

ZAKAY LAW GROUP, APLC
Shani O. Zakay (State Bar #277924)
3990 Old Town Avenue, Suite C204
San Diego, CA 92110
Telephone: (619)255-9047
Facsimile: (858) 404-9203

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
12/29/2020 at 11:25:00 AM
Clerk of the Superior Court
By Melinda McClure, Deputy Clerk

JCL LAW FIRM, APC
Jean-Claude Lapuyade (State Bar #248676)
3990 Old Town Avenue, Suite C204
San Diego, CA 92110
Telephone: (619)599-8292
Facsimile: (619) 599-8291

ATTORNEYS FOR PLAINTIFF

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

HECTOR AVITIA, an individual, and on
behalf of himself and on behalf of all persons
similarly situated,

Plaintiff,

v.

LAZ PARKING CALIFORNIA, LLC, a
Connecticut limited liability corporation; and
DOES 1 through 50, Inclusive;

Defendant.

Case No. 37-2020-00030133-CU-OE-CTL

FIRST AMENDED COMPLAINT FOR:

**1. VIOLATIONS OF THE CALIFORNIA
PRIVATE ATTORNEY GENERAL
ACT AT LABOR CODE §§ 2698 ET
SEQ.**

DEMAND FOR JURY TRIAL

1 Plaintiff HECTOR AVITIA (“PLAINTIFF”) in his representative capacity on behalf of the State
2 of California and fellow Aggrieved Employees alleges based on information and belief, except for her
3 own acts and knowledge which are based on personal knowledge, the following:

4 **INTRODUCTION**

5 1. PLAINTIFF brings this representative action pursuant to the Private Attorneys General
6 Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA”) on behalf of other current and former
7 aggrieved employees of DEFENDANTS for engaging in a pattern and practice of wage and hour
8 violations under the California Labor Code.

9 2. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANT decreased
10 their employment-related costs by systematically violating California wage and hour laws.

11 3. DEFENDANT’s systematic pattern of wage and hour and IWC Wage Order violations
12 toward PLAINTIFF and other aggrieved employees in California include, *inter alia*:

- 13 a. Failure to provide compliant meal and rest periods;
14 b. Failure to pay all minimum, regular and overtime wages;
15 c. Failure to maintain true and accurate records;
16 d. Failure to provide accurate itemized wage statements;
17 e. Failure to timely pay wages due during, and upon termination of employment;
18 and

19 4. PLAINTIFF brings this representative action against DEFENDANT on behalf of the State
20 of California and aggrieved employees of DEFENDANTS in California seeking all civil penalties
21 permitted pursuant to California Labor Code § 2699, *et seq.*

22 5. PLAINTIFF reserves the right to name additional representatives throughout the State of
23 California.

24 6. PLAINTIFF does not seek to recover anything other than penalties as permitted by
25 California Labor Code § 2699. To the extent that statutory violations are mentioned for wage violations,
26 PLAINTIFF does not seek underlying general and/or special damages for those violations in this action,
27 but simply the civil penalties permitted by California Labor Code § 2699. Notwithstanding,
28

1 PLAINTIFF is not abandoning his right to pursue their individual claims for, *inter alia*, Defendants'
2 alleged wage violations, and/or general or special damages arising from those violations, and he fully
3 intends to, at a future date, pursue claims for those individual claims and damages.

4 **THE PARTIES**

5 7. Defendant LAZ PARKING CALIFORNIA, LLC ("DEFENDANT") is a Connecticut
6 corporation that at all relevant times mentioned herein conducted and continues to conduct substantial
7 business in the state of California, county of San Diego, City of San Diego operates and/or manages
8 parking lots and parking structures throughout California.

9 8. PLAINTIFF has been employed by DEFENDANT at as a non-exempt employee, paid on
10 an hourly basis, entitled to overtime pay and legally compliant meal and rest periods from
11 approximately July 2017 to the present.

12 9. PLAINTIFF brings this action in his representative capacity on behalf of the State of
13 California and on behalf of all of DEFENDANT'S current and former non-exempt employees employed
14 in California who suffered one or more Labor Code violations enumerated in Labor Code §§ 2698 *et*
15 *seq.* (hereinafter "AGGRIEVED EMPLOYEES") and who worked for DEFENDANT between April 6,
16 2019 and the present ("PAGA PERIOD").

17 10. PLAINTIFF is an "AGGRIEVED EMPLOYEE" within the meaning of Labor Code §
18 2699(c) because he was employed by DEFENDANT and suffered one or more of the alleged Labor Code
19 violations committed by DEFENDANT.

20 11. PLAINTIFF and all other AGRIEVED EMPLOYEES are, and at all relevant times were,
21 employees of DEFENDANT, within the meanings set forth in the California Labor Code and the
22 applicable Industrial Welfare Commission Wage Order.

23 12. Each of the fictitiously named defendants participated in the acts alleged in this
24 Complaint. The true names and capacities of the defendants named as DOES 1 THROUGH 50,
25 inclusive, are presently unknown to PLAINTIFF. PLAINTIFF will amend this Complaint, setting forth
26 the true names and capacities of these fictitiously named defendants when their true names are
27 ascertained. PLAINTIFF is informed and believes, and on that basis alleges, that each of the fictitious
28 defendants have participated in the acts alleged in this Complaint.

13. DEFENDANT, including DOES 1 THROUGH 50 (hereinafter collectively “DEFENDANTS”), were PLAINTIFF’s employers or persons acting on behalf of PLAINTIFF’s employer, within the meaning of California Labor Code § 558, who violated or caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating hours and days of work in any order of the Industrial Welfare Commission and, as such, are subject to civil penalties for each underpaid employee, as set forth in Labor Code § 558, at all relevant times.

14. DEFENDANTS were PLAINTIFF's employers or persons acting on behalf of PLAINTIFF's employer either individually or as an officer, agent, or employee of another person, within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any employee a wage less than the minimum fixed by California state law, and as such, are subject to civil penalties for each underpaid employee.

JOINT EMPLOYER

15. The Private Attorney General Act (“PAGA”), permits an aggrieved employee to enforce any provision of the California Labor Code that provides for a civil penalty. (*Lab. Code* § 2699(a).)

16. Section 558 of the California Labor Code provides that “any employer *or other person* acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commissions shall be subject to a civil penalty...” (*Lab. Code* § 558(a).);

17. Section 1197.1 of the Labor Code provides that “[a]ny employer or *other person* acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission shall be subject to a civil penalty...” (*Lab. Code* § 1197.1(a).)

18. Interpreting Sections 558 and 1197.1 of the Labor Code, California courts have held that a corporate employer's owners, officers and directors, are subject to civil penalties for the employer's failure to pay appropriate wages to its employees, and, since liability under either 558 or 1197.1 does not depend on a finding of an alter ego, no alter ego allegations or findings are necessary. *Atempa v. Pedrazzani*, (2018) 27 Cal.App.5th 809; see generally *Ochoa-Hernandez v. Cjaders Food, Inc.* (2009 WL 1404694); *Thurman v. Bayshore Management, Inc.* (2017) 203 Cal.App.4th 1112, 1145-1146.

20. At all relevant times, each Defendant, whether named or fictitious, was the agent, employee or other person acting on behalf of each other Defendant, and, in participating in the acts alleged in this Complaint, acted within the scope of such agency or employment and ratified the acts of the other.

21. Each Defendant, whether named or fictitious, exercised control over PLAINTIFF's wages, working hours, and/or working conditions.

22. Each Defendant, whether named or fictitious, acted in all respects pertinent to this action as the agent of the other DEFENDANTS, carried out a joint scheme, business plan or policy, and the acts of each Defendant are legally attributable to the other DEFENDANTS.

JURISDICTION AND VENUE

23. This Court has jurisdiction over this Action pursuant to California Code of Civil Procedure, Section 410.10. This Court has jurisdiction over PLAINTIFF's claims for civil penalties under the Private Attorney General Act of 2004, California Labor Code §2698 *et seq.*

24. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANTS, resides in this County, and DEFENDANTS (i) currently maintains and at all relevant times maintained offices and facilities in this County and/or conducts substantial business in this County, and (ii) committed the wrongful conduct herein alleged in this County against members of the AGGRIEVED EMPLOYEES.

THE CONDUCT

25. In violation of the applicable sections of the California Labor Code and the requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company policy, practice and procedure, intentionally, knowingly and systematically failed to provide legally complaint meal and rest period, failed to accurately compensate PLAINTIFF and the other members of the AGGRIEVED EMPLOYEES for missed meal and rest periods, failed to pay PLAINTIFF and the

1 other members of the AGGRIEVED EMPLOYEES for all time worked, and failed to issue to
2 PLAINTIFF and the members of the AGGRIEVED EMPLOYEES with accurate itemized wage
3 statements showing, among other things, all applicable hourly rates in effect during the pay periods and
4 the corresponding amount of time worked at each hourly rate. DEFENDANTS' uniform policies and
5 practices are intended to purposefully avoid the accurate and full payment for all time worked as required
6 by California law which allows DEFENDANTS to illegally profit and gain an unfair advantage over
7 competitors who comply with the law. To the extent equitable tolling operates to toll claims by the
8 AGGRIEVED EMPLOYEES against DEFENDANTS, the PAGA PERIOD should be adjusted
9 accordingly.

10 **A. Meal Period Violations**

11 26. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were
12 required to pay PLAINTIFF and AGGRIEVED EMPLOYEES for all their time worked, meaning the
13 time during which an employee is subject to the control of an employer, including all the time the
14 employee is suffered or permitted to work. From time-to-time during the PAGA PERIOD,
15 DEFENDANTS required PLAINTIFF and AGGRIEVED EMPLOYEES to work without paying them
16 for all the time they were under DEFENDANTS' control. Specifically, as a result of PLAINTIFF's
17 demanding work requirements, not being relieved of cordless communication devices and
18 DEFENDANTS' under staffing, DEFENDANTS required PLAINTIFF to work while clocked out
19 during what was supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF was from time to
20 time interrupted by work assignments while clocked out for what should have been PLAINTIFF's off-
21 duty meal break. Indeed, there were many days where PLAINTIFF did not even receive a partial lunch.
22 As a result, the PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited minimum wage and
23 overtime wages by regularly working without their time being accurately recorded and without
24 compensation at the applicable minimum wage and overtime rates. DEFENDANTS' uniform policy
25 and practice not to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all time worked is
26 evidenced by DEFENDANTS' business records.

27 27. From time-to-time during the PAGA PERIOD, as a result of their rigorous work
28 schedules, not being relieved of cordless communication devices and DEFENDANTS' inadequate

1 staffing practices, PLAINTIFF and other CALIFORNIA CLASS members were from time to time
2 unable to take thirty (30) minute off duty meal breaks and were not fully relieved of duty for their meal
3 periods. PLAINTIFF and other AGGRIEVED EMPLOYEES were required from time to time to
4 perform work as ordered by DEFENDANTS for more than five (5) hours during some shifts without
5 receiving a meal break. Further, DEFENDANTS from time to time failed to provide PLAINTIFF and
6 AGGRIEVED EMPLOYEES with a second off-duty meal period for some workdays in which these
7 employees were required by DEFENDANTS to work ten (10) hours of work from time to time. The
8 nature of the work performed by the PLAINTIFF and the AGGRIEVED EMPLOYEES does not
9 qualify for limited and narrowly construed “on-duty” meal period exception. PLAINTIFF and other
10 AGGRIEVED EMPLOYEES therefore forfeited meal breaks without additional compensation and in
11 accordance with DEFENDANTS’ strict corporate policy and practice. DEFENDANTS failed to
12 maintain adequate staffing levels while increasing the production levels for each employee at the busy
13 airports they provided services for.

14 **B. Rest Period Violations**

15 28. From time-to-time during the CLASS PERIOD, PLAINTIFF and other CALIFORNIA
16 CLASS members were also required from time to time to work in excess of four (4) hours without
17 being provided ten (10) minute rest periods as a result of their rigorous work schedule, not being
18 relieved of their cordless communication devices and DEFENDANTS’ inadequate staffing . Further,
19 for the same reasons these employees were denied their first rest periods of at least ten (10) minutes for
20 some shifts worked of at least two (2) to four (4) hours from time to time, a first and second rest period
21 of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours from time to
22 time, and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten
23 (10) hours or more from time to time. PLAINTIFF and other CALIFORNIA CLASS members were
24 also not provided with one-hour wages in lieu thereof. As a result of their rigorous work schedules and
25 DEFENDANTS’ inadequate staffing, PLAINTIFF and other AGGRIEVED EMPLOYEES were from
26 time to time denied their proper rest periods by DEFENDANTS and DEFENDANTS’ managers. Even
27 when provided their rest breaks, PLAINTIFF and other AGGRIEVED EMPLOYEES were required
28

1 by DEFENDANTS to remain on the premises and remain on-duty and/or on-call and under
2 DEFENDANTS' control.

3
4 **C. Overtime Regular Rate Violation**

5 29. From time-to-time during the PAGA PERIOD, DEFENDANTS failed and continue to fail
6 to accurately calculate and pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for their
7 overtime hours worked. As a result, PLAINTIFF and the other AGGRIEVED EMPLOYEES forfeited
8 wages due them for working overtime without compensation at the correct overtime rates.
9 DEFENDANTS' uniform policy and practice to not pay the AGGRIEVED EMPLOYEES the correct
10 overtime rate for all overtime worked in accordance with applicable law is evidenced by
11 DEFENDANTS' business records.

12 30. State law provides that employees must be paid overtime at one-and-one-half times their
13 "regular rate of pay." PLAINTIFF and other AGGRIEVED EMPLOYEES were compensated at an
14 hourly rate plus flat-sum incentive pay that was tied to specific elements of an employee's performance.

15 31. The second component of PLAINTIFF'S and other AGGRIEVED EMPLOYEES'
16 compensation was DEFENDANTS' flat-sum non-discretionary incentive program that paid
17 PLAINTIFF and other AGGRIEVED EMPLOYEES flat-sum incentive wages based on their
18 performance for DEFENDANTS. The flat-sum non-discretionary bonus program provided all
19 employees paid on an hourly basis with flat-sum bonus compensation when the employees met the
20 various performance goals set by DEFENDANTS. These flat-sum incentive payments are identified
21 as "BONUS" in the wage statements issued by DEFENDANTS to PLAINTIFF and the other
22 AGGRIEVED EMPLOYEES.

23 32. However, from-time-to-time during the PAGA PERIOD, when calculating the regular rate
24 of pay, in those pay periods where PLAINTIFF and other CALIFORNIA CLASS members worked
25 overtime and earned this flat-sum non-discretionary bonus, DEFENDANTS failed to accurately include
26 the flat-sum non-discretionary bonus compensation as part of the employees' "regular rate of pay"
27 and/or calculated all hours worked rather than just all non-overtime hours worked. Management and
28 supervisors described the incentive/bonus program to potential and new employees as part of the

1 compensation package. As a matter of law, the incentive compensation received by PLAINTIFF and
2 other CALIFORNIA CLASS members must be included in the “regular rate of pay.” The failure to do
3 so has resulted in a systematic underpayment of overtime compensation to PLAINTIFF and other
4 AGGRIEVED EMPLOYEES by DEFENDANTS.

5 33. In violation of the applicable sections of the California Labor Code and the requirements
6 of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company
7 policy, practice and procedure, intentionally and knowingly failed to compensate PLAINTIFF and the
8 other AGGRIEVED EMPLOYEES at the correct rate of pay for all overtime worked. This uniform
9 policy and practice of DEFENDANTS is intended to purposefully avoid the payment of the correct
10 overtime compensation as required by California law which allowed DEFENDANTS to illegally profit
11 and gain an unfair advantage over competitors who complied with the law. To the extent equitable
12 tolling operates to toll claims by the AGGRIEVED EMPLOYEES against DEFENDANTS, the PAGA
13 PERIOD should be adjusted accordingly.

14 **D. Wage Statement Violations**

15 34. California Labor Code Section 226 requires an employer to furnish its employees an
16 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked, (3) the
17 number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net wages
18 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the
19 employee and only the last four digits of the employee’s social security number or an employee
20 identification number other than a social security number, (8) the name and address of the legal entity
21 that is the employer and, (9) all applicable hourly rates in effect during the pay period and the
22 corresponding number of hours worked at each hourly rate by the employee.

23 35. From time to time during the PAGA PERIOD, when PLAINTIFF and other
24 AGGRIEVED EMPLOYEES missed meal and rest breaks, were paid inaccurate missed meal and rest
25 period premiums, were paid overtime in the same pay period where they earned a non-discretionary
26 incentive award, or were paid an adjustment to overtime, DEFENDANTS also failed to provide
27 PLAINTIFF and the other AGGRIEVED EMPLOYEES with complete and accurate wage statements
28 which failed to accurately show, among other things, (1) gross wages earned, (2) total hours worked,

(3) all deductions, (4) net wages earned, and, (5) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate, correct rates of pay for penalty payments or missed meal and rest periods.

36. As a result, DEFENDANTS issued PLAINTIFF and the other AGGRIEVED EMPLOYEES with wage statements that violate Cal. Lab. Code § 226. Further, DEFENDANTS' violations are knowing and intentional, were not isolated or due to an unintentional payroll error due to clerical or inadvertent mistake.

E. Suitable Seating Violations

37. PLAINTIFF further alleges that the kiosks and booths located at DEFENDANT's operated and/or managed parking lots and structures provide ample space to allow for the presence and use of a stool or seat by DEFENDANT's employees' during the performance of their work duties. DEFENDANT's employees' working at DEFENDANT's operated and/or managed parking lots and structures, spend a very substantial portion, and, in many workdays, the vast majority of their working time within these kiosks or booths. The nature of the position can reasonably be accomplished while using a seat/stool.

38. In violation of the applicable sections of the California Labor Code and the requirements of the applicable Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a matter of company policy, practice and procedure, intentionally, knowingly and systematically failed to provide PLAINTIFF and the other Aggrieved Employees suitable seating when the nature of these employees' work reasonably permitted sitting.

39. DEFENDANT knew or should have known that PLAINTIFF and other Aggrieved Employees were entitled to suitable seating and/or were entitled to sit when it did not interfere with the performance of their duties, and that DEFENDANT did not provide suitable seating and/or did not allow them to sit when it did not interfere with the performance of their duties. By reason of this conduct applicable to PLAINTIFF and all Aggrieved Employees, DEFENDANT violated California Labor Code Section 1198 and Wage Order 4-2001, Section 14 by failing to provide suitable seats.

1 **FIRST CAUSE OF ACTION**

2 **For Civil Penalties Pursuant to Private Attorneys General Act ("PAGA")**

3 **[Cal. Lab. Code §§ 2698, et seq.]**

4 **(By PLAINTIFF and AGGRIEVED EMPLOYEES and Against All DEFENDANTS)**

5 40. PLAINTIFF and the AGGRIEVED EMPLOYEES reallege and incorporate by this
6 reference, as though fully set forth herein, the prior paragraphs of this Complaint.

7 41. PAGA is a mechanism by which the State of California itself can enforce state labor laws
8 through the employee suing under the PAGA who do so as the proxy or agent of the state's labor law
9 enforcement agencies. An action to recover civil penalties under PAGA is fundamentally a law
10 enforcement action designed to protect the public and not to benefit private parties. The purpose of the
11 PAGA is not to recover damages or restitution, but to create a means of "deputizing" citizens as private
12 attorneys general to enforce the Labor Code. In enacting PAGA, the California Legislature specified
13 that "it was ... in the public interest to allow aggrieved employees, acting as private attorneys general to
14 recover civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA
15 claims cannot be subject to arbitration.

16 42. PLAINTIFF brings this Representative Action on behalf of the State of California with
17 respect to himself and all other current and former AGGRIEVED EMPLOYEES employed by
18 DEFENDANTS during the PAGA PERIOD.

19 43. At all relevant times, for the reasons described herein, and others, PLAINTIFF and
20 similarly situated employees were aggrieved employees of DEFENDANTS within the meaning of Labor
21 Code Section 2699(c).

22 44. Labor Code Sections 2699(a) and (g) authorize an AGGRIEVED EMPLOYEE, like
23 PLAINTIFF, on behalf of himself and other current or former employees, to bring a civil action to
24 recover civil penalties pursuant to the procedures specified in Labor Code Section 2699.3

25 45. PLAINTIFF complied with the procedures for bringing suit specified in Labor Code
26 Section 2699.3. By certified letter, return receipt requested, dated August 26, 2020, PLAINTIFF gave
27 written notice to the Labor and Workforce Development Agency ("LWDA") and to DEENDANTS of
28 the specific provisions of the Labor Code alleged to have been violated, including the facts and theories

to support the alleged violations. See Exhibit #1, attached hereto and incorporated by this reference herein.

46. More than sixty-five (65) days have passed since serving the LWDA with notice of DEFENDANTS' violations, the LWDA has not provided any notice by certified mail of its intent to investigate the DEFENDANTS' alleged violations as mandated by Labor Code Section 2699.3(a)(2)(A). Accordingly, pursuant to Labor Code Section 2699.3(a)(2)A, PLAINTIFF may commence and is authorized to pursue this cause of action.

47. Pursuant to Labor Code Sections 2699(a) and (f), PLAINTIFF and similarly AGGRIEVED EMPLOYEES are entitled to civil penalties for DEFENDANTS' violations of Labor Code Section 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.14, 1198, 1199, 2802, 2804, and applicable wage orders, California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating) in the following amounts:

a. For violation of Labor Code Sections 201, 202, 203, and 204, one hundred dollars (\$100) for each AGGRIEVED EMPLOYEE per pay period for the initial violation and two hundred dollars (\$200) for AGGRIEVED EMPLOYEE per pay period for each subsequent violation [penalty per Labor Code Section 2699(f)(2)];

b. For violations of Labor Code Section 226(a), a civil penalty in the amount of two hundred fifty dollars (\$250) for each AGGRIEVED EMPLOYEE for any initial violation and one thousand dollars for each subsequent violation [penalty per Labor Code Section 226.3];

c. For violations of Labor Code Sections 204, a civil penalty in the amount of one hundred dollars (\$100) for each AGGRIEVED EMPLOYEE for any initial violation and two hundred dollars (\$200) for AGGRIEVED EMPLOYEE for each subsequent violation [penalty per Labor Code Section 210];

d. For violations of Labor Code Sections 226.7, 510 and 512, a civil penalty in the amount of fifty dollars (\$50) for each underpaid

1 AGGRIEVED EMPLOYEE for the initial violation and hundred dollars
2 (\$100) for each underpaid AGGRIEVED EMPLOYEE for each subsequent
3 violation [penalty per Labor Code Section 558];

4 e. For violations of Labor Code Section 2269(a), a civil penalty in the
5 amount of two hundred fifty dollars (\$250) per AGGRIEVED EMPLOYEE
6 per violation in an initial citation and one thousand dollars (\$1,000) per
7 AGGRIEVED EMPLOYEE for each subsequent violation [penalty per
8 Labor Code Section 226.3];

9 f. For violations of Labor Code Section 1174(d), a civil penalty in the
10 amount of five hundred (\$500) dollars for per AGGRIEVED EMPLOYEE
11 [penalty per Labor Code Section 1174.5].

12 g. For violations of Labor Code Sections 1194, 1194.2, 1197, 1198 and
13 1199, a civil penalty in the amount of one hundred dollars (\$100) per
14 AGGRIEVED EMPLOYEE per pay period for the initial violation and two
15 hundred dollars fifty (\$250) per AGGRIEVED EMPLOYEE per pay period
16 for each subsequent violation [penalty per Labor Code Section].

17 h. For violations of Labor Code Section 2802 a civil penalty in the
18 amount of one hundred dollars (\$100) per AGGRIEVED EMPLOYEE per
19 pay period for the initial violation and two hundred dollars fifty (\$250) per
20 AGGRIEVED EMPLOYEE per pay period for each subsequent violation
21 [penalty per Labor Code Section].

22 48. For all provisions of the Labor Code for which civil penalty is not specifically provided,
23 Labor Code § 2699(f) imposes upon Defendant a penalty of one hundred dollars (\$100) for each
24 AGGRIEVED EMPLOYEE per pay period for the initial violation and two hundred dollars (\$200) for
25 each AGGRIEVED EMPLOYEE per pay period for each subsequent violation. PLAINTIFF and the
26 AGGRIEVED EMPLOYEES are entitled to an award of reasonable attorney's fees and costs in
27 connection with their claims for civil penalties pursuant to Labor Code Section 2699(g)(1).
28

49. Some or all of the conduct and violations alleged herein occurred during the PAGA PERIOD. To the extent that any of the conduct and violations alleged herein did not affect PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that affected other AGGRIEVED EMPLOYEES. (Carrington v. Starbucks Corp. (2018) 30 Cal.App.5th 504, 519; See also Huff v. Securitas Security Services USA, Inc. (2018) 23 Cal. App. 5th 745, 751 [“PAGA allows an “aggrieved employee”—a person affected by at least one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that employer.”], Emphasis added, reh'g denied (June 13, 2018).)

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for judgment against DEFENDANTS as follows:

- (a) For reasonable attorney’s fees and costs of suit to the extent permitted by law, including pursuant to Labor Code § 2699, *et seq.*;
- (b) For civil penalties to the extent permitted by law pursuant to the Labor Code under the Private Attorneys General Act; and
- (c) For such other relief as the Court deems just and proper.

Dated: December 23, 2020

Respectfully Submitted,
JCL LAW FIRM, APC

By: 
Jean-Claude Lapuyade, Esq.
Attorney for Plaintiff

1 **DEMAND FOR JURY TRIAL**

2 PLAINTIFF demands a jury trial on all issues triable to a jury.

3
4 Dated: December 23, 2020

Respectfully Submitted,
JCL LAW FIRM, APC

5
6 By: 
7 Jean-Claude Lapuyade, Esq.
8 Attorney for Plaintiff
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 1



3990 Old Town Avenue, Suite C204
San Diego, CA 92110
Tel: 619-599-8292
Fax: 619-599-8291
Toll Free: 1-888-498-6999
www.jcl-lawfirm.com
Jean-Claude Lapuyade, Esq.
jlapuyade@jcl-lawfirm.com

August 26, 2020

Labor & Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
PAGA@dir.ca.gov
Via Online Submission

LAZ PARKING CALIFORNIA, LLC
c/o CSC – Lawyers Incorporating Service
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833
Certified U.S. Mail with Return Receipt

Re: Notice of Violations of California Labor Code Sections §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.14, 1198, 1199, 2802, and 2804 Applicable Industrial Welfare Commission Wage Orders, and Pursuant to California Labor Code Section 2699.3.

Dear Sir/ Madam:

This office represents HECTOR AVITIA (“Client”) and other aggrieved employees in a class action against LAZ PARKING CALIFORNIA, LLC (“Defendant”). This office intends to file the enclosed Class Action Complaint on behalf of Client and other similarly situated employees. The purpose of this correspondence is to provide the Labor and Workforce Development Agency with notice of alleged violations of the California Labor Code and certain facts and theories in support of the alleged violations in accordance with Labor Code section 2699.3.

Client was employed by Defendant in California. Client was paid on an hourly basis and entitled to legally required meal and rest periods. At all times during his employment, Defendant failed to, among other things, provide Client, and all those similarly situated, with all legally mandated off-duty meal and rest periods and overtime compensation at one-and-one-half times the regular rate of pay.

As a consequence, Client contends that Defendant failed to fully compensate them, and other similarly situated and aggrieved employees, for all earned wages and failed to provide accurate wage statements. Accordingly, Client contend that Defendant’ conduct violated Labor Code sections §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.14, 1198, 1199, 2802, and 2804 and applicable wage orders, and is therefore actionable pursuant to section 2698 *et seq.*

A true and correct copy of the proposed Complaint for the class action is attached hereto. The Complaint (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Client, (iv) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to the Clients, and (v) sets forth the illegal practices used by Defendant. Client therefore incorporate the allegations of the attached Complaint into this letter as if fully set forth herein.

If the agency needs any further information, please do not hesitate to ask. The class action lawsuit consists of a class of other aggrieved employees. As class counsel, our intention is to vigorously prosecute the class wide claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Act of 2004 on behalf of Clients and all aggrieved California employees and Class Members

Your earliest response to this notice is appreciated. If you have any questions or concerns, please do not hesitate to contact me at the above number and address.

Sincerely,
JCL LAW FIRM, APC

A handwritten signature in dark ink, appearing to read 'JC Lapuyade', with a stylized flourish at the end.

Jean-Claude Lapuyade, Esq.

Enclosure (1)

JEAN-CLAUDE LAPUYADE (SBN 248676)

JLAPUYADE@JCL-LAWFIRM.COM

JCL LAW FIRM, APC

3990 OLD TOWN AVENUE, SUITE C204

SAN DIEGO, CA 92110

TEL: (619) 599-8292

FAX: (619) 599-8291

SHANI O. ZAKAY (SBN 277924)

ZAKAY LAW GROUP, APLC

5850 OBERLIN DRIVE, SUITE 230A

SAN DIEGO, CA 92121

TEL: (619) 255-9047

FAX: (619) 404-9203

ATTORNEYS FOR PLAINTIFF

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

HECTOR AVITIA, an individual, on behalf of
himself, and on behalf of all persons similarly
situated,

Plaintiffs,

vs.

LAZ PARKING CALIFORNIA, LLC, a
Connecticut limited liability corporation; and
DOES 1 through 50, Inclusive;

DEFENDANTS.

Case No. _____

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq.*
3. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;

DEMAND FOR JURY TRIAL

1 Plaintiff HECTOR AVITIA (“PLAINTIFF”) an individual, on behalf of himself and all other
2 similarly situated current and former employees alleges on information and belief, except for his own
3 acts and knowledge which are based on personal knowledge, the following:

4 **THE PARTIES**

5 1. Defendant LAZ PARKING CALIFORNIA, LLC (“DEFENDANT”) is a Connecticut
6 corporation that at all relevant times mentioned herein conducted and continues to conduct substantial
7 business in the state of California, county of Los Angeles, City of Los Angeles operates and/or manages
8 parking lots and parking structures throughout California.

9 2. The true names and capacities, whether individual, corporate, subsidiary, partnership,
10 associate or otherwise of defendants DOES 1 through 50, inclusive, are presently unknown to
11 PLAINTIFF who therefore sues these defendants by such fictitious names pursuant to Cal. Civ. Proc.
12 Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege the true names and
13 capacities of Does 1 through 50, inclusive, when they are ascertained. PLAINTIFF is informed and
14 believes, and based upon that information and belief allege, that the Defendants named in this
15 Complaint, including DOES 1 through 50, inclusive (hereinafter collectively “DEFENDANTS”), are
16 responsible in some manner for one or more of the events and happenings that proximately caused the
17 injuries and damages hereinafter alleged.

18 3. The agents, servants and/or employees of the DEFENDANTS and each of them acting on
19 behalf of the DEFENDANT acted within the course and scope of his, her or its authority as the agent,
20 servant and/or employee of the DEFENDANT, and personally participated in the conduct alleged
21 herein on behalf of the DEFENDANT with respect to the conduct alleged herein. Consequently, the
22 acts of each of the DEFENDANTS are legally attributable to the other and all DEFENDANTS are
23 jointly and severally liable to PLAINTIFF and those similarly situated, for the loss sustained as a
24 proximate result of the conduct of the DEFENDANTS’ agents, servants and/or employees.

25 4. DEFENDANTS were PLAINTIFF’s employers or persons acting on behalf of
26 PLAINTIFF’s employer, within the meaning of California Labor Code § 558, who violated or caused
27 to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating
28

hours and days of work in any order of the Industrial Welfare Commission and, as such, are subject to civil penalties for each underpaid employee, as set forth in Labor Code § 558, at all relevant times.

5. DEFENDANTS were PLAINTIFF's employers or persons acting on behalf of PLAINTIFF's employer either individually or as an officer, agent, or employee of another person, within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any employee a wage less than the minimum fixed by California state law, and as such, are subject to civil penalties for each underpaid employee.

6. PLAINTIFF has been employed by DEFENDANTS as a non-exempt employee, paid on an hourly basis, entitled to certain non-discretionary flat-sum incentive awards, bonuses, overtime pay and legally compliant meal and rest periods from approximately March 2017 to the present.

7. PLAINTIFF brings this Class Action on behalf of himself and on behalf of all of DEFENDANTS current and former non-exempt California employees (the "CALIFORNIA CLASS") at any time between a date beginning four (4) years prior to the filing of this complaint and ending on a date determined by the Court (the "CLASS PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA CLASS members is under five million dollars (\$5,000,000.00).

8. PLAINTIFF brings this Class Action on behalf of himself and on behalf of the CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during the CLASS PERIOD caused by DEFENDANTS' uniform policy and practice which (1) failed to provide PLAINTIFF and the CALIFORNIA CLASS with legally compliant meal and rest periods or an additional hour of pay at the regular rate of compensation in lieu thereof in violation of California Labor Code Sections 226.7(c), 512(a) and the applicable Industrial Welfare Commission Wage Order, (2) failed to pay PLAINTIFF and the CALIFORNIA CLASS for all hours worked in violation of, *inter alia*, California Labor Code Sections 510, 1194, 1197, and 1197.1, and (3) failed to provide accurate itemized wage statements in violation of California Labor Code Sections 226 and 226.3.

9. DEFENDANTS' uniform policies and practices alleged herein were unlawful, unfair and deceptive business practices whereby DEFENDANTS retained and continues to retain wages due PLAINTIFF and the other members of the CALIFORNIA CLASS.

10. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction enjoining such conduct by DEFENDANTS in the future, relief for the named PLAINTIFF and the other members of the CALIFORNIA CLASS who have been economically injured by DEFENDANTS's past and current unlawful conduct, and all other appropriate legal and equitable relief.

JURISDICTION AND VENUE

11. This Court has jurisdiction over this Action pursuant to California Code of Civil Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This action is brought as a Class Action on behalf of PLAINTIFF and similarly situated employees of DEFENDANTS pursuant to Cal. Code of Civ. Proc. § 382.

12. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANTS, resides in this County, and DEFENDANTS (i) currently maintains and at all relevant times maintained offices and facilities in this County and/or conducts substantial business in this County, and (ii) committed the wrongful conduct herein alleged in this County against members of the CALIFORNIA CLASS.

THE CONDUCT

13. In violation of the applicable sections of the California Labor Code and the requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company policy, practice and procedure, intentionally, knowingly and systematically failed to provide legally complaint meal and rest period, failed to accurately compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest periods, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all time worked, and failed to issue to PLAINTIFF and the members of the CALIFORNIA CLASS with accurate itemized wage statements showing, among other things, all applicable hourly rates in effect during the pay periods and the corresponding amount of time worked at each hourly rate. DEFENDANTS' uniform policies and practices are intended to purposefully avoid the accurate and full payment for all time worked as required by California law which allows DEFENDANTS to illegally profit and gain an unfair advantage over competitors who comply with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS against DEFENDANTS, the CLASS PERIOD should be adjusted accordingly.

1 **A. Meal Period Violations**

2 14. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were
3 required to pay PLAINTIFF and CALIFORNIA CLASS members for all their time worked, meaning
4 the time during which an employee is subject to the control of an employer, including all the time the
5 employee is suffered or permitted to work. From time-to-time during the CLASS PERIOD,
6 DEFENDANTS required PLAINTIFF and CALIFORNIA CLASS members to work without paying
7 them for all the time they were under DEFENDANTS' control. Specifically, as a result of
8 PLAINTIFF's demanding work requirements and DEFENDANTS' under staffing, DEFENDANTS
9 required PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF's off-
10 duty meal break. PLAINTIFF was from time to time interrupted by work assignments while clocked
11 out for what should have been PLAINTIFF's off-duty meal break. Indeed, there were many days where
12 PLAINTIFF did not even receive a partial lunch. As a result, the PLAINTIFF and other CALIFORNIA
13 CLASS members forfeited minimum wage and overtime wages by regularly working without their time
14 being accurately recorded and without compensation at the applicable minimum wage and overtime
15 rates. DEFENDANTS' uniform policy and practice not to pay PLAINTIFF and other CALIFORNIA
16 CLASS members for all time worked is evidenced by DEFENDANTS' business records.

17 15. From time-to-time during the CLASS PERIOD, as a result of their rigorous work
18 schedules and DEFENDANTS' inadequate staffing practices, PLAINTIFF and other CALIFORNIA
19 CLASS members were from time to time unable to take thirty (30) minute off duty meal breaks and
20 were not fully relieved of duty for their meal periods. PLAINTIFF and other CALIFORNIA CLASS
21 members were required from time to time to perform work as ordered by DEFENDANTS for more
22 than five (5) hours during some shifts without receiving a meal break. Further, DEFENDANTS from
23 time to time failed to provide PLAINTIFF and CALIFORNIA CLASS members with a second off-
24 duty meal period for some workdays in which these employees were required by DEFENDANTS to
25 work ten (10) hours of work from time to time. The nature of the work performed by the PLAINTIFF
26 and the members of the CALIFORNIA CLASS does not qualify for limited and narrowly construed
27 "on-duty" meal period exception. PLAINTIFF and other members of the CALIFORNIA CLASS
28 therefore forfeited meal breaks without additional compensation and in accordance with

DEFENDANTS' strict corporate policy and practice. DEFENDANTS failed to maintain adequate staffing levels while increasing the production levels for each employee at the busy airports they provided services for.

B. Rest Period Violations

16. From time-to-time during the CLASS PERIOD, PLAINTIFF and other CALIFORNIA CLASS members were also required from time to time to work in excess of four (4) hours without being provided ten (10) minute rest periods as a result of their rigorous work schedule and DEFENDANTS' inadequate staffing . Further, for the same reasons these employees were denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to time, a first and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours from time to time, and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time. PLAINTIFF and other CALIFORNIA CLASS members were also not provided with one-hour wages in lieu thereof. As a result of their rigorous work schedules and DEFENDANTS' inadequate staffing, PLAINTIFF and other CALIFORNIA CLASS members were from time to time denied their proper rest periods by DEFENDANTS and DEFENDANTS' managers.

C. Overtime Regular Rate Violation

17. From time-to-time during the CLASS PERIOD, DEFENDANTS failed and continue to fail to accurately calculate and pay PLAINTIFF and the other CALIFORNIA CLASS members for their overtime hours worked. As a result, PLAINTIFF and the other CALIFORNIA CLASS members forfeited wages due them for working overtime without compensation at the correct overtime rates. DEFENDANTS' uniform policy and practice to not pay the CALIFORNIA CLASS members the correct overtime rate for all overtime worked in accordance with applicable law is evidenced by DEFENDANTS' business records.

18. State law provides that employees must be paid overtime at one-and-one-half times their "regular rate of pay." PLAINTIFF and other CALIFORNIA CLASS members were compensated at an hourly rate plus flat-sum incentive pay that was tied to specific elements of an employee's performance.

1 19. The second component of PLAINTIFF'S and other CALIFORNIA CLASS members'
2 compensation was DEFENDANTS' flat-sum non-discretionary incentive program that paid
3 PLAINTIFF and other CLASS MEMBERS flat-sum incentive wages based on their performance for
4 DEFENDANTS. The flat-sum non-discretionary bonus program provided all employees paid on an
5 hourly basis with flat-sum bonus compensation when the employees met the various performance goals
6 set by DEFENDANTS. These flat-sum incentive payments are identified as "BONUS" in the wage
7 statements issued by DEFENDANTS to PLAINTIFF and the other CALIFORNIA CLASS members.

8 20. However, from-time-to-time during the CLASS PERIOD, when calculating the regular
9 rate of pay, in those pay periods where PLAINTIFF and other CALIFORNIA CLASS members worked
10 overtime and earned this flat-sum non-discretionary bonus, DEFENDANTS failed to accurately include
11 the flat-sum non-discretionary bonus compensation as part of the employees' "regular rate of pay"
12 and/or calculated all hours worked rather than just all non-overtime hours worked. Management and
13 supervisors described the incentive/bonus program to potential and new employees as part of the
14 compensation package. As a matter of law, the incentive compensation received by PLAINTIFF and
15 other CALIFORNIA CLASS members must be included in the "regular rate of pay." The failure to do
16 so has resulted in a systematic underpayment of overtime compensation to PLAINTIFF and other
17 CALIFORNIA CLASS members by DEFENDANTS.

18 21. In violation of the applicable sections of the California Labor Code and the requirements
19 of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company
20 policy, practice and procedure, intentionally and knowingly failed to compensate PLAINTIFF and the
21 other members of the CALIFORNIA CLASS at the correct rate of pay for all overtime worked. This
22 uniform policy and practice of DEFENDANTS is intended to purposefully avoid the payment of the
23 correct overtime compensation as required by California law which allowed DEFENDANTS to
24 illegally profit and gain an unfair advantage over competitors who complied with the law. To the extent
25 equitable tolling operates to toll claims by the CALIFORNIA CLASS members against
26 DEFENDANTS, the CLASS PERIOD should be adjusted accordingly.

27 **D. Wage Statement Violations**
28

1 22. California Labor Code Section 226 requires an employer to furnish its employees an
2 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked, (3) the
3 number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net wages
4 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the
5 employee and only the last four digits of the employee's social security number or an employee
6 identification number other than a social security number, (8) the name and address of the legal entity
7 that is the employer and, (9) all applicable hourly rates in effect during the pay period and the
8 corresponding number of hours worked at each hourly rate by the employee.

9 23. From time to time during the CLASS PERIOD, when PLAINTIFF and other
10 CALIFORNIA CLASS members missed meal and rest breaks, or were paid inaccurate missed meal
11 and rest period premiums, or were paid overtime in the same pay period where they earned a non-
12 discretionary incentive award, DEFENDANTS also failed to provide PLAINTIFF and the other
13 members of the CALIFORNIA CLASS with complete and accurate wage statements which failed to
14 accurately show, among other things, (1) gross wages earned, (2) total hours worked, (3) all deductions,
15 (4) net wages earned, and, (5) all applicable hourly rates in effect during the pay period and the
16 corresponding number of hours worked at each hourly rate by the employee all applicable hourly rates
17 in effect during the pay period and the corresponding amount of time worked at each hourly rate, correct
18 rates of pay for penalty payments or missed meal and rest periods.

19 24. As a result, DEFENDANTS issued PLAINTIFF and the other members of the
20 CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code § 226. Further,
21 DEFENDANTS' violations are knowing and intentional, were not isolated or due to an unintentional
22 payroll error due to clerical or inadvertent mistake.

23 **E. Suitable Seating Violations**

24 25. PLAINTIFF further alleges that the kiosks and booths located at DEFENDANT's
25 operated and/or managed parking lots and structures provide ample space to allow for the presence and
26 use of a stool or seat by DEFENDANT's employees' during the performance of their work duties.
27 DEFENDANT's employees' working at DEFENDANT's operated and/or managed parking lots and
28 structures, spend a very substantial portion, and, in many workdays, the vast majority of their working

time within these kiosks or booths. The nature of the position can reasonably be accomplished while using a seat/stool.

26. In violation of the applicable sections of the California Labor Code and the requirements of the applicable Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a matter of company policy, practice and procedure, intentionally, knowingly and systematically failed to provide PLAINTIFF and the other Aggrieved Employees suitable seating when the nature of these employees' work reasonably permitted sitting.

27. DEFENDANT knew or should have known that PLAINTIFF and other Aggrieved Employees were entitled to suitable seating and/or were entitled to sit when it did not interfere with the performance of their duties, and that DEFENDANT did not provide suitable seating and/or did not allow them to sit when it did not interfere with the performance of their duties. By reason of this conduct applicable to PLAINTIFF and all Aggrieved Employees, DEFENDANT violated California Labor Code Section 1198 and Wage Order 4-2001, Section 14 by failing to provide suitable seats.

CLASS ACTION ALLEGATIONS

28. PLAINTIFF brings the First through Sixth Causes of Action as a class action pursuant to California Code of Civil Procedure § 382 on behalf of the CALIFORNIA CLASS for claims accruing against DEFENDANTS, as described herein, during the CLASS PERIOD.

29. PLAINTIFF and the other CALIFORNIA CLASS members have uniformly been deprived of wages and penalties from unpaid wages earned and due, including but not limited to unpaid minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums, illegal meal and rest period policies, failure to separately compensate rest periods, failure to separately compensate for all non-productive time, failure to provide accurate itemized wage statements, failure to maintain required records, and interest, statutory and civil penalties, attorney's fees, costs, and expenses.

30. The members of the class are so numerous that joinder of all class members is impractical.

31. Common questions of law and fact regarding DEFENDANTS' conduct, including but not limited to, the off-the-clock work, unpaid meal and rest period premiums, failure to accurately calculate the regular rate of pay for overtime compensation, failure to accurately calculate the regular rate of compensation for missed meal and rest period premiums, failing to provide legally compliant meal and

rest periods, failure to provide accurate itemized wage statements accurate, and failure ensure they are paid at least minimum wage and overtime, exist as to all members of the class and predominate over any questions affecting solely any individual members of the class. Among the questions of law and fact common to the class are:

- a. Whether DEFENDANTS maintained legally compliant meal period policies and practices;
- b. Whether DEFENDANTS maintained legally compliant rest period policies and practices;
- c. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA CLASS members accurate premium payments for missed meal and rest periods;
- d. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA CLASS members accurate overtime wages.
- e. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA CLASS members at least minimum wage for all hours worked.
- f. Whether DEFENDANTS issued legally compliant wage statements;
- g. Whether DEFENDANTS committed an act of unfair competition by systematically failing to record and pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all time worked;
- h. Whether DEFENDANTS committed an act of unfair competition by systematically failing to record all meal and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS members, even though DEFENDANTS enjoyed the benefit of this work, required employees to perform this work and permits or suffers to permit this work;
- i. Whether DEFENDANTS committed an act of unfair competition in violation of the UCL, by failing to provide the PLAINTIFF and the other members of the CALIFORNIA CLASS with the legally required meal and

rest periods; and,

32. PLAINTIFF is a member of the CALIFORNIA CLASS and suffered damages as a result of DEFENDANTS' conduct and actions alleged herein.

33. PLAINTIFF's claims are typical of the claims of the class, and PLAINTIFF has the same interests as the other members of the class.

34. PLAINTIFF will fairly and adequately represent and protect the interests of the CALIFORNIA CLASS members.

35. PLAINTIFF retained able class counsel with extensive experience in class action litigation.

36. Further, PLAINTIFF's interests are coincident with, and not antagonistic to, the interests of the other CALIFORNIA CLASS members.

37. There is a strong community of interest among PLAINTIFF and the members of the CALIFORNIA CLASS to, *inter alia*, ensure that the combined assets of DEFENDANTS are sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries sustained;

38. The questions of law and fact common to the CALIFORNIA CLASS members predominate over any questions affecting only individual members, including legal and factual issues relating to liability and damages.

39. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because joinder of all class members is impractical. Moreover, since the damages suffered by individual members of the class may be relatively small, the expense and burden of individual litigation makes it practically impossible for the members of the class individually to redress the wrongs done to them. Without class certification and determination of declaratory, injunctive, statutory and other legal questions within the class format, prosecution of separate actions by individual members of the CALIFORNIA CLASS will create the risk of:

a. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS which would establish incompatible standards of conduct for the parties opposing the CALIFORNIA CLASS; and/or,

b. Adjudication with respect to individual members of the CALIFORNIA CLASS

which would as a practical matter be dispositive of the interests of the other members not party to the adjudication or substantially impair or impeded their ability to protect their interests.

40. Class treatment provides manageable judicial treatment calculated to bring an efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of DEFENDANTS.

FIRST CAUSE OF ACTION

For Unlawful Business Practices

[Cal. Bus. And Prof. Code §§ 17200, *et seq.*]

(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)

41. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

42. DEFENDANTS are “person[s]” as that term is defined under Cal. Bus. and Prof. Code § 17021.

43. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair competition as follows:

Any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition, as defined in this chapter, or as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition.

Cal. Bus. & Prof. Code § 17203.

44. By reason of this uniform conduct applicable to PLAINTIFF and all CALIFORNIA CLASS members, during the CLASS PERIOD, DEFENDANTS commit acts of unfair competition in

1 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
2 “UCL”), by engaging and continuing to engage in business practices which violates California law,
3 including but not limited to, the applicable Industrial Wage Order(s), the California Code of Regulations
4 and the California Labor Code including Sections 204, 210, 226, 226.7, 510, 512, 1194, 1197, 1197.1,
5 1198 & 2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal.
6 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute
7 unfair competition, including restitution of wages wrongfully withheld.

8 45. By the conduct alleged herein, DEFENDANTS’ practices were unlawful and unfair in that
9 these practices violated public policy, were immoral, unethical, oppressive, unscrupulous or
10 substantially injurious to employees, and were without valid justification or utility for which this Court
11 should issue equitable and injunctive relief pursuant to Section 17203 of the California Business &
12 Professions Code, including restitution of wages wrongfully withheld.

13 46. By the conduct alleged herein, DEFENDANTS’ practices were deceptive and fraudulent
14 in that DEFENDANTS’ uniform policy and practice failed to, *inter alia*, provide the legally mandated
15 meal and rest periods, the required accurate amount of compensation for missed meal and rest periods,
16 overtime and minimum wages owed, provide accurate itemized wage statements, due to a systematic
17 business practice that cannot be justified, pursuant to the applicable Cal. Lab. Code, and Industrial
18 Welfare Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this
19 Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including
20 restitution of wages wrongfully withheld.

21 47. By the conduct alleged herein, DEFENDANTS’ practices were also unlawful, unfair and
22 deceptive in that DEFENDANTS’ employment practices caused PLAINTIFF and the other members of
23 the CALIFORNIA CLASS to be underpaid during their employment with DEFENDANTS.

24 48. By the conduct alleged herein, DEFENDANTS’ practices were also unlawful, unfair and
25 deceptive in that DEFENDANTS’ uniform policies, practices and procedures failed to, *inter alia*,
26 provide the legally mandated meal and rest periods, the required accurate amount of compensation for
27 missed meal and rest periods, overtime and minimum wages owed, provide accurate itemized wage
28 statements, to PLAINTIFF and the other members of the CALIFORNIA CLASS as required by Cal.

1 Labor Code.

2 49. Therefore, PLAINTIFF demands on behalf of himself and on behalf of each
3 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty meal period
4 was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for each workday in
5 which a second off-duty meal period was not timely provided for each ten (10) hours of work.

6 50. PLAINTIFF further demands on behalf of himself and on behalf of each CALIFORNIA
7 CLASS member, one (1) hour of pay for each workday in which an off duty paid rest period was not
8 timely provided as required by law.

9 51. PLAINTIFF further demands on all wages due to PLAINTIFF and the members of the
10 CALIFORNIA CLASS as a result of working while off the clock on meal periods, inaccurately
11 calculated overtime and missed meal and rest periods premiums.

12 52. By and through the unlawful and unfair business practices described herein,
13 DEFENDANTS has obtained valuable property, money and services from PLAINTIFF and the other
14 members of the CALIFORNIA CLASS, including earned wages for all overtime worked, and has
15 deprived them of valuable rights and benefits guaranteed by law and contract, all to the detriment of
16 these employees and to the benefit of DEFENDANTS so as to allow DEFENDANTS to unfairly
17 compete against competitors who comply with the law.

18 53. All the acts described herein as violations of, among other things, the Industrial Welfare
19 Commission Wage Orders, the California Code of Regulations, and the California Labor Code, were
20 unlawful and in violation of public policy, were immoral, unethical, oppressive and unscrupulous, were
21 deceptive, and thereby constitute unlawful, unfair and deceptive business practices in violation of Cal.
22 Bus. & Prof. Code §§ 17200, *et seq.*

23 54. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to, and do,
24 seek such relief as may be necessary to restore to them the money and property which DEFENDANTS
25 has acquired, or of which PLAINTIFF and the other members of the CALIFORNIA CLASS have been
26 deprived, by means of the above described unlawful and unfair business practices, including earned but
27 unpaid wages for all overtime worked.

28 55. PLAINTIFF and the other members of the CALIFORNIA CLASS are further entitled to,

and do, seek a declaration that the described business practices are unlawful, unfair and deceptive, and that injunctive relief should be issued restraining DEFENDANTS from engaging in any unlawful and unfair business practices in the future.

56. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain, speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of DEFENDANTS. Further, the practices herein alleged presently continue to occur unabated. As a result of the unlawful and unfair business practices described herein, PLAINTIFF and the other members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal and economic harm unless DEFENDANTS is restrained from continuing to engage in these unlawful and unfair business practices.

SECOND CAUSE OF ACTION

For Failure to Pay Overtime Compensation

[Cal. Lab. Code §§ 510, *et seq.*]

(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)

57. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

58. PLAINTIFF and the other members of the CALIFORNIA CLASS for the period between April 6, 2016 and the present (“LABOR CLASS PERIOD”) bring a claim for DEFENDANTS’ willful and intentional violations of the California Labor Code and the Industrial Welfare Commission requirements for DEFENDANTS’ failure to pay these employees for all overtime worked, including, work performed in excess of eight (8) hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

59. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public policy, an employer must timely pay its employees for all hours worked.

60. Cal. Lab. Code § 510 further provides that employees in California shall not be employed more than eight (8) hours per workday and/or more than forty (40) hours per workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

61. Cal. Lab. Code § 1194 establishes an employee’s right to recover unpaid wages, including

overtime compensation and interest thereon, together with the costs of suit. Cal. Lab. Code § 1198 further states that the employment of an employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

62. During the LABOR CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS members were required by DEFENDANTS to work for DEFENDANTS and were not paid for all the time they worked or were not accurately compensated for all overtime hours worked.

63. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested, without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of implementing a uniform policy and practice that failed to accurately record overtime worked by PLAINTIFF and other CALIFORNIA CLASS members and denied accurate compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked, including, the overtime work performed in excess of eight (8) hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

64. In committing these violations of the California Labor Code, DEFENDANTS inaccurately calculated the amount of overtime worked and the applicable overtime rates and consequently underpaid the actual time worked by PLAINTIFF and other members of the CALIFORNIA CLASS. DEFENDANTS acted in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of the California Labor Code, the Industrial Welfare Commission requirements and other applicable laws and regulations.

65. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein, PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive full compensation for all overtime worked.

66. Cal. Lab. Code § 515 sets out various categories of employees who are exempt from the overtime requirements of the law. None of these exemptions are applicable to PLAINTIFF and the other members of the CALIFORNIA CLASS. Further, PLAINTIFF and the other members of the CALIFORNIA CLASS are not subject to a valid collective bargaining agreement that would preclude the causes of action contained herein this Complaint. Rather, the PLAINTIFF brings this Action on behalf of himself and the CALIFORNIA CLASS based on DEFENDANTS' violations of non-

negotiable, non-waivable rights provided by the State of California.

67. During the LABOR CLASS PERIOD, PLAINTIFF and the other members of the CALIFORNIA CLASS were paid less for time worked that they were entitled to, constituting a failure to pay all earned wages.

68. DEFENDANTS failed to accurately pay PLAINTIFF and the other members of the CALIFORNIA CLASS overtime wages for the time they worked which was in excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 & 1198, even though PLAINTIFF and the other members of the CALIFORNIA CLASS were required to work, and did in fact work, overtime as to which DEFENDANTS failed to accurately record and pay using the applicable overtime rate as evidenced by DEFENDANTS' business records and witnessed by employees.

69. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true time they worked, PLAINTIFF and the other members of the CALIFORNIA CLASS have suffered and will continue to suffer an economic injury in amounts which are presently unknown to them and which will be ascertained according to proof at trial.

70. DEFENDANTS knew or should have known that PLAINTIFF and the other members of the CALIFORNIA CLASS were under compensated for all overtime worked. DEFENDANTS systematically elected, either through intentional malfeasance or gross nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice and procedure, and DEFENDANTS perpetrated this systematic scheme by refusing to pay PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked.

71. In performing the acts and practices herein alleged in violation of California labor laws, and refusing to compensate the members of the CALIFORNIA CLASS for all time worked and provide them with the requisite overtime compensation, DEFENDANTS acted and continues to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of the CALIFORNIA CLASS with a conscious of and utter disregard for their legal rights, or the consequences to them, and with the despicable intent of depriving them of their property and legal rights, and otherwise causing them injury in order to increase company profits at the expense of these employees

72. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore request recovery of all unpaid wages, including overtime wages, according to proof, interest, statutory costs, as well as the assessment of any statutory penalties against DEFENDANTS, in a sum as provided by the California Labor Code and/or other applicable statutes. To the extent overtime compensation is determined to be owed to the CALIFORNIA CLASS members who have terminated their employment, DEFENDANTS' conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these CALIFORNIA CLASS members. DEFENDANTS' conduct as alleged herein was willful, intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are entitled to seek and recover statutory costs.

THIRD CAUSE OF ACTION

For Failure to Pay Minimum Wages

[Cal. Lab. Code §§ 1194, 1197 and 1197.1]

(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)

73. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

74. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for DEFENDANTS' willful and intentional violations of the California Labor Code and the Industrial Welfare Commission requirements for DEFENDANTS' failure to accurately record, calculate and pay minimum and reporting time wages to PLAINTIFF and CALIFORNIA CLASS members during the LABOR CLASS PERIOD.

75. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public policy, an employer must timely pay its employees for all hours worked.

76. Cal. Lab. Code § 1197 provides 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 the minimum so fixed is unlawful.

77. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages, including minimum wage compensation and interest thereon, together with the costs of suit.

1 78. DEFENDANTS maintain a uniform wage practice of paying PLAINTIFF and the other
2 members of the CALIFORNIA CLASS without regard to the correct amount of time they work. For
3 instance, as set forth herein, DEFENDANTS maintained a uniform policy that required PLAINTIFF to
4 work while clocked out during what was supposed to be PLAINTIFF's off-duty meal break without
5 compensation. Further, as set forth herein, DEFENDANTS' uniform policy and practice was to
6 unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the other members
7 of the CALIFORNIA CLASS.

8 79. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
9 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of implementing a
10 uniform policy and practice that denies accurate compensation to PLAINTIFF and the other members
11 of the CALIFORNIA CLASS in regard to minimum wage pay.

12 80. In committing these violations of the California Labor Code, DEFENDANTS inaccurately
13 calculated the correct time worked and consequently underpaid the actual time worked by PLAINTIFF
14 and other members of the CALIFORNIA CLASS. DEFENDANTS acted in an illegal attempt to avoid
15 the payment of all earned wages, and other benefits in violation of the California Labor Code, the
16 Industrial Welfare Commission requirements and other applicable laws and regulations.

17 81. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
18 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct minimum
19 wage compensation for their time worked for DEFENDANTS.

20 82. During the LABOR CLASS PERIOD, PLAINTIFF and the other members of the
21 CALIFORNIA CLASS were paid less for time worked that they were entitled to, constituting a failure
22 to pay all earned wages.

23 83. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned compensation
24 to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true time they worked,
25 PLAINTIFF and the other members of the CALIFORNIA CLASS have suffered and will continue to
26 suffer an economic injury in amounts which are presently unknown to them and which will be
27 ascertained according to proof at trial.

28 84. DEFENDANTS knew or should have known that PLAINTIFF and the other members of

1 the CALIFORNIA CLASS were under compensated for their time worked. DEFENDANTS
2 systematically elected, either through intentional malfeasance or gross nonfeasance, to not pay
3 employees for their labor as a matter of uniform company policy, practice and procedure, and
4 DEFENDANTS perpetrated this systematic scheme by refusing to pay PLAINTIFF and the other
5 members of the CALIFORNIA CLASS the correct minimum wages for their time worked.

6 85. In performing the acts and practices herein alleged in violation of California labor laws,
7 and refusing to compensate the members of the CALIFORNIA CLASS for all time worked and provide
8 them with the requisite compensation, DEFENDANTS acted and continues to act intentionally,
9 oppressively, and maliciously toward PLAINTIFF and the other members of the CALIFORNIA CLASS
10 with a conscious and utter disregard for their legal rights, or the consequences to them, and with the
11 despicable intent of depriving them of their property and legal rights, and otherwise causing them injury
12 in order to increase company profits at the expense of these employees.

13 86. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore request
14 recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment of
15 any statutory penalties against DEFENDANTS, in a sum as provided by the California Labor Code
16 and/or other applicable statutes. To the extent minimum wage compensation is determined to be owed
17 to the CALIFORNIA CLASS members who have terminated their employment, DEFENDANTS'
18 conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled
19 to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein on behalf of
20 these CALIFORNIA CLASS members. DEFENDANTS' conduct as alleged herein was willful,
21 intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA CLASS members are
22 entitled to seek and recover statutory costs.

23
24
25 ///

26 **FOURTH CAUSE OF ACTION**

27 **For Failure to Provide Required Meal Periods**

28 **[Cal. Lab. Code §§ 226.7 & 512]**

1 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

2 87. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
3 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

4 88. During the LABOR CLASS PERIOD, from time to time, DEFENDANTS failed to
5 provide all the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA
6 CLASS members as required by the applicable Wage Order and Labor Code. The nature of the work
7 performed by PLAINTIFF and CALIFORNIA CLASS members did not prevent these employees from
8 being relieved of all of their duties for the legally required off-duty meal periods. As a result of their
9 rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS members were from time to
10 time not fully relieved of duty by DEFENDANTS for their meal periods. Additionally,
11 DEFENDANTS' failure to provide PLAINTIFF and the CALIFORNIA CLASS members with legally
12 required meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANTS' business
13 records from time to time. Further, DEFENDANTS failed to provide PLAINTIFF and CALIFORNIA
14 CLASS members with a second off-duty meal period in some workdays in which these employees were
15 required by DEFENDANTS to work ten (10) hours of work. As a result, PLAINTIFF and other members
16 of the CALIFORNIA CLASS therefore forfeited meal breaks without additional compensation and in
17 accordance with DEFENDANTS' strict corporate policy and practice.

18 89. DEFENDANTS further violates California Labor Code §§ 226.7 and the applicable IWC
19 Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS Members who were not
20 provided a meal period, in accordance with the applicable Wage Order, one additional hour of
21 compensation at each employee's regular rate of compensation for each workday that a meal period was
22 not provided.

23 90. As a proximate result of the aforementioned violations, PLAINTIFF and CALIFORNIA
24 CLASS Members have been damaged in an amount according to proof at trial, and seek all wages earned
25 and due, interest, penalties, expenses and costs of suit.

26 **FIFTH CAUSE OF ACTION**

27 **For Failure to Provide Required Rest Periods**

28 **[Cal. Lab. Code §§ 226.7 & 512]**

1 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

2 91. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
3 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

4 92. During the LABOR CLASS PERIOD, PLAINTIFF and other CALIFORNIA CLASS
5 members were from time to time required to work in excess of four (4) hours without being provided
6 ten (10) minute rest periods. Further, these employees were denied their first rest periods of at least ten
7 (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest period
8 of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first,
9 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more
10 from time to time. PLAINTIFF and other CALIFORNIA CLASS members were also not provided with
11 one-hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other
12 CALIFORNIA CLASS members were periodically denied their proper rest periods by DEFENDANTS
13 and DEFENDANTS' managers.

14 93. DEFENDANTS further violated California Labor Code §§ 226.7 and the applicable IWC
15 Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS Members who were not
16 provided a rest period, in accordance with the applicable Wage Order, one additional hour of
17 compensation at each employee's regular rate of compensation for each workday that rest period was
18 not provided.

19 94. As a proximate result of the aforementioned violations, PLAINTIFF and CALIFORNIA
20 CLASS Members have been damaged in an amount according to proof at trial, and seek all wages earned
21 and due, interest, penalties, expenses and costs of suit.

22
23
24
25 // //

26 **SIXTH CAUSE OF ACTION**

27 **For Failure to Provide Accurate Itemized Statements**

28 **[Cal. Lab. Code §§ 226 and 226.2]**

1 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

2 95. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
3 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

4 96. Cal. Labor Code § 226 provides that an employer must furnish employees with an
5 “accurate itemized” statement in writing showing:

- 6 1. Gross wages earned;
- 7 2. Total hours worked by the employee, except for any employee
8 whose compensation is solely based on a salary and who is exempt from
9 payment of overtime under subdivision (a) of Section 515 or any applicable
10 order of the Industrial Welfare Commission;
- 11 3. The number of piece-rate units earned and any applicable piece rate
12 if the employee is paid on a piece-rate basis;
- 13 4. All deductions, provided that all deductions made on written orders
14 of the employee may be aggregated and shown as one item;
- 15 5. Net wages earned;
- 16 6. The inclusive dates of the period for which the employee is paid,
- 17 7. The name of the employee and his or her social security number,
18 except that by January 1, 2008, only the last four digits of his or her social
19 security number or an employee identification number other than a social
20 security number may be shown on the itemized statement,
- 21 8. The name and address of the legal entity that is the employer, and
- 22 9. All applicable hourly rates in effect during the pay period and the
23 corresponding number of hours worked at each hourly rate by the employee.

24 97. During the LABOR CLASS PERIOD, DEFENDANTS also failed to provide PLAINTIFF
25 and the other members of the CALIFORNIA CLASS with complete and accurate wage statements
26 which failed to accurately show, among other things, (1) total number of hours worked, (2) net wages
27 earned, (3) gross wages earned and (7) all applicable hourly rates in effect during the pay period and
28

1 the corresponding number of hours worked at each hourly rate by the employee in violation of
2 California Labor Code Section 226.

3 98. DEFENDANTS knowingly and intentionally failed to comply with Cal. Labor Code §
4 226, causing injury and damages to the PLAINTIFF and the other members of the CALIFORNIA
5 CLASS. These damages include, but are not limited to, costs expended calculating the correct rates for
6 the overtime worked and the amount of employment taxes which were not properly paid to state and
7 federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFF and the other
8 members of the CALIFORNIA CLASS may elect to recover liquidated damages of fifty dollars (\$50.00)
9 for the initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each
10 violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, and all other damages and
11 penalties available pursuant to Labor Code § 226.2(a)(6), all in an amount according to proof at the time
12 of trial (but in no event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective
13 member of the CALIFORNIA CLASS herein.

14 **SEVENTH CAUSE OF ACTION**

15 **FAILURE TO PAY WAGES WHEN DUE**

16 **(Cal Lab. Code §§201, 202, 203)**

17 **((By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS))**

18 99. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
19 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

20 100. Cal. Lab. Code § 200 provides that:

21 As used in this article:(a) "Wages" includes all amounts for
22 labor performed by employees of every description, whether
23 the amount is fixed or ascertained by the standard of time,
24 task, piece, Commission basis, or other method of
25 calculation. (b) "Labor" includes labor, work, or service
26 whether rendered or performed under contract, subcontract,
27 partnership, station plan, or other agreement if the labor to
28

1 be paid for is performed personally by the person demanding
2 payment.

3 101. Cal. Lab. Code § 201 provides, in relevant part, that “If an employer discharges an
4 employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”

5 102. Cal. Lab. Code § 202 provides, in relevant part, that:

6 If an employee not having a written contract for a definite
7 period quits his or her employment, his or her wages shall
8 become due and payable not later than 72 hours thereafter,
9 unless the employee has given 72 hours previous notice of
10 his or her intention to quit, in which case the employee is
11 entitled to his or her wages at the time of quitting.
12 Notwithstanding any other provision of law, an employee
13 who quits without providing a 72-hour notice shall be
14 entitled to receive payment by mail if he or she so requests
15 and designates a mailing address. The date of the mailing
16 shall constitute the date of payment for purposes of the
17 requirement to provide payment within 72 hours of the
18 notice of quitting.

19 103. There was no definite term in PLAINTIFF’s or any CALIFORNIA CLASS Members’
20 employment contract.

21 104. Cal. Lab. Code § 203 provides:

22 If an employer willfully fails to pay, without abatement or
23 reduction, in accordance with Sections 201, 201.5, 202, and
24 205.5, any wages of an employee who is discharged or who
25 quits, the wages of the employee shall continue as a penalty
26 from the due date thereof at the same rate until paid or until
27 an action therefor is commenced; but the wages shall not
28 continue for more than 30 days.

105. The employment of PLAINTIFF and many CALIFORNIA CLASS Members terminated and DEFENDANTS has not tendered payment of wages, to these employees who missed meal and rest breaks, as required by law.

106. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and the members of the CALIFORNIA CLASS whose employment has, PLAINTIFF demand up to thirty days of pay as penalty for not paying all wages due at time of termination for all employees who terminated employment during the LABOR CLASS PERIOD, and demands an accounting and payment of all wages due, plus interest and statutory costs as allowed by law.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for judgment against each DEFENDANTS, jointly and severally, as follows:

1. On behalf of the CALIFORNIA CLASS:

A) That the Court certify the First Cause of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;

B) An order temporarily, preliminarily and permanently enjoining and restraining DEFENDANTS from engaging in similar unlawful conduct as set forth herein;

C) An order requiring DEFENDANTS to pay all wages and all sums unlawfully withheld from compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS; and,

D) Restitutionary disgorgement of DEFENDANTS's ill-gotten gains into a fluid fund for restitution of the sums incidental to DEFENDANTS's violations due to PLAINTIFF and to the other members of the CALIFORNIA CLASS.

E) That the Court certify the Second, Third, Fourth, Fifth, Sixth and Seventh Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;

1. Compensatory damages, according to proof at trial, including compensatory damages for overtime compensation due PLAINTIFF and the other members of the CALIFORNIA CLASS, during the applicable CALIFORNIA CLASS PERIOD plus interest thereon at the statutory rate;

2. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226;

3. Meal and rest period compensation pursuant to California Labor Code Section 226.7, 512 and the applicable IWC Wage Order;

4. For liquidated damages pursuant to California Labor Code Sections 1194.2 and 1197;

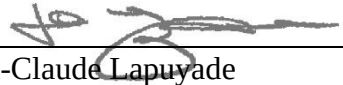
5. For waiting time penalties pursuant to California Labor Code Section 201, 202 and 20; and,

2. On all claims:

- A) An award of interest, including prejudgment interest at the legal rate;
- B) Such other and further relief as the Court deems just and equitable; and,
- C) An award of penalties, attorneys' fees and cost of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code §226, §1194, §2699 *et seq.*, and/or §2802.

Dated: August 20, 2020

Respectfully Submitted,
JCL LAW FIRM, A.P.C.

By: 
Jean-Claude Lapuyade
Attorneys for PLAINTIFF

DEMAND FOR JURY TRIAL

PLAINTIFF demands a jury trial on all issues triable to a jury.

1
2 Dated: August 20, 2020
3

Respectfully Submitted,
JCL LAW FIRM, A.P.C.

4 By: 
5 Jean-Claude Lapuyade
6 Attorneys for PLAINTIFF
7
8
9
10
11
12
13
14



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to: LAZ Parking California
40 CSC Lawyers Incorporating
Suite
2710 Gateway Oaks Drive 150N
Sacramento CA 95833



9590 9402 4157 8092 6231 86

2. Article Number (Transfer from service label)

7019 2280 0002 0097 9149

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *Koy Saechao* ☐ Agent ☒ Addressee

B. Received by (Printed Name)

Koy Saechao

C. Date of Delivery

D. Is delivery address different from item 1? ☒ Yes
If YES, enter delivery address below: ☐ No

AUG 31 2020

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☐ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Registered Mail
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery
- ☐ Priority Mail Express®
- ☒ Registered Mail™

Domestic Return Receipt