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

10 NELSON COTLETO, as an individual and on
11 behalf of all others similarly situated,

12 Plaintiff,

13 vs.

14 LA CANADA FLINTRIDGE COUNTRY
15 CLUB, a California Corporation; and DOES 1
16 through 100,

17 Defendants.

Case No.: 20STCV28295

Amended as a Matter of Right Pursuant to
Labor Code Section 2699.3(a)(2)(C)

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

- (1) **FAILURE TO PAY ALL
OVERTIME WAGES (LABOR
CODE §§ 204, 510, 558, 1194, 1198);**
- (2) **FAILURE TO PAY ALL SPLIT
SHIFT PREMIUM WAGES (LABOR
CODE § 1197 AND WAGE ORDER
5);**
- (3) **MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7 AND 512);**
- (4) **REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7 AND 516);**
- (5) **WAGE STATEMENT VIOLATIONS
(LABOR CODE § 226 *et seq.*);**
- (6) **WAITING TIME PENALTIES
(LABOR CODE §§ 201-203);**
- (7) **UNFAIR COMPETITION (BUS &
PROF CODE § 17200 *et seq.*); AND**
- (8) **CIVIL PENALTIES UNDER
THE PRIVATE ATTORNEYS
GENERAL ACT (LABOR
CODE § 2698 *et seq.*).**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Nelson Cotleto (hereinafter "Plaintiff") on behalf of himself and all others
2 similarly situated, hereby brings this First Amended Class and Representative Action Complaint
3 ("Complaint") against La Canada Flintridge County Club, a California corporation; and DOES 1
4 to 100, inclusive (collectively "Defendants"), and on information and belief alleges as follows:

5 JURISDICTION

6 1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this
7 Complaint for recovery of unpaid wages and penalties under California Business and Professions
8 Code § 17200 *et. seq.*, Labor Code §§ 201-204, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1194,
9 1197, 1198, and 2698 *et seq.*; and Industrial Welfare Commission Wage Order 5 ("Wage Order
10 5"), in addition to seeking declaratory relief and restitution. This Complaint is brought pursuant
11 to California Code of Civil Procedure § 382. This Court has jurisdiction over Defendants'
12 violations of the California Labor Code because the amount in controversy exceeds this Court's
13 jurisdictional minimum.

14 VENUE

15 2. Venue is proper in this judicial district pursuant to California Code of Civil
16 Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein
17 occurred in the County of Los Angeles. Defendants own, maintain offices, transact business, have
18 an agent or agents within the County of Los Angeles, and/or otherwise are found within the
19 County of Los Angeles, and Defendants are within the jurisdiction of this Court for purposes of
20 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 Complaint in this action and within the statute of limitations periods applicable
25 to each cause of action pled herein, Plaintiff was employed by Defendants as a non-exempt
26 employee. Plaintiff was, and is, a victim of Defendants' policies and/or practices complained of
27 herein, lost money and/or property, and has been deprived of the rights guaranteed by Labor Code
28 §§ 201-204, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1194, 1997, 1198, and 2698 *et seq.*; California

1 Business and Professions Code § 17200 *et seq.* (“Unfair Competition Law”), and Wage Order 5,
2 which sets employment standards for the Public Housekeeping Industry.

3 4. Plaintiff is informed and believes, and based thereon alleges, that during the four
4 years preceding the filing of the Complaint and continuing to the present, Defendants did (and
5 continue to do) business by employing Plaintiff and other, similarly-situated non-exempt
6 employees within Los Angeles and the state of California and do business in Los Angeles in the
7 State of California.

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

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

18 7. At all times herein mentioned, each of said Defendants participated in the doing
19 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
20 Defendants, and each of them, were the agents, servants, and employees of each and every one of
21 the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned
22 were acting within the course and scope of said agency and employment. Defendants, and each
23 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or
24 omissions complained of herein.

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

1 members of the Classes.

2 **GENERAL FACTUAL ALLEGATIONS**

3 9. Plaintiff was employed by Defendants as a non-exempt employee in the position
4 of "Banquet Server". Plaintiff worked at Defendants' facilities from approximately February
5 2019 until his wrongful termination in approximately October 2019.

6 10. Plaintiff was instructed by Defendants to clock in and clock out using a time-punch
7 machine. Plaintiff and the other non-exempt employees would regularly be made to work off-
8 the-clock so as to avoid registering their overtime hours. Specifically, no less than approximately
9 ten times per month, Plaintiff would be charged with setting up an event that he was assigned to
10 work while another event was still ongoing. On these occasions, Plaintiff would do all of his set
11 up work off-the-clock and then subsequently punch in at the scheduled time his event was
12 supposed to commence. Initially, Plaintiff would punch in upon arrival at the Country Club so
13 he would be on the clock while he was performing his preparatory duties. However, this practice
14 was soon eliminated when his supervisors got angry with him and explained that he could only
15 clock in when his shift was scheduled to start so as to avoid accruing overtime. Furthermore,
16 Plaintiff would be tasked with performing work off-the-clock at the end of his scheduled shifts.
17 Plaintiff was instructed by his supervisors that he was to clock out and complete his post-shift
18 paperwork off-the-clock. Plaintiff's managers specifically told Plaintiff and other non-exempt
19 employees that the Country Club actively discouraged overtime and that as a result they should
20 complete their post-shift work after clocking out for the day. All of the above mentioned off-the-
21 clock work was unrecorded and uncompensated by Defendants.

22 11. During his employment with Defendants, Plaintiff routinely worked in excess of
23 eight hours per workday and/or forty hours per workweek but did not receive overtime
24 compensation equal to one and one-half times his regular rate of pay for all overtime hours
25 worked. Specifically, Defendants routinely paid Plaintiff event bonuses for working at events
26 held at the country club, and other forms of non-discretionary incentive pay (hereinafter the
27 aforementioned forms of pay are collectively referred to as "Incentive Pay"). Despite Defendants'
28 payment of Incentive Pay to Plaintiff, Defendants failed to include all forms of Incentive Pay

1 when calculating Plaintiff's "regular rate" of pay, thereby causing Plaintiff to be underpaid his
2 required overtime wages.

3 12. In addition, Plaintiff was not always paid an overtime rate of pay when he worked
4 overtime hours, including when he worked 12 hours continuously. Instead, Plaintiff was paid at
5 his normal base rate of pay for the hours that he worked in excess of eight, which almost always
6 constituted overtime hours worked.

7 13. Plaintiff was routinely scheduled to work a night shift at the Country Club where
8 he would work until 1:00 a.m., and would go home for five nonworking hours, and then be
9 required to come back to the country club at 6:00 a.m. the same day, constituting a "split shift."
10 On those occasions when Plaintiff was scheduled and required to work a split shift, Defendants
11 failed to compensate Plaintiff with the required split shift premium as mandated by Wage Order
12 5, §4. Upon information and belief, during at least a portion of the putative class period,
13 Defendants failed to maintain any mechanism for the payment of split shift premium payments
14 when Defendants scheduled and required their non-exempt employees to work split shifts.

15 14. Plaintiff was not provided all required meal periods due to Defendants' meal
16 period policies/practices which fail to provide a timely first meal period (before the end of the
17 fifth hour of work). Although Plaintiff regularly worked shifts over 5.0 hours, he was routinely
18 not provided a first meal period until after the completion of five hours of work. Specifically,
19 due to work requirements, Plaintiff could not take a meal period and instead was directed by his
20 supervisors to clock out, work through his meal period, and clock back in after thirty minutes had
21 elapsed. Additionally, Plaintiff was not permitted to leave the premises under any circumstances
22 during these faux meal periods where he was required to fraudulently clock out for his meal
23 periods. Furthermore, Plaintiff was not provided meal periods when he worked at special events
24 and was not provided a second meal period when he worked a second shift in the same workday.

25 15. On those occasions when Plaintiff was not provided with all legally-compliant
26 meal periods to which he was entitled, Defendants failed to compensate Plaintiff with the required
27 meal period premium for each workday in which he experienced a meal period violation as
28 mandated by Labor Code § 226.7. On information and belief, Defendants failed to maintain any

1 mechanism for the payment of meal period premium payments pursuant to Labor Code section
2 226.7, when Defendants failed to provide their non-exempt employees with a legally compliant
3 meal period.

4 16. Plaintiff was not authorized and permitted to take all legally compliant rest
5 periods. Rather, Defendants would routinely require Plaintiff to work through his rest periods.
6 Defendants maintained a systematic practice/policy of not permitting Plaintiff and other non-
7 exempt employees to take any rest periods during their shifts. On those occasions when Plaintiff
8 was not authorized and permitted to take all legally-compliant rest periods to which he was
9 entitled, Defendants failed to compensate Plaintiff with the required rest period premium, as
10 mandated by Labor Code § 226.7. Further, on information and belief, during at least a portion of
11 the time period in question, Defendants maintained no payroll code or other mechanism for the
12 payment of rest period premium payments under Labor Code § 226.7 in the event that a legally
13 compliant rest period was not provided to its non-exempt employees.

14 17. As a result of Defendants' failure to pay all overtime wages, meal and rest period
15 premium wages, and split shift premium wages, Defendants maintained inaccurate payroll
16 records, and issued inaccurate and facially deficient wage statements.

17 18. As a further result of Defendants' failure to pay all overtime wages, meal and rest
18 period premium wages, and split shift premium wages, Defendants failed to pay all wages owed
19 to Plaintiff upon his separation of employment from Defendants.

20 **CLASS ACTION ALLEGATIONS**

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

- 23 a. The Overtime Class consists of all Defendants' current and former non-exempt
24 California employees who: (i) worked more than eight hours per day and/or forty
25 hours per week, and received Incentive Pay during a corresponding time period
26 that overtime hours were worked; and/or (ii) were paid less than one and one half
27 times their regular rate of pay for hours worked over eight hours per day and/or
28

forty hours per week, during the four years immediately preceding the filing of the Complaint through the present.

b. The Split Shift Class consists of all of Defendants' current and former non-exempt California employees who worked at least two shifts in the same workday separated by an unpaid nonworking period, other than a bona fide rest or meal period, during the four years immediately preceding the filing of the Complaint through the present.

c. The Meal Period Class consists of all Defendants' current and former non-exempt California employees who worked at least one shift in excess of 5.0 hours without a meal period of at least 30 minutes in duration commencing prior to the conclusion of the fifth hour of work reflected in their timekeeping records, during the four years immediately preceding the filing of the Complaint through the present.

d. 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 the filing of the Complaint through the present.

e. The Wage Statement Class consists of all members of the Overtime Class, Split Shift Class, Meal Period Class, and/or Rest Period Class who received a wage statement, during the one year immediately preceding the filing of the Complaint through the present.

f. The Waiting Time Penalty Class consists of members of the Overtime Class, Split Shift Class, Meal Period Class and/or Rest Period Class, who separated their employment with Defendants during the three years immediately preceding the filing of the Complaint through the present.

20. **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 and Subclasses are 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.

21. **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 including, without limitation to:

- i. Whether Defendants failed to properly calculate the regular rate of pay for the members of the Overtime Class;
- ii. Whether Defendants failed to pay an overtime rate of pay for all overtime hours worked for the members of the Overtime Class;
- iii. Whether Defendants provided split shift premium payments for all split shift shifts worked by members of the split shift class;
- iv. Whether Defendants provided all legally compliant meal periods to members of the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;
- v. Whether Defendants provided all legally compliant rest periods to members of the Rest Period Class pursuant to Labor Code §§ 226.7 and 516;
- vi. Whether Defendants furnished legally compliant wage statements to members of the Wage Statement Class pursuant to Labor Code § 226; and
- vii. Whether Defendants' policies and/or practices for the timing and amount of payment of final wages to members of the Waiting Time Penalty Class at the time of their separation of employment were lawful.

22. **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 regular rate calculation, payment of overtime wages for overtime hours worked, payment of split shift premium wages for split shifts, Defendants' meal and rest period policies/practices. As such, the common questions predominate over individual questions concerning each individual class

1 member's showing as to their eligibility for recovery or as to the amount of their damages.

2 23. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because
3 Plaintiff was employed by Defendants as a non-exempt employee in California during the
4 statute(s) of limitations period applicable to each cause of action pled in the Complaint. As alleged
5 herein, Plaintiff, like the members of the Classes, was deprived of all earned overtime wages, was
6 not paid all split shift premium wages, was not provided all required meal and rest periods, did
7 not receive meal and rest period premium wages in lieu of missed or non-compliant meal and rest
8 periods, did not receive all final wages owed upon his separation of employment from Defendants,
9 and was not provided with accurate itemized wage statements.

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

16 25. **Superiority:** The California Labor Code is broadly remedial in nature and serves
17 an important public interest in establishing minimum working conditions and standards in
18 California. These laws and labor standards protect the average working employee from
19 exploitation by employers who have the responsibility to follow the laws and who may seek to
20 take advantage of superior economic and bargaining power in setting onerous terms and
21 conditions of employment. The nature of this action and the format of laws available to Plaintiff
22 and members of the Classes make the class action format a particularly efficient and appropriate
23 procedure to redress the violations alleged herein. If each employee were required to file an
24 individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they
25 would be able to exploit and overwhelm the limited resources of each individual plaintiff with
26 their vastly superior financial and legal resources. Moreover, requiring each member of the
27 Class(es) to pursue an individual remedy would also discourage the assertion of lawful claims by
28 employees who would be disinclined to file an action against their former and/or current employer

1 for real and justifiable fear of retaliation and permanent damages to their careers at subsequent
2 employment. Further, the prosecution of separate actions by the individual class members, even
3 if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications
4 with respect to the individual class members against Defendants herein; and which would
5 establish potentially incompatible standards of conduct for Defendants; and/or legal
6 determinations with respect to individual class members which would, as a practical matter, be
7 dispositive of the interest of the other class members not parties to adjudications or which would
8 substantially impair or impede the ability of the class members to protect their interests. Further,
9 the claims of the individual members of the Class are not sufficiently large to warrant vigorous
10 individual prosecution considering all of the concomitant costs and expenses attending thereto.
11 As such, the Classes identified in Paragraph 18 are maintainable as a Class under § 382 of the
12 Code of Civil Procedure.

13 **FIRST CAUSE OF ACTION**

14 **FAILURE TO PAY ALL OVERTIME WAGES**

15 **(AGAINST ALL DEFENDANTS)**

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

17 27. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194,
18 and 1198, which provide that non-exempt employees are entitled to all overtime wages and
19 compensation for hours worked, and provide a private right of action for the failure to pay all
20 overtime compensation for overtime work performed.

21 28. At all times relevant herein, Defendants were required to properly compensate
22 non-exempt employees, including Plaintiff and members of the Overtime Class, for all overtime
23 hours worked pursuant to California Labor Code § 1194 and Wage Order 5. Wage Order 5, § 3
24 requires an employer to pay an employee “one and one-half (1½) times the employee’s regular
25 rate of pay” for work in excess of eight hours per workday and/or in excess of forty hours of work
26 in the workweek. Wage Order 5, § 3 also requires an employer to pay an employee double the
27 employee’s regular rate of pay for work in excess of twelve hours each work day and/or for work
28 in excess of eight hours on the seventh consecutive day of work in the workweek. Defendants

1 caused Plaintiff to work overtime hours, but did not compensate Plaintiff or members of the
2 Overtime Pay Class at one and one half times their regular rate of pay for such hours.

3 29. Defendants' policy/practice of requiring overtime work and not paying at the
4 proper overtime rates for said work violates California Labor Code §§ 204, 210, 216, 510, 558,
5 1194, and 1198; and Wage Order 5.

6 30. The foregoing policies/practices alleged herein are unlawful and create entitlement
7 to recovery by Plaintiff and the members of the Overtime Class in a civil action for the unpaid
8 amount of overtime wages, including interest thereon, statutory penalties, civil penalties,
9 attorneys' fees, and costs of suit according to California Labor Code §§ 204, 210, 216, 510, 558,
10 1194, and 1198; and Code of Civil Procedure § 1021.5.

11 **SECOND CAUSE OF ACTION**

12 **FAILURE TO PAY ALL SPLIT SHIFT PREMIUM WAGES**

13 **(AGAINST ALL DEFENDANTS)**

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

15 32. At all times relevant Plaintiff was an hourly non-exempt employee of Defendants
16 covered by labor Code § 1197 and Wage Order 5.

17 33. Wage Order 5 subdivision 4(C) states that: 'When an employee works a split shift,
18 one (1) hour's pay at minimum wage shall be paid in addition to the minimum wage for that
19 workday, except when the employee resides at the place of employment.'

20 34. Wage Order 5 subdivision (2)(N) defines a split shift as: "Split shift means a work
21 schedule, which is interrupted by non-paid non-working periods established by the employer,
22 other than bona fide rest or meal periods."

23 35. Defendants violated Wage Order 5 by scheduling Plaintiff for split shifts in which
24 his work schedule was interrupted by non-paid, non-working periods established by Defendants
25 which were not bona fide rest or meal periods, and did not pay the required split shift premium
26 wage.

27 36. The foregoing policies/practices alleged herein are unlawful and create entitlement
28 to recovery by Plaintiff and the members of the Split Shift Class in a civil action for the unpaid

1 amount of minimum wages, including interest thereon, statutory penalties, civil penalties,
2 attorneys' fees, and costs of suit according to California Labor Code §§ 1197 and 218.5.

3 **THIRD CAUSE OF ACTION**

4 **MEAL PERIOD VIOLATIONS**

5 **(AGAINST ALL DEFENDANTS)**

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

7 38. Plaintiff is informed and believes, and based thereon alleges, that Defendants
8 failed in their affirmative obligation to provide all of their non-exempt employees in California,
9 including Plaintiff and members of the Meal Period Class, with all legally compliant meal periods
10 in accordance with the mandates of the California Labor Code and Wage Order 5, § 11. Despite
11 Defendants' violations, Defendants did not pay an additional hour of pay to Plaintiff and members
12 of the Meal Period Class at their respective regular rates of pay, in accordance with California
13 Labor Code §§ 204, 210, 226.7, and 512.

14 39. As a result, Defendants are responsible for paying premium compensation for meal
15 period violations pursuant to Labor Code §§ 226.7, 512, and 558, and Wage Order 5, including
16 interest thereon, statutory penalties, civil penalties, and costs of suit.

17 **FOURTH CAUSE OF ACTION**

18 **REST PERIOD VIOLATIONS**

19 **(AGAINST ALL DEFENDANTS)**

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

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

24 42. As alleged herein, Defendants failed to authorize and permit Plaintiff and members
25 of the Rest Period Class to take all required rest periods.

26 43. The foregoing violations create an entitlement to recovery by Plaintiff and
27 members of the Rest Period Class in a civil action for the unpaid amount of rest period premiums
28 owing, including interest thereon, as well as statutory penalties, civil penalties, and costs of suit

1 according to California Labor Code §§ 226.7, 516, 558, Wage Order 4, California Code of Civil
2 Procedure § 1021.5, and Civil Code §§ 3287(b) and 3289.

3 **FIFTH CAUSE OF ACTION**

4 **WAGE STATEMENT VIOLATIONS**

5 **(AGAINST ALL DEFENDANTS)**

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

7 45. Plaintiff is informed and believes, and based thereon alleges that, Defendants
8 knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff
9 and members of the Wage Statement Class with accurate and complete wage statements as
10 described herein, in violation of Labor Code § 226.

11 46. Defendants' failure to furnish Plaintiff and members of the Wage Statement Class
12 with complete and accurate itemized wage statements resulted in actual injury, as said failures led
13 to, among other things, the non-payment of all their overtime wages, split shift premium wages,
14 as well as meal and rest period premium wages and deprived them of the information necessary
15 to identify the discrepancies in Defendants' reported data.

16 47. Furthermore, Defendants failed to comply with Labor Code Section 226 *et seq* by
17 failing to include the address of the legal entity employing Plaintiff and other non-exempt
18 employees on their wage statements.

19 48. Defendants' failure creates an entitlement to recovery by Plaintiff and members of
20 the Wage Statement Class in a civil action for all damages and/or penalties pursuant to Labor
21 Code § 226, including statutory penalties, civil penalties, reasonable attorney's fees, and costs of
22 suit according to California Labor Code §§ 226 and 226.3 and 2698 *et seq*.

23 **SIXTH CAUSE OF ACTION**

24 **WAITING TIME PENALTIES**

25 **(AGAINST ALL DEFENDANTS)**

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

27 50. This cause of action is brought pursuant to Labor Code §§ 201-203, which require
28 an employer to pay all wages immediately at the time of separation of employment in the event

1 the employer discharges the employee or the employee provides at least 72 hours of notice of
2 their intent to quit. In the event the employee provides less than 72 hours of notice of their intent
3 to quit, said employee's wages become due and payable not later than 72 hours upon said
4 employee's last date of employment.

5 51. Plaintiff is informed and believes, and based thereon alleges, that Defendants
6 failed to timely pay Plaintiff and members of the Waiting Time Penalty Class all final wages due
7 to them at their separation from employment, including, unpaid overtime wages, split shift
8 premium wages, and meal and rest period premium wages.

9 52. Further, Plaintiff is informed and believes, and based thereon alleges, that as a
10 matter of uniform policy and practice, Defendants continue to fail to pay Plaintiff and members
11 of the Waiting Time Penalty Class all earned wages at the end of employment in a timely manner
12 pursuant to the requirements of Labor Code §§ 201-203.

13 53. Defendants' failure to pay all final wages was willful within the meaning of Labor
14 Code § 203. Defendants' willful failure to timely pay Plaintiff and the members of the Waiting
15 Time Penalty Class their earned wages upon separation from employment results in a continued
16 payment of wages up to thirty days from the time the wages were due.

17 54. Therefore, Plaintiff and members of the Waiting Time Penalty Class are entitled
18 to compensation pursuant to Labor Code § 203, plus reasonable attorneys' fees and costs of suit.

19 **SEVENTH CAUSE OF ACTION**

20 **UNFAIR COMPETITION**

21 **(AGAINST ALL DEFENDANTS)**

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

23 56. Defendants have engaged and continue to engage in unfair and/or unlawful
24 business practices in California in violation of California Business and Professions Code § 17200
25 et seq., by failing to properly pay overtime wages, split shift premium wages, provide all required
26 meal and rest periods, or pay premium payments in lieu thereof, and failing to pay all final wages
27 owed to employees upon their separation from employment with Defendants.

28 57. Defendants' utilization of these unfair and/or unlawful business practices deprived

1 Plaintiff and continues to deprive members of the Classes of compensation to which they are
2 legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage
3 over Defendants' competitors who have been and/or are currently employing workers and
4 attempting to do so in honest compliance with applicable wage and hour laws.

5 58. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged
6 herein, Plaintiff for himself and on behalf of the members of the Classes, seeks full restitution of
7 monies, as necessary and according to proof, to restore any and all monies withheld, acquired
8 and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

9 59. The acts complained of herein occurred within the last four years immediately
10 preceding the filing of the Complaint in this action.

11 60. Plaintiff was compelled to retain the services of counsel to file this court action to
12 protect her interests and those of the Classes, to obtain restitution and injunctive relief on behalf
13 of Defendants' current non-exempt employees, and to enforce important rights affecting the
14 public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs,
15 which he is entitled to recover under Code of Civil Procedure § 1021.5.

16 **CAUSE OF ACTION**

17 **PRIVATE ATTORNEYS GENERAL ACT**

18 **(AGAINST ALL DEFENDANTS)**

19 61. Defendants have committed several Labor Code violations against Plaintiff,
20 members of the Classes, and other aggrieved employees. Plaintiff, an "aggrieved employee"
21 within the meaning of Labor Code § 2698 et seq., acting on behalf of himself and other aggrieved
22 employees, brings this representative action against Defendants to recover the civil penalties due
23 to Plaintiff, the members of the Classes, other aggrieved employees, and the State of California
24 according to proof pursuant to Labor Code § 558 and § 2699 (a) and (f) including, but not limited
25 to \$100.00 for each initial violation and \$200 for each subsequent violation per employee per pay
26 period for the following Labor Code violations: (1) \$100.00 for each initial violation for each
27 failure to pay each employee and \$200 for each subsequent violation or willful or intentional
28 violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the

1 amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent
2 violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial
3 violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per
4 employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent
5 violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for
6 each initial violation and \$200 for each subsequent violation per employee per pay period for
7 those violations of the Labor Code for which no civil penalty is specifically provided, based on
8 the following Labor Code violations:

- 9 a. Failing to pay Plaintiff, the Overtime Class, and other aggrieved employees all
10 earned overtime compensation in violation of Labor Code §§ 204, 510, 558, 1194,
11 and 1198;
- 12 b. Failing to provide all legally required meal periods, and failure to pay meal period
13 premium wages, to Plaintiff, the Meal Period Class, and other aggrieved employees
14 in violation of Labor Code §§ 226.7, 512, 558, and 1198;
- 15 c. Failing to authorize and permit all legally required rest periods, and failure to pay
16 rest period premium wages, to Plaintiff, the Rest Period Class, and other aggrieved
17 employees in violation of Labor Code §§ 226.7, 512, 558, and 1198;
- 18 d. Failing to furnish Plaintiff, the Wage Statement Class, and other aggrieved
19 employees with complete, accurate, itemized wage statements in violation of Labor
20 Code § 226;
- 21 e. Failing to timely pay Plaintiff, the Waiting Time Class, and other aggrieved
22 employees all final wages due in violation of Labor Code §§ 201, 202, 203;
- 23 f. Failing to pay non-exempt employees all earned wages at least twice during each
24 calendar month in violation of Labor Code § 204; and
- 25 g. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved
26 employees in violation of Labor Code §§ 558 and 1174.

27 62. On July 27, 2020, Plaintiff notified Defendants via certified mail, and notified the
28 California Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’

1 violations of the California Labor Code and Plaintiff's intent to bring a claim for civil penalties
2 under California Labor Code § 2698 et seq. with respect to violations of the California Labor
3 Code identified in Paragraph 61 (a)-(g). Now that sixty-five days have passed from Plaintiff's
4 notifying Defendants and the LWDA of these violations, and the LWDA has not provided notice
5 that it intends to investigate the violations, Plaintiff has exhausted his administrative requirements
6 for bringing a claim under the Private Attorneys General Act with respect to these violations.

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

11 **PRAYER**

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

- 14 1. For an order certifying the proposed Classes;
- 15 2. For an order appointing Plaintiff as representative of the Classes;
- 16 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
- 17 4. Upon the First Cause of Action, for compensatory, consequential, general and
18 special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
- 19 5. Upon the Second Cause of Action, for compensatory, consequential, general and
20 special damages according to proof pursuant to Labor Code § 1197;
- 21 6. Upon the Third Cause of Action, for compensatory, consequential, general and
22 special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;
- 23 7. Upon the Fourth Cause of Action, for compensatory, consequential, general and
24 special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;
- 25 8. Upon the Fifth Cause of Action for statutory penalties pursuant to Labor Code §
26 226;
- 27 9. Upon the Sixth Cause of Action, for statutory waiting time penalties pursuant to
28 Labor Code § 203;

1 10. Upon the Seventh Cause of Action, for restitution to Plaintiff and members of the
2 Class of all money and/or property unlawfully acquired by Defendants by means of any acts or
3 practices declared by this Court to be in violation of Business and Professions Code § 17200 *et*
4 *seq.*;

5 11. Upon the Eighth Cause of Action, for civil penalties due to Plaintiff, other
6 aggrieved employees, and the State of California according to proof pursuant to Labor Code §§
7 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for
8 each failure to pay each employee and \$200 for each subsequent violation or willful or intentional
9 violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the
10 amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent
11 violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial
12 violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per
13 employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent
14 violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for
15 each initial violation and \$200 for each subsequent violation per employee per pay period for
16 those violations of the Labor Code for which no civil penalty is specifically provided, based on
17 the following Labor Code violations;

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

20 13. On all causes of action, for attorneys' fees and costs as provided by Labor Code
21 §§ 226, 1194 *et seq.*, and 2699(g); and Code of Civil Procedure § 1021.5; and

22 14. For such other and further relief the Court may deem just and proper.

23
24 Dated: October 14, 2020

Respectfully submitted,
STANSBURY BROWN LAW

25
26 By: _____


Daniel J. Brown
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

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

Dated: October 14, 2020

Respectfully submitted,
STANSBURY BROWN LAW

By: _____


Daniel J. Brown
Attorneys for Plaintiff

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PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action; my business address is 2610 ½ Abbot Kinney Blvd. Venice, CA 90212

On October 14, 2020, I served the document listed below on the parties in this action as follows:

- FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT

- ☐ (BY MAIL) I placed such envelope on the above date, with postage fully prepaid, for deposit in the U.S. Postal Service at my place of business at Venice, California, following the ordinary business practices of my place of business. I am readily familiar with the business practice at my place of business for collection and processing of correspondence for mail with the U.S. Postal Service. Under that practice, such correspondence is deposited with the U.S. Postal Service the same day it is collected and processed in the ordinary course of business.
- ☐ (BY HAND DELIVERY) I delivered to an authorized courier or driver authorized by _____ to receive documents to be delivered on the same date.
- ☐ (BY FEDERAL EXPRESS) I am readily familiar with the practice of collection and processing of correspondence for overnight delivery and know that the document(s) described herein will be deposited in a box or other facility regularly maintained by Federal Express for overnight delivery.
- X (BY CASE ANYWHERE) I caused to be transmitted the document(s) described herein via the CaseAnywhere(s) listed on the attached service list.
- X (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on October 14, 2020, at Venice, California.



Daniel J. Brown

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