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

10 JUAN P. LOPEZ, on behalf of himself and
all others similarly situated,

11 Plaintiff,

12 v.

13 RGGD, INC. dba CRYSTAL ART
GALLERY, a California corporation; and
14 DOES 1 through 100, inclusive,

15 Defendants.
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CASE NO. 20STCV43367

**CLASS AND REPRESENTATIVE ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages for all Hours Worked (Labor Code §§ 1194, 1194.2, 1197, 1197.1, and Wage Order 1-2001);
2. Failure to Pay Overtime Compensation (Labor Code §§ 510, 1198, and Wage Order No. 1-2001);
3. Failure to Provide Duty-Free Meal Periods (Labor Code §§ 226.7, 512, and Wage Order No. 1-2001);
4. Failure to Authorize and Permit Rest Breaks (Labor Code § 226.7 and Wage Order No. 1-2001);
5. Failure to Maintain and Provide Accurate Itemized Wage Statements (Labor Code §§ 226, 226.3, and 1174);
6. Failure to Pay all Wages Owed Timely and Upon Separation of Employment (Labor Code §§ 201, 202, 203, 204, and 210);
7. Failure to Produce Personnel File (Labor Code §§ 226(b), 1198.5(k), and Wage Order No. 1);
8. Unfair Competition (Bus. & Prof. Code § 17200, *et seq.*); and
9. Penalties per the Private Attorneys General Act of 2004 (Labor Code § 2698, *et seq.*)

DEMAND FOR JURY TRIAL

By Fax

CLASS AND REPRESENTATIVE ACTION COMPLAINT

1 Plaintiff JUAN P. LOPEZ, an individual, (“Plaintiff”), on behalf of himself, the State of
2 California, and all others similarly situated, alleges and complains of Defendant RGGD, INC. dba
3 CRYSTAL ART GALLERY, a California corporation, and DOES 1 to 100 (collectively,
4 “Defendants”), and each of them, as follows:

5 **I. INTRODUCTION**

6 1. This is a class action, pursuant to California Code of Civil Procedure section 382,
7 on behalf of Plaintiff and the following class: *All current and former hourly-paid or non-exempt*
8 *employees who worked for RGGD, Inc. doing business as CRYSTAL ART GALLERY, and/or its*
9 *predecessor or merged entities, within the State of California from four years prior to the filing of*
10 *the Complaint and continuing to the present* (the “Class” or “Class Members”).

11 2. Throughout the time period involved in this case, Defendants willfully maintained
12 a consistent policy of: failing to pay at least the minimum wage for all hours worked; failing to
13 pay all overtime wages owed and/or for failing to pay for all overtime hours worked; failing to
14 provide timely duty-free meal periods and/or paying the required premiums; failing to authorize
15 and permit duty-free rest breaks and/or paying the required premiums; failing to maintain and
16 provide accurate itemized wage statements; failing to pay all wages owed timely and upon
17 separation of employment; and failing to timely provide personnel file and non-compliance with
18 records request. Defendants’ illegal conduct has also given rise to derivative claims for unfair
19 business practices and violation of the Private Attorneys General Act of 2004 (“PAGA”).

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

25 4. Plaintiff, on behalf of himself and all other similarly situated aggrieved employees,
26 also brings this representative action against Defendants to recover wages and penalties owed
27 pursuant to Labor Code section 2699 (the “Aggrieved Employees”). Plaintiff was compelled to
28 retain the services of counsel to file this action to protect her interests and those of Aggrieved

1 Employees and has thereby incurred attorneys' fees and costs, which he is likewise entitled to
2 recover under Labor Code section 2699.

3 5. For purposes of the allegations set forth herein, Class Members, along with those
4 similarly situated Aggrieved Employees comprising the PAGA representative action are
5 collectively referred to as "Employees" except as otherwise specified.

6 **II. JURISDICTION AND VENUE**

7 6. This Court has subject matter jurisdiction over all causes of action asserted herein
8 pursuant to Article VI, section 10 of the California Constitution and California Code of Civil
9 Procedure section 410.10 by virtue of the fact that this is a civil action in which the matter in
10 controversy, exclusive of interest, exceeds \$25,000, and because each cause of action asserted
11 arises under the laws of the State of California or is subject to adjudication in the courts of the
12 State of California.

13 7. This Court has personal jurisdiction over Defendants because each has caused
14 injuries in Los Angeles County and the State of California through their acts, and by their
15 violation of the California Labor Code, California state common law, and California Business &
16 Professions Code sections 17200, *et seq.* Defendants also transact business throughout California
17 and have obtained the benefits of the laws of the United States and the State of California and are
18 therefore subject to the personal jurisdiction of this Court.

19 8. Venue as to each defendant is proper in this judicial district pursuant to Code of
20 Civil Procedure section 395. Defendants operate within California and do business within Los
21 Angeles County. The unlawful acts alleged herein have a direct effect on Plaintiff and Employees
22 within the State of California and Los Angeles County.

23 9. This case should be classified as complex according to California Rules of Court,
24 Rule 3.400 and assigned to a complex litigation judge and department, as it is a class action, will
25 involve substantial documentary evidence, a large number of witnesses, and is likely to involve
26 extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
27 and would require substantial post judgment judicial supervision.

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11. Plaintiff is informed and believes, and based thereon alleges, that Defendant RGGD, Inc. doing business as Crystal Art Gallery is, and at all times relevant hereto was, a corporation organized and existing under and by virtue of the laws of the State of California and doing business in California and, at all times hereinafter mentioned, was and is an employer as defined in and subject to the Labor Code and Industrial Welfare Commission (“IWC”) Wage Orders, whose employees are engaged throughout this county and the State of California. During the relevant time period, Defendant RGGD, Inc., dba Crystal Art Gallery, employed Plaintiff and Employees within the State of California.

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

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

14. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects pertinent to this action, as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants. Plaintiff is further informed and believes and based thereon alleges that Defendants are joint employers in that they employed Plaintiff and

1 Employees, at the same time and were operating as a joint enterprise and single entity at all
2 relevant time periods.

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

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

17 17. At all times throughout their employment, Plaintiff and Employees were regularly
18 and consistently subject to the common policies and practices utilized by Defendants.

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

23 **IV. FACTUAL BACKGROUND**

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

25 19. Until his separation on March 20, 2020, Plaintiff Juan P. Lopez worked for
26 approximately fourteen (14) years as an hourly-paid, non-exempt employee in Defendants’
27 Vernon, California location. During the relevant time period, Plaintiff worked in various job
28 capacities, including, but not limited to, shipping agent.

1 20. Plaintiff and Employees are non-exempt employees pursuant to the applicable IWC
2 Wage Orders. This action seeks recovery for wages and compensation due and owing to Plaintiff
3 and the Employees under California laws for the maximum period allowed to the present, as set
4 out below.

5 21. Plaintiff alleges that Defendants did not fully compensate Plaintiff and Employees
6 who worked in non-exempt and hourly-paid positions because they were regularly required to
7 perform activities that were off-the-clock, as well as during meal periods. Through these policies
8 and/or practices, Defendants artificially reduced the actual hours worked and ultimately
9 disadvantaged Plaintiff and Employees.

10 22. Labor Code section 1197 states the California requirement that employees must be
11 paid at least the minimum wage fixed by the Commission, and any payment of less than the
12 minimum wage is unlawful. Labor Code section 1194 entitles “any employee receiving less than
13 the legal minimum wage...to recover in a civil action the unpaid balance of the full amount of this
14 minimum wage.” IWC Wage Order 1-2001¹ subdivision 4 also obligates employers to pay each
15 employee minimum wages for all hours worked.

16 23. Throughout the applicable time period, Defendants did not pay and continue to not
17 pay Plaintiff and the Employees at least the California minimum wage for all hours worked,
18 thereby violating Labor Code section 1194. Pursuant to Labor Code section 1194.2, Plaintiff and
19 the Employees are entitled to recover liquidated damages (double damages) for Defendants’
20 failure to pay minimum wages. Likewise, Plaintiff also seeks penalties on behalf of himself and
21 Employees under Labor Code section 1199.

22 24. Here, Defendants’ hourly, non-exempt employees were not paid wages for all hours
23 worked. Defendants failed to pay Plaintiff and Employees for post-shift off-the-clock work.
24 Additionally, to the extent Defendants interrupted Employees’ meal periods by requiring or
25 pressuring Employees to perform work during or before completing their thirty (30) minute meal
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27 ¹ Upon information and belief, Plaintiff alleges that IWC Wage Order No. 1-2001 is applicable. However,
28 Plaintiff reserves the right to amend and/or allege any other applicable IWC Wage Order(s) that may be
gleaned relevant after discovery.

1 periods, some of the unpaid meal period time constitutes off-the-clock hours resulting in unpaid
2 minimum wages (along with unpaid overtime wages) owed to Plaintiff and Employees. Due to
3 Defendants' assignment of workloads and their failure to schedule adequate staffing, Plaintiff and
4 Employees were compelled to perform work off-the-clock, resulting in uncompensated minimum
5 wages.

6 25. Further, the work times of Plaintiff and Employees very frequently have been, and
7 continue to be, greater than eight (8) hours per day and/or forty (40) hours per week. Yet, because
8 Defendants wanted to keep labor costs down while demanding high production from their
9 workforce, Defendants failed to pay all overtime wages owed to Plaintiff and Employees. Thus,
10 Defendants retained the benefits of their hard-working hourly workforce without assuming the
11 legally-mandated costs of labor. Since Defendants owe Plaintiff and Employees the legally
12 required wages for unpaid hours that were worked off-the-clock, as discussed herein and alleged
13 *supra*, Plaintiff and Employees suffered damages in the amounts attributable to those overtime
14 hours as well.

15 26. Labor Code section 510 requires an employer to compensate an employee who
16 works more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first
17 eight (8) hours worked on the seventh consecutive day no less than one and one-half times the
18 regular rate of pay for an employee. Further, Labor Code section 510 obligates employers to
19 compensate employees at no less than twice the regular rate of pay when an employee works more
20 than twelve (12) hours in a day or more than eight (8) hours on the seventh consecutive day of
21 work.

22 27. By their common policy and/or practice of requiring Plaintiff and Employees to
23 work in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without
24 compensating them at the applicable overtime rate of pay, Defendants willfully violated the
25 provisions of Labor Code sections 510 and 1198, as well as IWC Wage Order No. 1-2001.

26 28. Defendants regularly failed to provide Plaintiff and Employees with timely duty-
27 free meal periods. Labor Code sections 226.7, 512, and IWC Wage Order No. 1-2001 require
28 employers to provide employees with a thirty (30) minute uninterrupted and duty-free meal period

1 within the first five (5) hours of work. *See also, Brinker Rest. Corp. v. Superior Court* (2012) 53
2 Cal. 4th 1004, 1042 (“Accordingly, first meal periods must start after no more than five hours.”).
3 Moreover, an employee who works more than ten (10) hours per day is entitled to receive a second
4 thirty (30) minute uninterrupted and duty-free meal period.

5 29. Defendants regularly denied Plaintiff and Employees meal periods that comply
6 with Labor Code sections 226.7, 512, and IWC Wage Order No. 1-2001. The demands of the job
7 duties of Plaintiff and Employees were such that they were prevented from taking timely,
8 uninterrupted meal periods. For example, Plaintiff took numerous meal periods after his fifth hour
9 of work that were in violation of Labor Code sections 226.7, 512, and IWC Wage Order No. 1-
10 2001. Specifically, Plaintiff and Employees frequently worked off-the-clock and during their meal
11 periods without receiving proper compensation and without entering into a lawful on-duty meal
12 period agreement.

13 30. Moreover, Plaintiff was not provided meal periods after his tenth hour of work in
14 violation of Labor Code sections 226.7, 512, and IWC Wage Order No. 1-2001. To the extent
15 Defendants claim that Plaintiff and Employees waived their rights to second meal periods for
16 shifts worked in excess of ten (10) hours, the waivers are non-applicable for those occasions when
17 Plaintiff and Employees frequently worked shifts in excess of twelve (12) hours a day and/or to
18 the extent the waivers are ineffective on-duty meal period agreements where the nature of the
19 work does not prevent them from being relieved of all duties. Having been subjected to on-site,
20 late, short, interrupted, and/or missed meal periods, Plaintiff and Employees did not receive their
21 statutorily-mandated meal periods.

22 31. The same late, short, interrupted, and missed breaks also occur in connection with
23 what are supposed to be Plaintiff’s and Employees’ timely, duty-free rest breaks. Defendants were
24 obligated but failed to provide Plaintiff and the Employees with net ten (10) minute rest breaks for
25 work shifts exceeding four (4) hours or a major fraction thereof worked as required by Labor Code
26 section 226.7 and IWC Wage Order No. 1-2001. Since Plaintiff and Employees frequently worked
27 shifts that were longer than three and one-half (3.5) or six (6) hours in duration, Defendants were
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1 required but regularly failed to provide Plaintiff and Employees with all of the timely duty-free
2 rest breaks.

3 32. Further, Plaintiff and Employees were prohibited from leaving the premises during
4 their shifts for rest breaks. As a result, Defendants retained control over Plaintiff and Employees
5 during their meal and rest periods. The California Supreme Court held, in *Augustus v. ABM*
6 *Security Services Inc.* (2016) 2 Cal. 5th 257, that employees must be relieved of all duties during
7 rest periods pursuant to Labor Code section 226.7. In *Augustus*, the Court expressly rejected the
8 employer's assertion that it could provide an on-duty rest period to employees who worked as
9 security guards and further explained "that employers [must] relinquish any control over how
10 employees spend their break time, and relieve their employees of all duties." *Id.* at 273. The Court
11 found that the Wage Orders and the Labor Code require employers to "relinquish control over how
12 employees spend their time" and "relieve employees of all duties" during employees' 10-minute
13 rest periods. On-duty rest periods are prohibited. Plaintiff and Employees contend that they did not
14 receive timely and compliant rest breaks.

15 33. Plaintiff and Employees were not compensated with one (1) hour's worth of pay at
16 their regular rate of compensation when they were not provided with compliant meal and rest
17 periods in accordance with Labor Code section 226.7(b).

18 34. Plaintiff and Employees were not furnished with accurate itemized wage
19 statements that accurately showed their gross wages earned, net wages earned, premium payments
20 for meal and rest breaks, all applicable hourly rates and corresponding number of hours worked at
21 each hourly rate in effect during their pay periods, and other information required by Labor Code
22 section 226(a).

23 35. During the relevant time period, Defendants have knowingly and intentionally
24 failed to provide Plaintiff and Employees with the above-described writing through actions alleged
25 herein in violation of Labor Code section 226. Plaintiff and Employees have been injured by
26 Defendants' intentional violation of Labor Code section 226(a) because they were denied both
27 their legal right to receive, and their protected interest in receiving, accurate itemized wage
28 statements.

1 36. In addition, because Defendants failed to provide the accurate and mandated
2 information on the itemized wage statements, Plaintiff and Employees have been prevented by
3 Defendants from determining, *inter alia*, if all hours worked were paid and the extent of the
4 underpayment. Plaintiff has had to file this lawsuit and will be required to conduct discovery and
5 perform computations in order to analyze whether, and to what extent, Plaintiff and Employees
6 suffered underpayment, thereby causing Plaintiff to incur expenses and time lost. Thus, Plaintiff
7 and Employees are owed the amounts provided for in Labor Code section 226(e).

8 37. Further, for the violations described above, Plaintiff and Aggrieved Employees
9 may also recover civil penalties through Labor Code section 226.3 and PAGA for Defendants'
10 violations of Labor Code section 226(a).

11 38. Additionally, Plaintiff and Employees have been denied their legal right and
12 protected interest in having available at a central location at the plant or establishment where they
13 are employed, accurate and complete payroll records showing the hours worked daily by, and the
14 wages paid to, employees at those respective locations pursuant to Labor Code section 1174.
15 Through Labor Code section 1174.5 and PAGA, Plaintiff and Aggrieved Employees may also
16 recover civil penalties for violations of Labor Code section 1174(d).

17 39. Labor Code section 203 provides "if an employer willfully fails to pay...any wages
18 of an employee who is discharged or who quits, the wages of the employee shall continue as a
19 penalty..." for up to 30 days. Labor Code § 203; *Mamika v. Barca* (1998) 68 Cal. App. 4th 487,
20 492.

21 40. Due to Defendants' non-compliant policies and/or practices described herein,
22 Plaintiff and Employees whose employment with Defendants concluded were neither compensated
23 for all straight-time and overtime hours worked, nor were they paid all meal and rest break
24 premiums owed. Thus, Defendants have failed to pay Plaintiff and Employees all wages owed,
25 whose sums were certain, at the time of termination or within seventy-two (72) hours of their
26 resignation and have failed to pay those sums for thirty (30) days thereafter in violation of Labor
27 Code section 203.

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1 41. Labor Code section 204 expressly requires that “[a]ll wages...earned by any person
2 in any employment are due and payable twice during each calendar month, on days designated in
3 advance by the employer as the regular paydays.” Pursuant to Labor Code section 204(d), these
4 requirements are “deemed satisfied by the payment of wages for weekly, biweekly or semimonthly
5 payroll if the wages are paid not more than seven (7) calendar days following the close of the
6 payroll period.” Due to Defendants’ failure to pay Plaintiff and Employees for, *inter alia*, all
7 straight-time and overtime hours worked, Defendants failed to timely pay Plaintiff and Employees
8 within seven (7) days of the close of the payroll period in accordance with Labor Code section 204
9 on a regular and consistent basis.

10 42. Through Labor Code section 210 and PAGA, and to the extent permitted by law,
11 Plaintiff and Aggrieved Employees are entitled to recover civil penalties for violations of Labor
12 Code section 204.

13 43. On June 19, 2020 and August 11, 2020, Plaintiff made written requests for his
14 complete employment records from Defendants, including, but not limited to: timecards;
15 timekeeping records; payroll information; job duties; any documents signed by Plaintiff; work
16 performance and any grievances; discharge information; and other documents constituting his
17 personnel file. Under Labor Code sections 226(b), 1198.5(b), and subdivision 7 of IWC Wage
18 Order No. 1-2001, Defendants are required to allow Plaintiff and Employees access to their
19 personnel files and payroll records as soon as practicable, but no later than twenty-one (21)
20 calendar days after such a request. After the mailing of that second correspondence, Defendants
21 produced a purported response to Plaintiff’s records request. But Defendants’ sixty-three (63) page
22 production is noticeably lacking as there are no payroll statements or time records despite
23 Plaintiff’s over one decade of employment history. Due to Defendants’ failure to comply, Plaintiff
24 and Employees are entitled to recover penalties.

25 44. Based on the foregoing, Defendants have also engaged in unlawful and unfair
26 business practices in violation of California’s Business and Professions Code sections 17200, *et*
27 *seq.*, thereby entitling Plaintiff and Class Members to restitution, disgorgement of profits, and/or
28 other equitable remedies.

V. CLASS ACTION ALLEGATIONS

45. Plaintiff brings this action on behalf of himself and all others similarly situated, as a class action pursuant to Code of Civil Procedure section 382. Plaintiff seeks to represent a proposed class composed of and defined as follows:

All current and former hourly-paid or non-exempt employees who worked for RGGD, Inc. doing business as CRYSTAL ART GALLERY, and/or its predecessor or merged entities, within the State of California from four years prior to the filing of the Complaint and continuing to the present (again, “Class” or “Class Members”).

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

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

A. Numerosity

48. The potential members of the Class as defined are so numerous that joinder of all the members of the Class is impracticable. While the precise number of Class Members has not been determined at this time, Plaintiff is informed and believes that there are over one hundred (100) Class Members employed by Defendants within the State of California at any given time. Accounting for employee turnover during the relevant time periods necessarily increases this number substantially.

49. Plaintiff alleges Defendants' employment records would provide information as to the number and location of all Class Members.

B. Commonality

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

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- 1 i. Whether Defendants violated Labor Code sections 1194, 1194.2, 1197, 1197.1,
2 and/or IWC Wage Order 1-2001 by not compensating Plaintiff and Class Members minimum
3 wages for all hours worked;
- 4 ii. Whether Defendants violated Labor Code sections 510, 1198, and/or IWC Wage
5 Order No. 1-2001 by not compensating Plaintiff and Class Members with proper overtime wages;
- 6 iii. Whether Defendants violated Labor Code section 226.7, 512, and/or IWC Wage
7 Order No. 1-2001 by not providing compliant duty-free meal and/or rest breaks and failing to pay
8 premiums owed thereon;
- 9 iv. Whether Defendants violated Labor Code section 226(a) by not furnishing Class
10 Members with accurate itemized wage statements;
- 11 v. Whether Defendants failed to maintain in a central location at the respective plants
12 or establishment accurate payroll records in violation of Labor Code section 1174(d);
- 13 vi. Whether Defendants violated Labor Code sections 201 and 202 by failing to pay
14 Plaintiff and Class Members upon termination and/or resignation all wages earned;
- 15 vii. Whether Defendants are liable to Plaintiff and Class Members for waiting time
16 penalties under Labor Code section 203;
- 17 viii. Whether Defendants violated Labor Code sections 204 and 210 by not paying
18 Plaintiff and Class Members all their wages owed within seven (7) days of the close of payroll;
- 19 ix. Whether Defendants violated Labor Code sections 226(b) and 1198.5 by failing to
20 provide or make available personnel files within the requisite time following written request;
- 21 x. Whether Defendants engaged in unfair business practices in violation of the Unfair
22 Competition Law, Business and Professions Code sections 17200, *et seq.*;
- 23 xi. Whether Plaintiff and Class Members are entitled to costs and attorneys' fees;
- 24 xii. Whether Plaintiff and Class Members are entitled to interest; and
- 25 xiii. The proper formula(s) for calculating damages, restitution, and interest owed to
26 Plaintiff and Class Members.

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1 **C. Typicality**

2 51. The claims of Plaintiff are typical of the claims of the Class. Plaintiff and Class
3 Members sustained injuries and damages arising out of and caused by Defendants' common
4 course of conduct in violation of laws and regulations that have the force and effect of law and
5 statutes, as alleged herein.

6 **D. Adequacy of Representation**

7 52. Plaintiff will fairly and adequately represent and protect the interests of the Class.
8 Counsel who represent Plaintiff and Class Members are competent and experienced in litigating
9 wage and hour class actions and have the financial resources to litigate the claims at issue.

10 **E. Superiority of Class Action**

11 53. A class action is superior to other available means for the fair and efficient
12 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and
13 questions of law and fact common to the Class predominate over any questions affecting only
14 individual members of the Class. Each member of the Class has been damaged and is entitled to
15 recovery by reason of Defendants' illegal policy and/or practice of failing to properly pay
16 minimum wages and overtime, failing to provide timely duty-free meal periods, failing to
17 authorize and permit duty-free rest breaks, failing to maintain and provide accurate itemized wage
18 statements, failing to pay all wages owed in a timely manner, failing to pay all wages due upon
19 termination and/or resignation, failing to comply with records requests, and engaging in unfair
20 business practices.

21 54. Class action treatment will allow those similarly situated persons to litigate their
22 claims in a manner that is most efficient and economical for the parties and the judicial system.
23 Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this
24 action that would preclude its maintenance as a class action.

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1 **FIRST CAUSE OF ACTION**
2 **FAILURE TO PAY MINIMUM WAGES**
3 **Cal. Labor Code §§ 1194, 1194.2, 1197, 1197.1, and IWC Wage Order No. 1-2001**
4 **[On Behalf of Plaintiff and the Class Against All Defendants]**

5 55. Plaintiff, on behalf of himself and the Class, re-alleges and incorporates by
6 reference all of the allegations contained in the preceding paragraphs of this Complaint as though
7 fully alleged herein.

8 56. At all times relevant herein, Defendants did not pay, and continue to not pay,
9 Plaintiff and Class Members the legal minimum wage for all time worked. Among other things,
10 Plaintiff and Class Members were regularly required to perform post-shift activities that were off-
11 the-clock, as well as during meal periods. Due to Defendants' assignment of workloads and their
12 failure to schedule adequate staffing, Plaintiff and the Class were compelled to perform work off-
13 the-clock, resulting in uncompensated hours.

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

19 **SECOND CAUSE OF ACTION**
20 **FAILURE TO PAY OVERTIME WAGES**
21 **Cal. Labor Code §§ 510 and 1198 and IWC Wage Order No. 1-2001**
22 **[On Behalf of Plaintiff and the Class Against All Defendants]**

23 58. Plaintiff, on behalf of himself and the Class, re-alleges and incorporates by
24 reference all of the allegations contained in the preceding paragraphs of this Complaint as though
25 fully set forth herein.

26 59. At all times relevant herein, Plaintiff and the Class regularly worked shifts that
27 consisted of more than eight (8) hours in a workday and/or more than forty (40) hours in a
28 workweek and were not paid proper overtime wages for all overtime hours worked as a result of,
but not limited to, Defendants' systematic pressure on Plaintiff and Class Members to perform
work off the clock, including during meal periods, that resulted in unaccounted work hours.

1 60. Labor Code section 1198 and the applicable IWC Wage Order(s) provide that it is
2 unlawful to employ persons without compensating them at a rate of pay either time-and-one-half
3 or two-times that person's regular rate of pay, depending on the number of hours worked by the
4 person on a daily or weekly basis.

5 61. Specifically, subdivision 3 of IWC Wage Order No. 1-2001 provides that an
6 employee shall not be employed more than eight (8) hours in any workday and/or more than forty
7 (40) hours in any workweek unless the employee receives one and one-half (1 ½) times such
8 employee's regular rate of pay for all hours worked over eight (8) hours in any workday and/or
9 more than forty (40) hours in any workweek. Further, an employer must compensate employees at
10 no less than twice the regular rate of pay when an employee works more than twelve (12) hours in
11 a workday or more than eight (8) hours on the seventh consecutive day of work.

12 62. Labor Code section 510 codifies the right to overtime compensation at one-and-
13 one-half times the regular hourly rate for hours worked in excess of eight (8) hours in a day or
14 forty (40) hours in a week or for the first eight (8) hours worked on the seventh day of work, and
15 to overtime compensation at twice the regular hourly rate for hours worked in excess of twelve
16 (12) hours in a day or in excess of eight (8) hours in a day on the seventh day of work.

17 63. During the relevant time period, Plaintiff and Class Members worked in excess of
18 eight (8) hours in a workday, and/or in excess of forty (40) hours in a week, but were not properly
19 compensated at one-and-one-half times their regular hourly rate of pay for such hours.

20 64. During the relevant time period, Defendants intentionally and willfully failed to
21 pay overtime wages owed to Plaintiff and Class Members.

22 65. Defendants' failure to pay Plaintiff and Class Members the unpaid balance of
23 overtime compensation, as required by California laws, violates the provisions of Labor Code
24 sections 510 and 1198, and is therefore unlawful.

25 66. Pursuant to Labor Code section 1194, Plaintiff and Class Members are entitled to
26 recover unpaid overtime compensation, as well as interest, costs, and attorneys' fees.

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THIRD CAUSE OF ACTION
FAILURE TO PROVIDE MEAL PERIODS
Cal. Labor Code §§ 226.7, 512, and IWC Wage Order No. 1-2001
[On behalf of Plaintiff and the Class Against All Defendants]

67. Plaintiff, on behalf of himself and the Class, re-alleges and incorporates by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully alleged herein.

68. Defendants regularly denied Plaintiff and Class Members meal periods that comply with Labor Code sections 226.7, 512, and IWC Wage Order No. 1-2001. The demands of the job duties of Plaintiff and the Class were such that they were prevented from taking compliant meal periods. Specifically, Plaintiff and Class Members worked off-the-clock and during their meal periods without receiving proper compensation and without entering into a lawful on-duty meal period agreement.

69. Labor Code section 226.7 provides “an employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission (“IWC”).” Labor Code section 512 and IWC Wage Order No. 1-2001 require employers to provide employees with thirty (30) minute uninterrupted and duty-free meal periods within the first five (5) hours of work. *Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1042 (“Accordingly, first meal periods must start after no more than five hours.”) Moreover, an employee who works more than ten (10) hours per day is entitled to receive a second thirty (30) minute uninterrupted and duty-free meal period.

70. Plaintiff took numerous meal periods after his fifth hour of work that were in violation of Labor Code sections 226.7, 512, and IWC Wage Order No. 1-2001.

71. Moreover, Plaintiff was not provided meal periods after his tenth hour of work in violation of Labor Code sections 226.7, 512, and IWC Wage Order No. 1-2001.

72. To the extent Defendants claim that Plaintiff and the Class waived their rights to second meal periods for shifts worked in excess of ten (10) hours, the waivers are non-applicable for those occasions when Plaintiff and Class Members frequently worked shifts in excess of

1 twelve (12) hours a day and/or to the extent the waivers are ineffective on-duty meal period
2 agreements where the nature of the work does not prevent them from being relieved of all duties.

3 73. Having been subjected to late, short, interrupted, and missed meal periods, Plaintiff
4 and Class Members thus did not receive their statutorily-mandated meal periods.

5 74. Under Labor Code section 226.7 and IWC Wage Order No. 1-2001, Plaintiff and
6 each Class Member is entitled to be paid one (1) hour of additional wages for each day he or she
7 was not provided with all required meal periods. Defendants regularly failed to pay Plaintiff and
8 Class Members the additional wages to which they were entitled for non-compliant meal periods.

9 75. As a result, Defendants are liable to Plaintiff and each Class Member for one (1)
10 hour of additional wages for each workday a compliant meal period was not provided.

11 **FOURTH CAUSE OF ACTION**
12 **FAILURE TO AUTHORIZE AND PERMIT REST PERIODS**
13 **Cal. Labor Code § 226.7 and IWC Wage Order No. 1-2001**
[On behalf of Plaintiff and the Class Against All Defendants]

14 76. Plaintiff, on behalf of himself and the Class, re-alleges and incorporates by
15 reference all of the allegations contained in the preceding paragraphs of this Complaint as though
16 fully alleged herein.

17 77. Under IWC Wage Order No. 1-2001, subdivision 12, an employer must authorize
18 and permit all employees to take ten (10) minute duty free rest periods for every major fraction of
19 four (4) hours worked. Labor Code section 226.7 provides “an employer shall not require an
20 employee to work during a meal or rest or recovery period mandated pursuant to an applicable
21 statute, or applicable regulation, standard, or order of the Industrial Welfare Commission.”

22 78. Defendants are required by California law to authorize and permit breaks of ten
23 (10) uninterrupted minutes for each four (4) hours of work or major fraction thereof (i.e., more
24 than two hours). That is, the required number of rest breaks is equal to the number of work hours
25 divided by four, and if the work time is not evenly divisible by four, any remainder of two hours
26 or less is rounded down and that which exceeds two hours is rounded up. For example, if a Class
27 Member’s work time is six hours and ten minutes, he or she is entitled to two rest breaks. If the
28 work time is nine hours, the employee is still entitled to only two rest breaks. (There is an

1 exception: if the shift is under three and one-half hours, no rest break is required.) Each failure to
2 authorize rest breaks as so required is itself a violation of California's rest break laws.

3 79. Despite these legal requirements, Defendants failed to authorize Plaintiff and Class
4 Members to take timely, duty-free rest breaks regardless of whether they worked more than four
5 (4) hours in a workday.

6 80. Plaintiff and Class Members were also prohibited from leaving the premises during
7 their shifts. As a result, Defendants retained control over Plaintiff and the Class during their rest
8 breaks. Pursuant to Labor Code section 226.7 and subdivision 12(A) of IWC Wage Order 1-2001,
9 employees must be relieved of all duties during rest periods. *See, Augustus v. ABM Security*
10 *Services Inc.* (2016) 2 Cal. 5th 257, 273 (holding "that employers [must] relinquish any control
11 over how employees spend their break time, and relieve their employees of all duties."). *Id.* at 273.
12 On-duty rest periods are prohibited. Plaintiff and the Class thus did not receive timely and
13 compliant rest breaks.

14 81. Under Labor Code section 226.7 and IWC Wage Order No. 1-2001, Plaintiff and
15 each Class Member is entitled to be paid one (1) hour of wages for each day he or she was not
16 provided with all required rest breaks. Defendants regularly failed to pay Plaintiff and Class
17 Members the additional wages to which they were entitled for rest breaks that Defendants failed to
18 authorize and permit.

19 82. As a result, Defendants are liable to Plaintiff and each Class Member for one (1)
20 hour of additional wages for each workday they did not receive a compliant rest break.

21 **FIFTH CAUSE OF ACTION**
22 **FAILURE TO MAINTAIN AND PROVIDE ACCURATE WAGE STATEMENTS**
23 **Cal. Labor Code §§ 226 and 1174**
24 **[On Behalf of Plaintiff and the Class Against All Defendants]**

25 83. Plaintiff, on behalf of himself and the Class, re-alleges and incorporates by
26 reference all of the allegations contained in the preceding paragraphs as though fully set forth
27 herein.

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

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

85. During the relevant time period, due to Defendants' failure to, *inter alia*, provide Plaintiff and Class Members with lawful meal periods and rest breaks (and pay missed meal and rest break premiums thereon), along with the failure to pay minimum and overtime wages, the wage statements issued by Defendants, at a minimum, do not indicate the correct amount of gross wages earned, the correct total hours worked, the correct net wages earned, or the applicable and/or correct hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate in violation of Labor Code section 226(a)(1), (2), (5), and (9).

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

87. The absence of accurate information on their wage statements has delayed timely challenge to Defendants' unlawful pay practices, requires discovery and mathematical

1 computations to determine the amount of wages owed, causes difficulty and expense in attempting
2 to reconstruct time and pay records, and led to submission of inaccurate information about wages
3 and amounts deducted from wages to state and federal governmental agencies. Plaintiff would not
4 have had to engage in these efforts and incur these costs had Defendants provided accurate wage
5 statements. This also delayed Plaintiff's ability to demand and recover the underpayment of wages
6 from Defendants.

7 88. Thus, Plaintiff and Class Members have been injured by Defendants' intentional
8 violation of Labor Code section 226(a) because they were denied both their legal right to receive,
9 and their protected interest in receiving, accurate itemized wage statements.

10 89. Plaintiff and Class Members are thus entitled to recover from Defendants the
11 greater of their actual damages caused by Defendants' failure to comply with Labor Code section
12 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000.00) per employee
13 pursuant to Labor Code section 226(e), and/or any other allowable penalties including those
14 pursuant to Labor Code section 226.3.

15 90. Pursuant to Labor Code section 1174(d), an employer shall keep at a central
16 location in the state or at the plants or establishments at which employees are employed, payroll
17 records showing the hours worked daily by, and wages paid to, employees employed at the
18 respective plants or establishments. These records shall be kept in accordance with rules
19 established for this purpose by the commission, but in any case shall be kept on file for not less
20 than three (3) years.

21 91. Defendants have intentionally and willfully failed to keep accurate and complete
22 records showing the hours worked daily and wages paid to Plaintiff and Class Members. Thus,
23 Plaintiff and Class Members have been denied their legal right and protected interest in having
24 available at a central location at the plant or establishment where they are employed, accurate and
25 complete payroll records showing the hours worked daily by, and the wages paid to, employees at
26 those respective locations pursuant to Labor Code section 1174.

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SIXTH CAUSE OF ACTION
FAILURE TO PAY ALL WAGES WITHIN A TIMELY MANNER
AND UPON SEPARATION OF EMPLOYMENT
Cal. Labor Code §§ 201, 202, 203, 204, and 210
[On behalf of Plaintiff and the Class Against All Defendants]

92. Plaintiff, on behalf of himself and the Class, re-alleges and incorporates by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully alleged herein.

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

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

95. As alleged herein and above, Defendants' failure to pay wages was willful in that Defendants knew wages (including overtime and meal/rest break premiums) were owed to Plaintiff and Class Members, but failed to pay said wages, at the time of termination, or within 72 hours of resignation, thus entitling Plaintiff and Class Members to penalties under Labor Code section 203, which provides that an employee's wages shall continue as a penalty until paid for a period of up to thirty (30) days from the time they were due.

96. Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and 15th day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and 10th

1 day of the following month. Labor Code section 204 also requires that all wages earned for labor
2 in excess of the normal work period shall be paid no later than the payday for the next regular
3 payroll period.

4 97. The requirements of Labor Code section 204 shall be deemed satisfied by the
5 payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more
6 than seven (7) calendar days following the close of the payroll period when the wages were
7 earned.

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

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

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

22 **SEVENTH CAUSE OF ACTION**
23 **FAILURE TO COMPLY WITH WRITTEN REQUEST TO**
24 **INSPECT OF COPY RECORDS**
25 **Cal. Labor Code §§ 226, 1198.5, and IWC Wage Order No. 1-2001**
26 **[On behalf of Plaintiff and the Class Against All Defendants]**

27 101. Plaintiff, on behalf of himself and the Class, re-alleges and incorporates by
28 reference all of the allegations contained in the preceding paragraphs of this Complaint as though
fully alleged herein.

1 102. Labor Code section 226(b) requires Defendants to permit current and former
2 employees to inspect or copy payroll records pertaining to that current or former employee. An
3 employer who receives a written or oral request from a current or former employee to inspect or
4 copy his or her payroll records shall comply with the request as soon as practicable, but no later
5 than twenty-one (21) calendar days from the date of the request. A failure by an employer to
6 permit a current or former employee to inspect or copy his or her payroll records within the
7 aforementioned twenty-one (21) calendar day period entitles the current or former employee to
8 recover a penalty from the employer in a civil action before a court of competent jurisdiction. *See*,
9 Labor Code § 226(c) and (f).

10 103. Labor Code section 1198.5 requires that employers, like Defendants, allow current
11 and former employees access to their personnel files and records that relate to the employee's
12 performance or to any grievance concerning the employee. Inspections must be allowed at
13 reasonable times and intervals. To facilitate the inspection, employers must do one of the
14 following: (1) keep a copy of each employee's personnel records at the place where the employee
15 reports to work; (2) make the personnel records available at the place where the employee reports
16 to work within a reasonable amount of time following the employee's request; or (3) permit the
17 employee to inspect the records at the location where they are stored with no loss of compensation
18 to the employee. *See*, Labor Code § 1198.5.

19 104. Subdivision 7 of IWC Wage Order No. 1-2001 also states that all required
20 employment records shall be in the English language and in ink or other indelible form, properly
21 dated, showing month, day, and year and shall be kept on file by the employer for at least three (3)
22 years at the place of employment or at a central location within the State of California. An
23 employee's records shall be available for inspection by the employee upon reasonable request.
24 *See*, IWC Wage Order 1-2001, subdivision 7.

25 105. On June 19, 2020 and August 11, 2020, Plaintiff made written requests for his
26 complete employment records from Defendants, including, but not limited to: timecards;
27 timekeeping records; payroll information; job duties; any documents signed by Plaintiff; work
28 performance and any grievances; discharge information; and other documents constituting his

1 personnel file. After the mailing of that second correspondence, Defendants produced a purported
2 response to Plaintiff's records request. But Defendants' sixty-three (63) page production is
3 noticeably lacking as there are no payroll or time records despite Plaintiff's over one decade of
4 employment history. Defendants have failed to produce all of the required documents in response
5 to Plaintiff's written requests as required by law.

6 106. Under Labor Code section 226(e) and (f), based on Defendants' conduct as herein
7 alleged, Plaintiff and the Class are entitled to: (a) fifty dollars (\$50) for the initial pay period in
8 which a wage and hour statement violation occurred, and one hundred dollars (\$100) per
9 employee for each violation in the subsequent pay periods, not exceeding an aggregate penalty of
10 four thousand dollars (\$4,000); (b) an additional seven hundred and fifty dollars (\$750) penalty for
11 Defendants' failure to allow Plaintiff and the Class to timely inspect and copy pertinent records
12 under Labor Code section 1198.5(k); and (c) injunctive relief to ensure Defendants comply with a
13 lawful request to provide personnel records, copies of signed documents, and wage and hour
14 statements in compliance with Labor Code sections 226, 1198.5, and IWC Wage Order No. 1-
15 2001.

16 **EIGHTH CAUSE OF ACTION**
17 **UNFAIR COMPETITION LAW VIOLATIONS**
18 **Cal. Business & Professions Code §§ 17200, *et seq.***
 [On Behalf of Plaintiff and the Class Against All Defendants]

19 107. Plaintiff, on behalf of himself and the Class, re-alleges and incorporates by
20 reference all of the allegations contained in the preceding paragraphs of this Complaint as though
21 fully set forth herein.

22 108. The Unfair Competition Law ("UCL"), California Business & Professions Code
23 sections 17200, *et seq.*, prohibits any unlawful, unfair, or fraudulent business practices. Business
24 & Professions Code section 17204 allows "any person who has suffered injury in fact and has lost
25 money or property" to prosecute a civil action for violation of the UCL. Such a person may bring
26 such an action on behalf of himself or herself and others similarly situated who are affected by the
27 unlawful, unfair, or fraudulent business practice.

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1 109. The statute of limitations for a claim under the UCL is four (4) years. Accordingly,
2 the actionable period for this cause of action is four (4) years prior to the filing of this Complaint
3 through the present, and on-going until the violations are corrected, and/or the Class is certified.

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

9 111. A violation of Business and Professions Code sections 17200, *et seq.* may be
10 predicated upon the violation of any state or federal law. Defendants' policies and/or practices
11 have violated state law in at least the following respects:

- 12 (a) Requiring Plaintiff and Class Members to work without paying them
13 minimum wage for all hours worked in violation of Labor Code sections
14 1194, 1194.2, 1197, and IWC Wage Order No. 1-2001;
- 15 (b) Requiring Plaintiff and Class Members to work overtime without paying
16 them proper compensation in violation of Labor Code sections 510, 1198,
17 and IWC Wage Order No. 1-2001;
- 18 (c) Failing to provide timely duty-free meal periods and failing to authorize and
19 permit duty-free rest breaks in violation of Labor Code sections 226.7, 512,
20 and IWC Wage Order No. 1-2001;
- 21 (d) Failing to maintain and provide Plaintiff and Class Members with accurate
22 itemized wage statements in violation of Labor Code sections 226 and
23 1174;
- 24 (e) Failing to timely pay all wages to Plaintiff and Class Members during their
25 employment and upon separation of employment in violation of Labor Code
26 sections 201, 202, 203, 204, and 210; and

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1 (f) Failing to comply with written requests by Plaintiff and Class Members to
2 inspect or copy employment records in violation of Labor Code sections
3 226, 1198.5, and IWC Wage Order No. 1-2001.

4 Thus, Defendants engaged in unlawful competition in violation of sections 17200, *et seq.* of the
5 California Business & Professions Code by violating sections 201, 202, 203, 204, 210, 226, 226.7,
6 510, 512, 1174, 1194, 1194.2, 1197, 1198, and 1198.5 of the Labor Code and IWC Wage Order
7 No. 1-2001.

8 112. As a direct and proximate result of Defendants' unlawful business practices,
9 Plaintiff and Class Members have suffered economic injuries because Defendants' conduct has
10 damaged Plaintiff and Class Members by wrongfully denying them all straight-time and overtime
11 wages owed for all hours worked, failing to pay all meal and rest breaks premiums owed, failing
12 to pay all wages owed in a timely manner and upon separation, and while supplying them
13 inaccurate and misleading wage statements, and failing to comply with Plaintiff's records request.
14 Such conduct is substantially injurious to Plaintiff and Class Members.

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

20 114. Defendants have profited from their unlawful, unfair, and/or fraudulent acts and
21 practices. Plaintiff and Class Members are entitled to monetary relief pursuant to Business &
22 Professions Code sections 17203 and 17208 for all unpaid wages, including underpaid overtime
23 compensation, from at least four (4) years prior to the filing of this Complaint through the date of
24 such restitution, at rates specified by law. Defendants should be required to disgorge all the profits
25 and gains they have reaped and restore such profits and gains to Plaintiff and Class Members,
26 from whom they were unlawfully taken.

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

4 116. Plaintiff and Class Members are entitled to enforce all applicable penalty
5 provisions of the Labor Code pursuant to Business & Professions Code section 17202.

6 117. Plaintiff has assumed the responsibility of enforcement of the laws and public
7 policies specified herein by suing on behalf of himself and Class Members previously or presently
8 employed by Defendants in California. Plaintiff's success in this action will enforce important
9 rights affecting the public interest. Plaintiff will incur a financial burden in pursuing this action in
10 the public interest. Therefore, an award of reasonable attorneys' fees to Plaintiff is appropriate
11 pursuant to Code of Civil Procedure section 1021.5.

12 **NINTH CAUSE OF ACTION**
13 **PENALTIES PURSUANT TO PRIVATE ATTORNEYS GENERAL ACT OF 2004**
14 **Cal. Labor Code §§ 2698, *et seq.***
[On Behalf of Plaintiff and Aggrieved Employees Against All Defendants]

15 118. Plaintiff, on behalf of himself and Aggrieved Employees, re-alleges and
16 incorporates by reference all of the allegations contained in the previous paragraphs of this
17 Complaint as though fully set forth herein.

18 119. Plaintiff, on behalf of himself and Aggrieved Employees, brings this representative
19 action against Defendants to recover wages and penalties pursuant to the Private Attorneys
20 General Act of 2004 ("PAGA"), Labor Code section 2698, *et seq.*

21 120. Based on the above allegations incorporated by reference, Defendants have violated
22 Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 1174, 1174.5, 1194,
23 1194.2, 1197, 1197.1, and 1198, as well as IWC Wage Order No. 1-2001.

24 121. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code
25 section 2699 because of Defendants' violations of Labor Code sections 201, 202, 203, 204, 210,
26 226, 226.3, 226.7, 510, 512, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, and 1198, as well as IWC
27 Wage Order No. 1-2001.

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1 122. Under Labor Code sections 2699(a), (f), and 2699.5, for each such violation,
2 Plaintiff and Aggrieved Employees are entitled to penalties in an amount to be shown at the time
3 of trial subject to the following formula:

4 \$100.00 for the initial violation per employee per pay period; and

5 \$200.00 for each subsequent violation per employee per pay period.

6 These penalties shall be allocated seventy-five percent (75%) to the Labor and Workforce
7 Development Agency (“LWDA”) and twenty-five percent (25%) to the affected employees. These
8 penalties may be stacked separately for each of Defendants’ violations of the California Labor
9 Code.

10 123. Defendants failed to provide Plaintiff and Aggrieved Employees with accurate
11 itemized wage statements in compliance with Labor Code section 226(a). Plaintiff seeks separate
12 PAGA penalties for Defendants’ violations of Labor Code section 226(a) and (e). *Lopez v. Friant*
13 *& Assocs., LLC* (2017) 15 Cal. App. 5th 773, 788; *Bell v. Home Depot U.S.A.* (E.D. Cal. Dec. 11,
14 2017) No. 2:12-cv-02499 JAM-CKD, 2017 U.S. Dist. LEXIS 204493, at *5 [finding after *Friant*
15 that “[t]o the extent the Court’s Order [granting summary judgment to *Home Depot*] was
16 ambiguous, the Court now clarifies that it granted summary judgment on Plaintiffs’ derivative
17 claim for [PAGA] penalties under section 226(e)...the Court’s Order should not be read to grant
18 summary judgment on Plaintiffs’ claim for PAGA penalties based on violation of section
19 226(a).”]). For violations of Labor Code section 226(a), Plaintiff seeks the default penalty
20 provided by Labor Code section 226.3. Labor Code section 226.3 provides that “[a]ny employer
21 who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two
22 hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand
23 dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer
24 fails to provide the employee a wage deduction statement or fails to keep the required records in
25 subdivision (a) of Section 226.” Accordingly, through PAGA and to the extent permitted by law
26 Plaintiff and Aggrieved Employees are entitled to recover penalties for violations of Labor Code
27 section 226.3 and seek default PAGA penalties for each of Defendants’ numerous violations of
28 Labor Code section 226(a).

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

9 125. Labor Code section 1197.1 authorizes a civil penalty, restitution of wages, and
10 liquidated damages, in the amount of: “(1) [f]or any initial violation that is intentionally
11 committed, one hundred dollars (\$100) for each underpaid employee for each pay period for
12 which the employee is underpaid...[and] (2) [f]or each subsequent violation for the same specific
13 offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for
14 which the employee is underpaid regardless of whether the initial violation is intentionally
15 committed.” Accordingly, through PAGA and to the extent permitted by law, Plaintiff and
16 Aggrieved Employees are entitled to recover pursuant to Labor Code section 1197.1.

17 126. Plaintiff has fully and completely exhausted his administrative remedies under
18 PAGA prior to proceeding with the PAGA claim. On July 14, 2020, Plaintiff gave written notice
19 to the LWDA and by certified mail to Defendants of the specific code provisions alleged to have
20 been violated and paid the required filing fee.

21 127. The LWDA has not provided notice of its intent to investigate the alleged
22 violations within 65 calendar days of the postmark date of the aforesaid letter. By operation of the
23 law, Plaintiff is entitled to commence this cause of action in the California Superior Court as a
24 representative action under PAGA.

25 128. Plaintiff, as a personal representative of the general public, will and does seek to
26 recover any and all penalties for each and every violation shown to exist or to have occurred
27 during the one (1) year period before Plaintiff filed Notice with the LWDA of his intent to bring
28 an action, in an amount according to proof, as to those penalties that are otherwise only available

1 to public agency enforcement actions. Funds recovered will be distributed in accordance with the
2 PAGA, with at least 75 percent of the penalties recovered being reimbursed to the State of
3 California and the LWDA.

4 129. Plaintiff was compelled to retain the services of counsel to file this action to protect
5 his interests and those of Aggrieved Employees, and to assess and collect the wages and penalties
6 owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which he is entitled
7 to recover under Labor Code section 2699(g)(1).

8 **PRAYER FOR RELIEF**

9 **WHEREFORE**, Plaintiff prays for the following relief:

- 10 1. For an order certifying this action as a class action;
- 11 2. For compensatory damages in the amount of the unpaid minimum wage and
12 overtime compensation for work performed by Plaintiff and Employees, as may be proven;
- 13 3. For liquidated damages in the amount equal to the unpaid minimum wage and
14 interest thereon, as may be proven;
- 15 4. For compensatory damages in the amount of the hourly wage made by Plaintiff and
16 Employees for each noncompliant meal period for which premium pay was not paid, as may be
17 proven;
- 18 5. For compensatory damages in the amount of the hourly wage made by Plaintiff and
19 Employees for each day of noncompliant rest breaks for which premium pay was not paid, as may
20 be proven;
- 21 6. For actual damages and/or penalties pursuant to Labor Code section 226(e) for
22 Plaintiff and Employees, as may be proven;
- 23 7. For penalties pursuant to Labor Code section 203 for Plaintiff and Employees who
24 quit or were fired in an amount equal to their daily wage multiplied by thirty (30) days, as may be
25 proven;
- 26 8. For penalties and injunctive relief to require compliance with Labor Code sections
27 226(b) and 1198.5 requests for employment records;

28 ///

1 9. For restitution for unfair competition pursuant to Business & Professions Code
2 sections 17200, *et seq.*, including disgorgement of profits, as may be proven;

3 10. For a civil penalty in the amount of \$100 for the initial violation and \$200 for each
4 subsequent violation as specified in section 2699(f)(2) of the Labor Code in the representative
5 action brought on behalf of Plaintiff and Aggrieved Employees pursuant the Private Attorneys
6 General Act of 2004;

7 11. For all civil penalties available under section 210 of the Labor Code and the Private
8 Attorneys General Act of 2004;

9 12. For all civil penalties available under section 226.3 of the Labor Code and the
10 Private Attorneys General Act of 2004;

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

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

15 15. For all civil penalties available under section 1198.5 of the Labor Code and the
16 Private Attorneys General Act of 2004;

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

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

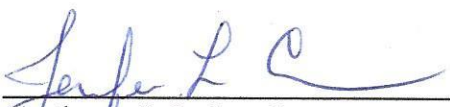
21 18. For an award providing for the payment of the costs of this suit;

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

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

24
25 Dated: November 11, 2020

Respectfully submitted,
COUNSELONE, P.C.

26
27 By: 
28 Anthony J. Orshansky,
 Jennifer L. Connor
 Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial of his claims by jury to the extent authorized by law.

Dated: November 11, 2020

Respectfully submitted,
COUNSELONE, P.C.

By: _____

Anthony J. Orshansky,
Jennifer L. Connor
Attorneys for Plaintiff