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County of Santa Clara,
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Case #20CV373776
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Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
Brittany V. Berzin (Cal. State Bar No. 325121)
Shimoda Law Corp.
9401 East Stockton Boulevard, Suite 120
Elk Grove, CA 95624
Telephone: (916) 525-0716
Facsimile: (916) 760-3733

Attorneys for Plaintiff JESUS FERREYRA
on behalf of himself and other similarly situated employees

**SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

JESUS FERREYRA, individually and on
behalf of all other similarly situated
employees,

Plaintiff,

vs.

POINT DIGITAL FINANCE, INC., a
Delaware Corporation;
EDWARD LIM, an individual; and
DOES 1 to 100, inclusive,

Defendants.

Case No. 20CV373776

CLASS ACTION

**FIRST AMENDED COMPLAINT FOR
DAMAGES:**

1. Failure to Pay Overtime Wages
2. Failure to Pay Minimum Wages
3. Meal Period Violations
4. Rest Period Violations
5. Wage Statement Violations
6. Waiting Time Penalties
7. Unfair Competition
8. Private Attorneys General Act

DEMAND FOR JURY TRIAL

Plaintiff JESUS FERREYRA ("Plaintiff"), on behalf of himself and all other similarly
situated employees, hereby files this Complaint against Defendants POINT DIGITAL FINANCE,
INC., a Delaware Corporation; EDWARD LIM, an individual; and DOES 1 to 100, inclusive
(hereinafter all collectively referred to as "Defendants"). On information and belief, Plaintiff alleges
the following:

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JURISDICTION AND VENUE

2. The Santa Clara County Superior Court has jurisdiction in this matter pursuant to California Code of Civil Procedure section 410.10 to determine alleged violations of the California Labor Code, California Business and Professions Code, and Wage Order No. 4.

2. The Santa Clara County Superior Court has jurisdiction in this matter pursuant to California Code of Civil Procedure section 410.10 to determine alleged violations of the California Labor Code, California Business and Professions Code, and Wage Order No. 4.

4. Plaintiff sought permission pursuant to Labor Code section 2699 *et seq.* to pursue the claims set forth in this Complaint against Defendants as a Private Attorney General on behalf of himself and other similarly situated employees. Pursuant to Labor Code section 2699.3, Plaintiff gave written notice via online submission to the Labor and Workforce Development Agency (“LWDA”) on approximately September 14, 2020. Plaintiff provided facts and legal bases for his claims within the notice to the LWDA on all violations asserted under the Private Attorneys General Act cause of action. Plaintiff submitted the \$75.00 filing fee. The September 14, 2020 notice was also sent via certified mail to Defendants on the same day. Plaintiff is informed and believes, that to date, the LWDA has not provided any response to Plaintiff’s notice correspondence. Accordingly, Plaintiff is informed and believes that he has exhausted all administrative remedies pursuant to the Private Attorneys General Act and may bring this action on behalf of himself and all similarly situated employees. *See* Cal. Labor Code § 2699.3(a)(2)(A), (c)(3); *Caliber Bodyworks, Inc. v. Sup. Ct.*, 134 Cal.App.4th 365, 383 n.18, 385 n.19 (2005).

1
FIRST AMENDED CLASS ACTION COMPLAINT

PARTIES

5. JESUS FERREYRA is an individual over the age of eighteen (18) and is a resident of the State of California.

6. On information and belief, Plaintiff alleges, POINT DIGITAL FINANCE, INC., is now and/or at all times mentioned in this Complaint was a Delaware Corporation and the owner and operator of an industry, business and/or facility doing business in the State of California.

7. Plaintiff is informed and believes, and thereupon alleges, that EDWARD LIM is an individual over the age of eighteen (18) and is a resident of the State of California. Plaintiff further alleges that EDWARD LIM is an owner, director, officer, and/or managing agent of POINT DIGITAL FINANCE, INC. responsible for causing the violations outlined in the first through sixth and eighth causes of action. As such EDWARD LIM is individually liable pursuant to California Labor Code section 558.1.

8. Defendants DOES 1 through 100 are affiliates, subsidiaries and related entities and the alter egos of each of the other Defendants named herein, corporate or otherwise, who participated in and are liable for the actions herein alleged. Plaintiff will seek to amend this Complaint to allege the true names and capacities of these DOE Defendants when they are ascertained. At all times mentioned herein, each Defendant was the agent or employee of each of the other Defendants and was acting within the course and scope of such agency or employment. The Defendants are jointly and severally liable to Plaintiff.

9. At all times mentioned herein, each Defendant was the agent or employee of each of the other Defendants and was acting within the course and scope of such agency or employment. The Defendants are jointly and severally liable to Plaintiff.

10. Defendants, and each of them, are now and/or at all times mentioned in this Complaint were members of and/or engaged in a joint employment, joint venture, partnership and common enterprise, and were acting within the course and scope of, and in pursuance of said joint employment, joint venture, partnership and common enterprise.

11. Defendants, and each of them, now and/or at all times mentioned in this Complaint approved, ratified, acquiesced, aided or abetted the acts and omissions alleged in this Complaint.

12. Defendants proximately caused Plaintiff to be subjected to the unlawful practices, wrongs, complaints, injuries and/or damages alleged in this Complaint.

CLASS ALLEGATIONS

13. Plaintiff brings the First through Seventh Causes of Action on behalf of himself and all others similarly situated as a class action pursuant to California Code of Civil Procedure section 382. The class which Plaintiff seeks to represent is composed of, and defined, as follows:

All non-exempt employees who have worked, or continue to work, for Defendants in California from November 19, 2016 to the present.

14. This action has been brought and may be properly maintained as a class action, pursuant to the provision of California Code of Civil Procedure section 382, because there is a well-defined community of interests in the litigation and the proposed class is easily ascertainable.

(a) Numerosity: The putative class is so numerous that the individual joinder of all members is impracticable under the circumstances of this case. While the exact number of class members is unknown to Plaintiff at this time, Plaintiff is informed and believes that Defendants have employed as many as fifty (50) individuals falling within the above stated class definition throughout the State of California during the applicable statute of limitations, who were subjected to the policies and practices outlined in this Complaint. As such, joinder of all members of the putative class is not practicable.

(b) Common Questions Predominate: Common questions of law and fact exist as to all members of the putative class and predominate over questions that affect only individual members of the class. These common questions of law and fact include, without limitation, the following:

- (1) Whether Defendants paid putative class members for all hours worked;
- (2) Whether Defendants paid all overtime wages owed;
- (3) Whether Defendants failed to correctly calculate putative class members' regular rate of pay;
- (4) Whether Defendants maintained accurate payroll records;
- (5) Whether Defendants failed to authorize and permit all meal and rest periods;

1 (6) Whether as a result of Defendants' policies and practices Plaintiff and putative
2 class members received all wages, due and owing, at the time of their termination
3 or separation; and

4 (7) Whether Defendants provided Plaintiff's and putative class members with wage
5 statements that complied with Labor Code section 226.

6 (c) Typicality: Plaintiff's claims are typical of the claims of the members of the putative
7 class. The putative class also sustained damages arising out of Defendants' common
8 course of conduct in violation of the law as complained of herein. Additionally,
9 Defendants issued Plaintiff and all members of the putative class wage statements that
10 did not comply with Labor Code section 226. As a result, Plaintiff and each member of
11 the putative class will have suffered the same type of harm and seek the same type of
12 recovery based on the same legal theories.

13 (d) Adequacy: Plaintiff will fairly and adequately protect the interests of the members of the
14 putative class. For all relevant times, Plaintiff resided in California and worked for
15 Defendants in California. Moreover, Plaintiff is an adequate representative of the
16 putative class as Plaintiff has no interests that are adverse to those of putative class
17 members. Additionally, Plaintiff has retained counsel who has substantial experience in
18 complex civil litigation and wage and hour matters.

19 (e) Superiority: A class action is superior to other available means for the fair and efficient
20 adjudication of the controversy since individual joinder of all members of the putative
21 class is impracticable. Class action treatment will permit a larger number of similarly
22 situated persons to prosecute their common claims in a single forum simultaneously,
23 efficiently, and without the unnecessary duplication of effort and expense that numerous
24 individual actions would engender. Further, as damages suffered by each individual
25 member of the class may be relatively small, the expenses and burden of the individual
26 litigation would make it difficult or impossible for individual members of the class to
27 redress the wrongs done to them, and an important public interest will be served by
28 addressing the matter as a class action. The cost to the court system of adjudication of

1 such individualized litigation would be substantial. Individualized litigation would also
2 present the potential for inconsistent or contradictory judgments.

3 15. Plaintiff is unaware of any difficulties that are likely to be encountered in the
4 management of this action that would preclude its maintenance as a class action.

5 GENERAL ALLEGATIONS

6 16. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 15 as though fully
7 set forth herein.

8 17. Plaintiff worked for Defendants from approximately July 2019 to August 2020 as a non-
9 exempt employee. Plaintiff's job was to help Defendants' customers obtain home financing. Similarly
10 situated employees also worked for Defendants as non-exempt employees. Plaintiff and similarly
11 situated employees regularly worked over eight (8) hours in a day and/or forty (40) hours in a week,
12 incurring overtime and were paid non-discretionary remuneration, such as bonuses. For example,
13 Plaintiff's time records reflect that from 2/24/20 to 3/1/20 he worked 52.65 hours and worked over eight
14 (8) hours in a day on all five (5) days he worked that week. Plaintiff's 2/24/20-3/8/30 paystub reflects
15 he was paid a performance bonus of \$350. Plaintiff was paid performance bonuses that were based on
16 the number of files that were funded. Plaintiff is informed and believed that similarly situated
17 employees regularly worked similar schedules incurring overtime and earning bonuses and other non-
18 discretionary payments within the same workweek and/or pay period.

19 18. Plaintiff and similarly situated employees were also not authorized and permitted to take
20 all meal and rest periods they were entitled to, being paid meal and rest period premiums on occasions,
21 but not for each instance they were unlawfully denied meal and rest periods. For instance, Plaintiff's
22 2/24/20-3/8/20 paystub reflects that Defendants paid him four missed meal period premiums.

23 19. Plaintiff is informed and believes that Defendants did not correctly incorporate the value
24 of the non-discretionary remuneration, such as bonuses, etc., into Plaintiff's and similarly situated
25 employees' regular rate of pay when calculating overtime, double time, meal and rest period premiums,
26 or sick leave pay. For example, Plaintiff's 2/24/20-3/8/20 paystub reflects that Plaintiff was paid the
27 four meal period premiums at his base \$28.85 hourly rate of pay, which did not incorporate the value of
28 his performance bonus earned in that same period. Additionally, the overtime paid on the paystub

1 shows the overtime rate of \$43.2750, which is exactly 1.5x his base hourly rate, demonstrating no
2 additional consideration was given to the bonus payments he received when calculating the overtime
3 rate of pay. Plaintiff is informed and believes that Defendant similarly only paid sick leave wages at an
4 employee's base rate of pay rather than their regular rate of pay when sick leave and bonuses were paid
5 within the same workweek and/or pay period. For these reasons, Plaintiff and similarly situated
6 employees were underpaid their wages owed.

7 20. Plaintiff is informed and believes that Defendants also failed to pay double time wages at
8 the correct rate of pay. For example, Plaintiff's 3/9/20 to 3/22/20 paystub reflects that he worked 3.08
9 hours of double time that was paid at his base \$28.85 hourly rate of pay. Plaintiff is informed and
10 believes that similarly situated employees also worked double time and were only paid double time
11 wages at their base hourly rate of pay. Defendants failed to pay Plaintiff and similarly situated
12 employees for all hours worked. Plaintiff and similarly situated employees would have to wait several
13 minutes, ranging from 2 to 4 for the computer to turn on or wake up and to log in to the ADP website
14 prior to being able to clock in. Plaintiff's and similarly situated employees' time was automatically
15 recorded at the time their login process was completed on the ADP website and could not be changed
16 through the website to reflect the time Plaintiff and similarly situated employees spent waiting for the
17 computer to turn on or wake up and to log in to ADP. Plaintiff and similarly situated employees were
18 not paid for this time spent working prior to logging in. As a result, Plaintiff and similarly situated
19 employees were not paid at least the minimum wage for each hour they worked, and Defendants failed
20 to maintain accurate records of the hours Plaintiff and similarly situated employees worked.

21 21. Defendants failed to provide Plaintiff and similarly situated employees with legally
22 compliant paystubs. The paystubs Defendants issued did not itemize the total hours worked, accurate
23 regular and overtime rates of pay, accurate missed meal and rest period premiums owed, and accurate
24 gross and net wages earned. Plaintiff's and similarly situated employees' paystubs do not provide an
25 overtime rate of pay or overtime hours worked calculation that includes all remuneration paid within the
26 workweek and/or pay period. As a result, Plaintiff and similarly situated employees were not able to
27 determine the total wages owed to them from their paystubs alone.

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22. As of this date of this letter, Defendants have not paid Plaintiff and similarly situated employees all minimum wages, overtime and double time wages, paid sick time, and meal and rest period premiums owed to them.

23. Defendant Point Digital Finance, Inc. identified Defendant Edward Lim in its filings with the California Secretary of State from 2014 to the present as its President, Chief Executive Officer, Secretary, and Chief Financial Officer. Plaintiff observed during his employment that Edward Lim would announce changes to Plaintiff's and similarly situated employees' compensation policies. Plaintiff is informed and believes that Edward Lim was responsible for creating and electing to implement Point Digital Finance, Inc.'s payroll and compensation policies and practices or that Edward Lim was aware of such policies and practices and ratified them.

CAUSES OF ACTION

FIRST CAUSE OF ACTION
FAILURE TO PAY OVERTIME WAGES
(As to all Defendants)

24. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 23 as though fully set forth herein.

25. During the period Plaintiff was employed by Defendants, Defendants were required to compensate Plaintiff at one and one-half (1½) times the regular rate of pay for hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and two (2) times the regular rate of pay for hours worked in excess of twelve (12) hours per day. *See, e.g.*, IWC Wage Order No. 4, section (3)(A); Cal. Lab. Code §§ 510, 1194.

26. Plaintiff and similarly situated employees worked in excess of eight (8) hours per day and/or forty (40) hours per week on several occasions while employed by Defendants. However, Defendants failed to compensate Plaintiff and similarly situated employees for all overtime hours worked at the correct overtime rate of pay because Defendants did not incorporate the value of bonuses it paid to into the regular rate for the purpose of calculating overtime.

27. Plaintiff and similarly situated employees were not exempt from overtime protections employees under the California Wage Orders and Labor Code.

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28. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

SECOND CAUSE OF ACTION
FAILURE TO PAY MINIMUM WAGES
(As to all Defendants)

29. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 28 as though fully set forth herein.

30. For the period preceding the filing of this Complaint, Defendants were required to compensate Plaintiff and similarly situated employees with at least California's applicable minimum for every hour worked. *See* MW-Order 2019; IWC Wage Order, No. 4, section 4(A); Cal. Lab. Code § 1194. Defendants failed to pay Plaintiff and similarly situated employees for all time they spent working for Defendants.

31. Plaintiff was not exempt to the State's Minimum Wage Order. Defendants aware of their obligation to pay the minimum wage for each hour worked but failed to do so.

32. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

THIRD CAUSE OF ACTION
MEAL PERIOD VIOLATIONS
(As to all Defendants)

33. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 32 as though fully set forth herein.

34. An employer must provide an employee a meal period in accordance with the applicable Wage Order, and California Labor Code sections 226.7 and 512.

35. California Labor Code sections 226.7 and 512 and IWC Wage Order No. 4, section 11(A) require an employer to provide an uninterrupted meal period of not less than thirty (30) minutes for each work period of more than five (5) hours.

36. California Labor Code section 512 and Wage Order No. 4 section 11(B) further provide that employers may not employ employees for a work period for more than ten (10) hours

1 per day without providing the employee with a second meal period of at least thirty (30) minutes.
2 However, if the total hours worked is no more than twelve (12) hours, the second meal period may
3 be waived so long as there was no waiver as to the first meal period. Employees are entitled to one
4 (1) hour of pay at their regular rate of compensation for each meal period not provided.

5 37. Defendants employed Plaintiff and similarly situated employees for periods of more
6 than five (5) hours without providing meal breaks of at least thirty (30) minutes or a second meal
7 period of at least thirty (30) minutes when Plaintiff and similarly situated employees worked more
8 than ten (10) hours in a day. Defendants also failed to allow Plaintiff and similarly situated
9 employees to take their first meal period before the completion of their fifth hour of work and failed
10 to allow Plaintiff and similarly situated employees to take their second meal period before the
11 completion of their tenth hour of work. Plaintiff and similarly situated employees did not waive their
12 rights to all meal periods throughout their employment.

13 38. Defendants further failed to pay Plaintiff and similarly situated employees all
14 applicable meal period premiums at the correct rate for any such missed meal breaks.

15 39. As a proximate result of Defendants' conduct, Plaintiff and similarly situated
16 employees have been damaged as stated in the section below entitled "DAMAGES," which is
17 incorporated here to the extent pertinent as if set forth here in full.

18 **FOURTH CAUSE OF ACTION**
19 **REST PERIOD VIOLATIONS**
20 **(As to all Defendants)**

21 40. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 39 as though fully
22 set forth herein.

23 41. An employer must provide an employee a rest period in accordance with the
24 applicable Wage Order and California Labor Code section 226.7.

25 42. California Labor Code section 226.7 and Wage Order No. 4, section 12(A) require an
26 employer to provide a rest period of not less than ten (10) minutes for each work period of more than
27 four (4) hours or a major fraction thereof.

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43. Plaintiff alleges that Defendants failed to authorize and permit Plaintiff and similarly situated employees to take paid rest periods of at least ten (10) minutes for each work period that they worked more than four (4) hours or a major fraction thereof.

44. Defendants further failed to pay Plaintiff and similarly situated employees all applicable rest period premiums at the correct rate for any such missed rest periods.

45. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

FIFTH CAUSE OF ACTION
WAGE STATEMENT VIOLATIONS
(As to all Defendants)

46. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 45 as though fully set forth herein.

47. Pursuant to California Labor Code section 226(a), an employer must provide an itemized statement to an employee, semimonthly or at the time of each payment of wages, showing:

(1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

48. Plaintiff alleges that Defendants intentionally and knowingly failed to provide an itemized statement or failed to provide an accurate and complete itemized statement showing the

1 requirements set forth in California Labor Code section 226(a). The paystubs Defendants issued did
2 not itemize the total hours worked, accurate regular and overtime rates of pay, accurate missed meal
3 and rest period premiums owed, and accurate gross and net wages earned. Plaintiff and similarly
4 situated employees were not able to promptly and easily determine all information required to be
5 stated under Labor Code section 226(a) from their paystubs alone. Additionally, Plaintiff and
6 similarly situated employees suffered confusion over whether they received all wages owed and were
7 prevented from effectively challenging information on their wage statements.

8 49. As a proximate result of Defendants' conduct, Plaintiff and similarly situated
9 employees have been damaged as stated in the section below entitled "DAMAGES," which is
10 incorporated here to the extent pertinent as if set forth here in full.

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12 **SIXTH CAUSE OF ACTION**
WAITING TIME PENALTIES
(As to all Defendants)

13 50. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 49 as though fully
14 set forth herein.

15 51. An employer must pay an employee who is terminated all unpaid wages immediately
16 upon termination. *See* Cal. Lab. Code § 201.

17 52. An employer must pay an employee who resigns all unpaid wages within seventy-two
18 (72) hours of their resignation. *See* Cal. Lab. Code § 202.

19 53. Plaintiff and similarly situated employees did not receive all wages, including minimum
20 and overtime wages, meal and rest period premiums, or all sick leave pay owed at their termination or
21 within the required time after their separation from employment.

22 54. An employer who willfully fails to pay an employee wages in accordance with California
23 Labor Code sections 201 and/or 202 must pay the employee a waiting time penalty of up to thirty (30)
24 days. *See* Cal. Lab. Code § 203.

25 55. Defendants knew of their obligation to pay Plaintiff's and similarly situated employees'
26 their final wages when their employment terminated. Indeed, Defendants had knowledge that Plaintiff
27 and similarly situated employees were receiving additional non-discretionary remuneration, such as
28 bonuses, in addition to their basic hourly rate that were not included in the regular rate of pay for

premium pay purposes and were not receiving all meal and rest periods owed or premium payments in lieu thereof. Such conduct shows Defendants had knowledge of earned, but unpaid wages at the time of separation, yet Defendants still refused to pay the remaining wages owed.

56. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged and deprived of their wages and thereby seek their daily rate of pay multiplied by thirty (30) days for Defendants' failure to pay all wages due.

SEVENTH CAUSE OF ACTION
UNFAIR COMPETITION
(As to Point Digital Finance, Inc and DOES 1 to 100)

57. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 56 as though fully set forth herein.

58. Unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code. *See* California Business and Professions ("B&P") Code § 17200.

59. Plaintiff and similarly situated employees were not paid all wages owed, including minimum and overtime wages and paid sick time.

60. Plaintiff further alleges that such actions and/or conduct constitute a violation of the California Unfair Competition Law ("UCL") (Business and Professions Code 17200 *et seq.*) pursuant to *Cortez v. Purolator Air Filtration Products Co.*, 23 Cal. 4th 163 (2000).

61. As a direct and legal result of the Defendants' conduct, as alleged herein, pursuant to the UCL (including B&P Code §17203), Plaintiff and similarly situated employees are entitled to restitution, including, but not limited to, interest and penalties pursuant to Business & Professions Code sections 17203, 17208, all in an amount as yet unascertained but subject to proof at trial, for four (4) years from the filing of this Action.

EIGHTH CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(As to all Defendants)

62. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 61 as though fully set forth herein.

63. Plaintiff has alleged to the Labor Commissioner that Defendants have violated the following provisions of the Labor Code in their dealings with him and other similarly situated current and former employees:

- Violation of Labor Code §§ 510, 1194; IWC Wage Order 4, § 3 (Failure to Pay Overtime Wages)
- Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 4, § 4 (Failure to Pay Minimum Wages)
- Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)
- Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)
- Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order)
- Violation of Labor Code §§ 226.7, 512; IWC Wage Order 4, §§ 11(A) and 11(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)
- Violation of Labor Code § 226.7; IWC Wage Order 4, § 12(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof)
- Violation of Labor Code § 226.3, 1174, 1198; IWC Wage Order 4, § 7(A) (Failure to Maintain Accurate Records)

64. Plaintiff seeks civil penalties against Defendants as provided in the Labor Code, or, if no civil penalty is provided, default penalties pursuant to Labor Code section 2699(f)(2).

65. Plaintiff seeks these civil penalties from Defendants pursuant to Labor Code sections 2699(a) and 2699.3.

DAMAGES

WHEREFORE Plaintiff requests relief as follows:

1. A jury trial;
2. As to the First Cause of Action:
 - a. \$500,000;
 - b. Interest for the wages due pursuant to California Labor Code section 1194;

- 1 c. For reasonable attorney's fees and costs incurred pursuant to California Labor
2 Code section 1194;
- 3 3. As to the Second Cause of Action:
- 4 a. \$500,000;
- 5 b. Interest for the wages due pursuant to California Labor Code section 1194;
- 6 c. For reasonable attorney's fees and costs incurred pursuant to California Labor
7 Code section 1194;
- 8 d. Liquidated damages pursuant to California Labor Code section 1194.2;
- 9 4. As to the Third Cause of Action:
- 10 a. \$500,000;
- 11 b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure
12 section 1021.5;
- 13 5. As to the Fourth Cause of Action:
- 14 a. Wages in an amount to be proven at trial;
- 15 b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure
16 section 1021.5;
- 17 6. As to the Ninth Cause of Action:
- 18 a. For civil penalties as provided for in the Labor Code for each enumerated
19 violation in the amount of \$2,000,000;
- 20 b. For those Labor Code sections, the violation of which there is no civil penalty
21 provided, the default penalty provided in Labor Code section 2699(f): for any
22 initial violation, one hundred dollars (\$100) for each aggrieved employee per pay
23 period; For any subsequent violation, two hundred dollars (\$200) for each
24 aggrieved employee per pay period;
- 25 c. Reasonable attorney's fees and costs pursuant to Labor Code section 2699;
- 26 d. For any other remedies as allowed by law and/or deemed appropriate by the
27 Court;
- 28 7. For such other and further relief as this Court may deem just and proper,

1 including, but not limited to:

- 2 a. Wages as proved at trial;
- 3 b. Injunctive and Declaratory relief;
- 4 c. Attorney's fees and costs as provided for by law; and
- 5 d. Interest.
- 6

7 Dated: February 3, 2021

Shimoda Law Corp.

8

9 By: 

10 Galen T. Shimoda

11 Justin P. Rodríguez

12 Brittany V. Berzin

13 Attorneys for Plaintiff

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3 **PROOF OF SERVICE — CCP §§ 1013a, 1010.6 and 2015.5**
4 **and California Rules of Court, Rule 1.21 and Rule 2.150**

5 I, Rylee K. Fonseca, declare that:

6 I am a citizen of the United States and am over the age of eighteen years and not a party to
7 the within above-entitled action.

8 On February 3, 2021, I served the following documents on the party below:

- 9 • First Amended Complaint For Damages

10 Tatyana A. Shmygol (SBN 267104)
11 Steven L. Friedlander (SBN 154146)
12 SV Employment Law Firm PC
13 160 Bovet Road Suite 401
14 San Mateo, California 94402
15 Phone: (650) 265-0226
16 Facsimile: (650) 265-0223
17 Email: tshmygol@svelf.com
18 sfriedlander@svelf.com

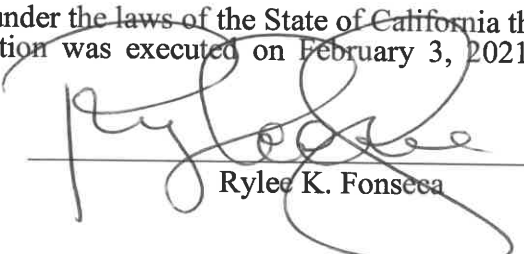
19 [XXX] [By Mail] I am familiar with my employer's practice for the collection and
20 processing of correspondence for mailing with the United States Postal
21 Service and that each day's mail is deposited with the United States Postal
22 Service that same day in the ordinary course of business. On the date set
23 forth above, I served the aforementioned document(s) on the parties in
24 said action by placing a true copy thereof enclosed in a sealed envelope
25 with postage thereon fully prepaid, for collection and mailing on this date,
26 following ordinary business practices, at Elk Grove, California, addressed
27 as set forth above.

28 [] [By Personal Service] By personally delivering a true copy thereof to the
office of the addressee above.

[] [By Electronic Mail] I e-mailed the documents(s) to the person(s) shown
above. No error was reported by the e-mail service that I used.

[] [By Overnight Courier] By causing a true copy and/or original thereof to
be personally delivered via the following overnight courier service: UPS.

I declare under penalty of perjury under the laws of the State of California that the foregoing
is true and correct, and that this declaration was executed on February 3, 2021, at Elk Grove,
California


Rylee K. Fonseca