

JAMES HAWKINS, APLC
JAMES R. HAWKINS (State Bar No. 192925)
James@jameshawkinsaplc.com
SAMANTHA A. SMITH (State Bar No. 233331)
Samantha@jameshawkinsaplc.com
9880 Research Drive, Suite 200
Irvine, California 92618
Telephone: (949) 387-7200
Facsimile: (949) 387-6676

Attorneys for Plaintiff David Root and the putative class

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE

DAVID ROOT, individually and on behalf
of all others similarly situated,

Plaintiff,

vs.

NATIONAL DISTRIBUTION CENTERS,
LLC dba NFI INDUSTRIES, a Delaware
Corporation, and DOES 1-10, inclusive,

Defendants.

Case No.

Assigned for All Purposes to:

CLASS ACTION COMPLAINT FOR:

1. Failure to Pay Lawful Wages;
2. Failure to Provide Meal Periods;
3. Failure to Authorize or Permit Rest Periods;
4. Failure to Pay Wages Upon Separation of Employment and Within the Required Time;
5. Failure to Furnish Accurate Wage Statements; and
6. Violation of California Business and Professions Code §§ 17200, *et seq.*

DEMAND FOR JURY TRIAL

1 Plaintiff David Root, individually and on behalf of all others similarly situated, alleges as
2 follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiff David Root (“Plaintiff”) brings this class action, pursuant to California Code
5 of Civil Procedure section 382, on behalf of himself and non-exempt employees employed, or
6 formerly employed, within the State of California by National Distribution Centers, LLC dba NFI
7 Industries, and any subsidiaries or affiliated companies (hereinafter, along with DOES 1 through 10,
8 collectively referred to as “NFI” or “Defendants”).

9 2. NFI is a third-party supply chain solutions provider with business lines that include
10 transportation, warehousing, intermodal, brokerage, transportation management, and global and real
11 estate service throughout the State of California.

12 3. Through this action, Plaintiff is alleging that Defendants have engaged in a systematic
13 pattern of wage and hour violations under the California Labor Code and Industrial Welfare
14 Commission (“IWC”) Wage Orders, all of which contribute to Defendants’ deliberate unfair
15 competition.

16 4. Plaintiff is informed and believes, and thereon alleges, that Defendants have increased
17 their profits by violating state wage and hour laws by, among other things:

- 18 (a) Failing to pay all lawful wages owed, including minimum wages and overtime
19 wages;
- 20 (b) Failing to authorize or permit lawful meal periods or compensation in lieu
21 thereof,
- 22 (c) Failing to authorize or permit lawful rest periods or provide compensation in
23 lieu thereof;
- 24 (d) Willfully failing to provide accurate semi-monthly itemized wage statements;
25 and
- 26 (e) Failing to pay all wages due upon separation of employment.

27 5. Plaintiff brings this lawsuit seeking monetary relief against Defendants on behalf of
28 himself and all others similarly situated to recover, among other things, unpaid meal period

1 compensation, unpaid rest period compensation, interest, attorney's fees, costs and expenses and
2 penalties pursuant to Labor Code §§ 201-204, 210, 226, 226.7, 510, 512, 1182.12, 1194, 1194.2,
3 1197, and 1198.

4 6. Plaintiff, on behalf of himself and all class members, pursuant to Business and
5 Professions Code sections 17200, *et seq*, also seeks injunctive relief and restitution for the unfair,
6 unlawful, or fraudulent practices alleged in this complaint.

7 **JURISDICTION AND VENUE**

8 7. This is a class action, pursuant to California Code of Civil Procedure § 382. The
9 monetary damages and restitution sought by Plaintiff exceed the minimal jurisdictional limits of the
10 Superior Court and will be established according to proof at trial.

11 8. This Court has jurisdiction over this action pursuant to the California Constitution,
12 Article VI, § 10, which grants the Superior Court original jurisdiction in all cases except those given
13 by statutes to other courts. The statutes under which this action is brought do not specify any other
14 basis for jurisdiction.

15 9. This Court has jurisdiction over all Defendants because, upon information and belief,
16 Defendants have sufficient minimum contacts in California or otherwise intentionally avail
17 themselves of the California market so as to render the exercise of jurisdiction over them by the
18 California courts consistent with traditional notions of fair play and substantial justice.

19 10. Venue as to each defendant is proper in this judicial district, pursuant to California
20 Code of Civil Procedure section 395.5. Upon information and belief, Defendants transact business
21 or have at least one facility in this county and acts and omissions alleged herein took place in this
22 county.

23 **THE PARTIES**

24 11. Plaintiff David Root is a resident of California. Plaintiff was employed by Defendants
25 during the Class Period in California.

26 12. Defendant NFI provides transportation, warehousing, intermodal, brokerage,
27 transportation management, and global and real estate services throughout the state of California,
28

1 including Riverside county. The unlawful acts alleged herein have a direct effect on Plaintiff and
2 those similarly situated within the state of California and Riverside county.

3 13. Plaintiff is informed and believes, and thereon alleges, that Defendants at all times
4 hereinafter mentioned, were and are employers as defined in and subject to the Labor Code and IWC
5 Wage Orders, whose employees were and are engaged throughout this county and the State of
6 California.

7 14. Plaintiff is unaware of the true names or capacities of the defendants sued herein under
8 the fictitious names DOES 1 through 20 but will seek leave of this Court to amend this complaint
9 and serve such fictitiously named defendants once their names and capacities become known.

10 15. Plaintiff is informed and believes, and based thereon alleges, that each defendant
11 acted in all respects pertinent to this action as the agent of the other defendant, carried out a joint
12 scheme, business plan or policy in all respects pertinent hereto, and the acts of each defendant are
13 legally attributable to the other defendant. Furthermore, defendants in all respects acted as the
14 employer and/or joint employer of Plaintiff and the class members.

15 16. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts
16 and omissions alleged herein were performed by, or are attributable to, Defendants and/or DOES 1
17 through 10, acting as the agent or alter ego for the other, with legal authority to act on the other's
18 behalf. The acts of any and all Defendants were in accordance with, and represent, the official policy
19 of Defendants.

20 17. At all relevant times, Defendants, and each of them, acted within the scope of such
21 agency or employment, or ratified each and every act or omission complained of herein. At all
22 relevant times, Defendants, and each of them, aided and abetted the acts and omissions of each and
23 all the other Defendants in proximately causing the damages herein alleged.

24 18. Plaintiff is informed and believes, and thereon alleges, that each of said Defendants
25 is in some manner intentionally, negligently or otherwise responsible for the acts, omissions,
26 occurrences and transactions alleged herein.

CLASS ACTION ALLEGATIONS

19. Plaintiff brings this action under Code of Civil Procedure § 382 on behalf of himself and all other members of the general public similarly situated who were affected by Defendants' Labor Code, Business and Professions Code §§ 17200 and IWC Wage Order violations.

20. All claims alleged herein arise under California law for which Plaintiff seeks relief authorized by California law.

21. Plaintiff's proposed Class consists of and is defined as follows:

All persons currently or formerly employed as non-exempt employees by Defendants in the State of California within four years prior to the filing of this action to the present.

22. Plaintiff also seeks to certify the following Subclass:

Waiting Time Subclass

All members of the Class who separated their employment from Defendants within three years prior to the filing of this action to the present.

23. Members of the Class and Subclass described above will collectively be referred to as "class members." Plaintiff reserves the right to establish other or additional subclasses, or modify any Class or Subclass definition, as appropriate based on investigation, discovery and specific theories of liability.

24. This action has been brought and may properly be maintained as a class action under the California Code of Civil Procedure § 382 because there are common questions of law and fact as to the Class that predominate over questions affecting only individual members including, but not limited to:

- a. Whether Defendants paid Plaintiff and class members all lawful wages owed, including minimum wages and overtime wages;
- b. Whether Defendants deprived Plaintiff and class members of timely meal periods;
- c. Whether Defendants deprived Plaintiff and class members of rest breaks or required Plaintiff and class members to work through rest breaks;

- d. Whether Defendants failed to timely pay Plaintiff and former class members all wages due upon termination or within 72 hours of resignation;
- e. Whether Defendants failed to furnish Plaintiff and class members with accurate wage statements; and
- f. Whether Defendants engaged in unfair business practices in violation of Business & Professions Code §§ 17200, *et seq.*

25. There is a well-defined community of interest in the litigation and the Class is readily ascertainable.

- a. Numerosity: The members of the Class are so numerous that joinder of all members is impractical. Although the members of the Class are unknown to Plaintiff at this time, on information and belief, the Class is estimated to be greater than 100 individuals. The identity of the class members are readily ascertainable by inspection of Defendants' employment and payroll records.
- b. Typicality: The claims (or defenses, if any) of Plaintiff are typical of the claims (or defenses, if any) of the Class because Defendants' failure to comply with the provisions of California wage and hour laws entitled each class member to similar pay, benefits and other relief. The injuries sustained by Plaintiff are also typical of the injuries sustained by the Class because they arise out of and are caused by Defendants' common course of conduct as alleged herein.
- c. Adequacy: Plaintiff is qualified to, and will, fairly and adequately represent and protect the interests of all members of the Class because it is in her best interests to prosecute the claims alleged herein to obtain full compensation and penalties due her and the Class. Plaintiff's attorneys, as proposed class counsel, are competent and experienced in litigating large employment class actions and are versed in the rules governing class action discovery, certification and settlement. Plaintiff has incurred and, throughout the duration of this action, will continue to incur attorneys' fees and costs that

1 have been and will be necessarily expended for the prosecution of this action
2 for the substantial benefit of each class member.

3 d. Superiority: The nature of this action makes the use of class action
4 adjudication superior to other methods. A class action will achieve economies
5 of time, effort and expense as compared with separate lawsuits, and will avoid
6 inconsistent outcomes because the same issues can be adjudicated in the same
7 manner and at the same time for each Class. If appropriate this Court can, and
8 is empowered to, fashion methods to efficiently manage this case as a class
9 action.

10 e. Public Policy Considerations: Employers in the State of California and other
11 states violate employment and labor laws every day. Current employees are
12 often afraid to assert their rights out of fear of direct or indirect retaliation.
13 Former employees are fearful of bringing actions because they believe their
14 former employers might damage their future endeavors through negative
15 references and/or other means. Class actions provide the class members who
16 are not named in the complaint with a type of anonymity that allows for the
17 vindication of their rights at the same time as affording them privacy
18 protections.

19 **GENERAL ALLEGATIONS**

20 26. At all relevant times mentioned herein, Defendants employed Plaintiff and other
21 persons as non-exempt, hourly employees.

22 27. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned
23 herein, Defendants were advised by skilled lawyers, employees and other professionals who were
24 knowledgeable about California wage and hour law, employment and personnel practices and the
25 requirements of California.

26 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
27 should have known that Plaintiff and class members were entitled to receive all meal periods or
28 payment of one additional hour of pay at Plaintiff's and class members' regular rate of pay when

1 they did not receive one timely, uninterrupted meal period when working more than five hours and
2 a second timely, uninterrupted meal period when working more than ten hours. Defendants failed to
3 provide these lawful meal periods to class members. These failures include, but are not limited to,
4 failing to provide the first meal periods within the first five hours of work and failing to provide
5 second meal periods for shifts of longer than ten hours.

6 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
7 should have known that Plaintiff and class members were entitled to receive all rest breaks or
8 payment of one additional hour of pay at Plaintiff and class members' regular rate of pay when a rest
9 break was missed. In violation of the Labor Code and IWC Wage Orders, Plaintiff and class members
10 did not receive all rest breaks or payment of one additional hour of pay at Plaintiff and class
11 members' regular rate of pay when a rest break was missed.

12 30. Upon information and belief, Defendants also required Plaintiff and class members
13 to remain on the premises during rest breaks.

14 31. Despite the above-mentioned meal period and rest break violations, Defendants did
15 not compensate Plaintiff, and on information and belief, did not compensate class members, one
16 additional hour of pay at their regular rate as required by California law, including Labor Code
17 section 226.7 and the applicable IWC wage order, for each day on which lawful meal periods and
18 rest breaks were not authorized and permitted. As a result, Plaintiff and class members were not paid
19 all lawful wages owed (including overtime wages). Plaintiff is informed and believes, and thereon
20 alleges, that Defendants knew or should have known that Plaintiff and class members were entitled
21 to receive all lawful wages owed yet failed to do so in violation of the Labor Code and IWC Wage
22 Orders.

23 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
24 should have known that Plaintiff and class members were entitled to timely payment of wages during
25 their employment. In violation of the California Labor Code, Plaintiff and class members did not
26 receive payment of all wages including, but not limited to, compensation for meal period violations
27 and rest period violations, within permissible time periods.
28

33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and Waiting Time class members were entitled to timely payment of wages upon separation of employment. In violation of the California Labor Code, Plaintiff and Waiting Time class members did not receive payment of all wages including, but not limited to, compensation for meal period violations and compensation for rest period violations, upon separation of their employment with Defendants.

34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and class members were entitled to receive complete and accurate wage statements in accordance with California law. In violation of the California Labor Code, Plaintiff and class members were not furnished with complete and accurate wage statements showing their rates of pay, among other things.

35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known they had a duty to compensate Plaintiff and class members, and Defendants had the financial ability to pay such compensation but willfully, knowingly and intentionally failed to do so all in order to increase Defendants' profits.

36. Therefore, Plaintiff brings this lawsuit seeking monetary and injunctive relief against Defendants on behalf of himself and all class members to recover, among other things, unpaid meal period premium payments, unpaid rest period premium payments, interest, attorneys' fees, penalties, costs and expenses.

FIRST CAUSE OF ACTION

FAILURE TO PAY ALL LAWFUL WAGES OWED

(Violations of Lab. Code §§ 510, 1194, 1199)

37. Plaintiff hereby incorporates all previous paragraphs of this complaint as though fully set forth herein.

38. As discussed herein, Defendants' policies and practices resulted in Plaintiff and Class Members not receiving compensation for all earned wages including overtime and/or minimum wage in violation of California state wage and hour laws.

39. As discussed herein, Defendants did not compensate Plaintiff and class members one additional hour of pay at their regular rate as required by California law, including Labor Code section 226.7 and the applicable IWC wage order, for each day on which lawful meal periods and rest breaks were not authorized and permitted. As a result, Plaintiff and class members were not paid all lawful wages, including minimum wages and overtime wages. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and class members were entitled to receive all wages owed yet failed to do so.

40. As a result of the unlawful acts of Defendants, Plaintiff and the Class he seeks to represent have been deprived of compensation for all earned wages including minimum wage and/or overtime wages in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs, pursuant to Labor Code section 1194.

41. As a result of Defendants' failure to pay Plaintiff and class members an additional hour of pay for each day a compliant meal period was not provided, Plaintiff and class members suffered and continue to suffer a loss of wages and compensation.

SECOND CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

(Violations of Labor Code §§ 226.7 and 512)

42. Plaintiff hereby incorporates all previous paragraphs of this complaint as though fully set forth herein.

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

44. Section 11 of the applicable IWC Wage Order states, “no employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee.”

45. Labor Code § 512(a) also provides that an employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than thirty (30) minutes, except that if the total hours worked is no more than

1 twelve (12) hours, the second meal period may be waived by mutual consent of the employer and
2 the employee only if the first meal period was not waived.

3 6. Upon information and belief, during the relevant time period, Plaintiff and class
4 members did not receive compliant meal periods for working more than five (5) and/or ten (10)
5 hours per day because, among other things, Defendant did not provide the first meal periods within
6 the first 5 hours of class members' shifts and did not provide second meal periods for shifts over
7 10 hours. Defendants also maintained a policy and practice of requiring Plaintiff and Class
8 Members to remain on premises during meal periods in violation of California law.

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

12 47. At all relevant times, Defendants failed to pay Plaintiff and class members the full
13 meal period premium for missed and untimely meal periods pursuant to Labor Code § 226.7(b) and
14 section 11 of the applicable IWC Wage Order.

15 48. As a result of Defendants' failure to pay Plaintiff and class members an additional
16 hour of pay for each day a compliant meal period was not provided, Plaintiff and class members
17 suffered and continue to suffer a loss of wages and compensation.

18 **THIRD CAUSE OF ACTION**

19 **FAILURE TO PERMIT REST PERIODS**

20 **(Violations of Labor Code § 226.7)**

21 49. Plaintiff hereby incorporates all previous paragraphs of this complaint as though fully
22 set forth herein.

23 50. Labor Code § 226.7(a) provides that no employer shall require an employee to work
24 during any rest period mandated by the IWC Wage Orders.

25 51. Section 12 of the applicable IWC Wage Order states "every employer shall authorize
26 and permit all employees to take rest periods, which insofar as practicable shall be in the middle of
27 each work period" and the "authorized rest period time shall be based on the total hours worked daily
28

1 at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof” unless the
2 total daily work time is less than three and one-half (3½) hours.

3 7. Upon information and belief, during the relevant time period, Plaintiff and class
4 members did not receive a ten (10) minute rest period for every four (4) hours or major fraction
5 thereof worked because they were required to work through their daily rest periods and/or were
6 not authorized to take their rest periods. Defendants also maintained a policy and practice of
7 requiring Plaintiff and Class Members to remain on premises during meal periods in violation of
8 California law.

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

12 53. At all relevant times, Defendants failed to pay Plaintiff and class members the full
13 rest period premium for missed or interrupted rest periods pursuant to Labor Code § 226.7(b) and
14 section 12 of the applicable IWC Wage Order.

15 54. As a result of Defendants’ failure to pay Plaintiff and class members an additional
16 hour of pay for each day a rest period was not provided, Plaintiff and class members suffered and
17 continue to suffer a loss of wages and compensation.

18 **FOURTH CAUSE OF ACTION**

19 **FAILURE TO PAY WAGES UPON SEPARATION**

20 **OF EMPLOYMENT AND WITHIN THE REQUIRED TIME**

21 **(Violations of Labor Code §§ 201, 202, 203 and 210)**

22 55. Plaintiff hereby incorporates all previous paragraphs of this complaint as though fully
23 set forth herein.

24 56. California Labor Code §§ 201 and 202 provide that if an employer discharges an
25 employee, the wages earned and unpaid at the time of discharge are due and payable immediately,
26 and that if an employee voluntarily leaves his or her employment, his or her wages shall become due
27 and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-
28

two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

57. During the relevant time period, Defendants willfully failed to pay Plaintiff and Waiting Time Subclass Members all their earned wages upon termination including, but not limited to, compensation for failure to provide compliant meal periods and permit compliant rest periods, either at the time of discharge or within seventy-two (72) hours of their leaving Defendants' employ.

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

59. California Labor Code § 203 provides that if an employer willfully fails to pay wages owed promptly upon discharge or resignation as required under California Labor Code §§ 201 and 202, then the wages of the employee shall continue as a penalty from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

60. Defendants willfully failed to pay Plaintiff and Waiting Time Subclass Members all wages due and, as a result, owe Plaintiff and Waiting Time Subclass Members regular daily wages for each day they were not paid, at their regular rates of pay up to a thirty (30) day maximum pursuant to California Labor Code § 203 all in an amount to be shown according to proof at trial.

61. Based on these violations, Plaintiff and the Waiting Time Subclass he seeks to represent request relief as described herein and below.

FIFTH CAUSE OF ACTION

FAILURE TO FURNISH ACCURATE WAGE STATEMENTS

(Violation of Labor Code § 226)

62. Plaintiff hereby incorporates all previous paragraphs of this complaint as though fully set forth herein.

63. California Labor Code § 226(a) requires employers to furnish their employees with an accurate itemized writing that shows gross wages earned, total hours worked, all deductions, net wages earned, the inclusive dates of the period for which the employee is paid, the name of the

1 employee and the portion of his or her social security number as required by law, the name and
2 address of the legal entity that is the employer and all applicable hourly rates in effect during the pay
3 period and the corresponding number of hours worked at each hourly rate by the employee.

4 64. Defendants have intentionally and willfully failed to provide Plaintiff and class
5 members with complete and accurate wage statements. The deficiencies include, among other things,
6 the failure to list rates of pay and failure to list the proper amount of the gross wages earned and net
7 wages earned due to the failure to compensate class members for non-compliant meal periods and
8 rest periods.

9 65. As a result of Defendants' violation of California Labor Code § 226(a), Plaintiff and
10 class members have suffered injury and damage to their statutorily protected rights. Specifically,
11 Plaintiff and class members have been injured by Defendants' intentional violation of California
12 Labor Code § 226(a) because they were denied both their legal right to receive, and their protected
13 interest in receiving, accurate itemized wage statements under California Labor Code § 226(a).
14 Plaintiff has had to file this lawsuit in order to determine the extent of the underpayment of wages,
15 thereby causing Plaintiff to incur expenses and lost time. Plaintiff would not have had to engage in
16 these efforts and incur these costs had Defendants provided the accurate wages earned. This has also
17 delayed Plaintiff's ability to demand and recover the underpayment of wages from Defendants.

18 66. California Labor Code § 226(a) requires an employer to pay the greater of all actual
19 damages or fifty dollars (\$50.00) for the initial pay period in which a violation occurred, and one
20 hundred dollars (\$100.00) per employee for each violation in subsequent pay periods, plus attorney's
21 fees and costs, to each employee who was injured by the employer's failure to comply with California
22 Labor Code § 226(a).

23 67. Defendants' violations of California Labor Code § 226(a) prevented Plaintiff and
24 class members from knowing, understanding and disputing the wages paid to them, and resulted in
25 an unjustified economic enrichment to Defendants. As a result of Defendants' knowing and
26 intentional failure to comply with California Labor Code § 226(a), Plaintiff and class members have
27 suffered an injury, and the exact amount of damages and/or penalties is all in an amount to be shown
28 according to proof at trial.

1 68. Plaintiff and class members are also entitled to injunctive relief under California
2 Labor Code § 226(g), compelling Defendants to comply with California Labor Code § 226 and seek
3 the recovery of attorneys' fees and costs incurred in obtaining this injunctive relief.

4 **IXTH CAUSE OF ACTION**

5 **UNFAIR BUSINESS PRACTICES**

6 **(Violation of Business and Professions Code §§ 17200 *et seq.*)**

7 69. Plaintiff hereby incorporates all previous paragraphs of this complaint as though fully
8 set forth herein.

9 70. California Business and Professions Code §§ 17200, *et seq.*, prohibits acts of unfair
10 competition, which includes any "unlawful, unfair or fraudulent business act or practice"

11 71. A violation of California Business and Professions Code §§ 17200, *et seq.* may be
12 predicated on the violation of any state or federal law. In the instant case, Defendants' policies and
13 practices have violated state law, causing Plaintiff and class members to suffer and continue to suffer
14 injuries in fact. As alleged herein, Defendants systematically engaged in unlawful conduct in
15 violation of the California Labor Code and IWC Wage Orders, such as failing to provide meal periods
16 or compensation in lieu thereof, failing to permit rest periods or compensation in lieu thereof, failing
17 to pay all wages due and owing upon separation of employment and in a timely manner, and failing
18 to furnish accurate wage statements, all in order to decrease their costs of doing business and increase
19 their profits.

20 72. At all times relevant herein, Defendants intentionally avoided paying Plaintiff and
21 class members wages and monies, thereby creating for Defendants an artificially lower cost of doing
22 business in order to undercut their competitors and establish and/or gain a greater foothold in the
23 marketplace.

24 73. As a result of Defendants' conduct, Plaintiff and class members suffered a loss of
25 wages and monies, all in an amount to be shown according to proof at trial. By violating the foregoing
26 statutes and regulations as herein alleged, Defendants' acts constitute unfair and unlawful business
27 practices under California Business and Professions Code §§ 17200, *et seq.*

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

75. As a result of the unfair business practices of Defendants, as alleged herein, Plaintiff and class members are entitled to injunctive relief, disgorgement and restitution in an amount to be shown according to proof at trial.

76. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of California Code of Civil Procedure § 1021.5. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, unlawful and harmful to Plaintiff, class members and to the general public. Based on Defendants' conduct as alleged herein, Plaintiff and class members are entitled to an award of attorneys' fees pursuant to California Code of Civil Procedure § 1021.5.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of all others similarly situated, prays for judgment against Defendants as follows:

1. For certification of the proposed Class and Waiting Time Subclass and any other appropriate classes or subclasses under California Code of Civil Procedure § 382;
2. For appointment of Plaintiff as the class representative;
3. For appointment of James Hawkins, APLC as class counsel for all purposes;
4. For general damages;
5. For special damages;
6. For statutory penalties to the extent permitted by law, including those pursuant to the California Labor Code and IWC Wage Orders;
7. For injunctive relief as provided by the California Labor Code and California Business and Professions Code §§ 17200 *et seq.*;
8. For restitution as provided by California Business and Professions Code §§ 17200, *et seq.*;

1 9. For an order requiring Defendants to restore and disgorge all funds to each employee
2 acquired by means of any act or practice declared by this Court to be unlawful, unfair or fraudulent
3 and, therefore, constituting unfair competition under California Business and Professions Code §§
4 17200 *et seq.*;

5 10. For an award of damages in the amount of unpaid compensation;

6 11. For pre-judgment interest;

7 12. For reasonable attorney's fees and costs of suit to the extent permitted by law;
8 California Code of Civil Procedure § 1021.5 and California Labor Code § 226(e);

9 13. For such other relief as the Court deems just and proper.

10
11 Dated: August 11, 2020

JAMES HAWKINS, APLC

12
13 By: _____

Samantha Smith

Samantha A. Smith
Attorneys for Plaintiff

14
15
16
17 **DEMAND FOR JURY TRIAL**

18 Plaintiffs hereby demand a jury trial with respect to all issues triable of right by jury.

19
20 Dated: August 11, 2020

21 **JAMES HAWKINS, APLC**

22
23 By: _____

Samantha Smith

Samantha A. Smith
Attorneys for Plaintiff