

ANTHONY J. ORSHANSKY (SBN 199364)  
anthony@counselonegroup.com  
JUSTIN KACHADOORIAN (SBN 260356)  
justin@counselonegroup.com  
**COUNSELONE, PC**  
9301 Wilshire Boulevard, Suite 650  
Beverly Hills, California 90210  
Telephone: (310) 277-9945  
Facsimile: (424) 277-3727

Attorneys for Mauricio Vazquez, on behalf of himself  
and others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**FOR THE COUNTY OF ORANGE**

MAURICIO VAZQUEZ, on behalf of himself  
and others similarly situated,

Plaintiff,

v.

VOLCOM, LLC, a Delaware limited liability  
company; VOLCOM RETAIL, LLC, a  
Delaware limited liability company;  
VOLCOM RETAIL OUTLETS, LLC, a  
Delaware limited liability company; and  
DOES 1 through 100,

Defendants.

Case No.: 30-2020-01169022-CU-OE-CXC

Assigned for all purposes to: Judge Glenda Sanders

Dent: CX101

**CLASS AND REPRESENTATIVE**  
**ACTION COMPLAINT FOR:**

1. Failure to Pay Minimum Wages
2. Failure to Pay All Overtime Wages
3. Meal Period Liability under Labor Code § 226.7
4. Rest Break Liability under Labor Code § 226.7
5. Failure to Reimburse for Business Expenses
6. Failure to Provide Accurate Itemized Employee Wage Statements
7. Failure to Pay All Wages Owed Timely and upon Separation of Employment
8. Violation of Labor Code § 1174(d)
9. Violation of Business & Professions Code §§ 17200, et seq.
10. Penalties Pursuant to Labor Code § 2699

**DEMAND FOR JURY TRIAL**

1 Mauricio Vazquez, an individual, (“Plaintiff”), on behalf of himself, the State of  
2 California, and all others similarly situated, alleges and complains of defendants Volcom, LLC,  
3 a Delaware limited liability company; Volcom Retail, LLC, a Delaware limited liability  
4 company; Volcom Retail Outlets, LLC, a Delaware limited liability company; and DOES 1  
5 through 100 (collectively, “Defendants”), and each of them, as follows:

6 **I. INTRODUCTION**

7 1. This is a class action pursuant to California Code of Civil Procedure section 382  
8 on behalf of Plaintiff and the following class: *All current and former hourly paid or non-exempt*  
9 *employees who worked for Volcom, LLC, Volcom Retail, LLC, Volcom Retail Outlets, LLC,*  
10 *and/or their predecessor or merged entities, within the State of California from four years prior*  
11 *to the filing of the Complaint and continuing to the present* (the “Class” or “Class Members”).

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

20 3. Plaintiff, on behalf of himself and all other similarly situated employees, pursuant  
21 to California Business & 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  
24 and equitable relief allowed, plus interest, attorneys’ fees and costs.

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

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

3 5. For purposes of the allegations set forth herein, Class Members, along with  
4 Aggrieved Employees comprising the PAGA representative action, are collectively referred to  
5 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 Orange County and the State of California through their acts, and by their violation of  
15 the California Labor Code, California state common law, and California Business & Professions  
16 Code sections 17200, *et seq.* Defendants also transact business throughout California and have  
17 obtained the benefits of the laws of the United States and the State of California and are therefore  
18 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 Orange  
21 County. The unlawful acts alleged herein have a direct effect on Plaintiff and Employees within  
22 the State of California and Orange 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 because it is a class action;  
25 will involve substantial documentary evidence and a large number of witnesses; is likely to  
26 involve extensive motion practice raising difficult or novel issues that will be time-consuming to  
27 resolve; and would require substantial post judgment judicial supervision.

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11. Plaintiff is informed and believes, and based thereon alleges, that Defendant Volcom, LLC is a limited liability company headquartered in Costa Mesa, California and, upon information and belief, each of its members is a citizen of the State of California.

13. Plaintiff is informed and believes, and based thereon alleges, that Defendant Volcom Retail Outlets, LLC is a limited liability company headquartered in Costa Mesa, California and, upon information and belief, each of its members is a citizen of the State of California.

15. 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

1 true names and capacities of the defendants designated hereinafter as DOES when such identities  
2 become known.

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

5 17. Plaintiff is informed and believes, and based thereon alleges, that each Defendant  
6 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a  
7 joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each  
8 Defendant are legally attributable to other Defendants. Plaintiff is further informed and believes  
9 and based thereon alleges that Defendants are joint employers in that they employed Plaintiff and  
10 Employees at the same time and were operating as a joint enterprise and single entity at all  
11 relevant time periods.

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

19 19. California law also permits and recognizes the piercing of a corporate veil  
20 between sister companies under the single enterprise rule. *Hasso v. Hapke* (2014) 227 Cal. App.  
21 4th 107, 155; *Greenspan v. LADT, LLC* (2010) 191 Cal. App. 4th 486, 512. The single enterprise  
22 rule applies where “there are two or more personalities, there is but one enterprise; and that this  
23 enterprise has been so handled that it should respond, as a whole, for the debts of certain  
24 component elements of it.” *Hasso, supra*, 227 Cal. App. 4th at 155; *Greenspan, supra*, 191 Cal.  
25 App. 4th at 512.

26 20. At all times throughout their employment, Plaintiff and Employees were regularly  
27 and consistently subject to the common policies and/or practices utilized by Defendants.

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

#### IV. FACTUAL BACKGROUND

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

22. Defendants employ hundreds of individuals in the State of California. Defendants design, market, and distribute boardsports-oriented products. Plaintiff worked for Defendants as a non-exempt, hourly paid employee until his separation on March 19, 2020, in Costa Mesa, California.

23. Plaintiff and Employees are nonexempt employees pursuant to the applicable IWC Wage Order. This action seeks recovery for wages and compensation due and owing to Plaintiff and Employees under California laws for the maximum period allowed to the present, as set out herein.

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

25. During the relevant time period, Defendants have had a consistent policy and/or practice of failing to pay overtime wages to Plaintiff and Employees for all overtime hours worked they worked. The work times of Plaintiff and Employees have been, and continue to be, greater than eight (8) hours per day and/or forty (40) hours per week. Yet, because Defendants did not pay Plaintiff and Employees wages for, *inter alia*, hours that were worked off the clock, Plaintiff and Employees were deprived wages at overtime premium amounts attributable to overtime hours.

1           26. By their common policy and/or practice of requiring Plaintiff and Employees to  
2 work in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without  
3 compensating them at the applicable overtime rate of pay, Defendants willfully violated the  
4 provisions of Labor Code sections 510 and 1198, as well as IWC Wage Order Nos. 1-2001, 4-  
5 2001, and 7-2001.

6           27. Throughout the applicable period of time, Defendants did not pay and continue  
7 not to pay Plaintiff and Employees at least the California minimum wage for all hours worked,  
8 violating Labor Code section 1194. Pursuant to Labor Code section 1194.2, Plaintiff and Class  
9 Members are entitled to recover liquidated damages (double damages) for Defendants' failure to  
10 pay minimum wages.

11           28. Defendants regularly failed to provide Plaintiff and Employees with timely duty-  
12 free meal periods. Labor Code sections 226.7, 512, and IWC Wage Order Nos. 1-2001, 4-2001,  
13 and 7-2001 require employers to provide employees with a thirty (30) minute uninterrupted and  
14 duty-free meal period within the first five (5) hours of work. *See also, Brinker Rest. Corp. v.*  
15 *Superior Court* (2012) 53 Cal. 4th 1004, 1042 ("Accordingly, first meal periods must start after  
16 no more than five hours."). Moreover, an employee who works more than ten (10) hours per day  
17 is entitled to receive a second thirty (30) minute uninterrupted and duty-free meal period.

18           29. Defendants regularly denied Plaintiff and Employees meal periods that comply  
19 with Labor Code sections 226.7, 512, and IWC Wage Order Nos. 1-2001, 4-2001, and 7-2001.  
20 By way of example, Plaintiff and Employees performed work tasks while off-the-clock and  
21 during their meal periods, which were not duty-free. Plaintiff and Employees did not receive  
22 complaint duty-free meal periods within the first five (5) hours of their work. Also, despite  
23 working shifts that exceeded ten hours, Plaintiff and Employees were consistently deprived of  
24 second meal breaks altogether. Plaintiff and Employees thus suffered late, short, interrupted,  
25 and/or missed meal breaks.

26           30. Defendants were also obligated but failed to authorize and permit Plaintiff and  
27 Employees to take net ten (10) minute rest breaks for work shifts exceeding four (4) hours or a  
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major fraction thereof worked as required by IWC Wage Order Nos. 1-2001, 4-2001, and 7-2001. Defendants regularly failed to provide Plaintiff and Employees with timely duty-free rest breaks.

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

32. Defendants violated Labor Code section 2802 by failing to pay and indemnify Plaintiff and Employees for their necessary business expenditures and losses incurred in direct consequence of the discharge of their duties.

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

34. Due to Defendants' non-compliant policies and/or practices described herein, Plaintiff and Employees whose employment with Defendants concluded were not compensated for, *inter alia*, all straight-time and overtime hours worked, and were not paid all meal and rest break premiums owed. Thus, Defendants have failed to pay Plaintiff and Employees all wages owed, whose sums were certain, at the time of termination or within seventy-two (72) hours of their resignation and have failed to pay those sums for thirty (30) days thereafter in violation of Labor Code section 203.

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

1           36. Through Labor Code section 210 and the PAGA, and to the extent permitted by  
2 law, Plaintiff and Aggrieved Employees are entitled to recover civil penalties for violations of  
3 Labor Code section 204.

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

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

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

22           40. Further, for the violations described above, Plaintiff and Aggrieved Employees  
23 may also recover civil penalties pursuant to Labor Code section 226.3 and the PAGA for  
24 Defendants' violations of Labor Code section 226(a).

25           41. Additionally, Plaintiff and Employees have been denied their legal right and  
26 protected interest in having available at a central location at the plant or establishment where they  
27 are employed, accurate and complete payroll records showing the hours worked daily by, and the  
28 wages paid to, Employees at those respective locations pursuant to Labor Code section 1174.

Pursuant to Labor Code section 1174.5 and the PAGA, Plaintiff and Aggrieved Employees may also recover civil penalties for violation of Labor Code section 1174(d).

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

## **V. CLASS ACTION ALLEGATIONS**

43. 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 comprised of and defined as follows:

*All current and former hourly paid or non-exempt employees who worked for Volcom, LLC, Volcom Retail, LLC, Volcom Retail Outlets, LLC, and/or their 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").*

44. 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.

45. 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**

46. The potential members of the Class as defined are so numerous that joinder of all the members of the Class is not practicable. While the precise number of Class Members has not been determined at this time, Plaintiff is informed and believes that there are over five hundred (500) Class Members employed by Defendants within the State of California during the relevant time period.

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

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1           **B.     Commonality**

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

- 5                   a.     Whether Defendants' failure to pay wages, without abatement or  
6                   reduction, in accordance with the California Labor Code, was willful;  
7                   b.     Whether Defendants had a corporate policy and/or practice of failing to  
8                   pay Class Members for all hours worked in violation of California law;  
9                   c.     Whether Defendants failed to pay at least the minimum wage to Class  
10                  Members for all hours worked;  
11                  d.     Whether Defendants required Class Members to work over eight (8) hours  
12                  per day and/or over forty (40) hours per week and failed to pay the legally  
13                  required overtime compensation to Class Members;  
14                  e.     Whether Defendants deprived Class Members of legally compliant meal  
15                  and rest periods;  
16                  f.     Whether Defendants required Class Members to work during meal and/or  
17                  rest periods without compensation;  
18                  g.     Whether Defendants had a corporate policy and/or practice of failing to  
19                  pay Class Members premium payments for noncompliant (short, late,  
20                  interrupted, and/or missed altogether) meal periods and rest breaks in  
21                  violation of California law;  
22                  h.     Whether Defendants failed to reimburse Class Members for necessary  
23                  business-related expenses and costs;  
24                  i.     Whether Defendants failed to timely pay all wages due to Class Members  
25                  during their employment;  
26                  j.     Whether Defendants failed to pay all wages due to Class Members within  
27                  the required time upon their discharge or resignation;

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- 1 k. Whether Defendants complied with wage reporting as required by the  
2 California Labor Code, including, *inter alia*, section 226;
- 3 l. Whether Defendants kept complete and accurate payroll records as  
4 required by the California Labor Code, including, *inter alia*, section  
5 1174(d);
- 6 m. Whether Defendants' conduct was willful or reckless;
- 7 n. Whether Defendants engaged in unfair business practices in violation of  
8 the Unfair Competition Law, Business and Professions Code sections  
9 17200, *et seq.*;
- 10 o. Whether Class Members are entitled to compensatory damages pursuant  
11 to the California Labor Code;
- 12 p. The appropriate amount of damages, restitution, and/or monetary penalties  
13 resulting from Defendants' violation of California law;
- 14 q. Whether Class Members are entitled to attorneys' fees and costs; and
- 15 r. Whether Class Members are entitled to interest.

16 **C. Typicality**

17 49. The claims of Plaintiff are typical of the claims of the Class. Plaintiff and Class  
18 Members sustained injuries and damages arising out of and caused by Defendants' common  
19 course of conduct in violation of laws and regulations that have the force and effect of law and  
20 statutes, as alleged herein.

21 **D. Adequacy of Representation**

22 50. Plaintiff will fairly and adequately represent and protect the interest of the Class.  
23 Counsel who represent Plaintiff and Class Members are competent and experienced in litigating  
24 wage and hour class actions, and have the financial resources to litigate the claims at issue.

25 **E. Superiority of Class Action**

26 51. A class action is superior to other available means for the fair and efficient  
27 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and  
28 questions of law and fact common to the Class predominate over any questions affecting only

1 individual members of the Class. Each member of the Class has been damaged and is entitled to  
2 recovery by reason of Defendants' illegal policy and/or practice of failing to properly pay  
3 minimum wages and overtime for all hours worked, failing to provide timely duty-free meal  
4 periods and/or pay premiums owed thereon, failing to authorize and permit duty-free rest breaks  
5 and/or pay premiums owed thereon, failing to reimburse necessary business-related expenses and  
6 costs, failing to maintain and provide accurate itemized wage statements, failing to pay all wages  
7 owed in a timely manner, failing to pay all wages due upon termination and/or resignation, and  
8 engaging in unfair business practices.

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

### 13 **FIRST CAUSE OF ACTION**

#### 14 **FAILURE TO PAY MINIMUM WAGES**

15 **Cal. Labor Code §§ 1194, 1194.2, 1197, 1197.1, and IWC Wage Order Nos. 1-2001, 4-**  
16 **2001, and 7-2001**

#### 17 **[On Behalf of Plaintiff and the Class against All Defendants]**

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

21 54. Throughout the period of time applicable to this cause of action, Defendants did  
22 not pay and continue to not pay Plaintiff and Class Members at least the California minimum  
23 wage for all hours worked, thereby violating Labor Code section 1194 and IWC Wage Order  
24 Nos. 1-2001, 4-2001, and 7-2001.

25 55. Defendants' failure to pay Plaintiff and Class Members the minimum wage as  
26 required is unlawful and violates Labor Code sections 1194, 1194.2, 1197, and 1197.1. As a  
27 result, Plaintiff and Class Members are entitled to recover the unpaid balance of their minimum  
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wage compensation, as well as interest, costs, and attorney's fees and liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

## **SECOND CAUSE OF ACTION**

### **FAILURE TO PAY ALL OVERTIME WAGES**

**Cal. Labor Code §§ 510 and 1198 and IWC Wage Order Nos. 1-2001, 4-2001, and 7-2001**

**[On Behalf of Plaintiff and the Class against All Defendants]**

56. 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 set forth herein.

57. At all times relevant to this Complaint, Labor Code section 510(a) was in effect and provided: "Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of forty hours in any one workweek...shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee."

58. Pursuant to Section 3 of IWC Wage Order Nos. 1-2001, 4-2001, and 7-2001, an employee shall not be employed more than eight (8) hours in any workday and/or more than forty (40) hours in any workweek unless the employee receives one and one-half (1 ½) times such employee's regular rate of pay for all hours worked over eight (8) hours in any workday and/or more than forty (40) hours in any workweek. Further, an employer must compensate employees at no less than twice the regular rate of pay when an employee works more than twelve (12) hours in a day or more than eight (8) hours on the seventh consecutive day of work.

59. At all times mentioned, Plaintiff and the Class worked shifts that consisted of more than eight (8) hours in a workday and/or more than forty (40) hours in a workweek and were not paid proper overtime wages for all overtime hours worked as a result of, but not limited to, Defendants' failure to pay for work performed off the clock, including, *inter alia*, pre- and post- shift and during meal periods.

60. Accordingly, by requiring Plaintiff and the Class to work in excess of eight (8) hours per day and/or forty (40) hours per week without properly compensating them overtime

wages, as described above, Defendants willfully violated the provisions of Labor Code section 1194.

61. As a result of the unlawful acts of Defendants, Plaintiff and the Class have been deprived of overtime wages in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, costs, and attorneys' fees.

### **THIRD CAUSE OF ACTION**

#### **FAILURE TO PROVIDE MEAL PERIODS**

**Cal. Labor Code §§ 226.7, 512, and IWC Wage Order Nos. 1-2001, 4-2001, and 7-2001**

**[On Behalf of Plaintiff and the Class against All Defendants]**

62. 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.

63. 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")." Similarly, Labor Code section 512 and IWC Wage Order Nos. 1-2001, 4-2001, and 7-2001 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.

64. Despite these legal requirements, Defendants regularly failed to provide both first and second meal periods that comply with Labor Code sections 512, 226.7, and IWC Wage Order Nos. 1-2001, 4-2001, and 7-2001. Plaintiff and Class Members were not provided timely and duty-free thirty (30) minute meal periods. Plaintiff and Class Members often experienced untimely and interrupted meal periods, and sometimes missed meal breaks altogether. Specifically, Plaintiff and Class Members did not always receive timely duty-free meal periods in that first meals would be taken after the fifth hour of work, meal periods were interrupted, or,

on occasion, the demands of employee job duties were such that they were prevented from taking a meal period altogether. Having been thus subjected to late, short, interrupted, and missed meal periods, Plaintiff and Class Members did not receive their statutorily mandated meal periods.

65. To the extent Defendants claim that Plaintiff and Class Members waived their rights to second meal periods for shifts worked in excess of ten (10) hours, the waivers are not applicable to shifts in excess of twelve (12) hours a day and/or to the extent the waivers are ineffective on-duty meal period agreements where the nature of the work does not prevent them from being relieved of all duties.

66. Under Labor Code section 226.7 and IWC Wage Order Nos. 1-2001, 4-2001, and 7-2001, Plaintiff and each Class Member is entitled to be paid one (1) hour of additional wages for each day he or she was not provided with all required meal periods. Defendants regularly failed to pay Plaintiff and Class Members the additional wages to which they were entitled for non-compliant meal periods.

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

#### **FOURTH CAUSE OF ACTION**

##### **FAILURE TO AUTHORIZE AND PERMIT REST PERIODS**

##### **Cal. Labor Code § 226.7 and IWC Wage Order Nos. 1-2001, 4-2001, and 7-2001**

##### **[On Behalf of Plaintiff and the Class against All Defendants]**

68. 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.

69. Under Wage Order Nos. 1-2001, 4-2001, and 7-2001, section 12, an employer must authorize and permit all employees to take ten (10) minute duty free rest periods for every major fraction of four hours worked. 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.”

1           70. Defendants are required by California law to authorize and permit breaks of ten  
2 (10) uninterrupted minutes for each four hours of work or major fraction thereof (i.e., more than  
3 two hours). That is, the required number of rest breaks is equal to the number of work hours  
4 divided by four, and if the work time is not evenly divisible by four, any remainder of two hours  
5 or less is rounded down and that which exceeds two hours is rounded up. For example, if a Class  
6 Member's work time is six hours and ten minutes, he or she is entitled to two rest breaks. If the  
7 work time is nine hours, the employee is still entitled to only two rest breaks. (There is an  
8 exception: if the shift is under three and one-half hours, no rest break is required.) Each failure  
9 to authorize rest breaks as so required is itself a violation of California's rest break laws.

10           71. Despite these legal requirements, Defendants failed to authorize and permit  
11 Plaintiff and Class Members to take timely, duty-free rest breaks. Plaintiff and Class Members  
12 were subject to policies and/or practices that prevented them from taking legally compliant rest  
13 periods. Defendants did not relieve Plaintiff and Class Members of all duties during their rest  
14 breaks and regularly required them to be available to continue working – or, in fact, interrupted  
15 them – during their rest breaks. Notwithstanding any formal written policy to the contrary,  
16 Defendants' actual custom and business practice was to undermine any formal policy of  
17 permitting rest breaks by pressuring Class Members to perform their duties in a way that omitted  
18 breaks, including, but not limited to, scheduling a heavy workload that made taking breaks  
19 extremely difficult, maintaining an informal anti-rest break policy enforced through ridicule or  
20 reprimand, and exerting coercion against the taking of, creating incentives to forego, or otherwise  
21 encouraging the skipping of legally protected breaks. Here, as a companywide practice and in  
22 fact, Defendants did not offer Plaintiff and Class Members the opportunity to receive compliant  
23 off-duty rest periods and, thus, "the court may not conclude employees voluntarily chose to  
24 skip...breaks." *Alberts v. Aurora Behavioral Health Care* (2015) 241 Cal. App. 4th 388, 410  
25 ("[i]f an employer fails to provide legally compliant meal or rest breaks, the court may not  
26 conclude employees voluntarily chose to skip those breaks."); *accord Brinker*, 53 Cal. 4th at  
27 1033 ("No issue of waiver ever arises for a rest break that was required by law but never  
28 authorized; if a break is not authorized, an employee has no opportunity to decline to take it.")

72. Defendants retained control over Plaintiff and Class Members during their rest periods. *See, Augustus v. ABM Security Services, Inc.* (2016) 2 Cal. 5th 257, 269 (concluding that “during rest periods employers must relieve employees of all duties and relinquish control over how employees spend their time.”). In *Augustus*, the court expressly rejected the employer’s assertion that it could provide an on-duty rest period to employees who worked as security guards and further explained “that employers [must] relinquish any control over how employees spend their break time, and relieve their employees of all duties.” *Id.* at 273. During breaks employers must relieve employees of all duties and relinquish control over how employees spend their time.

73. Plaintiff and Class Members were not compensated with one (1) hour's worth of pay at their regular rate of compensation when they were not provided with a compliant rest break in accordance with Labor Code section 226.7(b).

74. As a result, Defendants are liable to Plaintiff and Class Members for one (1) hour of additional of pay at their regular rates of compensation for each work day when a compliant rest break was not provided, in a sum to be proven at trial.

## **FIFTH CAUSE OF ACTION**

## FAILURE TO REIMBURSE FOR BUSINESS EXPENSES

**Cal. Labor Code § 2802**

**[On Behalf of Plaintiff and the Class against All Defendants]**

75. 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 set forth herein.

76. Labor Code section 2802 provides that “[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.” “Necessary business expenses” is defined to include all “reasonable expenses.” See, Labor Code § 2802(c); *Cochran v. Schwan’s Home Service, Inc.* (2014) 228 Cal. App. 4th 1137.

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1           77.     Plaintiff and Class Members incurred necessary business expenses (e.g., purchase  
2 and use of personal cell phones) in discharging their duties. However, Defendants did not pay  
3 fully, or at all, for these necessary business expenses incurred by Plaintiff and Class Members.

4           78.     Defendants' failure to pay for or reimburse the work-related business expenses of  
5 Plaintiff and Class Members violated non-waivable rights secured to Plaintiff and Class Members  
6 by Labor Code section 2802.

7           79.     Plaintiff and Class Members are entitled to reimbursement for these necessary  
8 expenditures, plus interest pursuant to Labor Code section 2802(b) and attorneys' fees and costs  
9 under Labor Code section 2802(c).

10                               **SIXTH CAUSE OF ACTION**

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

12                               **Cal. Labor Code §§ 226 and 226.3**

13                               **[On Behalf of Plaintiff and the Class against All Defendants]**

14           80.     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           81.     Labor Code section 226(a) requires employers, semi-monthly or at the time or each  
18 payment of wages, to furnish employees an accurate itemized statement in writing showing:

- 19           (1)     gross wages earned;
- 20           (2)     total hours worked by the employee;
- 21           (3)     the number of piece-rate units earned and any applicable piece rate if the  
22                   employee is paid on a piece rate;
- 23           (4)     all deductions, provided that all deductions made on written orders of the  
24                   employee may be aggregated and shown as one item;
- 25           (5)     net wages earned;
- 26           (6)     the inclusive dates of the period for which the employee is paid;

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- 1           (7)     the name of the employee and only the last four digits of his or her social  
2                     security number or an employee identification number other than a social  
3                     security number;  
4           (8)     the name and address of the legal entity that is the employer...; and  
5           (9)     all applicable hourly rates in effect during the pay period and the corresponding  
6                     number of hours worked at each hourly rate by the employee....

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

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

20           84.     The absence of accurate information on their wage statements has delayed timely  
21 challenge to Defendants' unlawful pay practices, requires discovery and mathematical  
22 computations to determine the amount of wages owed, causes difficulty and expense in  
23 attempting to reconstruct time and pay records, and led to submission of inaccurate information  
24 about wages and amounts deducted from wages to state and federal governmental agencies.  
25 Plaintiff would not have had to engage in these efforts and incur these costs had Defendants  
26 provided accurate wage statements. This also delayed Plaintiff's ability to demand and recover  
27 the underpayment of wages from Defendants.

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

4           86.     Plaintiff and Class Members are thus entitled to recover from Defendants the  
5 greater of their actual damages caused by Defendants’ failure to comply with Labor Code section  
6 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000.00) per employee  
7 pursuant to Labor Code section 226(e), and/or any other allowable penalties including those  
8 pursuant to Labor Code section 226.3.

9                                   **SEVENTH CAUSE OF ACTION**

10                           **FAILURE TO PAY ALL WAGES OWED TIMELY**

11                           **AND UPON SEPARATION OF EMPLOYMENT**

12                           **Cal. Labor Code §§ 201, 202, 203, 204, and 210**

13                           **[On Behalf of Plaintiff and the Class against All Defendants]**

14           87.     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           88.     Labor Code sections 201 and 202 provide that if an employer discharges an  
18 employee, the wages earned and unpaid at the time of discharge are due and payable immediately,  
19 and that if an employee voluntarily leaves his employment, his or her wages shall become due  
20 and payable not later than seventy-two (72) hours thereafter, unless the employee has given  
21 seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee  
22 is entitled to his or her wages at the time of quitting.

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

27           90.     As alleged herein and above, Defendants’ failure to pay wages was willful in that  
28 Defendants knew wages (e.g., for off-the-clock work, underpaid overtime, unpaid premiums)

1 were owed to Plaintiff and Class Members, but failed to pay said wages, at the time of  
2 termination, or within 72 hours of resignation, thus entitling Plaintiff and Class Members to  
3 penalties under Labor Code section 203, which provides that an employee's wages shall continue  
4 as a penalty until paid for a period of up to thirty (30) days from the time they were due.

5         91. Labor Code section 204 requires that all wages earned by any person in any  
6 employment between the 1<sup>st</sup> and 15<sup>th</sup> day, inclusive, of any calendar month, other than those  
7 wages due upon termination of an employee, are due and payable between the 16<sup>th</sup> and the 26<sup>th</sup>  
8 day of the month during which the labor was performed, and that all wages earned by any person  
9 in any employment between the 16<sup>th</sup> and the last day, inclusive, of any calendar month, other  
10 than those wages due upon termination of an employee, are due and payable between the 1<sup>st</sup> and  
11 10<sup>th</sup> day of the following month. Section 204 also requires that all wages earned for labor in  
12 excess of the normal work period shall be paid no later than the payday for the next regular  
13 payroll period.

14         92. The requirements of Labor Code section 204 shall be deemed satisfied by the  
15 payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more  
16 than seven calendar days following the close of the payroll period when the wages were earned.

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

21         94. Labor Code section 210 imposes upon Defendants a penalty of \$100.00 for each  
22 violation of failing to pay the wages of each employee. Furthermore, Labor Code section 210  
23 imposes upon Defendants for each subsequent violation, or any willful or intentional violation,  
24 of failure to pay the wages of each employee a penalty of \$200.00, plus 25% of the amount  
25 unlawfully withheld.

26         95. Pursuant to Labor Code sections 218.5 and 218.6, along with California Civil  
27 Code sections 3287(b) and 3289, Plaintiff requests that the Court award reasonable attorneys'  
28 fees and the costs incurred by him in this action, along with pre-judgment interest on all amounts

1 recovered herein, as well as any statutory penalties Defendants may owe under the California  
2 Labor Code and/or any other statute.

3 **EIGHTH CAUSE OF ACTION**

4 **VIOLATION OF LABOR CODE § 1174(d)**

5 **[On Behalf of Plaintiff and the Class against All Defendants]**

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

9 97. Pursuant to Labor Code section 1174(d), an employer shall keep, at a central  
10 location in the state or at the plants or establishments at which employees are employed, payroll  
11 records showing the hours worked daily by and the wages paid to employees employed at the  
12 respective plants or establishments. These records shall be kept in accordance with rules  
13 established for this purpose by the commission, but in any case shall be kept on file for not less  
14 than two years.

15 98. Defendants have intentionally and willfully failed to keep accurate and complete  
16 payroll records showing the hours worked daily and the wages paid, to Plaintiff and Class  
17 Members.

18 99. As a result of Defendants' violation of Labor Code section 1174(d), Plaintiff  
19 and Class Members have suffered injury and damage to their statutorily protected rights.

20 100. More specifically, Plaintiff and Class Members have been injured by Defendants'  
21 intentional and willful violation of Labor Code section 1174(d) because they were denied both  
22 their legal right and protected interest in having available, accurate, and complete payroll records  
23 pursuant to Labor Code section 1174(d).

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1 **NINTH CAUSE OF ACTION**

2 **UNFAIR COMPETITION LAW VIOLATIONS**

3 **Cal. Business & Professions Code §§ 17200, *et seq.***

4 **[On Behalf of Plaintiff and the Class against All Defendants]**

5 101. 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.

8 102. The Unfair Competition Law (“UCL”), California Business & Professions Code  
9 sections 17200, *et seq.*, prohibits any unlawful, unfair, or fraudulent business practices. Business  
10 & Professions Code section 17204 allows “any person who has suffered injury in fact and has  
11 lost money or property” to prosecute a civil action for violation of the UCL. Such a person may  
12 bring such an action on behalf of himself or herself and others similarly situated who are affected  
13 by the unlawful, unfair, or fraudulent business practice.

14 103. The statute of limitations for a claim under the UCL is four years. Accordingly,  
15 the actionable period for this cause of action is four years prior to the filing of this Complaint  
16 through the present, and on-going until the violations are corrected, and/or the Class is certified.

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

22 105. A violation of Business and Professions Code sections 17200, *et seq.* may be  
23 predicated upon the violation of any state or federal law. Defendants’ policies and/or practices  
24 have violated state law in at least the following respects:

25 (a) Requiring Plaintiff and Class Members to work without paying them minimum  
26 wage for all hours worked in violation of Labor Code sections 1194, 1194.2, 1197, and IWC  
27 Wage Order Nos. 1-2001, 4-2001, and 7-2001;

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1 (b) Requiring Plaintiff and Class Members to work overtime without paying them  
2 proper compensation in violation of Labor Code sections 510, 1198, and IWC Wage Order Nos.  
3 1-2001, 4-2001, and 7-2001;

4 (c) Failing to provide Plaintiff and Class Members timely duty-free meal periods and  
5 to authorize and permit duty-free rest breaks for Plaintiff and Class Members in violation of  
6 Labor Code sections 226.7, 512, and IWC Wage Order Nos. 1-2001, 4-2001, and 7-2001;

7 (d) Failing to reimburse Plaintiff and Class Members for necessary business expenses  
8 incurred in performing their job duties, in violation of Labor Code section 2802;

9 (e) Failing to timely pay all wages to Plaintiff and Class Members during their  
10 employment and upon separation of employment, in violation of Labor Code sections 201, 202,  
11 203, 204, and 210; and

12 (f) Failing to maintain and provide Plaintiff and Class Members with accurate  
13 itemized wage statements, in violation of Labor Code section 226.

14 Thus, Defendants engaged in unlawful competition in violation of section 17200, *et seq.*  
15 of the California Business & Professions Code by violating sections 201, 202, 203, 204, 210,  
16 226, 226.7, 510, 512, 1194, 1194.2, 1197 and 2802 of the Labor Code and IWC Wage Order  
17 Nos. 1-2001, 4-2001, and 7-2001.

18 106. As a direct and proximate result of Defendants' unlawful business practices,  
19 Plaintiff and Class Members have suffered economic injuries because Defendants' conduct has  
20 damaged Plaintiff and Class Members by wrongfully denying them all wages, including  
21 minimum and overtime wages, failing to pay all meal and rest breaks premiums owed, and  
22 neglecting to reimburse for necessary business expenses, along with the corresponding interest,  
23 in a timely manner and upon separation, and while supplying them inaccurate and misleading  
24 wage statements. Such conduct is substantially injurious to Plaintiff and Class Members.

25 107. Additionally, Defendants intentionally avoided paying Plaintiff and Class  
26 Members' wages and monies, thereby creating for Defendants an artificially lower cost of doing  
27 business in order to undercut their competitors and establish a greater foothold in the  
28

1 marketplace. Through their actions alleged herein, Defendants have engaged in unfair  
2 competition within the meaning of section 17200 of the California Business & Professions Code.

3 108. Defendants have profited from their unlawful, unfair, and/or fraudulent acts and  
4 practices. Plaintiff and Class Members are entitled to monetary relief pursuant to the California  
5 Business & Professions Code sections 17203 and 17208 from at least four years prior to the filing  
6 of this Complaint through the date of such restitution, at rates specified by law. Defendants  
7 should be required to disgorge all the profits and gains they have reaped and restore such profits  
8 and gains to Plaintiff and Class Members, from whom they were unlawfully taken.

9 109. Defendants' course of conduct, acts, and practices in violation of the California  
10 laws mentioned above constitute independent violations of section 17200, *et seq.* of the  
11 California Business & Professions Code.

12 110. Plaintiff and Class Members are entitled to enforce all applicable penalty  
13 provisions of the Labor Code pursuant to California Business & Professions Code section 17202.

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

20 **TENTH CAUSE OF ACTION**

21 **PENALTIES PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF 2004**

22 **Cal. Labor Code §§ 2698, *et seq.***

23 **[On Behalf of Plaintiff and Aggrieved Employees against All Defendants]**

24 112. Plaintiff, on behalf of himself and Aggrieved Employees, re-alleges and  
25 incorporates by reference all of the allegations contained in the previous paragraphs of this  
26 Complaint as though fully set forth herein.

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1           113. Plaintiff, on behalf of himself and Aggrieved Employees, brings this  
2 representative action against Defendants to recover wages and penalties pursuant to the Private  
3 Attorneys General Act of 2004 (“PAGA”), Labor Code section 2698, *et seq.*

4           114. Based on the above allegations incorporated by reference, Defendants have  
5 violated Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 1174, 1174.5,  
6 1194, 1194.2, 1197, 1197.1, 1198, and 2802, as well as IWC Wage Order Nos. 1-2001, 4-2001,  
7 and 7-2001.

8           115. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code  
9 section 2699 because of Defendants’ violations of Labor Code sections 201, 202, 203, 204, 210,  
10 226, 226.3, 226.7, 510, 512, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, and 2802, as well  
11 as IWC Wage Order Nos. 1-2001, 4-2001, and 7-2001.

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

15                   \$100.00 for the initial violation per employee per pay period; and

16                   \$200.00 for each subsequent violation per employee per pay period.

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

21           117. Defendants failed to provide Plaintiff and Aggrieved Employees with accurate  
22 itemized wage statements in compliance with Labor Code section 226(a). Plaintiff seeks separate  
23 PAGA penalties for Defendants’ violations of Labor Code section 226(a) and (e). *Lopez v. Friant*  
24 *& Assocs., LLC* (2017) 15 Cal. App. 5th 773, 788; *Bell v. Home Depot U.S.A.* (E.D. Cal. Dec.  
25 11, 2017) No. 2:12-cv-02499 JAM-CKD, 2017 U.S. Dist. LEXIS 204493, at \*5 [finding after  
26 *Friant* that “[t]o the extent the Court’s Order [granting summary judgment to *Home Depot*] was  
27 ambiguous, the Court now clarifies that it granted summary judgment on Plaintiffs’ derivative  
28 claim for [PAGA] penalties under section 226(e)...the Court’s Order should not be read to grant

summary judgment on Plaintiffs' claim for PAGA penalties based on violation of section 226(a)."). For violations of Labor Code section 226(a), Plaintiff seeks the default penalty provided by Labor Code section 226.3. Labor Code section 226.3 provides that "[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required records in subdivision (a) of Section 226." Accordingly, through PAGA and to the extent permitted by law Plaintiff and Aggrieved Employees are entitled to recover penalties for violations of Labor Code section 226.3 and seek default PAGA penalties for each of Defendants' numerous violations of Labor Code section 226(a).

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

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

120. Plaintiff has fully and completely exhausted his administrative remedies under PAGA prior to proceeding with the PAGA claim. On or around July 1, 2020, Plaintiff gave written notice to the LWDA and by certified mail to Defendants of the specific code provisions alleged to have been violated and paid the required filing fee. Plaintiff has not received notice from the LWDA of its intent to investigate the alleged violations within sixty-five (65) calendar days of the postmark date of the aforesaid letter.

121. Plaintiff, as a personal representative of the general public, will and does seek to recover any and all penalties for each and every violation shown to exist or to have occurred during the one year period before Plaintiff filed notice with the LWDA of his intent to bring an action, in an amount according to proof, as to those penalties that are otherwise only available to public agency enforcement actions. Funds recovered will be distributed in accordance with the PAGA, with 75% of the penalties recovered being reimbursed to the State of California and the LWDA.

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

### **PRAYER FOR RELIEF**

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

1. For an order certifying this action as a class action;
2. For compensatory damages in the amount of the unpaid minimum wage and overtime compensation for work performed by Plaintiff and Class Members, as may be proven;
3. For liquidated damages in the amount equal to the unpaid minimum wage and interest thereon, as may be proven;
4. For compensatory damages in the amount of the hourly wage made by Plaintiff and Class Members for each noncompliant meal period for which premium pay was not paid, as may be proven;

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1           5.       For compensatory damages in the amount of the hourly wage made by Plaintiff  
2 and Class Members for each day of noncompliant rest breaks for which premium pay was not  
3 paid, as may be proven;

4           6.       For penalties pursuant to Labor Code section 203 for Plaintiff and Class Members  
5 who quit or were fired in an amount equal to their daily wage multiplied by thirty (30) days, as  
6 may be proven;

7           7.       For actual damages and/or penalties pursuant to Labor Code section 226(e) for  
8 Plaintiff and Class Members, as may be proven;

9           8.       For reimbursement of business expenditures, as may be proven;

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

12          10.      For a civil penalty in the amount of \$100.00 for the initial violation and \$200.00  
13 for each subsequent violation as specified in section 2699(f)(2) of the Labor Code in the  
14 representative action brought on behalf of Plaintiff and Aggrieved Employees pursuant to the  
15 Private Attorneys General Act of 2004;

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

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

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

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

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

27          16.      For an award of pre-judgment and post-judgment interest;

28          17.      For an award providing for the payment of the costs of this suit;

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

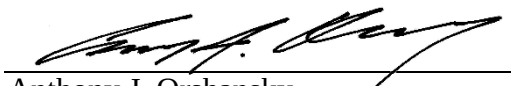
2           19.     For such other and further relief as the Court may deem proper and just.

3                               Respectfully submitted,

4 DATED: November 4, 2020

COUNSELONE, PC

6  
7 By



Anthony J. Orshansky  
Justin Kachadoorian  
Attorneys for Plaintiff, putative Class  
Members, and Aggrieved Employees

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