5, 218.6, 558, 1194, 1194.2, 1197, 1197.1 and 1198, Wage Order 1,
20 California Code of Civil Procedure § 1021.5, and Civil Code §§ 3287(b) and 3289.

21 **SECOND CAUSE OF ACTION**

22 **FAILURE TO PAY ALL OVERTIME WAGES OWED**

23 **(AGAINST ALL DEFENDANTS)**

24 29. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

25 30. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194
26 and 1198 which provide that all non-exempt employees are entitled to all overtime wages for all
27 overtime worked (hours in excess of 8 in one day and/or 40 in one week), and provide a private
28 right of action for the failure to pay all overtime compensation for overtime work performed.

31. At all times relevant herein, Defendants were required to properly compensate Plaintiff and the members of the Overtime Class for all overtime hours worked pursuant to California Labor Code §§ 510 and 1194, and Wage Order 1. Labor Code § 510 and Wage Order 1, Section 3 require an employer to pay an employee “one and one-half (1½) times the regular rate of pay” for work in excess of 8 hours per workday and/or in excess of 40 hours per workweek. Labor Code § 510 and Wage Order 1, Section 3 also require an employer to pay an employee double the employee’s regular rate for work in excess of 12 hours each workday and/or in excess of 8 hours on the seventh consecutive day of work in the workweek. Defendants caused Plaintiff and the members of the Overtime Class to work in excess of 8 hours in a workday and/or 40 hours in a workweek but did not properly compensate Plaintiff and the members of the Overtime Class at one and one-half their regular rate of pay for such hours.

32. The foregoing practices and policies are unlawful and create entitlement to recovery by Plaintiff and the members of the Overtime Class in a civil action for the unpaid amount of overtime premium owing, including interest thereon, as well as statutory penalties, civil penalties, and attorneys’ fees and costs of suit, pursuant to Labor Code §§ 204, 218.5, 218.6, 510, 558, 1194 and 1198, Wage Order 1, California Code of Civil Procedure § 1021.5, and Civil Code §§ 3287(b) and 3289.

THIRD CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

(AGAINST ALL DEFENDANTS)

33. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

34. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed in their affirmative obligation to provide all of their non-exempt employees in California, including Plaintiff and members of the Meal Period Class, with all legally compliant meal periods in accordance with the mandates of the California Labor Code and Wage Order 1, § 11. Despite Defendants’ violations, Defendants did not pay an additional hour of pay to Plaintiff and members of the Meal Period Class at their respective regular rates of compensation, in accordance with California Labor Code §§ 226.7, and 512.

1 35. As a result, Defendants are responsible for paying premium compensation for
2 meal period violations including interest thereon, as well as statutory penalties, civil penalties,
3 and costs of suit, pursuant to Labor Code §§ 226.7, 512, and 558, Wage Order 1, California Code
4 of Civil Procedure § 1021.5 and Civil Code §§ 3287(b) and 3289.

5 **FOURTH CAUSE OF ACTION**

6 **FAILURE TO AUTHORIZE AND PERMIT ALL PAID REST PERIODS**

7 **(AGAINST ALL DEFENDANTS)**

8 36. Plaintiff re-alleges and incorporates by reference all previous paragraphs as
9 though fully set forth herein.

10 37. Wage Order 1, § 12 and California Labor Code §§ 226.7 and 516 establish the
11 right of employees to be authorized and permitted to take a paid rest period of at least ten (10)
12 minutes net rest time for each four (4) hour period worked, or *major fraction thereof*.

13 38. As alleged herein, Defendants failed to authorize and permit Plaintiff and
14 members of the Rest Period Class to take all required and paid rest periods.

15 39. The foregoing violations create an entitlement to recovery by Plaintiff and
16 members of the Rest Period Class in a civil action for the unpaid amount of rest period premiums
17 owing, including interest thereon, as well as statutory penalties, civil penalties, and costs of suit
18 according to California Labor Code §§ 226.7, 516, 558, Wage Order 1, California Code of Civil
19 Procedure § 1021.5, and Civil Code §§ 3287(b) and 3289.

20 **FIFTH CAUSE OF ACTION**

21 **FAILURE TO PROVIDE ACCURATE, ITEMIZED WAGE STATEMENTS**

22 **(AGAINST ALL DEFENDANTS)**

23 40. Plaintiff re-alleges and incorporates by reference all previous paragraphs as
24 though fully set forth herein.

25 41. Plaintiff is informed and believes, and based thereon alleges, that Defendants
26 knowingly and intentionally, as a matter of uniform practice and policy, failed to furnish Plaintiff
27 and the Wage Statement Class Members with accurate, itemized wage statements that included
28 among other requirements, accurate total gross wages earned, meal and rest period premiums,

1 and total net wages earned in violation of Labor Code § 226 *et seq.*

2 42. Defendants' failure to furnish Plaintiff and the members of the Wage Statement
3 Class with complete and accurate, itemized wage statements resulted in actual injury, as said
4 failures led to, among other things, accurate total gross wages earned, meal and rest period
5 premiums, and total net wages earned in violation of Labor Code § 226 *et seq.*

6 43. Defendants' failures created an entitlement to Plaintiff and members of the Wage
7 Statement Class in a civil action for damages and/or penalties pursuant to Labor Code § 226,
8 including statutory penalties civil penalties, reasonable attorneys' fees, and costs according to
9 suit pursuant to Labor Code § 226 *et seq.*

10 **SIXTH CAUSE OF ACTION**

11 **UNFAIR COMPETITION**

12 **(AGAINST ALL DEFENDANTS)**

13 44. Plaintiff re-alleges and incorporates by reference all previous paragraphs as
14 though fully set forth herein.

15 45. Defendants have engaged and continue to engage in unfair and/or unlawful
16 business practices in California in violation of California Business and Professions Code § 17200
17 *et seq.*, by failing to properly pay all minimum and overtime wages, failing to provide all required
18 meal periods and failing to authorize and permit all required rest periods, and failing to pay meal
19 and rest period premium wage payments.

20 46. Defendants' utilization of these unfair and/or unlawful business practices
21 deprived Plaintiff and continues to deprive members of the Classes of compensation to which
22 they are legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair
23 advantage over Defendants' competitors who have been and/or are currently employing workers
24 and attempting to do so in honest compliance with applicable wage and hour laws.

25 47. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct
26 alleged herein, Plaintiff for himself and on behalf of the members of the Classes, seeks full
27 restitution of monies, as necessary and according to proof, to restore any and all monies withheld,
28 acquired and/or converted by Defendants pursuant to Business and Professions Code §§ 17203

1 and 17208.

2 48. The acts complained of herein occurred within the last four years immediately
3 preceding April 6, 2020...

4 49. Plaintiff was compelled to retain the services of counsel to file this court action
5 to protect his interests and those of the Classes, to obtain restitution and injunctive relief on
6 behalf of Defendants' current commission-paid employees, and to enforce important rights
7 affecting the public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees
8 and costs, which he is entitled to recover under Code of Civil Procedure § 1021.5.

9 **SEVENTH CAUSE OF ACTION**

10 **PRIVATE ATTORNEYS GENERAL ACT**

11 **(AGAINST ALL DEFENDANTS)**

12 50. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

13 51. Defendants have committed several Labor Code violations against Plaintiff,
14 members of the Classes, and other aggrieved employees. Plaintiff, an "aggrieved employee"
15 within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of himself and other aggrieved
16 employees, brings this representative action against Defendants to recover the civil penalties due
17 to Plaintiff, the members of the Classes, other aggrieved employees, and the State of California
18 according to proof pursuant to Labor Code § 558 and § 2699 (a) and (f) including, but not limited
19 to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for
20 each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for
21 each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$100.00 for
22 each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1;
23 (3) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to
24 Labor Code § 226.3 per employee per pay period (4) \$50.00 for each initial violation for each
25 underpaid employee for each pay period for which the employee was underpaid and \$100.00 for
26 each underpaid employee for each pay period for which the employee was underpaid pursuant to
27 Labor Code § 558; and/or (5) \$100.00 for each initial violation and \$200.00 for each subsequent
28 violation per employee per pay period for those violations of the Labor Code for which no civil

penalty is specifically provided, based on the following Labor Code violations:

- a) Defendant violated Labor Code §§ 1194, 1194.2, and 1197 by failing to pay Plaintiff and other aggrieved employees the statutory minimum wage for all hours worked;
- b) Defendant violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Plaintiff and other aggrieved employees all overtime compensation earned;
- c) Defendant violated Labor Code §§ 226.7, 512, and 558 by failing to provide all legally required meal periods and failing to pay meal period premiums to Plaintiff and other aggrieved employees;
- d) Defendant violated Labor Code §§ 226.7, 516, and 558 by failing to provide all legally required rest periods and failing to pay rest period premiums to Plaintiff and other aggrieved employees;
- e) Defendant violated Labor Code § 226 by failing to furnish Plaintiff and other aggrieved employees with accurate and compliant itemized wage statements;
- f) Defendant violated Labor Code § 204 by failing to pay Plaintiff and other aggrieved employees all earned wages at least twice during each calendar month; and
- g) Defendant violated Labor Code § 1174 by failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees.

52. On July 29, 2020, Plaintiff notified Defendants via certified mail, and notified the California Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code § 2698 et seq. with respect to violations of the California Labor Code identified in Paragraph 51 (a)-(g). Now that at least sixty-five days have passed from Plaintiff notifying Defendants and the LWDA of these violations, and the LWDA has not provided notice that it intends to investigate the violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

53. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and the interests of other aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which he is entitled to recover under California Labor Code § 2699(g).

PRAYER

WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf this suit is brought against Defendants, as follows:

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiff as representative of the Classes;
3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
4. Upon the First Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 204, 558, 1194, 1194.2, 1197, 1197.1 and 1198;
5. Upon the Second Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
6. Upon the Third Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;
7. Upon the Fourth Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;
8. Upon the Fifth Cause of Action, for statutory wage statement penalties pursuant to Labor Code § 226 *et seq.*;
9. Upon the Sixth Cause of Action, for restitution to Plaintiff and members of the Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or practices declared by this Court to be in violation of Business and Professions Code § 17200 *et seq.*;
10. Upon the Seventh Cause of Action, for civil penalties due to Plaintiff, other aggrieved employees, and the State of California according to proof pursuant to Labor Code §§ 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for

1 each failure to pay each employee and \$200.00 for each subsequent violation or willful or
2 intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus
3 25% of the amount unlawfully withheld; (2) \$100.00 for each initial violation and \$250.00 for
4 each subsequent violation pursuant to Labor Code § 1197.1; (3) \$250.00 for each initial violation
5 and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per
6 pay period (4) \$50.00 for each initial violation for each underpaid employee for each pay period
7 for which the employee was underpaid and \$100.00 for each underpaid employee for each pay
8 period for which the employee pursuant to Labor Code § 558; and/or (5) \$100.00 for each initial
9 violation and \$200.00 for each subsequent violation per employee per pay period for those
10 violations of the Labor Code for which no civil penalty is specifically provided, based on the
11 Labor Code violations cited in Paragraph 51 (a)-(g) above.

12 11. Prejudgment interest on all due and unpaid wages pursuant to California Labor
13 Code § 218.6 and Civil Code §§ 3287 and 3289;

14 12. On all causes of action, for attorneys' fees and costs as provided by Labor Code
15 § 218.5 and Code of Civil Procedure § 1021.5 and all other applicable statutes; and

16 13. For such other and further relief the Court may deem just and proper.

17
18 Dated: October 5, 2020

Respectfully submitted,
LIDMAN LAW, APC

19
20 By:



Scott M. Lidman
Elizabeth Nguyen
Milan Moore
Romina Tamiry
Attorneys for Plaintiff
VICTOR TORRES

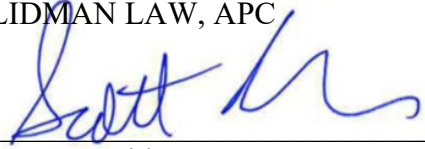
DEMAND FOR JURY TRIAL

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

Dated: October 5, 2020

Respectfully submitted,
LIDMAN LAW, APC

By:



Scott M. Lidman
Elizabeth Nguyen
Milan Moore
Romina Tamiry
Attorneys for Plaintiff
VICTOR TORRES