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Superior Court of California
County of Los Angeles

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

RAYMOND L. SMITH, on behalf of
himself and all others similarly situated,

Plaintiff,

v.

CAMILO LOPEZ, INC. dba C.L.
CONCRETE, a California corporation; and
DOES 1 through 100, inclusive,

Defendants.

CASE NO. **20STCV47555**
CLASS AND REPRESENTATIVE ACTION
COMPLAINT FOR:

1. Failure to Pay Minimum Wages for all Hours Worked (Labor Code §§ 1194, 1194.2, 1197, and 1197.1);
2. Failure to Pay Overtime Compensation (Labor Code §§ 510, 1194, and 1198);
3. Failure to Provide Duty-Free Meal Periods and/or Pay Required Premiums Thereon (Labor Code §§ 226.7 and 512);
4. Failure to Authorize and Permit Rest Breaks and/or Pay Required Premiums Thereon (Labor Code § 226.7);
5. Failure to Provide Accurate Itemized Wage Statements (Labor Code § 226);
6. Penalties per the Private Attorneys General Act of 2004 (Labor Code § 2698, *et seq.*); and
7. Unfair Competition (Bus. & Prof. Code § 17200, *et seq.*)

DEMAND FOR JURY TRIAL

By Fax

CLASS AND REPRESENTATIVE ACTION COMPLAINT

1 Plaintiff RAYMOND L. SMITH, an individual, (“Plaintiff”), on behalf of himself, the
2 State of California, and all others similarly situated, alleges and complains of Defendant CAMILO
3 LOPEZ, INC. dba C.L. CONCRETE, INC., a California corporation, and DOES 1 to 100
4 (collectively, “Defendants”), and each of them, as follows:

5 **I. INTRODUCTION**

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

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

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

23 4. Plaintiff, on behalf of himself and all other similarly situated aggrieved employees,
24 also brings this representative action against Defendants to recover wages and penalties owed
25 pursuant to Labor Code section 2699 (the “Aggrieved Employees”). Plaintiff was compelled to
26 retain the services of counsel to file this action to protect her interests and those of Aggrieved
27 Employees and has thereby incurred attorneys’ fees and costs, which he is likewise entitled to
28 recover under Labor Code section 2699.

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

4 **II. JURISDICTION AND VENUE**

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

11 7. Further, the aggregate amount in controversy for the proposed class action,
12 including monetary damages, restitution, penalties, injunctive relief, and attorneys’ fees, is less
13 than five million dollars (\$5,000,000), exclusive of interest and costs. Plaintiff reserves the right to
14 seek a larger amount based upon new and different information resulting from investigation and
15 discovery.

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

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

26 10. This case should be classified as complex according to California Rules of Court,
27 Rule 3.400 and assigned to a complex litigation judge and department, as it is a class action, will
28 involve substantial documentary evidence, a large number of witnesses, and is likely to involve

1 extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
2 and would require substantial post judgment judicial supervision.

3 **III. PARTIES**

4 11. Plaintiff Raymond L. Smith is a resident of La Puente, California. At all relevant
5 times herein, Defendants employed Plaintiff as an hourly non-exempt employee, and subjected
6 him to the same employment policies and practices that affected Employees.

7 12. Plaintiff is informed and believes, and based thereon alleges, that Defendant
8 Camilo Lopez, Inc. doing business as C.L. Concrete is, and at all times relevant hereto was, a
9 corporation organized and existing under and by virtue of the laws of the State of California and
10 doing business in California and, at all times hereinafter mentioned, was and is an employer as
11 defined in and subject to the Labor Code, whose employees are engaged throughout this county
12 and the State of California. During the relevant time period, Defendant Camilo Lopez, Inc. doing
13 business as C.L. Concrete employed Plaintiff and Employees within the State of California.

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

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

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

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

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

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

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

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

23 **IV. FACTUAL BACKGROUND**

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

25 20. Until taking leave due to disability, Plaintiff Raymond L. Smith worked for
26 approximately twenty-five (25) years as an hourly-paid, non-exempt employee in Defendants’
27 Azusa, California location. During the relevant time period, Plaintiff worked in various job
28 capacities, including, but not limited to, laborer.

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

5 22. Plaintiff alleges that Defendants did not fully compensate Plaintiff and Employees
6 who worked in non-exempt and hourly-paid positions because they were regularly required to
7 perform activities that were off-the-clock (including pre-shift/post-shift duties and compulsory
8 travel time), as well as working during meal periods and rest breaks without receiving premium
9 pay. Through these policies and/or practices, Defendants artificially reduced the actual hours
10 worked, undercompensated its workforce, and ultimately disadvantaged Plaintiff and Employees.

11 23. Labor Code section 1197 states the California requirement that employees must be
12 paid at least the minimum wage fixed by the Commission, and any payment of less than the
13 minimum wage is unlawful. Labor Code section 1194 entitles “any employee receiving less than
14 the legal minimum wage...to recover in a civil action the unpaid balance of the full amount of this
15 minimum wage.”

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

22 25. Here, Defendants’ hourly, non-exempt employees were not paid wages for all hours
23 worked. Specifically, Defendants failed to pay Plaintiff and Employees for off-the-clock work,
24 including pre-shift and post-shift duties, including, but not limited to: meetings with the foreman;
25 gathering materials and supplies (*i.e.* metal stakes, backs, and planks) for the job; loading and
26 unloading the company truck; and compulsory travel time spent driving or commuting from
27 Defendant’s yard in Azusa to the jobsite. This off-the-clock travel time ranged anywhere from one
28 to four hours a day, depending on the distance to the job location and traffic conditions.

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

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

17 28. By their common policy and/or practice of requiring Plaintiff and Employees to
18 work in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without
19 compensating them at the applicable overtime rate of pay, Defendants willfully violated the
20 provisions of Labor Code sections 510 and 1198.

21 29. Defendants regularly failed to provide Plaintiff and Employees with timely duty-
22 free meal periods. Due to Defendants' assignment of unreasonable workload demands and their
23 failure to schedule adequate staffing, Plaintiff and Employees were deprived of legally-mandated
24 timely and duty-free meal breaks.

25 30. Labor Code sections 226.7 and 512 require employers to provide employees with a
26 thirty (30) minute uninterrupted and duty-free meal period within the first five (5) hours of work.
27 *See also, Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1042 ("Accordingly, first
28 meal periods must start after no more than five hours."). Moreover, an employee who works more

1 than ten (10) hours per day is entitled to receive a second thirty (30) minute uninterrupted and
2 duty-free meal period.

3 31. Defendants regularly denied Plaintiff and Employees meal periods that comply
4 with Labor Code sections 226.7 and 512. The default practice was that Plaintiff and Employees
5 were not provided duty-free meal breaks during their shifts; it was demanded that Plaintiff and
6 Employees either forego eating entirely and/or take their meal periods on-duty. To the extent any
7 purported on-duty meal period agreements exist, such are unlawful and ineffective when the
8 nature of the work does not prevent Employees from being relieved of all duties.

9 32. Moreover, on the occasions when meal breaks were provided, Defendants provided
10 them after the fifth hour of work and/or Defendants interrupted Employees' meal periods by
11 requiring or pressuring Employees to perform work during their break or return before completing
12 thirty (30) minutes in violation of Labor Code sections 226.7 and 512. Further, Plaintiff and
13 Employees never received second meal periods for shifts worked in excess of ten (10) hours, and
14 again, any waivers are non-applicable for those occasions when Plaintiff and Employees worked
15 shifts in excess of twelve (12) hours a day and/or to the extent the nature of the work does not
16 prevent them from being relieved of all duties.

17 33. Despite having been subjected to late, short, interrupted, and/or missed meal
18 periods, Plaintiff and Employees were not compensated with one (1) hour's worth of pay at their
19 regular rate of compensation when they were not provided with compliant meal periods in
20 accordance with Labor Code section 226.7(b).

21 34. The same missed breaks also occurred in connection with what are supposed to be
22 Plaintiff's and Employees' timely, duty-free rest breaks. Defendants were obligated but failed to
23 provide Plaintiff and the Employees with compensated, duty-free rest breaks of not less than ten
24 (10) minutes for shifts exceeding four (4) hours or a major fraction thereof worked as required by
25 Labor Code section 226.7 and IWC Wage Order No. 16-2001.¹

26
27 ¹ Upon information and belief, Plaintiff alleges that IWC Wage Order No 16-2001 is applicable. However,
28 Plaintiff reserves the right to amend and/or allege any other applicable IWC Wage Order(s) that may be
gleaned relevant after discovery.

1 35. The *Brinker* Court explained in the context of rest breaks that employer liability
2 attaches from adopting an unlawful policy:

3 An employer is required to authorize and permit the amount of rest break time
4 called for under the wage order for its industry. If it does not - if, for example, it
5 adopts a uniform policy authorizing and permitting only one rest break for
employees working a seven-hour shift when two are required - ***it has violated the
wage order and is liable.***

6
7 *See, Brinker Rest. Corp. v. Sup. Ct.* (2012) 53 Cal. 4th 1004, 1033. [emphasis added]

8 36. Since Defendants did not offer Plaintiff and the Employees the opportunity to
9 receive a compliant off-duty rest period, “the court may not conclude employees voluntarily chose
10 to skip...breaks.” *Alberts v. Aurora Behavioral Health Care* (2015) 241 Cal. App. 4th 388, 410
11 (“[i]f an employer fails to provide legally compliant meal or rest breaks, the court may not
12 conclude employees voluntarily chose to skip those breaks.”); *accord Brinker* 53 Cal. 4th at 1033
13 (“No issue of waiver ever arises for a rest break that was required by law but never authorized; if a
14 break is not authorized, an employee has no opportunity to decline to take it.”).

15 37. Here, Defendants failed to have a lawful rest period policy in place that permitted
16 and made available to Plaintiff and other Employees off-duty rest breaks that could also be taken
17 off-premises. Since Plaintiff and Employees frequently worked shifts that were longer than three
18 and one-half (3.5) or six (6) hours in duration, Defendants were required but failed to provide
19 Plaintiff and Employees with all of the mandated timely duty-free rest breaks.

20 38. Because Defendants retained control over Plaintiff and Employees during their
21 meal and rest periods, Plaintiff and Employees were subjected to on-duty rest breaks which are
22 prohibited. The California Supreme Court held, in *Augustus v. ABM Security Services Inc.* (2016)
23 2 Cal. 5th 257, that employees must be relieved of all duties during rest periods pursuant to Labor
24 Code section 226.7. In *Augustus*, the Court expressly rejected the employer’s assertion that it
25 could provide an on-duty rest period to employees who worked as security guards and further
26 explained “that employers [must] relinquish any control over how employees spend their break
27 time, and relieve their employees of all duties.” *Id.* at 273. The Court found that the Wage Orders
28 and the Labor Code require employers to “relinquish control over how employees spend their

1 time” and “relieve employees of all duties” during employees’ 10-minute rest periods. On-duty
2 rest periods are prohibited. Plaintiff and Employees contend that they did not receive compliant
3 rest breaks.

4 39. Despite having been subjected to missed and/or non-compliant rest breaks,
5 Plaintiff and Employees were not compensated with one (1) hour’s worth of pay at their regular
6 rate of compensation in accordance with Labor Code section 226.7(b).

7 40. As to Plaintiff and Employees, Defendants also failed to provide accurate itemized
8 wage statements in accordance with Labor Code § 226(a) (1, 2, 5, and 9). Labor Code § 226
9 obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage
10 statement in writing showing:

- 11 (1) gross wages earned;
- 12 (2) total hours worked by the employee;
- 13 (3) the number of piece-rate units earned and any applicable piece rate if the
14 employee is paid on a piece rate;
- 14 (4) all deductions, provided that all deductions made on written orders 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 only the last four digits of his or her social
security number or an employee identification number other than a social
18 security number;
- 18 (8) the name and address of the legal entity that is the employer...; and
- 19 (9) all applicable hourly rates in effect during the pay period and the
20 corresponding number of hours worked at each hourly rate by the
employee...

21 41. Due to Defendants’ failure to pay Plaintiff and the Employees minimum and
22 overtime wages for all hours worked (*e.g.*, failure to pay for all pre-shift/post-shift off-the-clock
23 work and compulsory travel time), failure to provide lawful meal and rest breaks and pay
24 premiums owed thereon, and unreimbursed business expenses described herein, the wage
25 statements issued do not indicate the correct amount of gross wages earned, total hours worked, all
26 deductions, net wages earned, or the applicable and/or correct hourly rates in effect during the pay
27 period and the corresponding number of hours worked at each hourly rate in violation of Labor
28 Code § 226(a)(1), (2), (5), and (9).

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

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

14 **Defendants' Conduct Triggers PAGA Penalties And Equitable Relief**

15 44. Further, for the wage statement violations described above, Plaintiff and Aggrieved
16 Employees may also recover civil penalties through Labor Code section 226.3 and PAGA for
17 Defendants' violations of Labor Code section 226(a).

18 45. Plaintiff and Aggrieved Employees have also been denied their legal right and
19 protected interest in having available at a central location at the plant or establishment where they
20 are employed, accurate and complete payroll records showing the hours worked daily by, and the
21 wages paid to, employees at those respective locations pursuant to Labor Code section 1174(d).
22 Plaintiff and Aggrieved Employees may also recover civil penalties through Labor Code section
23 1174.5 and PAGA.

24 46. Due to Defendants' failure to pay Plaintiff and Aggrieved Employees for, *inter*
25 *alia*, all minimum and overtime wages, along with meal period and rest break premiums and
26 unreimbursed expenses, as described herein, Defendants failed to pay separated Aggrieved
27 Employees all wages owed, whose sums were certain, at the time of termination or within seventy-
28 two (72) hours of their resignation and have failed to pay those sums for thirty (30) days thereafter

1 in violation of Labor Code section 203. To the extent permitted by law, Aggrieved Employees are
2 entitled to recover civil penalties for violations of Labor Code section 203 through PAGA.

3 47. Due to Defendants' failure to pay Plaintiff and Aggrieved Employees for, *inter*
4 *alia*, all minimum and overtime wages, along with meal period and rest break premiums and
5 unreimbursed expenses, as described herein, Defendants failed to timely pay Plaintiff and
6 Employees within seven (7) days of the close of the payroll period in accordance with Labor Code
7 section 204 on a regular and consistent basis. *See, Parson v. Golden State FC, LLC* (N.D. Cal.
8 May 2, 2016) No. 16-cv-00405-JST, 2016 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at *3-5
9 (finding after *Ling vs. P.F Chang's China Bistro, Inc.* that a failure to pay rest period premiums
10 can support claims under Labor Code §§ 203 and 204). To the extent permitted by law, Plaintiff
11 and Employees are entitled to recover civil penalties for violations of Labor Code section 204
12 through Labor Code section 210 and PAGA.

13 48. Finally, Plaintiff and Aggrieved Employees were required purchase work boots and
14 pants as part of discharging their labor duties. Labor Code section 2802(a) provides that an
15 employer must reimburse employees for all necessary expenditures that the employee incurs in
16 discharging his or her duties. Defendants failed to reimburse Plaintiff and Aggrieved Employees
17 for these necessary business expenses incurred, in violation of Labor Code section 2802. *See, Lab.*
18 *Code § 2802(a)* ("An employer shall indemnify his or her employee for all necessary expenditures
19 or losses incurred by the employee in direct consequence of the discharge of his or her duties.");
20 *Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal. App. 4th 1137. Therefore, because
21 Plaintiff and Aggrieved Employees incurred necessary business expenses in the scope of their
22 employment but were not reimbursed, Defendants are liable under Labor Code section 2802(a)
23 and the PAGA.

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

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V. CLASS ACTION ALLEGATIONS

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

All current and former hourly paid or non-exempt employees who worked for CAMILO LOPEZ, INC. doing business as C.L. CONCRETE, and/or its predecessor or merged entities, within the State of California from four years prior to the filing of the Complaint and continuing to the present (again, "Class" or "Class Members").

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

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

A. Numerosity

53. The potential members of the Class as defined are so numerous that joinder of all the members of the Class is impracticable. While the precise number of Class Members has not been determined at this time, Plaintiff is informed and believes that there are over fifty (50) Class Members employed by Defendants within the State of California during the relevant statutory period(s), especially when accounting for employee turnover.

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

B. Commonality

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

i. Whether Defendants violated Labor Code sections 1194, 1194.2, 1197, 1197.1 by not compensating Plaintiff and Class Members minimum wages for all hours worked;

1 ii. Whether Defendants violated Labor Code sections 510, 1194, and/or 1198 by not
2 compensating Plaintiff and Class Members with proper overtime wages;

3 iii. Whether Defendants violated Labor Code sections 226.7 and/or 512 by not
4 providing compliant duty-free meal and/or rest breaks and failing to pay premiums owed thereon;

5 iv. Whether Defendants violated Labor Code section 226(a) by not furnishing Class
6 Members with accurate itemized wage statements;

7 v. Whether Defendants engaged in unfair business practices in violation of the Unfair
8 Competition Law, Business and Professions Code sections 17200, *et seq.*;

9 xi. Whether Plaintiff and Class Members are entitled to costs and attorneys' fees;

10 xii. Whether Plaintiff and Class Members are entitled to interest; and

11 xiii. The proper formula(s) for calculating damages, restitution, and interest owed to
12 Plaintiff and Class Members.

13 **C. Typicality**

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

18 **D. Adequacy of Representation**

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

22 **E. Superiority of Class Action**

23 58. A class action is superior to other available means for the fair and efficient
24 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and
25 questions of law and fact common to the Class predominate over any questions affecting only
26 individual members of the Class. Each member of the Class has been damaged and is entitled to
27 recovery by reason of Defendants' illegal policy and/or practice of failing to properly pay
28 minimum wages and overtime, failing to provide timely duty-free meal periods and/or pay

1 required premiums thereon, failing to authorize and permit duty-free rest breaks and/or pay
2 required premiums thereon, failing to maintain and provide accurate itemized wage statements,
3 and engaging in unfair business practices.

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

8 **FIRST CAUSE OF ACTION**
9 **FAILURE TO PAY MINIMUM WAGES**
10 **Cal. Labor Code §§ 1194, 1194.2, 1197, and 1197.1**
11 **[On Behalf of Plaintiff and the Class Against All Defendants]**

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

15 61. At all times relevant herein, Defendants did not pay, and continue to not pay,
16 Plaintiff and Class Members the legal minimum wage for all time worked. Among other thing,
17 Plaintiff and Class Members were regularly required to work off-the-clock performing pre-shift
18 and post-shift duties, including, but not limited to: meetings with the foreman; gathering materials
19 and supplies (*i.e.* metal stakes, lumber, and planks) for the job; dividing into crews; loading and
20 unloading the company truck(s); obtaining the job site address(es); and compulsory travel time
21 spent driving or commuting from Defendant's yard in Azusa to the jobsite.

22 62. The travel time was compulsory in that Plaintiff and Class Members were expected
23 and required to show up at Defendant's location yard in Azusa before going to the job site. For
24 example, while a shift start time could be at 7:00 a.m., Plaintiff and Class Members were required
25 to show up at the Azusa location at 5:30 a.m. Defendant required Plaintiff and Class Members to
26 arrive at the reporting location so that they would handle the loading of materials onto multiple
27 company trucks that would then be dispatched to the job site. Absent showing up at the Azusa
28 yard, there would be insufficient labor available to load the trucks – *e.g.*, materials such as planks
required two or more men to carry – plus, Plaintiff and Class Members would be dispatched in

1 crews that were assigned same day at the Azusa yard. New job site assignments and associated
2 addresses were also only disclosed that same day at the yard. Finally, Plaintiff and Employees
3 were required to drive back from the job site to the Azusa yard at the end of their day, also off-the-
4 clock hours. This off-the-clock travel time ranged anywhere from one to four hours a day
5 depending on the distance to the job location and traffic conditions (*e.g.*, traffic from Santa
6 Monica to Azusa during rush hour could take up to two hours). As a result, Plaintiff and Class
7 Members were compelled to perform work off-the-clock, resulting in uncompensated hours.

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

13 **SECOND CAUSE OF ACTION**
14 **FAILURE TO PAY OVERTIME WAGES**
15 **Cal. Labor Code §§ 510, 1194, and 1198**
 [On Behalf of Plaintiff and the Class Against All Defendants]

16 64. Plaintiff, on behalf of himself and the Class, re-alleges and incorporates by
17 reference all of the allegations contained in the preceding paragraphs of this Complaint as though
18 fully set forth herein.

19 65. At all times relevant herein, Plaintiff and the Class regularly worked shifts that
20 consisted of more than eight (8) hours in a workday and/or more than forty (40) hours in a
21 workweek and were not paid proper overtime wages for all overtime hours worked as a result of,
22 but not limited to, Defendants' systematic pressure on Plaintiff and Class Members to perform
23 work off the clock, including pre-shift/post-shift duties and compulsory travel time from
24 Defendant's location to the designated job site, that resulted in unaccounted work hours.

25 66. Labor Code section 510 codifies the right to overtime compensation at one-and-
26 one-half times the regular hourly rate for hours worked in excess of eight (8) hours in a day or
27 forty (40) hours in a week or for the first eight (8) hours worked on the seventh day of work, and
28 to overtime compensation at twice the regular hourly rate for hours worked in excess of twelve

1 (12) hours in a day or in excess of eight (8) hours in a day on the seventh day of work.

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

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

8 69. During the relevant time period, Defendants intentionally and willfully failed to
9 pay overtime wages owed to Plaintiff and Class Members.

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

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

15 **THIRD CAUSE OF ACTION**
16 **FAILURE TO PROVIDE MEAL PERIODS AND/OR PAY**
17 **REQUIRED PREMIUMS THEREON**
18 **Cal. Labor Code §§ 226.7 and 512**
19 **[On behalf of Plaintiff and the Class Against All Defendants]**

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

23 73. Defendants regularly denied Plaintiff and Class Members meal periods that comply
24 with Labor Code sections 226.7 and 512. The default practice of Defendant was that Plaintiff and
25 the Class Members were not provided duty-free meal breaks during their shifts; it was demanded
26 that either forego eating entirely and/or take their meal periods on-duty. Specifically, Plaintiff and
27 Class Members worked during their meal periods without being relieved of all duties, without
28 entering into a lawful on-duty meal period agreement, and without being paid premium pay for
missed meal breaks.

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

9 75. When meal breaks were provided to Plaintiff, Defendants provided them after the
10 fifth hour of work and/or interrupted them and/or pressured Plaintiff to return to work rendering
11 the break shorter than the requisite thirty (30) minutes duration in violation of Labor Code sections
12 226.7 and 512. Moreover, Plaintiff was not provided meal periods after his tenth hour of work in
13 violation of Labor Code sections 226.7 and 512.

14 76. Under Labor Code section 226.7, Plaintiff and each Class Member is entitled to be
15 paid one (1) hour of additional wages for each day he or she was not provided with all required
16 meal periods. Defendants regularly failed to pay Plaintiff and Class Members the additional wages
17 to which they were entitled for non-compliant meal periods.

18 77. Having been subjected to late, short, interrupted, and missed meal periods, Plaintiff
19 and Class Members did not receive their statutorily-mandated meal periods. As a result,
20 Defendants are liable to Plaintiff and each Class Member for one (1) hour of additional wages for
21 each workday a compliant meal period was not provided.

22 **FOURTH CAUSE OF ACTION**
23 **FAILURE TO AUTHORIZE AND PERMIT REST PERIODS**
24 **AND/OR PAY REQUIRED PREMIUMS THEREON**
25 **Cal. Labor Code § 226.7**
26 **[On behalf of Plaintiff and the Class Against All Defendants]**

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

1 79. Labor Code section 226.7 provides “an employer shall not require an employee to
2 work during a meal or rest or recovery period mandated pursuant to an applicable statute, or
3 applicable regulation, standard, or order of the Industrial Welfare Commission.” Under IWC
4 Wage Order No. 16-2001, subdivision 11, an employer must authorize and permit all employees to
5 take ten (10) minute duty free rest periods for every major fraction of four (4) hours worked.

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

15 81. Despite these legal requirements, Defendants failed to authorize Plaintiff and Class
16 Members to take timely, duty-free rest breaks regardless of whether they worked more than four
17 (4) hours in a workday. Since Plaintiff and Class Members frequently worked shifts that were
18 longer than three and one-half (3.5) or six (6) hours in duration, Defendants were required but
19 failed to provide Plaintiff and Class Members with all of the mandated timely duty-free rest
20 breaks.

21 82. Further, because Defendants failed to have a lawful rest period policy in place that
22 permitted and made available to Plaintiff and other Class Members off-duty rest breaks,
23 Defendants did not offer Plaintiff and the Class Members the opportunity to receive a compliant
24 off-duty rest period. Thus, “the court may not conclude employees voluntarily chose to
25 skip...breaks.” *Alberts v. Aurora Behavioral Health Care* (2015) 241 Cal. App. 4th 388, 410. On-
26 duty rest periods are prohibited. Plaintiff and the Class thus did not receive timely and compliant
27 rest breaks.

1 83. Under Labor Code section 226.7, Plaintiff and each Class Member is entitled to be
2 paid one (1) hour of wages for each day he or she was not provided with all required rest breaks.
3 Defendants regularly failed to pay Plaintiff and Class Members the additional wages to which they
4 were entitled for rest breaks that Defendants failed to authorize and permit.

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

7 **FIFTH CAUSE OF ACTION**
8 **FAILURE TO MAINTIAN AND PROVIDE ACCURATE WAGE STATEMENTS**
9 **Cal. Labor Code §§ 226 and 1174**
 [On Behalf of Plaintiff and the Class Against All Defendants]

10 85. Plaintiff, on behalf of himself and the Class, re-alleges and incorporates by
11 reference all of the allegations contained in the preceding paragraphs as though fully set forth
12 herein.

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

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

28 87. Due to Defendants' failure to pay Plaintiff and the Class Members minimum and

1 overtime wages for all hours worked (*e.g.*, failure to pay for all pre-shift/post-shift off-the-clock
2 work and compulsory travel time), failure to provide lawful meal and rest breaks and pay
3 premiums owed thereon, and unreimbursed business expenses described herein, the wage
4 statements issued do not indicate the correct amount of gross wages earned, total hours worked, all
5 deductions, net wages earned, or the applicable and/or correct hourly rates in effect during the pay
6 period and the corresponding number of hours worked at each hourly rate in violation of Labor
7 Code § 226(a)(1), (2), (5), and (9).

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

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

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

25 91. Plaintiff and Class Members are thus entitled to recover from Defendants the
26 greater of their actual damages caused by Defendants' failure to comply with Labor Code section
27 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000.00) per employee
28 pursuant to Labor Code section 226(e), and/or any other allowable penalties.

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

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

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

94. Based on the above allegations incorporated by reference, Defendants have violated Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 1174, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2800, and 2802, as well as IWC Wage Order No. 16-2001.

95. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code section 2699 because of Defendants’ violations of Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 1174, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2800, and 2802, as well as IWC Wage Order No. 16-2001.

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

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

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

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

97. Defendants failed to provide Plaintiff and Aggrieved Employees with accurate itemized wage statements in compliance with Labor Code section 226(a). Plaintiff seeks separate PAGA penalties for Defendants’ violations of Labor Code section 226(a) and (e). *Lopez v. Friant*

1 & Assocs., LLC (2017) 15 Cal. App. 5th 773, 788; *Bell v. Home Depot U.S.A.* (E.D. Cal. Dec. 11,
2 2017) No. 2:12-cv-02499 JAM-CKD, 2017 U.S. Dist. LEXIS 204493, at *5 [finding after *Friant*
3 that “[t]o the extent the Court’s Order [granting summary judgment to *Home Depot*] was
4 ambiguous, the Court now clarifies that it granted summary judgment on Plaintiffs’ derivative
5 claim for [PAGA] penalties under section 226(e)...the Court’s Order should not be read to grant
6 summary judgment on Plaintiffs’ claim for PAGA penalties based on violation of section
7 226(a).”]). For violations of Labor Code section 226(a), Plaintiff seeks the default penalty
8 provided by Labor Code section 226.3. Labor Code section 226.3 provides that “[a]ny employer
9 who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two
10 hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand
11 dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer
12 fails to provide the employee a wage deduction statement or fails to keep the required records in
13 subdivision (a) of Section 226.” Accordingly, through PAGA and to the extent permitted by law
14 Plaintiff and Aggrieved Employees are entitled to recover penalties for violations of Labor Code
15 section 226.3 and seek default PAGA penalties for each of Defendants’ numerous violations of
16 Labor Code section 226(a).

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

25 99. Labor Code section 1197.1 authorizes a civil penalty, restitution of wages, and
26 liquidated damages, in the amount of: “(1) [f]or any initial violation that is intentionally
27 committed, one hundred dollars (\$100) for each underpaid employee for each pay period for
28 which the employee is underpaid...[and] (2) [f]or each subsequent violation for the same specific

1 offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for
2 which the employee is underpaid regardless of whether the initial violation is intentionally
3 committed.” Accordingly, through PAGA and to the extent permitted by law, Plaintiff and
4 Aggrieved Employees are entitled to recover pursuant to Labor Code section 1197.1.

5 100. Plaintiff has fully and completely exhausted his administrative remedies under
6 PAGA prior to proceeding with the PAGA claim. On August 12, 2020, Plaintiff gave written
7 notice to the LWDA and by certified mail to Defendants of the specific code provisions alleged to
8 have been violated and paid the required filing fee.

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

13 102. Plaintiff, as a personal representative of the general public, will and does seek to
14 recover any and all penalties for each and every violation shown to exist or to have occurred
15 during the one (1) year period before Plaintiff filed Notice with the LWDA of his intent to bring
16 an action, in an amount according to proof, as to those penalties that are otherwise only available
17 to public agency enforcement actions. Funds recovered will be distributed in accordance with the
18 PAGA, with at least 75 percent of the penalties recovered being reimbursed to the State of
19 California and the LWDA.

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

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

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

1 fully set forth herein.

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

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

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

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

- 19 (a) Requiring Plaintiff and Class Members to work without paying them
20 minimum wage for all hours worked in violation of Labor Code sections
21 1194, 1194.2, 1197, and 1197.1;
- 22 (b) Requiring Plaintiff and Class Members to work overtime without paying
23 them proper compensation in violation of Labor Code sections 510, 1194,
24 and 1198;
- 25 (c) Failing to provide timely duty-free meal periods and failing to authorize and
26 permit duty-free rest breaks in violation of Labor Code sections 226.7, 512,
27 and IWC Wage Order 16-2001;
- 28 (d) Failing to maintain and provide Plaintiff and Class Members with accurate

1 itemized wage statements in violation of Labor Code sections 226 and
2 1174;

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

6 (f) Failing to reimburse necessary business expenses in violation of Labor
7 Code sections 2800 and 2802.

8 Thus, Defendants engaged in unlawful competition in violation of sections 17200, *et seq.* of
9 the California Business & Professions Code by violating sections 201, 202, 203, 204, 210, 226,
10 226.3, 226.7, 510, 512, 1174, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2800, and 2802, as well as
11 IWC Wage Order No. 16-2001.

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

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

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

1 and gains they have reaped and restore such profits and gains to Plaintiff and Class Members,
2 from whom they were unlawfully taken.

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

6 113. Plaintiff and Class Members are entitled to enforce all applicable penalty
7 provisions of the Labor Code pursuant to Business & Professions Code section 17202.

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

14 **PRAYER FOR RELIEF**

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

- 16 1. For an order certifying this action as a class action;
- 17 2. For compensatory damages in the amount of the unpaid minimum wage and
18 overtime compensation for work performed by Plaintiff and Employees, as may be proven;
- 19 3. For liquidated damages in the amount equal to the unpaid minimum wage and
20 interest thereon, as may be proven;
- 21 4. For compensatory damages in the amount of the hourly wage made by Plaintiff and
22 Employees for each noncompliant meal period for which premium pay was not paid, as may be
23 proven;
- 24 5. For compensatory damages in the amount of the hourly wage made by Plaintiff and
25 Employees for each day of noncompliant rest breaks for which premium pay was not paid, as may
26 be proven;
- 27 6. For actual damages and/or penalties pursuant to Labor Code section 226(e) for
28 Plaintiff and Employees, as may be proven;

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

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

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

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

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

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

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

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

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

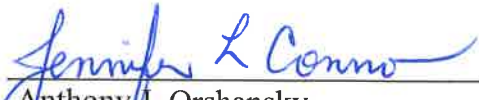
21 16. For an award providing for the payment of the costs of this suit;

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

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

24 Dated: December 11, 2020

Respectfully submitted,
COUNSELONE, P.C.

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

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Dated: December 11, 2020

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