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10 Attorneys for Plaintiff Jonathan Romero-Abrego
11 individually and on behalf of all others similarly situated

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN MATEO

JONATHAN ROMERO-ABREGO, and on
behalf of all others similarly situated,

Plaintiffs,

v.

ABM INDUSTRIES, INC., a Delaware
Corporation, and DOES 1-50, inclusive,

Defendants.

CASE NO.:

Assigned For All Purposes To:

Judge:

Dept.:

**CLASS ACTION COMPLAINT
FOR:**

1. Failure to Pay Wages;
2. Failure to Provide Meal Periods as Required;
3. Failure to Provide Rest Periods as Required;
4. Failure to Pay Timely Wages;
5. Failure to Provide Accurate Itemized Wage Statements; and
6. Violation of Business & Professions Code § 17200, *et seq.*

DEMAND FOR JURY TRIAL

1 Plaintiff Jonathan Romero-Abrego ("Plaintiff"), individually and on behalf of all others
2 similarly situated (hereinafter collectively referred to as the "Class" or "Class Member"), hereby
3 files this Complaint against Defendant ABM Industries, Inc.; and DOES 1-50, inclusive
4 (collectively "Defendants") and alleges on information and belief as follows:

5 **I. JURISDICTION AND VENUE**

6 1. This class action is brought pursuant to California Code of Civil Procedure §382.
7 The monetary damages and restitution sought by Plaintiff exceeds the minimum jurisdiction limits
8 of the California Superior Court and will be established according to proof at trial.

9 2. This Court has jurisdiction over this action pursuant to the California Constitution
10 Article VI §10, which grants the California Superior Court original jurisdiction in all causes
11 except those given by statute to other courts. The statutes under which this action is brought do not
12 give jurisdiction to any other court.

13 3. This Court has jurisdiction over Defendants because, upon information and belief,
14 each Defendant either has sufficient minimum contacts in California, or otherwise intentionally
15 avails itself of the California market so as to render the exercise of jurisdiction over it by the
16 California Courts consistent with traditional notions of fair play and substantial justice.

17 4. Venue is proper in this Court because upon information and belief, one or more of
18 the Defendants, reside, transact business, or have offices in this County and/or the acts or
19 omissions alleged herein took place in this County.

20 **II. PARTIES**

21 5. Plaintiff Jonathan Romero-Abrego was at all times relevant to this action, a
22 resident of California. Plaintiff was employed by Defendants from approximately August, 2018
23 through March, 2020, as a non-exempt, hourly employee.

24 6. Other than identified herein, Plaintiff is unaware of the true names, capacities,
25 relationships, and extent of participation in the conduct alleged herein, of the Defendants sued as
26 DOES 1 through 50, but are informed and believe and thereon alleges that said defendants are
27 legally responsible for the wrongful conduct alleged herein and therefore sues these defendants by
28 such fictitious names. Plaintiff will amend this complaint when their true names and capabilities

1 are ascertained.

2 7. Plaintiff is informed and believes and thereon alleges that each defendant, directly
3 or indirectly, or through agents or other persons, employed Plaintiff and other members of the
4 Class, and exercised control over their wages, hours, and working conditions. Plaintiff is informed
5 and believe and thereon allege that each Defendant acted in all respects pertinent to this action as
6 the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects
7 pertinent hereto, and the acts of each Defendant are legally attributable to the other defendants.

8 **III. CLASS ACTION ALLEGATION**

9 8. Plaintiff brings this action individually and on behalf of all others similarly
10 situated as a class action pursuant to Code of Civil Procedure § 382. The members of the Class are
11 defined as follows:

12 All persons who are or have been employed by Defendants as non-exempt employees or
13 equivalent positions, however titled, in the state of California within four (4) years from
14 the filing of the Complaint in this action until its resolution (collectively referred to as the
"Class" or "Class Members").

15 9. Plaintiff also seeks to represent the subclass(es) composed of and defined as
16 follows:

17 Waiting Time Subclass

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

20 10. Plaintiff reserves the right under California Rule of Court 3.765(b) and other
21 applicable laws to amend or modify the class definition with respect to issues or in any other
22 ways. Plaintiff is a member of the Class as well the Subclass.

23 11. The term "Class" includes Plaintiff and all members of the Class and the
24 Subclass, if applicable. Plaintiff seeks class-wide recovery based on the allegations set forth in this
25 complaint.

26 12. There is a well-defined community of interest in the litigation and the proposed
27 Class is easily ascertainable through the records Defendants are required to keep.

28 13. Numerosity. The members of the Class are so numerous that individual joinder

1 of all of them as plaintiffs is impracticable. While the exact number of the Class Members is
2 unknown to Plaintiff at this time, Plaintiff is informed and believe and thereon alleges that there
3 are at least 100 (one hundred) Class Members.

4 14. Commonality. Common questions of law and fact exist as to all Class
5 Members and predominate over any questions that affect only individual members of the Class.
6 These common questions include, but are not limited to:

7 i. Whether Defendants failed to pay all lawful earned wages to Plaintiff and
8 Class Members;

9 ii. Whether Defendants failed to accurately pay overtime to Plaintiff and Class
10 Members;

11 iii. Whether Defendants deprived Plaintiff and Class Members of lawful meal
12 periods without compensation;

13 iv. Whether Defendants deprived Plaintiff and Class Members of lawful rest
14 breaks without compensation;

15 v. Whether Defendants required Plaintiff and Class Members to remain on
16 premises during rest breaks;

17 vi. Whether Defendants provided accurate itemized wage statements pursuant
18 to Labor Code section 226;

19 vii. Whether Defendants failed to timely pay all wages due to Plaintiff and
20 Subclass members upon termination or within 72 hours of resignation;

21 viii. Whether Plaintiff and Class Members are entitled to equitable relief
22 pursuant to Business and Professions Code section 17200, *et. seq.*

23 15. Typicality. Plaintiff's claims herein alleged are typical of those claims which
24 could be alleged by any member of the Class and/or Subclass, and the relief sought is typical of
25 the relief which would be sought by each member of the Class and/or Subclass in separate actions.
26 Plaintiff and all members of the Class and or Subclass sustained injuries and damages arising out
27 of and caused by Defendants' common course of conduct in violation of California laws,
28

1 regulations, and statutes as alleged herein.

2 16. Adequacy. Plaintiff is qualified to, and will fairly and adequately, protect the
3 interests of each member of the Class and/or Subclass with whom he has a well-defined
4 community of interest and typicality of claims, as demonstrated herein. Plaintiff acknowledges an
5 obligation to make known to the Court any relationships, conflicts, or differences with any
6 member of the Class and/or Subclass. Plaintiff's attorneys and the proposed Counsel for the Class
7 and Subclass are versed in the rules governing class action discovery, certification, litigation, and
8 settlement and experienced in handling such matters. Other former and current employees of
9 Defendants may also serve as representatives of the Class and Subclass if needed.

10 17. Superiority. A class action is superior to other available means for the fair and
11 efficient adjudication of the claims of the Class and would be beneficial for the parties and the
12 court. Class action treatment will allow a large number of similarly situated persons to prosecute
13 their common claims in a single forum, simultaneously, efficiently, and without the unnecessary
14 duplication of effort and expense that numerous individual actions would require. The damages
15 suffered by each Class member are relatively small in the sense pertinent to class action analysis,
16 and the expense and burden of individual litigation would make it extremely difficult or
17 impossible for the individual Class Members to seek and obtain individual relief. A class action
18 will serve an important public interest by permitting such individuals to effectively pursue
19 recovery of the sums owed to them. Further, class litigation prevents the potential for inconsistent
20 or contradictory judgments raised by individual litigation.

21 18. Public Policy Considerations: Employers in the state of California violate
22 employment and labor laws everyday. Current employees are often afraid to assert their rights out
23 of fear of direct or indirect retaliation. Former employees are fearful of bringing actions because
24 they believe their former employers may damage their future endeavors through negative
25 references and/or other means. The nature of this action allows for the protection of current and
26 former employees' rights without fear or retaliation or damage.

1 **IV. FACTUAL ALLEGATIONS**

2 19. At all times set forth herein, Defendants employed Plaintiff and other persons in the
3 capacity of non-exempt hourly positions, however titled, throughout the state of California at
4 Defendants' various California retail locations.

5 20. Plaintiff is informed and believes that all Class Members are citizens of the state of
6 California.

7 21. Defendants continue to employ non-exempt employees, however titled, in
8 California and implement a uniform set of policies and practices to all non-exempt employees, as
9 they were all engaged in the generic job duties of retail sales.

10 22. Plaintiff is informed and believes, and thereon alleges, that Defendants are and
11 were advised by skilled lawyers and other professionals, employees, and advisors with knowledge
12 of the requirements of California's wage and employment laws.

13 23. Plaintiff is informed and believes, and thereon alleges, that Defendants did not at
14 all times compensate Plaintiff and Class Members at the proper overtime rate of pay.

15 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
16 should have known that Plaintiff and Class Members were entitled to receive wages for all time
17 worked (including minimum and overtime wages) and that they were not receiving all lawful
18 wages owed.

19 25. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and Class
20 Members were regularly required to work shifts in excess of five hours without being provided a
21 lawful meal period and over ten hours in a day without being provided a second lawful meal
22 period as required by law.

23 26. Indeed, during the relevant time, as a consequence of Defendants' staffing and
24 scheduling practices, lack of coverage, work demands, and Defendants' policies and practices,
25 Defendants frequently failed to provide Plaintiff and Class Members timely, legally compliant
26 uninterrupted 30-minute meal periods on shifts over five hours as required by law.

27 27. Despite the above-mentioned meal period violations, Defendants failed to
28 compensate Plaintiff, and on information and belief, failed to compensate Class Members, one

1 additional hour of pay at their regular rate as required by California law when meal periods were
2 not timely or lawfully provided in a compliant manner.

3 28. Plaintiff is informed and believe, and thereon alleges, that Defendants know,
4 should know, knew, and/or should have known that Plaintiff and Class Members were entitled to
5 receive premium wages based on their regular rate of pay under Labor Code §226.7 but were not
6 receiving such compensation.

7 29. In addition, during the relevant time frame, Plaintiff and Class Members were
8 systematically not authorized and permitted to take one net ten-minute paid, rest period for every
9 four hours worked or major fraction thereof, which is a violation of the Labor Code and IWC
10 wage order.

11 30. Plaintiff is informed and believes, and thereon alleges, that Defendants maintained
12 and enforced scheduling practices, policies, and imposed work demands that frequently required
13 Plaintiff and Class Members to forego their lawful, paid rest periods of a net ten minutes for every
14 four hours worked or major fraction thereof. Such requisite rest periods were not timely authorized
15 and permitted. Plaintiff and Class Members would often work through their rest periods to meet
16 their sales quotas and due to a lack of relief to take a rest period.

17 31. Despite the above-mentioned rest period violations, Defendants did not compensate
18 Plaintiff, and on information and belief, did not pay Class Members one additional hour of pay at
19 their regular rate as required by California law, including Labor Code section 226.7 and the
20 applicable IWC wage order, for each day on which lawful rest periods were not authorized and
21 permitted.

22 32. Defendants also failed to provide accurate, lawful itemized wage statements to
23 Plaintiff and Class Members in part because of the above specified violations. In addition, upon
24 information and belief, Defendants omitted from Plaintiff's and the Class Members' wage
25 statements an accurate itemization of total hours worked, including premiums due and owing for
26 meal and rest period violations, as well as the proper rates of pay, among other things.

27 33. Plaintiff is informed and believes, and thereon alleges, that at all times herein
28 mentioned, Defendants knew that at the time of termination of employment (or within 72 hours
thereof for resignations without prior notice as the case may be) they had a duty to accurately

1 compensate Plaintiff and Class Members for all wages owed including minimum wages, meal and
2 rest period premiums, and Defendants had the financial ability to pay such compensation, but
3 willfully, knowingly, recklessly, and/or intentionally failed to do so in part because of the above-
4 specified violations.

5 **FIRST CAUSE OF ACTION**

6 **FAILURE TO PAY ALL LAWFUL WAGES OWED**

7 **(Against All Defendants)**

8 34. Plaintiff incorporates and re-allege each and every allegation contained above as
9 though fully set forth herein.

10 35. At all times relevant, the IWC wage orders applicable to Plaintiff's and the Class
11 require employers to pay its employees for each hour worked at least minimum wage. "Hours
12 worked" means the time during which an employee is subject to the control of an employer, and
13 includes all the time the employee is suffered or permitted to work, whether or not required to do
14 so, and in the case of an employee who is required to reside on the employment premises, that
15 time spent carrying out assigned duties shall be counted as hours worked.

16 36. At all times relevant, the IWC wage orders applicable to Plaintiff and Class
17 Members' employment by Defendants provided that employees working for more than eight (8)
18 hours in a day or forty (40) hours in a work week are entitled to overtime compensation at the rate
19 of one and one-half times the regular rate of pay for all hours worked in excess of eight (8) hours
20 in a day or forty (40) hours in a work week. An employee who works more than twelve (12) hours
21 in a day is entitled to overtime compensation at a rate of twice the regular rate of pay.

22 37. Labor Code §510 codifies the right to overtime compensation at the rate of one and
23 one-half times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or
24 forty (40) hours in a work week and to overtime compensation at twice the regular rate of pay for
25 hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the
26 seventh day of work in a particular work week.

27 38. At all relevant times, Labor Code §1197.1 states "[a]ny employer or other persons
28 acting individually as an officer, agent, or employee of another person, who pays or causes to be

1 paid to any employee a wage less than the minimum fixed by an applicable state or local law, or
2 by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated
3 damages payable to the employee, and any applicable penalties pursuant to Section 203...”

4 39. At all times relevant, Plaintiff and Class Members regularly performed non-exempt
5 work and thus were subject to the overtime requirements of the IWC Wage Orders, CCR § 11000,
6 *et. seq.* and the Labor Code.

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

14 41. During the relevant time period, Defendants also failed to pay Plaintiff and Class
15 Members overtime wages at the proper rate, which caused Plaintiff and Class Members to not be
16 paid all overtime wages owed. Accordingly, Defendants owe Plaintiff and Class Members unpaid
17 overtime wages.

18 42. Pursuant to Labor Code §§ 510, 558 and 1194, Plaintiff and Class Members are
19 entitled to recover their unpaid wages and overtime compensation, as well as interest, costs, and
20 attorneys’ fees.

21 **SECOND CAUSE OF ACTION**

22 **FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF**

23 **(Against All Defendants)**

24 43. Plaintiff incorporates and re-alleges each and every allegation contained above as
25 though fully set forth herein.

26 44. Pursuant to Labor Code §512, no employer shall employ an employee for a work
27 period of more than five (5) hours without providing a meal break of not less than thirty (30)
28 minutes in which the employee is relieved of all of his or her duties. An employer may not employ

1 an employee for a work period of more than ten (10) hours per day without providing the
2 employee with a second meal period of not less than thirty (30) minutes, except that if the total
3 hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual
4 consent of the employer and the employee only if the first meal period was not waived.

5 45. Pursuant to the IWC wage orders applicable to Plaintiff and Class Members'
6 employment by Defendants, in order for an "on duty" meal period to be permissible, the nature of
7 the work of the employee must prevent an employee from being relieved of all duties relating to
8 his or her work for the employer and the employees must consent in writing to the "on duty" meal
9 period. On information and belief, Plaintiff and Class Members did not consent in writing to an
10 "on duty" meal period. Further, the nature of the work of Plaintiff and Class Members was not
11 such that they were prevented from being relieved of all duties. Despite the requirements of the
12 IWC wage orders applicable to Plaintiff's and Class Members' employment by Defendants and
13 Labor Code §512 and §226.7, Defendants did not provide Plaintiff and Class Members with all
14 their statutorily authorized meal periods.

15 46. For the four (4) years preceding the filing of this lawsuit, Defendants failed to
16 provide Plaintiff and Class Members, timely and uninterrupted meal periods of not less than thirty
17 (30) minutes pursuant to the IWC wage orders applicable to Plaintiff and Class Members'
18 employment by Defendants. As a proximate result of the aforementioned violations, Plaintiff and
19 Class Members have been damaged in an amount according to proof at time of trial.

20 47. By their failure to provide a compliant meal period for each shift worked over five
21 (5) hours and their failure to provide a compliant second meal period for any shift worked over ten
22 (10) hours per day by Plaintiff and the Class Members, and by failing to provide compensation in
23 lieu of such non-provided meal periods, as alleged above, Defendants violated the provisions of
24 Labor Code sections 226.7 and 512 and applicable IWC Wage Orders.

25 48. Plaintiff and the Class Members he seeks to represent did not voluntarily or
26 willfully waive meal periods and were regularly required to work shifts without being provided all
27 of his legally required meal periods. Defendants created a working environment in which Plaintiff
28 and Class Members were not provided all of their meal periods due to shift scheduling and/or

1 work-related demands placed upon them by Defendants as well as a lack of sufficient staffing to
2 meet the needs of Defendants' business as discussed above. On information and belief,
3 Defendants' implemented a policy and practice which resulted in systematic and class-wide
4 violations of the Labor Code. On information and belief, Defendants' violations have been
5 widespread throughout the relevant time period and will be evidenced by Defendants' time records
6 for the Class Members.

7 49. As a result of the unlawful acts of Defendants described herein, Plaintiff and the
8 Class Members he seeks to represent have been deprived of premium wages in amounts to be
9 determined at trial. Pursuant to Labor Code §226.7, Plaintiff and Class Members are entitled to
10 recover one (1) hour of premium pay for each day in which a meal period was not provided, along
11 with interest and penalties thereon, attorneys' fees, and costs.

12 **THIRD CAUSE OF ACTION**

13 **FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF**

14 **(Against All Defendants)**

15 50. Plaintiff incorporates and re-alleges each and every allegation contained above as
16 though fully set forth herein.

17 51. Pursuant to the IWC wage orders applicable to Plaintiff and Class Members'
18 employment by Defendants, "Every employer shall authorize and permit all employees to take rest
19 periods, which insofar as practicable shall be in the middle of each work period.... [The]
20 authorized rest period time shall be based on the total hours worked daily at the rate of ten (10)
21 minutes net rest time per four (4) hours worked or major fraction thereof... Authorized rest period
22 time shall be counted as hours worked, for which there shall be no deduction from wages." Labor
23 Code §226.7(a) prohibits an employer from requiring any employee to work during any rest period
24 mandated by an applicable order of the IWC.

25 52. Defendants were required to authorize and permit employees such as Plaintiff and
26 Class Members to take rest periods, based upon the total hours worked at a rate of ten (10) minutes
27 net rest per four (4) hours worked, or major fraction thereof, with no deduction from wages.
28 Despite said requirements of the IWC wage orders applicable to Plaintiff's and Class Members'

1 employment by Defendants, Defendants failed and refused to authorize and permit Plaintiff and
2 Class Members to take ten (10) minute rest periods for every four (4) hours worked, or major
3 fraction thereof.

4 53. On information and belief Defendants created a working environment in which
5 Plaintiff and Class Members were not provided all of their rest periods due to shift scheduling
6 and/or work-related demands placed upon them by Defendants as well as a lack of sufficient
7 staffing to meet the needs of Defendants' business as discussed above. On information and belief,
8 Defendants implemented a policy and practice which resulted in systematic and class-wide
9 violations of the Labor Code. On information and belief, Defendants' violations have been
10 widespread throughout the relevant time period.

11 54. As a proximate result of the aforementioned violations, Plaintiff and Class
12 Members have been damaged in an amount according to proof at time of trial. Pursuant to Labor
13 Code §226.7, Plaintiff and Class Members are entitled to recover one (1) hour of premium pay for
14 each day in which Defendants failed to provide a rest period to Plaintiff and the Class, plus
15 interest and penalties thereon, attorneys' fees, and costs.

16 **FOURTH CAUSE OF ACTION**

17 **FAILURE TO PAY TIMELY PAY WAGES**

18 **(Against All Defendants)**

19 55. Plaintiff incorporates and re-alleges each and every allegation contained above as
20 though fully set forth herein.

21 56. Labor Code §§201-202 requires an employer who discharges an employee to pay
22 compensation due and owing to said employee immediately upon discharge and that if an
23 employee voluntarily leaves his or her employment, his or her wages shall become due and
24 payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-
25 two (72) hours previous notice of his or her intention to quit, in which case the employee is
26 entitled to his or her wages on their last day of work.

27 57. Labor Code §203 provides that if an employer willfully fails to pay compensation
28 promptly upon discharge, as required by Labor Code §§201-202, the employer is liable for

1 waiting time penalties in the form of continued compensation for up to thirty (30) work days.

2 58. During the relevant time period, Defendants willfully failed and refused, and
3 continue to willfully fail and refuse, to pay Plaintiff and Class Members their wages, earned and
4 unpaid, either at the time of discharge, or within seventy-two (72) hours of their voluntarily
5 leaving Defendants' employ. These wages include regular and overtime.

6 59. As a result, Defendants are liable to Plaintiff and members of the Class for waiting
7 time penalties pursuant to Labor Code §203, in an amount according to proof at the time of trial.

8 **FIFTH CAUSE OF ACTION**

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

10 **(Against All Defendants)**

11 60. Plaintiff incorporates and re-alleges each and every allegation contained above as
12 though fully set forth herein.

13 61. Section 226(a) of the California Labor Code requires Defendants to itemize in wage
14 statements all deductions from payment of wages and to accurately report total hours worked by
15 Plaintiff and the Class including applicable hourly rates and reimbursement expenses among other
16 things. Defendants have knowingly and intentionally failed to comply with Labor Code section
17 226 and 204 on wage statements that have been provided to Plaintiff and the Class.

18 62. IWC Wage Orders require Defendants to maintain time records showing, among
19 others, when the employee begins and ends each work period, meal periods, split shift intervals
20 and total daily hours worked in an itemized wage statement, and must show all deductions and
21 reimbursements from payment of wages, and accurately report total hours worked by Plaintiffs
22 and the Class. On information and belief, Defendants have failed to record all or some of the items
23 delineated in Industrial Wage Orders and Labor Code §226.

24 63. As a result of Defendants' knowing and intentional failure to comply with Labor
25 Code § 226(a), Plaintiff and Class Members have suffered injury and damage to their statutorily-
26 protected rights. Specifically, Plaintiff and Class Members have been injured by Defendants'
27 intentional violation of Labor Code § 226(a) because they were denied both their legal right to
28 receive, and their protected interest in receiving, accurate itemized wage statements under Labor

1 Code § 226(a). In addition, Defendants have made it difficult to calculate the amount of wages and
2 compensation owed to Plaintiff and Class Members. Plaintiff has had to file this lawsuit and will
3 be required to conduct discovery and perform computations in order to analyze whether in fact
4 Plaintiff was paid correctly and the extent of the underpayment, thereby causing Plaintiff to incur
5 expenses and lost time. Plaintiff would not have had to engage in these efforts and incur these
6 costs had Defendants provided wage statements accurately showing his regular and overtime rates
7 of pay, among other things. This has also delayed Plaintiff's ability to demand and recover the
8 underpayment of wages from Defendants.

9 64. Plaintiff and Class Members are entitled to recover from Defendants the greater of
10 their actual damages caused by Defendants' failure to comply with Labor Code § 226(a) or an
11 aggregate penalty not exceeding \$4,000 dollars per employee.

12 **SIXTH CAUSE OF ACTION**

13 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200, *et seq.***

14 **(Against All Defendants)**

15 65. Plaintiff incorporates and re-alleges each and every allegation contained above as
16 though fully set forth herein.

17 66. Defendants' conduct, as alleged in this complaint, has been, and continues to be,
18 unfair, unlawful, and harmful to Plaintiff and Class Members, Defendants' competitors, and the
19 general public. Plaintiff seeks to enforce important rights affecting the public interest within the
20 meaning of the California Code of Civil Procedure §1021.5.

21 67. Defendants' policies, activities, and actions as alleged herein, are violations of
22 California law and constitute unlawful business acts and practices in violation of California
23 Business and Professions Code §§17200, *et seq.*

24 68. A violation of California Business and Professions Code §§17200, *et seq.*, may be
25 predicated on the violation of any state or federal law. Defendants' policies and practices have
26 violated state law in at least the following respects:

- 1 (a) Failing to pay all lawful wages owed to Plaintiff and Class
2 Members in violation of Labor Code §§ 510, 1194, 1197 and
3 1198;
- 4 (b) Failing to provide lawful, uninterrupted, duty-free meal periods
5 without paying Plaintiff and Class Members premium wages for
6 every day said meal periods were not provided in violation of
7 Labor Code §§ 226.7 and 512;
- 8 (c) Failing to authorize or permit lawful, uninterrupted, duty-free rest
9 breaks without paying Plaintiff and Class Members premium
10 wages for every day said rest breaks were not authorized or
11 permitted in violation of Labor Code § 226.7;
- 12 (d) Failing to provide Plaintiff and Class Members with accurate
13 itemized wage statements in violation of Labor Code § 226; and
- 14 (e) Failing to timely pay all earned wages to Plaintiff and Class
15 Members upon separation of employment in violation of Labor
16 Code §§ 201, 202 and 203.

17 69. Defendants intentionally avoided paying Plaintiff and Class Members' wages and
18 monies, thereby creating for Defendants an artificially lower cost of doing business in order to
19 undercut their competitors and establish and gain a greater foothold in the marketplace.

20 70. Pursuant to Business and Professions Code §§ 17200, *et seq.* Plaintiff and Class
21 Members are entitled to restitution of the wages unlawfully withheld and retained by Defendants
22 during a period that commences four years prior to the filing of the Complaint; an award of
23 attorney's fees pursuant to Code of Civil Procedure § 1021.5 and other applicable laws; and an
24 award of costs.

25 **PRAYER FOR RELIEF**

26 Plaintiff, on his own behalf and on behalf of all others similarly situated, prays for relief
27 and judgment against Defendants, jointly and severally, as follows:
28

- 1 1. For certification of the proposed Class and Subclass and any other appropriate
- 2 subclasses under California Code of Civil Procedure § 382;
- 3 2. For appointment of Jonathan Romero-Abrego as the class representative;
- 4 3. For appointment of James Hawkins, APLC as class counsel for all purposes;
- 5 4. For general damages;
- 6 5. For special damages;
- 7 6. For statutory penalties to the extent permitted by law, including those pursuant to
- 8 the Labor Code and IWC Wage Orders;
- 9 7. For restitution as provided by Business and Professions Code §§ 17200, *et seq.*;
- 10 8. For an order requiring Defendants to restore and disgorge all funds to each
- 11 employee acquired by means of any act or practice declared by this Court to be unlawful, unfair
- 12 or fraudulent and, therefore, constituting unfair competition under Business and Professions
- 13 Code §§ 17200, *et seq.*;
- 14 9. For an award of damages in the amount of unpaid compensation including, but
- 15 not limited to, unpaid wages, benefits and penalties;
- 16 10. For pre-judgment interest;
- 17 11. For reasonable attorney's fees, costs of suit and interest to the extent permitted
- 18 by law, including pursuant to Code of Civil Procedure § 1021.5 and Labor Code § 1194; and
- 19 12. For such other relief as the Court deems just and proper.
- 20

21 Dated: September 22, 2020

JAMES HAWKINS APLC

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23 By: 

24 James R. Hawkins
25 Samantha A. Smith
26 Attorneys for Plaintiff
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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial with respect to all issues triable of right by jury.

Dated: September 22, 2020

JAMES HAWKINS APLC

By: 
James R. Hawkins
Samantha A. Smith
Attorneys for Plaintiff