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11 Individually and on behalf of all others similarly situated

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **FOR THE COUNTY OF LOS ANGELES**

14 Michael Daw, individually and on behalf
15 of all others similarly situated,

16 Plaintiff,

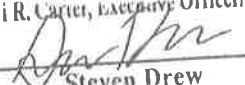
17 v.

18 Duarte Nissan Motor Group, LLC; and
19 Does 1 through 25,

20 Defendants.

CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

SEP 22 2020

Sherri R. Carter, Executive Officer/Clerk of Court
By , Deputy
Steven Drew

Case No. 20STCV25752

SSC-D-1

**FIRST AMENDED CLASS [Cal. Code
Civ. Proc. § 382] AND
REPRESENTATIVE ACTION [Labor
Code §§ 2698, et seq.] COMPLAINT**

1. Failure to Pay Minimum Wages (Lab. Code §§ 1182.12, 1194, 1194.2, 1197, 1198, and § 4 of the Applicable IWC Order);
2. Failure to Pay Overtime Wages (Lab. Code §§ 510, 1194, 1198, and § 3 of the Applicable IWC Wage Order);
3. Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512, and § 11 of the Applicable IWC Wage Order);
4. Failure to Provide Rest Periods (Lab. Code § 226.7 and § 12 of the Applicable IWC Wage Order);
5. Failure to Provide Accurate Itemized Wage Statements (Lab. Code § 226 and § 7 of the Applicable IWC Wage Order);
6. Failure to Reimburse Business Expenses (Lab. Code §§ 2800, 2802, and

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§ 9 of the Applicable IWC Wage Order);

7. Failure to Timely Pay Wages Due During Employment (Lab. Code §§ 204, 210, and the Applicable IWC Wage Order);

8. Failure to Timely Pay Wages Due Upon Separation of Employment (Lab. Code §§ 201, 202, 203, and the Applicable IWC Wage Order);

9. Failure to Produce Personnel Records (Lab. Code §§ 226, 432, and 1198.5);

10. Violation of the Unfair Competition Law (Bus. & Prof. Code §§ 17200-17208); and

11. Civil Penalties Pursuant to the PAGA (Labor Code § 2698 *et. seq.*)

JURY TRIAL DEMANDED

1 Plaintiff Michael Daw (“Plaintiff”), on behalf of himself and all others similarly
2 situated, complains and alleges as follows:

3 **I.**

4 **INTRODUCTION**

5 1. Plaintiff brings this class action pursuant to California Code of Civil Procedure
6 section 382 and representative action pursuant to the Private Attorneys General Act of 2004,
7 Labor Code section 2698, et seq. (“PAGA”) against Defendants Duarte Nissan Motor Group,
8 LLC (“Defendant Duarte Nissan Motor Group”) and Does 1-25 (hereinafter collectively
9 referred to as “Defendants”), as an individual and on behalf of all other similarly-situated and
10 all other aggrieved current and former employees of Defendants for: failure to pay all
11 minimum and overtime wages for all hours worked, failure to provide off-duty meal and rest
12 periods, failure to provide accurate itemized wage statements, failure to reimburse business
13 expenses, failure to timely pay all wages due during employment, failure to timely pay all
14 wages due upon separation of employment, failure to produce personnel records, and
15 restitution for unfair business practices in violation of Business and Professions Code sections
16 17200-17208, and under the PAGA.

17 2. This class action is within the Court’s jurisdiction under California Labor Code
18 sections 201-203, 204, 210, 226, 226.3, 226.7, 432, 510, 512, 1174, 1174.5, 1182.12, 1194,
19 1194.2, 1197, 1197.1, 1198, 1198.5, 1199(c), 1198.5, 2800, 2802, the California Industrial
20 Welfare Commission’s (“IWC”) Wage Orders, the California Unfair Competition Law (the
21 “UCL”), codified at California Business and Professions Code sections 17200-17208, and the
22 PAGA.

23 3. This Complaint challenges systemic illegal employment practices resulting in
24 violations of the California Labor Code and Business and Professions Code against employees
25 of Defendants.

26 4. Plaintiff is informed and believes and based thereon alleges that Defendants
27 jointly and severally have acted intentionally and with deliberate indifference and conscious
28 disregard to the rights of all employees by failing to pay minimum and overtime wages for all

1 hours worked, failing to provide off-duty meal and rest breaks, failing to reimburse all
2 business expenses, failing to provide accurate itemized wage statements, and failing to pay all
3 wages due during and upon termination.

4 5. Plaintiff is informed and believes and based thereon alleges that Defendants
5 have engaged in, among other things a system of willful violations of the California Labor
6 Code, Business and Professions Code, and applicable IWC Wage Orders by creating and
7 maintaining policies, practices, and customs that knowingly deny employees the above-stated
8 rights and benefits.

9 6. The policies, practices, and customs of Defendants described above and below
10 have resulted in unjust enrichment of Defendants and an unfair business advantage over
11 businesses that routinely adhere to the strictures of the California Labor Code and the
12 California Business and Professions Code.

13 7. Plaintiff has given notice of these claims to the LWDA seeking intervention.
14 As there has been no intervention within 65 days of Plaintiff's written notice to the LWDA,
15 Plaintiff asserts claims for civil penalties as a representative for and on behalf of the State of
16 California in a representative capacity, as provided by the PAGA to the extent permitted by
17 law, as an aggrieved employee who suffered one or more of the alleged violations during all
18 or a significant part of the applicable liability period, or proposed "PAGA Period" (which is
19 defined as any time from one year from the date of the filing for civil penalties under the
20 PAGA, excluding the 65-days as provided by Labor Code section 2699.3(d).)

21 8. Plaintiff's July 6, 2020 PAGA notice, showing compliance with Labor Code
22 section 2699.3 is hereby incorporated by reference and demonstrates that Plaintiff is an
23 aggrieved employee and has standing to bring a representative action on behalf of the State of
24 California and the LWDA as a private attorney general. Since no notice of cure has been
25 provided by Defendants, nor has the LWDA indicated that it intends to investigate within the
26 proscribed 65-day period from the date of mailing of the notice, Plaintiff has asserted PAGA
27 claims herein and brings this action as a "Representative Action" as specifically permitted and
28 authorized by Labor Code section 2699.3(a)(2)(C).

1 II.

2 **PARTIES, JURISDICTION, AND VENUE**

3 9. From approximately 2017 through 2018, and again from approximately 2018
4 until approximately August of 2019, Plaintiff was employed by Defendants. Plaintiff was and
5 is the victim of the policies, practices, and customs of Defendants complained of in this action
6 in ways that have deprived him of the rights guaranteed by California Labor Code sections
7 201-203, 204, 210, 226, 226.3, 226.7, 432, 510, 512, 1174, 1174.5, 1182.12, 1194, 1194.2,
8 1197, 1197.1, 1198, 1198.5 1199(c), 1198.5, 2800, 2802, the applicable IWC Wage Order,
9 and the UCL.

10 10. Venue as to each Defendant is proper in this judicial district, pursuant to Code
11 of Civil Procedure, section 395. Defendants conduct business in Los Angeles County,
12 California and each Defendant is within the jurisdiction of this Court for service of process
13 purposes. The unlawful acts alleged have a direct effect on Plaintiff and those similarly
14 situated within the State of California and Los Angeles County. Defendants employed
15 Plaintiff and employed and continue to employ numerous Class Members in Los Angeles
16 County. There is no federal question at issue, as the issues are based solely on California
17 statutes and law, including the Labor Code, the applicable IWC Wage Order, Code of Civil
18 Procedure, Civil Code, and Business and Professions Code.

19 11. The Court has jurisdiction over Plaintiff's and other aggrieved employees'
20 claims for civil penalties under the PAGA, Labor Code sections 2698, *et seq.* Plaintiff's
21 representative PAGA penalty claims are not subject to federal jurisdiction.

22 12. Business and Professions Code section 17203 provides that any person who
23 engages in unfair competition may be enjoined in any court of competent jurisdiction.
24 Business and Professions Code section 17204 provides that any person, acting on his own
25 behalf, may bring an action in a court of competent jurisdiction.

26 13. Plaintiff is informed and believes and based thereon alleges that Defendant
27 Duarte Nissan Motor Group was and is a California limited liability company doing business
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1 in the State of California. Plaintiff is informed and believes and based thereon alleges that
2 Defendant Duarte Nissan Motor Group maintains its headquarters in Duarte, California.

3 14. Plaintiff does not know the true names or capacities of the Defendants sued
4 herein as Does 1 through 25, inclusive, and, for that reason, said Defendants are sued under
5 such fictitious names. Plaintiff is informed and believes and based thereon alleges that each
6 of said fictitious Defendants are and were responsible in some manner for the injuries
7 complained of herein. Plaintiff will amend this Complaint to identify such fictitiously-named
8 Defendants pursuant to Code of Civil Procedure section 474 once their identities become
9 known.

10 15. The relief sought by Plaintiff on behalf of himself and the Plaintiff Class
11 defined below exceeds the minimal jurisdictional limits of the Superior Court and will be
12 established according to proof at trial. The Court has personal jurisdiction over each of the
13 parties because they are either citizens of this State, doing business in this State, or otherwise
14 have minimum contacts with this State.

15 16. Venue is proper in this Court because, upon information and belief, Plaintiff
16 worked for Defendants in this county, Defendants are headquartered in this county,
17 Defendants transact business in this county, and acts and omissions alleged herein took place
18 in this county.

19 17. Plaintiff is informed and believes and based thereon alleges that Defendants
20 were at all times relevant hereto members of, and engaged in, a joint venture, partnership,
21 association, or common enterprise, and acting within the course and scope of, and in pursuance
22 of, said joint venture, partnership, association, or common enterprise. Furthermore, Plaintiff
23 is informed and believes and based thereon alleges that at all times relevant hereto Defendants
24 conspired together in, aided and abetted, contributed to, and/or acted as agents or employees
25 of each other with respect to, the commission of the acts complained of herein. Defendants
26 are therefore jointly and severally liable for the injuries complained of herein.

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GENERAL ALLEGATIONS

19. During all, or portions of the Class Period, Defendants maintained a consistent policy of failing to pay Plaintiff and Class Members for all hours worked, including minimum and overtime wages, due to Defendants' policy and practice of paying Plaintiff and Class Members solely on a commission basis.

21. During all, or portions of the Class Period, Defendants failed to provide Plaintiff and Class Members timely, uninterrupted, off-duty meal periods of no less than thirty minutes before their fifth hour of work and failed to compensate Plaintiff and Class Members for these missed meal periods at their regular rate of pay. Plaintiff and Class Members were often not provided with meal breaks, would have to attend required meetings during their meal breaks such that they were on duty, performing off-the-clock work, or were otherwise

1 disincentivized from taking an off-duty, thirty-minute meal period, due to Defendants' policy
2 of paying Plaintiff and Class Members solely on a commission basis.

3 22. Defendants employed Plaintiff and Class Members for work periods of four
4 hours or major fraction thereof without rest periods of ten minutes' net rest time and failed to
5 compensate Plaintiff and Class Members for these missed rest periods. Plaintiff and Class
6 Members were regularly not provided with rest breaks, and when they did receive rest breaks,
7 they were not provided with pay for their time spent on rest breaks, and thus were denied their
8 paid, ten-minute, uninterrupted rest breaks under the Labor Code.

9 23. During all, or portions of the Class Period, Defendants had a consistent policy
10 of failing to reimburse Plaintiff and Class Members for all necessary and reasonable business
11 expenses incurred, in violation of California state wage and hour laws. Plaintiff and Class
12 Members were required to use their personal cellular devices, including their personal cell
13 phones, for work-related purposes, such as, but not limited to, communicating with clients.

14 24. Defendants have intentionally and willfully failed to provide Plaintiff and
15 Class Members with complete and accurate wage statements. The deficiencies include, among
16 other things, the failure to list the gross wages earned, net wages earned, and all hours worked.

17 25. During all, or portions, of the Class Period, Defendants had a consistent policy
18 of failing to pay Plaintiff and Class Members all wages due during and upon termination of
19 employment, in violation of California state wage and hour laws.

20 26. Defendants also employ a pattern and practice of ignoring and refusing to
21 produce employee records when requested in direct violation of Labor Code sections 226(b),
22 (c), (f), (h), 432, and 1198.5. For example, upon making valid requests for the inspection and
23 production of records by Plaintiff on May 3, 2020, Defendants, as a matter of pattern and
24 practice, ignored and refused to produce these records or make them available to Plaintiff
25 within the timeframe required by statute.

26 27. On information and belief, Plaintiff alleges that Defendants applied the same
27 policies described above to all other members of the proposed Plaintiff Class. As alleged below,
28 these uniform policies, practices and procedures violated California's labor laws and constituted

1 unfair, fraudulent, or illegal business practices under Business & Professions Code sections
2 17200, *et seq.*

3 **IV.**

4 **CLASS ALLEGATIONS**

5 28. Plaintiff brings this action pursuant to California Code of Civil Procedure
6 section 382 on behalf of himself and Class Members defined below. The Plaintiff Class is
7 comprised of and defined as:

8 Plaintiff Class

9 All current and former non-exempt and/or commissioned employees
10 who worked for Defendants in the State of California from April 6,
11 2016 to the date of trial.¹

12 29. Plaintiff also seeks to certify the following Subclass:

13 Waiting Time Subclass

14 All members of the Plaintiff Class who separated their employment
15 from Defendants from April 6, 2016 to the date of trial.

16 30. Plaintiff also seeks to certify the following Subclass:

17 Wage Statement Subclass:

18 All Class Members who, within one year of the filing of this Action,
19 received one or more itemized wage statements from April 6, 2019
20 to the date of trial.

21 31. Plaintiff reserves the right to establish other or additional subclasses, or modify
22 the Plaintiff Class or Subclass definitions, as appropriate based on investigation, discovery
23 and specific theories of liability.

24 32. There exists a well-defined community of interest among the Plaintiff Class,
25 and the Plaintiff Class is readily ascertainable.

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

1 33. The Class Members are so numerous that joinder of all members in a single
2 action would not be feasible or practical, and the amount of individual damages is not large
3 enough to make individual lawsuits by each Class Member practical or feasible. Plaintiff is
4 informed and believes and based upon such information and belief alleges that there are in
5 excess of 50 Class Members.

6 34. Plaintiff's claims are typical of the claims of the rest of the Plaintiff Class, and
7 Plaintiff and his counsel will fairly and adequately represent the interests of the Plaintiff Class.

8 35. Common issues of fact and/or law predominate in this action over any
9 allegedly individual issues. Specifically, the following common questions of fact or law
10 predominate and make this action superior to individual actions:

11 (i) Whether Plaintiff and the rest of the Plaintiff Class are entitled to
12 recover damages, penalties, and other relief on the grounds that Defendants have used uniform
13 policies, practices, and procedures that have consistently violated California labor laws and
14 regulations and caused Plaintiff and the rest of the Plaintiff Class to suffer the same or similar
15 injuries;

16 (ii) Whether Defendants violated Labor Code sections 1182.12, 1194,
17 1194.2, 1197, and 1198, and section 4 of the applicable IWC Wage Order by failing to pay
18 minimum wage for all hours worked;

19 (iii) Whether Defendants violated Labor Code sections 510, 1194, and
20 1198, and section 3 of the applicable IWC Wage Order by failing to pay overtime
21 compensation;

22 (iv) Whether Defendants violated Labor Code sections 226.7 and 512, and
23 section 11 of the applicable IWC Wage Order by failing to provide meal periods for each five
24 hours worked, and not compensating employees with one hour of pay at the employees'
25 regular rate of compensation for each workday that a meal period was not provided;

26 (v) Whether Defendants violated Labor Code section 226.7 and section 12
27 of the applicable IWC Wage Order by failing to provide daily rest periods of ten minutes per
28 four hours or major fraction thereof worked and by failing to compensate employees one

hour's wages in lieu of rest periods;

(vi) Whether Defendants violated Labor Code section 226 and section 7 of the applicable IWC Wage Order by failing to provide and maintain timely and accurate itemized wage statements;

(vii) Whether Defendants violated Labor Code sections 2800 and 2802, and section 9 of the applicable IWC Wage Order by failing to indemnify Plaintiff and Class Members for all the necessary expenditures or losses incurred in direct consequence of the discharge of their duties, or of their obedience to the directions of their employer;

(viii) Whether Defendants violated Labor Code sections 204 and 210, and sections 3 and 4 of the applicable IWC Wage Order by failing to pay wages for all hours worked;

(ix) Whether Defendants violated Labor Code sections 201-203 by failing to timely pay Plaintiff and Waiting Time Subclass Members all wages due upon termination or within seventy-two (72) hours of resignation;

(x) Whether Defendants violated Labor Code sections 226, 432, and 1198.5 by failing to produce employee personnel records in the time required by statute; and

(xi) Whether Defendants' practices constitute unfair, fraudulent, or illegal business practices under Business and Professions Code sections 17200, *et seq.*

36. California labor laws under which Plaintiff asserts the following causes of action on behalf of himself and the rest of the Plaintiff Class are broadly remedial in nature. These labor laws serve an important public interest in establishing minimum working conditions and standards in California. They furthermore protect employees from exploitation by employers who may seek to take advantage of their superior economic and bargaining power in setting onerous terms and conditions of employment. The class action mechanism is a particularly efficient and appropriate procedure to redress the injuries alleged herein. If each employee in the Plaintiff Class was required to file an individual action, Defendants would be able to use their superior financial and legal resources to gain an unfair advantage over each individual Class Member. Moreover, requiring each Class Member to pursue an individual

1 action would also discourage the assertion of meritorious causes of action by employees who
2 would likely be disinclined to file such individual actions due to a justifiable fear of retaliation
3 and damage to their careers at subsequent employment.

4 37. In addition, even if feasible, individual actions by each Class Member would
5 create a substantial risk (i) of inconsistent or varying adjudications with respect to the claims
6 of each Class Member against Defendants, that in turn could establish potentially
7 incompatible standards of conduct for Defendants, and/or (ii) of adjudications with respect to
8 individual Plaintiff and Class Members that would, as a practical matter, be dispositive of the
9 interests of the other Plaintiff and Class Members. Furthermore, the claims of each individual
10 Class Member are not sufficiently large enough to make it economically feasible to bring each
11 Class Member's claims on an individual basis.

12 **V.**

13 **CAUSES OF ACTION**

14 **FIRST CAUSE OF ACTION**

15 **FAILURE TO PAY MINIMUM WAGES**

16 **(Violation of Cal. Labor Code §§ 1182.12, 1194, 1194.2, 1197,**
17 **and 1198, and § 4 of the Applicable IWC Wage Order)**

18 38. Plaintiff re-alleges and incorporates herein by this reference each and every
19 allegation set forth in all previous paragraphs of the Complaint.

20 39. Labor Code section 1194(a) states: "Notwithstanding any agreement to work
21 for a lesser wage, any employee receiving less than the legal minimum wage or the legal
22 overtime compensation applicable to the employee is entitled to recover in a civil action the
23 unpaid balance of the full amount of this minimum wage or overtime compensation, including
24 interest thereon, reasonable attorney's fees, and costs of suit."

25 40. Labor Code section 1194.2 states: "In any action under Section 98, 1193.6,
26 1194, or 1197.1 to recover wages because of the payment of a wage less than the minimum
27 wage fixed by an order of the commission or by statute, an employee shall be entitled to
28 recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest

thereon.”

41. Labor Code section 1194.2 provides for liquidated damages equal to unlawfully unpaid minimum wages, with interest.

42. Labor Code section 1197 states: “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than minimum wage so fixed is unlawful.”

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

44. Pursuant to the “Minimum Wages” and “Hours and Days of Work” Sections of the applicable Wage Order, an employer may not pay employees less than the applicable minimum wage for all hours worked, and an employer may not pay non-exempt employees less than the applicable overtime rate for all overtime hours worked.

45. During the relevant time period, Defendants regularly failed to pay at least minimum wage to Plaintiff and Class Members for all hours worked pursuant to Labor Code sections 1194 and 1197.

46. Defendants’ failure to pay Plaintiff and Class Members the minimum wage as required violates Labor Code sections 1194 and 1197.

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

48. Defendants’ unlawful acts deprived Plaintiff and Class Members Plaintiff seeks to represent of minimum wages in amounts to be determined at trial, and they are entitled to recover these amounts, along with liquidated damages for unpaid regular or minimum

1 wages, interest, attorneys' fees, and costs.

2 49. Plaintiff seeks to recover in a civil action the unpaid balance of the full amount
3 of the unpaid wages resulting from Defendants' minimum wage violations including interest
4 thereon, reasonable attorney's fees and costs of suit, penalties, and liquidated damages to the
5 fullest extent permissible including those permitted pursuant to Labor Code sections 218.6,
6 1194, and 1194.2, and Code of Civil Procedure section 1021.5. Plaintiff, on behalf of himself
7 and the Class Members, requests relief as described below.

8 **SECOND CAUSE OF ACTION**

9 **FAILURE TO PAY OVERTIME COMPENSATION**

10 **(Violation of Cal. Labor Code §§ 510, 1194, and 1198,**
11 **and § 3 of the Applicable IWC Wage Order)**

12 50. Plaintiff re-alleges and incorporates herein by this reference each and every
13 allegation set forth in all previous paragraphs of the Complaint.

14 51. Labor Code section 1198 and the applicable IWC Wage Order provide that it
15 is unlawful to employ persons without compensating them at a rate of pay either one and one-
16 half (1½) or two (2) times the person's regular rate of pay, depending on the number of hours
17 or days worked by the person on a daily or weekly basis.

18 52. Specifically, section 3 of the applicable IWC Wage Order provides that
19 Defendants are and were required to pay overtime compensation to Plaintiff and Class
20 Members at the rate of one and one-half times (1½) their regular rate of pay when working
21 and for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in
22 a workweek and for the first eight (8) hours of work on the seventh day of work in a workweek.

23 53. Section 4 of the applicable IWC Wage Order further provide that Defendants
24 are and were required to pay overtime compensation to Plaintiff and Class Members at a rate
25 of two times their regular rate of pay when working and for all hours worked in excess of
26 twelve (12) hours in a day or in excess of eight (8) hours on the seventh day of work in a
27 workweek.

28 54. Labor Code section 510 codifies the right to overtime compensation at one and

1 one-half (1½) times the regular hourly rate for hours worked in excess of eight (8) hours in a
2 day or forty (40) hours in a week and for the first eight (8) hours worked on the seventh
3 consecutive day of work, and overtime compensation at twice the regular hourly rate for hours
4 worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the
5 seventh day of work in a workweek.

6 55. Labor Code section 510 and the applicable IWC Wage Order provide that
7 employment of more than six days in a workweek is only permissible if the employer pays
8 proper overtime compensation as set forth herein.

9 56. During the relevant time period, Defendants failed to pay Plaintiff and Class
10 Members overtime wages for all overtime hours worked when Plaintiff and Class Members
11 worked in excess of eight (8) hours in a day, forty (40) hours in a week and/or for a seventh
12 consecutive day of work in a workweek, or when Plaintiff and Class Members worked in
13 excess of twelve (12) hours in a day and/or in excess of eight (8) hours on the seventh day of
14 work in a workweek.

15 57. In violation of state law, Defendants knowingly and willfully refused to
16 perform their obligations and compensate Plaintiff and Class Members for all wages earned
17 and all hours worked.

18 58. Defendants' failure to pay Plaintiff and Class Members the unpaid balance of
19 overtime and double time compensation, as required by California law, violates the provisions
20 of Labor Code sections 510 and 1198, and is therefore unlawful.

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

26 60. Defendants' unlawful acts deprived Plaintiff and Class Members Plaintiff
27 seeks to represent of overtime wages in amounts to be determined at trial, and they are entitled
28 to recover these amounts, along with liquidated damages for unpaid regular or minimum

1 wages, interest, attorneys' fees, and costs.

2 61. Pursuant to Labor Code section 1194, Plaintiff and Class Members are entitled
3 to recover their unpaid overtime and double time compensation as well as interest, costs, and
4 attorneys' fees.

5 **THIRD CAUSE OF ACTION**
6 **FAILURE TO PROVIDE MEAL PERIODS**
7 **(Violation of Cal. Labor Code §§ 226.7 and 512, and**
8 **§ 11 of the Applicable IWC Wage Order)**

9 62. Plaintiff re-alleges and incorporates herein by this reference each and every
10 allegation set forth in all previous paragraphs of the Complaint.

11 63. Labor Code section 226.7 provides that no employer shall require an employee
12 to work during any meal period mandated by the IWC Wage Orders.

13 64. Section 11 of the applicable IWC Wage Order states, "[n]o employer shall
14 employ any person for a work period of more than five (5) hours without a meal period of not
15 less than 30 minutes, except that when a work period of not more than six (6) hours will
16 complete the day's work the meal period may be waived by mutual consent of the employer
17 and the employee."

18 65. Labor Code section 512(a) provides that an employer may not require, cause,
19 or permit an employee to work for a period of more than five (5) hours per day without
20 providing the employee with an uninterrupted meal period of not less than thirty (30) minutes,
21 except that if the total work period per day of the employee is not more than six (6) hours, the
22 meal period may be waived by mutual consent of both the employer and the employee.

23 66. During the relevant time period, Plaintiff and Class Members did not receive
24 compliant meal periods for working more than five (5) and/or ten (10) hours per day.

25 67. Labor Code section 226.7(b) and section 11 of the applicable IWC Wage Order
26 requires an employer to pay an employee one (1) additional hour of pay at the employee's
27 regular rate of compensation for each workday that a compliant meal period is not provided.

28 68. At all relevant times, Defendants failed to pay Plaintiff and Class Members

1 meal period premiums for their missed meal periods pursuant to Labor Code section 226.7(b)
2 and section 11 of the applicable IWC Wage Order.

3 69. As a result of Defendants' failure to pay Plaintiff and Class Members an
4 additional hour of pay for each day a compliant meal period was not provided, Plaintiff and
5 Class Members suffered and continue to suffer a loss of wages and compensation. Because
6 Defendants failed to provide meal periods, they are liable to Plaintiff and Class Members for
7 one hour of additional premium pay at the regular rate of compensation for each workday that
8 the meal periods were not provided, pursuant to Labor Code section 226.7 and section 11(B)
9 of the applicable IWC Wage Order.

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

16 71. Defendants' unlawful acts deprived Plaintiff and Class Members Plaintiff
17 seeks to represent of premium wages and/or other compensation in amounts to be determined
18 at trial, and they are entitled to recover such amounts, plus interest, attorneys' fees, and costs.

19 72. Plaintiff seeks to recover in a civil action the unpaid balance of the full amount
20 of the unpaid wages resulting from Defendants' meal period violations including interest
21 thereon, reasonable attorney's fees and costs of suit, and penalties to the fullest extent
22 permissible including those permitted pursuant to Labor Code sections 226.7 and 512, and
23 Code of Civil Procedure section 1021.5.

24 73. Plaintiff, on behalf of himself and Class Members, requests relief as described
25 below.

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1 **FOURTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE REST PERIODS**

3 **(Violation of Cal. Labor Code § 226.7 and § 12 of the Applicable IWC Wage Order)**

4 74. Plaintiff re-alleges and incorporates herein by this reference each and every
5 allegation set forth in all previous paragraphs of the Complaint.

6 75. Labor Code section 226.7(a) provides that no employer shall require an
7 employee to work during any rest period mandated by the IWC Wage Orders.

8 76. Section 12 of the applicable IWC Wage Order states “every employer shall
9 authorize and permit all employees to take rest periods, which insofar as practicable shall be
10 in the middle of each work period” and the “authorized rest period time shall be based on the
11 total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major
12 fraction thereof” unless the total daily work time is less than three and one-half (3½) hours.

13 77. Section 12(B) of the applicable IWC Wage Order states that if an employer
14 fails to provide an employee a rest period in accordance with the applicable provisions of this
15 Order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate
16 of compensation for each work day that the rest period is not provided.

17 78. Labor Code section 226.7(d) provides that a rest period mandated by state law
18 or IWC Wage Order “shall be counted as hours worked, for which there shall be no deduction
19 from wages.”

20 79. During the relevant time period, Plaintiff and Class Members did not receive a
21 ten (10)-minute net rest period for every four (4) hours or major fraction thereof worked.

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

25 81. At all relevant times, Defendants failed to pay Plaintiff and Class Members the
26 full rest period premium for missed or interrupted rest periods pursuant to Labor Code section
27 226.7(b) and section 12 of the applicable IWC Wage Order.

28 82. As a direct result of Defendants’ violations alleged herein, Plaintiff and Class

1 Members have suffered and continue to suffer substantial losses related to the use and
2 enjoyment of such wages, including lost interest on such monies and expenses and attorney's
3 fees in seeking to compel Defendants to fully perform their obligation under state law, all to
4 their respective damage in amounts according to proof at trial and within the jurisdictional
5 limitations of this Court.

6 83. Defendants' unlawful acts deprived Plaintiff and Class Members Plaintiff
7 seeks to represent of premium wages and/or other compensation in amounts to be determined
8 at trial, and they are entitled to recover such amounts, plus interest, attorneys' fees, and costs.

9 84. Plaintiff seeks to recover in a civil action the unpaid balance of the full amount
10 of the unpaid wages resulting from Defendants' rest period violations including interest
11 thereon, reasonable attorney's fees and costs of suit, and penalties to the fullest extent
12 permissible including those permitted pursuant to Labor Code section 226.7 and Code of Civil
13 Procedure section 1021.5.

14 85. Plaintiff, on behalf of himself and Class Members, requests relief as described
15 below.

16 **FIFTH CAUSE OF ACTION**

17 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

18 **(Violation of Cal. Labor Code § 226 and § 7 of the Applicable IWC Wage Order)**

19 86. Plaintiff re-alleges and incorporates herein by this reference each and every
20 allegation set forth in all previous paragraphs of the Complaint.

21 87. Labor Code section 226(a) states in pertinent part: "Every employer shall,
22 semimonthly or at the time of each payment of wages, furnish each of his or her employees,
23 either as a detachable part of the check, draft, or voucher paying the employee's wages, or
24 separately when wages are paid by personal check or cash, an accurate itemized statement in
25 writing showing: (1) gross wages earned, (2) total hours worked by the employee, except as
26 provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece
27 rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all
28 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....The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.”

88. Section 7(A) of the applicable IWC Wage Order states, in relevant part, that the employer shall keep accurate information regarding, “(4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee; (5) Total hours worked in the payroll period and applicable rates of pay.”

89. Defendants have intentionally and willfully failed to provide Plaintiff and members of the Wage Statement Subclass with complete and accurate wage statements. The deficiencies include, among other things, the failure to list the gross wages earned, net wages earned, and all hours worked.

90. As a result of Defendants’ violation of California Labor Code section 226(a), Plaintiff and members of the Wage Statement Subclass have suffered injury and damage to their statutorily protected rights. Specifically, Plaintiff and members of the Wage Statement Subclass have been injured by Defendants’ intentional violation of California Labor Code section 226(a) because they were denied both their legal right to receive, and their protected interest in receiving, accurate itemized wage statements under California Labor Code section 226(a). In addition, because Defendants failed to provide the accurate rates of pay on wage statements, Defendants have prevented Plaintiff and members of the Wage Statement Subclass from determining if all hours worked were paid at the appropriate rate and the extent of the underpayment. Plaintiff has had to file this lawsuit in order to analyze whether in fact Plaintiff was paid correctly and the extent of the underpayment, thereby causing Plaintiff to incur

1 expenses and lost time. Plaintiff would not have had to engage in these efforts and incur these
2 costs had Defendants provided the accurate rate of pay. This has also delayed Plaintiff's ability
3 to demand and recover the underpayment of wages from Defendants.

4 91. Labor Code section 226(e) states: "An employee suffering injury as a result of
5 a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to
6 recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in
7 which a violation occurs and one hundred dollars (\$100) per employee for each violation in a
8 subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000),
9 and is entitled to an award of costs and reasonable attorneys' fees."

10 92. Labor Code section 226(e)(2)(B) states: "An employee is deemed to suffer
11 injury for purposes of this subdivision if the employer fails to provide accurate and complete
12 information as required by any one or more of items (1) to (9), inclusive, of subdivision (a)
13 and the employee cannot promptly and easily determine from the wage statement alone one
14 or more of the following: (i) The amount of gross wages or net wages paid to the employee
15 during the pay period or any other information required to be provided on the itemized wage
16 statement pursuant to items (2) to (4), inclusive, (6) and (9) of subdivision (a)...." Because
17 Plaintiff's wage statements did not include, among other things, an accurate accounting of
18 gross wages earned or the accurate total hours worked, he is deemed to have suffered injury.

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

26 94. Labor Code section 226(h) states: "An employee may also bring an action for
27 injunctive relief to ensure compliance with this section, and is entitled to an award of costs
28 and reasonable attorney's fees."

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

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

97. Plaintiff, on behalf of himself and the members of the Wage Statement Subclass, requests relief as described below.

SIXTH CAUSE OF ACTION

FAILURE TO REIMBURSE BUSINESS EXPENSES

(Violation of Labor Code §§ 2800 and 2802, and § 9 of the Applicable IWC Wage Order)

98. Plaintiff re-alleges and incorporates by this reference each and every allegation set forth in all previous paragraphs of the Complaint.

99. Labor Code section 2800 provides, in pertinent part, “[a]n employer shall in all cases indemnify his employee for losses caused by the employer’s want of ordinary care.”

100. Labor Code section 2802 provides, in pertinent part, “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties....”

101. Further, Labor Code section 2802 additionally provides, in pertinent part: “(c)...the term ‘necessary expenditures or losses’ shall include all reasonable costs, including but not limited to, attorney’s fees incurred by the employee enforcing the rights granted by this section.”

102. Section 9 of the applicable IWC Wage Order provides that: “When tools or

1 equipment are required by the employer or are necessary to the performance of a job, such
2 tools and equipment shall be provided and maintained by the employer....”

3 103. California Labor Code section 2804 mandates that this statutory right cannot
4 be waived.

5 104. During the relevant time period, Defendants were required to indemnify and
6 reimburse Plaintiff and Class Members for all expenditures or losses caused by the employer’s
7 want of ordinary care and/or incurred in direct consequence of the discharge of Plaintiff’s and
8 Class Members’ duties, but failed to indemnify and reimburse Plaintiff and Class Members.

9 105. As a direct and proximate result, Plaintiff and Class Members have suffered,
10 and continue to suffer, substantial losses, related to the use and enjoyment of such monies to
11 be reimbursed, lost interest on such monies, and expenses and attorney’s fees in seeking to
12 compel Defendants to fully perform their obligations under California law, all to their damage
13 in amounts according to proof at the time of trial.

14 106. Accordingly, Plaintiff and Class Members are entitled to recover, and hereby
15 seek, an amount equal to incurred necessary expenditures, pre- and post-judgment interest,
16 applicable penalties, attorneys’ fees and costs, and any further equitable relief this Court may
17 deem just and proper. *See* Cal. Lab. Code § 2802; *see also* Cal. Civ. Proc. Code § 1021.5.

18 107. Plaintiff, on behalf of himself and Class Members, requests relief as described
19 below.

20 SEVENTH CAUSE OF ACTION

21 **FAILURE TO TIMELY PAY WAGES DUE DURING EMPLOYMENT**

22 **(Violation of Cal. Labor Code §§ 204 and 210, and the Applicable IWC Wage Order)**

23 108. Plaintiff re-alleges and incorporates herein by this reference each and every
24 allegation set forth in all previous paragraphs of the Complaint.

25 109. Labor Code section 204 provides that all wages earned by an employee are due
26 and payable twice during each calendar month.

27 110. Defendants failed to timely pay Plaintiff and Class Members all of their earned
28 wages as required by Labor Code section 204.

1 111. Plaintiff and Class Members have been deprived of their rightfully earned
2 wages as a direct and proximate result of Defendants' failure to pay said compensation.
3 Plaintiff and Class Members are entitled to recover such amounts, plus interest thereon,
4 attorney's fees, and costs.

5 112. In addition, Plaintiff and Class Members are entitled to penalties pursuant to
6 Labor Code section 210 as follows: (1) for Defendants' initial violation, \$100 for each failure
7 to pay each Class Member; and (2) for each of Defendants' subsequent violations, or any
8 willful or intentional violation, \$200 for each failure to pay each Class Member, plus 25
9 percent of the amount unlawfully withheld.

10 **EIGHTH CAUSE OF ACTION**

11 **FAILURE TO TIMELY PAY ALL WAGES DUE UPON SEPARATION OF** 12 **EMPLOYMENT**

13 **(Violation of Labor Code §§ 201, 202, and 203, and the Applicable IWC Wage Order)**

14 113. Plaintiff re-alleges and incorporates by this reference each and every allegation
15 set forth in all previous paragraphs of the Complaint.

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

22 115. During the relevant time period, Defendants willfully failed to pay Plaintiff
23 and Waiting Time Subclass Members all their earned wages upon termination including, but
24 not limited to, proper minimum wages and overtime and double-time compensation, either at
25 the time of discharge or within seventy-two (72) hours of their leaving Defendants' employ.

26 116. Defendants' failure to pay Plaintiff and Waiting Time Subclass Members all
27 their earned wages at the time of discharge or within seventy-two (72) hours of their leaving
28 Defendants' employ is in violation of Labor Code sections 201 and 202.

1 117. California Labor Code section 203 provides that if an employer willfully fails
2 to pay wages owed immediately upon discharge or resignation in accordance with Labor Code
3 sections 201 and 202, then the wages of the employee shall continue as a penalty from the due
4 date at the same rate until paid or until an action is commenced; but the wages shall not
5 continue for more than thirty (30) days.

6 118. Plaintiff and Waiting Time Subclass Members are entitled to recover from
7 Defendants the statutory penalty which is defined as Plaintiff's and Waiting Time Subclass
8 Members' regular daily wages for each day they were not paid, at their regular hourly rate of
9 pay, up to a thirty (30)-day maximum pursuant to Labor Code section 203.

10 **NINTH CAUSE OF ACTION**

11 **FAILURE TO PRODUCE PERSONNEL RECORDS**

12 **(Violation of Labor Code §§ 226, 432, and 1198.5)**

13 119. Plaintiff re-alleges and incorporates herein by this reference each and every
14 allegation set forth in all previous paragraphs of the Complaint.

15 120. Labor Code section 1198.5 provides that employers must maintain a copy of
16 each employee's personnel records for at least three years after the termination of an
17 employee, and that an employee's personnel records must be produced to an employee no
18 later than thirty calendar days after receiving a written request from the employee.

19 121. Labor Code section 226(a) states that employers must keep copies of an
20 employee's wage statements in the employee's personnel file.

21 122. Labor Code section 226(c) further states: "An employer who receives a written
22 or oral request to inspect or receive a copy of records pursuant to subdivision (b) pertaining
23 to a current or former employee shall comply with the request as soon as practicable, but no
24 later than 21 calendar days from the date of the request. A violation of this subdivision is an
25 infraction. Impossibility of performance, not caused by or a result of a violation of law, shall
26 be an affirmative defense for an employer in any action alleging a violation of this subdivision.
27 An employer may designate the person to whom a request under this subdivision will be
28 made."

1 123. Labor Code section 226(f) provides: “A failure by an employer to permit a
2 current or former employee to inspect or receive a copy of records within the time set forth in
3 subdivision (c) entitles the current or former employee or the Labor Commissioner to recover
4 a seven-hundred-fifty-dollar (\$750) penalty from the employer.”

5 124. Labor Code section 226(h) provides an employee with the ability to bring an
6 action for injunctive relief to ensure compliance with Labor Code section 226.

7 125. Labor Code section 1198.5(k) also provides a penalty of \$750 recoverable by
8 the aggrieved employee, for an employer who fails to timely produce the personnel records
9 of a current or former employee.

10 126. Here, Defendants employ a pattern and practice of ignoring and refusing to
11 produce employee records when requested in direct violation of Labor Code sections 226(b),
12 (c), (f), (h), 432, and 1198.5. Upon making valid requests for the inspection and production
13 of records by Plaintiff and Class Members, Defendants, as a matter of pattern and practice,
14 ignored and refused to produce these records or make them available to Plaintiff and Class
15 Members within the timeframe required by statute.

16 127. Plaintiff, on behalf of himself and Class Members, requests relief as described
17 below.

18 **TENTH CAUSE OF ACTION**

19 **VIOLATION OF THE UNFAIR COMPETITION LAW**

20 **(Business and Professions Code §§ 17200-17208)**

21 128. Plaintiff re-alleges and incorporates herein by this reference each and every
22 allegation set forth in all previous paragraphs of the Complaint.

23 129. California Business and Professions Code sections 17200, *et seq.* prohibits acts
24 of unfair competition, which includes any “unlawful, unfair or fraudulent business act or
25 practice”

26 130. A violation of California Business and Professions Code sections 17200, *et*
27 *seq.* may be predicated on the violation of any state or federal law. In the instant case,
28 Defendants’ policies and practices have violated state law causing Plaintiff and Class

Members to suffer, and continue to suffer, injuries in fact. As alleged herein, Defendants systematically engaged in unlawful conduct in violation of the California Labor Code and IWC Wage Orders, such as by failing to timely pay all earned wages, failing to pay minimum wages, failing to pay overtime wages, failing to authorize or permit paid rest breaks, failing to provide meal periods, failing to furnish accurate itemized wage statements, failing to reimburse business expenses, failing to timely pay final wages due during and upon separation of employment, and failing to produce employee personnel records, all in order to decrease their costs of doing business and increase their profits.

131. This cause of action is brought under Business and Professions Code sections 17203 and 17204, commonly called the Unfair Competition Law. Under this cause of action and pursuant to Business and Professions Code section 17208, Plaintiff and all Plaintiff Class Members seek restitution of wages owed and, where applicable, penalties under Labor Code section 203, where such wages were due to each of the Class Members during the Class Period, commencing four (4) years prior to the filing of this complaint, according to proof.

132. This cause of action is brought as a cumulative remedy as provided in Business and Professions Code section 17205, and is intended as an alternative remedy for restitution for Plaintiff and each Plaintiff Class Member, for the time period, or any portion thereof, commencing within four (4) years prior to the filing of this complaint, and as the primary remedy for Plaintiff and each member of the Plaintiff Class for the time period of the fourth year prior to the filing of this complaint, as such one-year time period exceeds the statute of limitations on statutory wage claims.

133. At all times relevant herein, Defendants intentionally avoided paying Plaintiff and Class Members wages and monies, thereby artificially lowering the cost of doing business for Defendants in order to undercut their competitors and establish and/or gain a greater foothold in the marketplace.

134. At the time Plaintiff and Class Members were hired, Defendants knowingly, intentionally and wrongfully misrepresented to each of them their conformance with the California Labor Code and IWC Wage Orders including that Defendants would make proper

1 payments required by law.

2 135. At all relevant times herein, Defendants held themselves out to Plaintiff and
3 Class Members as being knowledgeable concerning the labor laws of California.

4 136. At all times relevant herein, Plaintiff and Class Members relied on and believed
5 Defendants' representations concerning their conformance with California's wage and hour
6 laws all to their detriment.

7 137. As a result of Defendants' intentional, willful, purposeful, and wrongful
8 misrepresentation of their conformance with the California Labor Code and IWC Wage
9 Orders, Plaintiff and Class Members suffered a loss of wages and monies, all in an amount to
10 be shown according to proof at trial. By violating the foregoing statutes and regulations as
11 herein alleged, Defendants' acts constitute unfair and unlawful business practices under
12 California Business and Professions Code sections 17200, *et seq.*

13 138. Defendants' violations of the California Labor Code and IWC Wage Orders
14 and their scheme to lower their payroll costs as alleged herein, constitute unlawful business
15 practices because they were done in a systematic manner over a period of time to the detriment
16 of the Plaintiff and Class Members.

17 139. As a result of the unfair business practices of Defendants, as alleged herein,
18 Plaintiff and Class Members are entitled to injunctive relief, disgorgement, and restitution in
19 an amount to be shown according to proof at trial.

20 140. Plaintiff and Class Members seek to enforce important rights affecting the
21 public interest within the meaning of California Code of Civil Procedure section 1021.5.
22 Defendants' conduct, as alleged herein, has been, and continues to be, unfair, unlawful, and
23 harmful to Class Members and to the general public. Based on Defendants' conduct as alleged
24 herein, Plaintiff and Class Members are entitled to an award of attorneys' fees pursuant to
25 California Code of Civil Procedure section 1021.5.

26 ///

27 ///

28 ///

ELEVENTH CAUSE OF ACTION
CIVIL PENALTIES PURSUANT TO THE PAGA
(Labor Code §§ 2698, *et seq.*)

141. Plaintiff re-alleges and incorporates herein by this reference each and every allegation set forth in all previous paragraphs of the Complaint, including Plaintiff's Notice to the LWDA dated July 6, 2020.

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

143. For all provisions of the Labor Code except those for which a civil penalty is specifically provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent pay period in which Defendants violated these provisions of the Labor Code.

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

(a) Violation of Labor Code §§ 201, 202, 203, 204, 510, 1194, 1197, 1197.1, 1198, and 1199(c) for failure to timely pay all earned wages (including minimum wages and overtime wages) owed to Plaintiff and other aggrieved employees during employment and upon separation of employment as herein alleged;

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

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

4 (d) Violation of Labor Code § 226 for failure to provide accurate itemized wage
5 statements to Plaintiffs and other aggrieved employees as herein alleged;

6 (e) Violation of Labor Code §§ 1174 and 1174.5 for failure to maintain accurate
7 records;

8 (f) Violation of Labor Code §§ 226, 432, and 1198.5 for failure to produce
9 employee personnel records in the time required by statute; and

10 (g) Violation of Labor Code §2802 for failure to reimburse all reasonable and
11 necessary business expenses.

12 145. Further, Labor Code § 558(a) provides “any employer or other person acting
13 on behalf of an employer who violates, or causes to be violated, a section of this chapter or
14 any provisions regulating hours and days of work in any order of the IWC shall be subject
15 to a civil penalty as follows: (1) For any violation, fifty dollars (\$50) for each underpaid
16 employee for each pay period for which the employee was underpaid in addition to an
17 amount sufficient to recover underpaid wages. (2) For each subsequent violation, one
18 hundred dollars (\$100) for each underpaid employee for each pay period for which the
19 employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3)
20 Wages recovered pursuant to this section shall be paid to the affected employee.” Plaintiff
21 seeks only to recover the civil penalty provided for in section 558(a) for the violations alleged
22 herein and **does not** seek to recover unpaid wages. Labor Code § 558(c) provides “the civil
23 penalties provided for in this section are in addition to any other civil or criminal penalty
24 provided by law.”

25 146. As set forth above, Defendants have violated numerous provisions of the
26 Labor Code regulating hours and days of work as well as the IWC Wage Orders.
27 Accordingly, Plaintiffs seek the remedies set forth in Labor Code § 558 for themselves, the
28 underpaid employees, and the State of California.

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

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

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

150. Labor Code section 226.3 provides for civil penalties for violations of Section 226. The civil penalty is \$250 for the initial violation and \$1,000 for each subsequent violation.

151. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiff and other aggrieved employees are entitled to recover civil penalties, in addition to other remedies, for violations of the Labor Code sections cited above.

152. Plaintiff, as a representative of the general public, seeks to recover all Labor Code section 2699(f)(2) civil penalties for each Labor Code violation alleged herein, according to proof, as to those penalties otherwise only available in public agency enforcement actions. Funds recovered will be distributed in accordance with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State of California.

153. For bringing this action, Plaintiff is entitled to attorney's fees and costs incurred as alleged herein.

VI.

PRAYER

Plaintiff prays for judgment as follows:

1. That the Court determine this action may be maintained as a class action and Plaintiff as Class Representative and Plaintiff's counsel as Class Counsel;

2. For injunctive relief as provided by the Labor Code to the extent permitted by

1 law including, but not limited to, pursuant to Section 226(h), and Business and Professions
2 Code sections 17200, *et seq.*;

3 3. For restitution as provided by Business and Professions Code sections 17200,
4 *et seq.*;

5 4. For an order requiring Defendants to restore and disgorge all funds to each
6 affected person acquired by means of any act or practice declared by this Court to be unlawful,
7 unfair or fraudulent and, therefore, constituting unfair competition under Business and
8 Professions Code sections 17200, *et seq.*;

9 5. For an award of unpaid wages, including minimum and overtime wages, to the
10 extent permissible by law to each affected person;

11 6. For an award of liquidated damages to the extent permissible by Labor Code
12 section 1194.2;

13 7. For an award of meal period premium wages equal to one hour of pay at the
14 employee's regular rate of pay for each workday that a meal period was not provided in
15 accordance with Labor Code sections 226.7 and 512, and Section 11 of the applicable IWC
16 Wage Order;

17 8. For an award of rest period premium wages equal to one hour of pay at the
18 employee's regular rate of pay for each workday that a rest period was not provided in
19 accordance with Labor Code section 226.7 and Section 12 of the applicable IWC Wage Order;

20 9. For reimbursement of unpaid expenses incurred as a result of the use of
21 personal cellular devices, including personal cell phones, at the direction of and for the benefit
22 of Defendants, in accordance with Labor Code section 2802;

23 10. For penalties to the extent permitted pursuant to the Labor Code, and Orders
24 of the Industrial Welfare Commission including, but not limited to, penalties under Labor
25 Code section 226(e);

26 11. For an award of waiting time penalties per former employee pursuant to Labor
27 Code section 203(a);
28

12. For an award of penalties for each employee denied their personnel records pursuant to Labor Code sections 226 and 1198.5.

13. For an award of penalties incurred under Sections 210 and 226(e), per underpaid employee pursuant to Labor Code sections 210 and 226(e);

14. For an award of liquidated damages to the extent permissible under Labor Code section 1194.2;

15. For damages under Labor Code Section 558;

16. For civil penalties as described above pursuant to PAGA, 75% of which will be paid to the Labor Workforce Development Agency and 25% of which will be distributed to the aggrieved employees;

17. For pre- and post-judgment interest to the extent permitted by law including, but not limited to, Labor Code sections 218.6 and 1194; and

18. For determination of the appropriate remedy to compensate Plaintiff, the Plaintiff Class, and Subclass Members, as required to promote fairness and justice, including but not limited to, establishing procedures for compensation, and fluid recovery if appropriate.

LEBE LAW, APLC
COHELAN KHOURY & SINGER

Dated: September 22, 2020

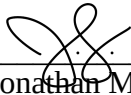
By: 
Jonathan M. Lebe
Michael D. Singer
Rosemary C. Khoury
Attorney for Plaintiff Michael Daw, individually and
on behalf of all others similarly situated

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all claims so triable.

LEBE LAW, APLC
COHELAN KHOURY & SINGER

Dated: September 22, 2020

By: 
Jonathan M. Lebe
Michael D. Singer
Rosemary C. Khoury
Attorney for Plaintiff Michael Daw, individually and
on behalf of all others similarly situated