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behalf of himself and all others similarly situated or aggrieved,

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF ORANGE – CIVIL COMPLEX CENTER**

GUSTAVO ROSETE HEREDIA, on behalf of  
himself and all others similarly situated or  
aggrieved,

Plaintiff,

v.

ALAN SMITH POOL PLASTERING, INC., a  
California corporation; ALAN M. SMITH, an  
individual; and DOES 1 through 100,  
inclusive,

Defendants.

CASE NO.: 30-2020-01163609-CU-OE-CXC

**FIRST AMENDED CLASS AND  
REPRESENTATIVE ACTION  
COMPLAINT FOR:**

1. Failure to Pay Overtime Wages;
2. Failure to Pay Minimum Wages;
3. Failure to Provide Meal Periods or Compensation in Lieu Thereof;
4. Failure to Provide Rest Periods or Compensation in Lieu Thereof;
5. Waiting Time Penalties;
6. Wage Statement Violations;
7. Violation of Labor Code § Labor Code § 2802;
8. Violation of Business and Professions Code § 17200, *et seq.*;
9. Violation of Labor Code § 204;
10. Civil Penalties Under Labor Code § 226.3;
11. Violation of Labor Code § 558;
12. Violation of Labor Code § 1197.1; and
13. Civil Penalties Under Labor Code § 2699.

**DEMAND FOR JURY TRIAL**

[Amount in Controversy Exceeds \$25,000]

COMES NOW plaintiff GUSTAVO ROSETE HEREDIA (“Plaintiff”), on behalf of  
himself and all others similarly situated or aggrieved, and alleges as follows:

1 **GENERAL ALLEGATIONS**

2 **INTRODUCTION**

3 1. This is a Class Action and Representative Action, pursuant to California Code of  
4 Civil Procedure section 382 and Labor Code section 2698, *et seq*, on behalf of Plaintiff and all  
5 other current and former similarly situated and aggrieved employees employed by or formerly  
6 employed by ALAN SMITH POOL PLASTERING, INC., a California corporation (“Alan Pool  
7 Plastering”), ALAN M. SMITH (“A. Smith”), and any of their respective subsidiaries or affiliated  
8 companies within the State of California (collectively with Doe defendants as further defined  
9 below, “Defendants”).

10 2. For at least four (4) years prior to the filing of this Action and continuing to the  
11 present, Defendants have had a consistent policy or practice of requiring their employees to work  
12 more than eight (8) hours per day, twelve (12) hours per day, forty (40) hours per week, and/or  
13 seven (7) straight work days in a work week without paying them proper overtime wages, as a  
14 result of, without limitation, routinely failing to pay Plaintiff and other non-exempt employees’  
15 wages for all time worked, including overtime wages, as a result of, without limitation, failing to  
16 accurately track and/or pay for all hours worked; failing to pay overtime for hours worked above  
17 eight (8) in a workday or above forty (40) in a workweek; failing to pay double time for hours  
18 worked above twelve (12) in a workday or greater than eight (8) on the seventh straight day of  
19 work; failing to pay overtime for the first eight (8) hours of work on the seventh straight workday;  
20 detrimental rounding or auto-deduction of time worked; engaging, suffering, or permitting  
21 employees to work off the clock; failing to accurately track and/or pay for all travel time hours;  
22 failing to pay all reporting time pay; editing and/or manipulating time worked to reflect lesser  
23 hours worked by employees than actually worked; and paying employees at the regular rate or  
24 otherwise improper rate(s) of pay, all to the detriment of Plaintiff and other similarly situated  
25 employees.

26 3. For at least four (4) years prior to the filing of this Action and continuing to the  
27 present, Defendants have had a consistent policy or practice of failing to pay minimum wages for  
28 all hours worked or otherwise under Defendants’ control to Plaintiff and other non-exempt

1 employees in the State of California in violation of California state wage and hour laws due to,  
2 without limitation, failing to accurately track and/or pay for all hours actually worked; detrimental  
3 rounding or auto-deduction of time worked; engaging, suffering, or permitting employees to work  
4 off the clock; failing to accurately track and/or pay for all travel time hours; failing to pay all  
5 reporting time pay; and by editing and/or manipulating time worked to reflect lesser hours worked  
6 by employees than actually worked, all to the detriment of Plaintiff and other similarly situated  
7 employees.

8         4.       For at least four (4) years prior to the filing of this Action and continuing to the  
9 present, Defendants have had a consistent policy or practice of failing to provide Plaintiff and  
10 other similarly situated employees or former employees within the State of California a thirty (30)  
11 minute complete, uninterrupted, and timely meal period for days on which the employees worked  
12 more than five (5) hours in a work day and a second thirty (30) minute complete, timely, and  
13 uninterrupted meal period for days on which employees worked in excess of ten (10) hours in a  
14 work day, and failing to provide compensation for such unprovided or incomplete, interrupted,  
15 and untimely meal periods as required by California wage and hour laws.

16         5.       For at least four (4) years prior to the filing of this Action and continuing to the  
17 present, Defendants have had a consistent policy or practice of compelling Plaintiff and similarly  
18 situated employees or former employees to work over four-hour periods (or major fractions  
19 thereof) without authorizing and permitting Plaintiff and similarly situated employees or former  
20 employees within the State of California to take timely, paid, uninterrupted and complete ten-  
21 minute rest periods in which the employees are completely relieved of all of their duties, and  
22 failing to provide compensation for such unprovided rest periods as required by California wage  
23 and hour laws.

24         6.       For at least four (4) years prior to the filing of this Action and continuing to the  
25 present, Defendants have had a consistent policy or practice of failing to pay Plaintiff and other  
26 aggrieved employees or former employees within the State of California their wages in accordance  
27 with Labor Code Section 204, which requires that: “[l]abor performed between the 1<sup>st</sup> and 15<sup>th</sup>  
28 days, inclusive, of any calendar month shall be paid for between the 16<sup>th</sup> and 26<sup>th</sup> day of the month

1 during which the labor was performed, and labor performed between the 16<sup>th</sup> and the last day,  
2 inclusive, of any calendar month, shall be paid for between the 1<sup>st</sup> and 10<sup>th</sup> day of the following  
3 month.”

4 7. At the time of Plaintiff’s employment and the employment of other former  
5 employees of Defendants ended, Defendants, among other things, failed to pay overtime and  
6 double time wages, minimum wages, and one hour of wages in lieu of each incomplete,  
7 interrupted, or untimely meal and/or rest period, as set forth herein, prior to their resignation  
8 and/or termination.

9 8. For at least one (1) year prior to the filing of this Action and continuing to the  
10 present, Defendants have had a consistent policy or practice of intentionally failing to furnish  
11 employees with itemized wage statements that accurately reflect: gross wages earned; total hours  
12 worked; net wages earned; and all applicable hourly rates in effect during the pay period and the  
13 corresponding number of hours worked at each hourly rate and other such information, as required  
14 by California wage and hour laws.

15 9. For at least four (4) years prior to the filing of this Action and continuing to the  
16 present, Defendants have failed and refused to indemnify Plaintiff and other similarly situated  
17 employees for their necessary costs incurred in direct consequence of the discharge of their duties,  
18 or of their obedience to the directions of Defendants, including, without limitation, for purchase  
19 and use of a personal cell-phone, including maintenance of cellular plans, as well as laundering  
20 mandatory work uniforms separately from their other clothes as necessitated by the construction  
21 and industrial tasks that resulted in cement, dirt and debris on their uniforms, as known by  
22 Defendants, in furtherance of their work duties, in violation of, among other authorities, Labor  
23 Code section 2802, and other statutory and common law offenses, including conversion.

24 10. Plaintiff, on behalf of himself and all other similarly situated employees, brings this  
25 Action pursuant to, including but not limited to, Labor Code sections 200, 201, 202, 203, 204,  
26 210, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1194, 1194.2, 1197, 1197.1, 2699, 2802, and all  
27 applicable wage orders, seeking, *inter alia*, overtime wages, double time wages, minimum wages,  
28

1 premium wages for missed meal and rest periods, reimbursements for incurred expenses,  
2 penalties, and reasonable attorneys' fees and costs.

3 11. Plaintiff, on behalf of himself and all other similarly situated employees, pursuant  
4 to California Business and Professions Code sections 17200 through 17208, also seeks all monies  
5 owed but withheld and retained by Defendants to which Plaintiff and members of the Class are  
6 entitled.

7 **PARTIES**

8 **A. Plaintiff**

9 12. Plaintiff is a resident of California. At all relevant times herein, Plaintiff is  
10 informed and believes, and based thereon alleges that Defendants employed Plaintiff as a non-  
11 exempt employee, with various duties that included, but were not limited to, hydro-blasting, pool  
12 resurfacing and replastering, pool crack repairs, pool tiling and coping, paving, pool decking,  
13 painting, and other construction-related tasks in connection with customers' swimming pools from  
14 approximately July of 2016 through approximately April of 2019.

15 **B. Defendants**

16 13. Plaintiff is informed and believes and based thereon alleges that defendant Alan  
17 Pool Plastering is, and at all times relevant hereto was, a corporation organized and existing under  
18 and by virtue of the laws of the State of California, doing business in, among other places, Orange  
19 County, State of California. Plaintiff is informed and believes and based thereon alleges that Alan  
20 Pool Plastering is a privately held company specializing in the construction, pool plastering and  
21 remodeling industry. At all relevant times herein, defendant Alan Pool Plastering employed  
22 Plaintiff and other similarly situated employees within the State of California.

23 14. Plaintiff is informed and believes and based thereon alleges that defendant Alan  
24 Pool Plastering is, and at all times relevant hereto was, a "person" as defined in Labor Code  
25 section 17 and Cal. Bus. & Prof. Code § 17201.

26 15. Plaintiff is informed and believes and based thereon alleges that defendant A.  
27 Smith is, and at all times relevant hereto was, an individual residing in the State of California.

1 Plaintiff is informed and believes and based thereon alleges that at all relevant times A. Smith is  
2 and was the principal, owner, officer, director and/or managing agent of Alan Pool Plastering.

3 16. Plaintiff is further informed and believes and based thereon alleges that A. Smith  
4 employed Plaintiff, by, among other things, exercising control over Plaintiff's wages, hours and/or  
5 working conditions. Plaintiff is further informed and believes and based thereon alleges that A.  
6 Smith violated, or caused to be violated, the above-referenced and below-referenced Labor Code  
7 provisions in violation of Labor Code section 558.1.

8 17. The true names and capacities, whether individual, corporate or associate, or  
9 otherwise, of the defendants' names herein as DOES 1 through 100, inclusive, are unknown to  
10 Plaintiff, who therefore sue said defendants by such fictitious names pursuant to California Code  
11 of Civil Procedure section 474, and Plaintiff will amend this complaint to show their true names  
12 and capacities when the same have been ascertained. Plaintiff is informed and believes and based  
13 thereon alleges that all defendants sued herein as DOES are in some manner responsible for the  
14 acts herein alleged and that Plaintiff's damages were proximately caused by their conduct.  
15 Whenever, heretofore or hereinafter, reference is made to "Defendants," it shall include Alan Pool  
16 Plastering, and any of its subsidiaries or affiliated companies within the State of California, A.  
17 Smith, as well as DOES 1 through 100 identified herein.

18 **ALTER EGO, AGENCY, AND JOINT EMPLOYER ALLEGATIONS**

19 18. Plaintiff is informed and believes and based thereon alleges that at all times  
20 mentioned herein, each of the defendants was the agent, principal, employee, employer,  
21 representative, joint venture or co-conspirator of each of the other defendants, either actually or  
22 ostensibly, and in doing the things alleged herein acted within the course and scope of such  
23 agency, employment, joint venture, and conspiracy.

24 19. All of the acts and conduct described herein of each and every corporate defendant  
25 was duly authorized, ordered, and directed by the respective and collective defendant corporate  
26 employers, and the officers, owner-managers, members and/or management-level employees of  
27 said corporate employers. In addition thereto, said corporate employers participated in the  
28 aforementioned acts and conduct of their said employees, agents, and representatives, and each of

1 them; and upon completion of the aforesaid acts and conduct of said corporate employees, agents,  
2 and representatives, the defendant corporations respectively and collectively ratified, accepted the  
3 benefits of, condoned, lauded, acquiesced, authorized, and otherwise approved of each and all of  
4 the said acts and conduct of the aforementioned corporate employees, agents and representatives.

5         20. Plaintiff is informed and believes, and based thereon alleges, that there exists such  
6 a unity of interest and ownership among Defendants, and each of them, that their individuality and  
7 separateness have ceased to exist.

8         21. Plaintiff is informed and believes, and based thereon alleges that despite the  
9 formation of the purported corporate existence of Alan Pool Plastering, and DOES 1 through 50,  
10 inclusive (the “Alter Ego Defendants”), they, and each of them, are one and the same with A.  
11 Smith and DOES 51 through 100 (“Individual Defendants”), and each of them, due to, but not  
12 limited to, the following reasons:

13                 a. The Alter Ego Defendants are completely dominated and controlled by the  
14 Individual Defendants who personally committed the wrongful and illegal acts and violated the  
15 laws as set forth in this Complaint, and who have hidden and currently hide behind the Alter Ego  
16 Defendants to perpetrate frauds, circumvent statutes, or accomplish some other wrongful or  
17 inequitable purpose;

18                 b. The Individual Defendants derive actual and significant monetary benefits  
19 by and through the Alter Ego Defendants’ unlawful conduct, and by using the Alter Ego  
20 Defendants as the funding source for the Individual Defendants’ own personal expenditures;

21                 c. Plaintiff is informed and believes and thereon alleges that the Individual  
22 Defendants and the Alter Ego Defendants, while really one and the same, were segregated to  
23 appear as though separate and distinct for purposes of perpetrating a fraud, circumventing a  
24 statute, or accomplishing some other wrongful or inequitable purpose;

25                 d. Plaintiff is informed and believes and thereon alleges that the business  
26 affairs of the Individual Defendants and the Alter Ego Defendants are, and at all relevant times  
27 mentioned herein were, so mixed and intermingled that the same cannot reasonably be segregated,  
28 and the same are inextricable confusion. The Alter Ego Defendants are, and at all relevant times

1 mentioned herein were, used by the Individual Defendants as mere shells and conduits for the  
2 conduct of certain of their, and each of their affairs. The Alter Ego Defendants are, and at all  
3 relevant times mentioned herein were, the alter egos of the Individual Defendants;

4 e. The recognition of the separate existence of the Individual Defendants from  
5 the Alter Ego Defendants would promote injustice insofar that it would permit these defendants to  
6 insulate themselves from liability to Plaintiff for violations to the Civil Code, Labor Code, and  
7 other statutory violations. The corporate existence of these defendants should thus be disregarded  
8 in equity and for the ends of justice because such disregard is necessary to avoid fraud and  
9 injustice to Plaintiff, and all other similarly situated employees, herein;

10 f. Accordingly, the Alter Ego Defendants constitute the alter ego of the  
11 Individual Defendants (and vice versa), and the fiction of their separate corporate existence must  
12 be disregarded;

13 22. As a result of the aforementioned facts, among others, Plaintiff is informed and  
14 believes, and based thereon alleges that the Individual Defendants, the Alter Ego Defendants, and  
15 each of them, are joint employers by virtue of a joint enterprise, and that Plaintiff was an  
16 employee of the Alter Ego Defendants and the Individual Defendants. Plaintiff performed  
17 services for each and every defendant, and to the mutual benefit of all defendants, and all  
18 defendants shared control of Plaintiff and all other similarly situated and aggrieved employees,  
19 either directly or indirectly, and in the manner in which defendants' business was and is  
20 conducted.

## 21 **JURISDICTION**

22 23. Jurisdiction exists in the Superior Court of the State of California pursuant to Code  
23 of Civil Procedure section 410.10.

24 24. Venue is proper in the County of Orange, California pursuant to Code of Civil  
25 Procedure section 392, *et seq.* because it is the location where defendants, or some of them, have  
26 their principal place of business. It is also where performance of the employment agreement, or  
27 part of it, between Plaintiff and Defendants, was due to be performed and was actually performed.  
28 The unlawful acts alleged herein have a direct effect on Plaintiff and those similarly situated and

1 aggrieved within the County of Orange and the State of California. Moreover, Defendants employ  
2 numerous Class Members in the County of Orange and the State of California.

3 **FACTUAL BACKGROUND**

4 25. Plaintiff and other similarly situated employees have not been paid, during the  
5 relevant liability periods, overtime wages for all overtime hours worked, as a result of, including  
6 but not limited to, Plaintiff and similarly situated employees routinely working over eight (8)  
7 hours per day, twelve (12) hours per day, forty (40) hours per week, and/or seven (7) consecutive  
8 work days in a work week without being properly compensated for the hours worked in excess of  
9 (8) hours per day in a work day, twelve (12) hours per day in a work day, forty (40) hours per  
10 week in a work week, and/or seven (7) consecutive work days in a workweek at the proper  
11 overtime rate of pay. Specifically, among other things, Defendants routinely failed to accurately  
12 track and/or pay for all hours actually worked, failed to pay all reporting time pay; detrimentally  
13 rounded or auto-deducted time worked; engaged, suffered, or permitted employees to work off the  
14 clock; failing to accurately track and/or pay for all travel time hours; edited and/or manipulated  
15 time worked to reflect lesser hours worked by employees than actually worked; and/or paid  
16 overtime hours at the regular rate or otherwise improper rate(s) of pay, resulting in underpayment  
17 of wages to Plaintiff and similarly situated employees.

18 26. Plaintiff and other similarly situated employees have not been paid, during the  
19 relevant liability periods, minimum wages for all regular hours worked or otherwise under  
20 Defendants' control, as a result of, including but not limited to, a consistent policy of failing to  
21 pay minimum wages to Plaintiff and other non-exempt employees in the State of California in  
22 violation of California state wage and hour laws as a result of, without limitation, Defendants  
23 routinely, among other things, failing to accurately track and/or pay for all hours actually worked;  
24 detrimental rounding or auto-deduction of employee work hours; engaging, suffering, or  
25 permitting employees to work off the clock; failing to accurately track and/or pay for all travel  
26 time hours; failing to pay all reporting time pay; and editing and/or manipulating time entries to  
27 reflect lesser hours worked by employees than actually worked, all to the detriment of Plaintiff and  
28 other similarly situated employees.

1           27. Defendants have had a consistent policy of failing to provide Plaintiff and other  
2 similarly situated employees or former employees within the State of California a thirty (30)  
3 minute uninterrupted timely meal period for days on which the employees worked more than five  
4 (5) hours in a work day and a second thirty (30) minute complete, timely, and uninterrupted meal  
5 period for days on which the employees worked in excess of ten (10) hours in a work day and  
6 failing to provide compensation for such unprovided or incomplete, interrupted, and untimely  
7 meal periods.

8           28. Defendants have had a consistent policy of compelling Plaintiff and similarly  
9 situated employees or former employees to work over four-hour periods (or major fractions  
10 thereof) without authorizing and permitting Plaintiff and similarly situated employees or former  
11 employees within the State of California to take timely, paid, uninterrupted and complete ten-  
12 minute rest periods in which the employees are completely relieved of all their duties, and failing  
13 to provide compensation for such unprovided rest periods as required by California wage and hour  
14 laws.

15           29. Defendants have had a consistent policy or practice of failing to pay Plaintiff and  
16 other aggrieved employees or former employees within the State of California their wages in  
17 accordance with Labor Code Section 204, which requires that: “[l]abor performed between the 1<sup>st</sup>  
18 and 15<sup>th</sup> days, inclusive, of any calendar month shall be paid for between the 16<sup>th</sup> and 26<sup>th</sup> day of  
19 the month during which the labor was performed, and labor performed between the 16<sup>th</sup> and the  
20 last day, inclusive, of any calendar month, shall be paid for between the 1<sup>st</sup> and 10<sup>th</sup> day of the  
21 following month.”

22           30. At the time of Plaintiff’s employment and the employment of other former  
23 employees of Defendants ended, Defendants, among other things, willfully failed to pay overtime  
24 and double time wages, minimum wages, and one hour of wages in lieu of each unprovided,  
25 untimely, incomplete or interrupted meal period and unprovided, untimely, incomplete, or  
26 interrupted rest period, as set forth herein, prior to their resignation and/or termination.

27           31. Defendants have failed to comply with Labor Code section 226, subdivision (a) by  
28 intentionally not providing itemized wage statements that accurately reflect, among other things,

1 gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect  
2 during the pay period and the corresponding number of hours worked at each hourly rate as  
3 required by California wage and hour laws.

4 32. Defendants have failed and refused to indemnify or reimburse Plaintiff and other  
5 similarly situated employees or former employees within the State of California for their necessary  
6 costs incurred in direct consequence of the discharge of their duties, or of their obedience to the  
7 directions of Defendants, including, without limitation, purchase and use of a personal cell-phone,  
8 including maintenance of cellular plans, as well as laundering mandatory work uniforms  
9 separately from their other clothes as necessitated by the construction and industrial tasks that  
10 resulted in cement, dirt and debris on their uniforms, as known by Defendants, in violation of,  
11 among other authorities, Labor Code section 2802, and other statutory and common law offenses,  
12 including conversion.

13 33. Plaintiff and other similarly situated employees or former employees at all times  
14 pertinent hereto were not exempt from minimum wage requirements, overtime wage requirements,  
15 provision of meal breaks or compensation in lieu thereof, provision of rest breaks or compensation  
16 in lieu thereof, provision of accurate, itemized wage statements, provision of reimbursements for  
17 expenses incurred in furtherance of work duties, provision of all wages before resignation or  
18 termination, and other such provisions of California law, and the implementing rules and  
19 regulations of the IWC California Wage Orders.

20 34. At all times herein, Defendants, and each of them, were liable for unpaid wages,  
21 penalties arising therefrom, and related damages pursuant to, among other authorities, the joint  
22 employer doctrine, the alter ego doctrine, agency doctrines, and Labor Code section 558.1.

### 23 **CLASS ACTION ALLEGATIONS**

24 35. Plaintiff brings this Action on behalf of himself and all others similarly situated, as  
25 a class action pursuant to Code of Civil Procedure section 382. Plaintiff seeks to represent seven  
26 (7) Classes composed of and defined as follows:

#### 27 **Non-Exempt Class**

28 All current and former non-exempt employees of Defendants within the State of  
California at any time commencing four (4) years preceding the filing of Plaintiff's

complaint up until the time that notice of the class action is provided to the class (collectively referred to as “Non-Exempt Class”).

**Meal Period Class**

All current and former non-exempt employees of Defendants within the State of California at any time commencing four (4) years preceding the filing of Plaintiff’s complaint up until the time that notice of the class action is provided to the class who worked shifts of five (5) hours or more (collectively referred to as “Meal Period Class”).

**Rest Period Class**

All current and former non-exempt employees of Defendants within the State of California at any time commencing four (4) years preceding the filing of Plaintiff’s complaint up until the time that notice of the class action is provided to the class, who worked shifts of three and-a-half (3 ½) hours or more (collectively referred to as the “Rest Period Class”)

**Untimely Payment Class**

All current and former non-exempt employees of Defendants within the State of California, at any time commencing four (4) years preceding the filing of Plaintiff’s Complaint up until the time that notice of the class action is provided to the class, who did not get paid their wages between the 16<sup>th</sup> and 26<sup>th</sup> day of the month for labor performed between the 1<sup>st</sup> and 15<sup>th</sup> days, inclusive, during that same calendar month, and who performed labor between the 16<sup>th</sup> and the last day, inclusive, of any calendar month, but were not paid for that labor between the 1<sup>st</sup> and 10<sup>th</sup> day of the following calendar month.

**Late Pay Class**

All former non-exempt employees of Defendants within the State of California at any time commencing three (3) years preceding the filing of Plaintiff’s complaint up until the time that notice of the class action is provided to the class, who did not receive all their due wages upon termination and/or resignation of their employment (collectively referred to as “Late Pay Class”).

**Wage Statement Class**

All current and former non-exempt employees of Defendants within the State of California to whom, at any time commencing one (1) year preceding the filing of Plaintiff’s complaint up until the time that notice of the class action is provided to the class, were provided with wage statements (collectively referred to as “Wage Statement Class”).

**Expense Class**

All current and former employees of Defendants within the State of California at any time commencing four (4) years preceding the filing of Plaintiff’s complaint up until the time that notice of the class action is provided to the class who incurred costs in purchasing and/or using a personal cell-phone, including maintenance of cellular plans, and in laundering their work uniforms separately from their other clothes in furtherance of their work duties for Defendants (collectively referred to

1 as the “Expense Class”).

2 36. Plaintiff reserves the right under California Rules of Court, rule 3.765, subdivision  
3 (b) to amend or modify the class description with greater specificity or further division into  
4 subclasses or limitation to particular issues.

5 37. This Action has been brought and may properly be maintained as a class action  
6 under the provisions of Code of Civil Procedure section 382 because there is a well-defined  
7 community of interest in the litigation and the proposed classes are easily ascertainable.

8 **A. Numerosity**

9 38. The potential members of the Class as defined are so numerous that joinder of all  
10 the members of the Class is impracticable. While the precise number of Class Members has not  
11 been determined yet, Plaintiff is informed and believes that there are over eighty-five (85) Class  
12 Members employed by Defendants within the State of California.

13 39. Accounting for employee turnover during the relevant time periods necessarily  
14 increases this number substantially. Plaintiff alleges Defendants’ employment records would  
15 provide information as to the number and location of all Class Members. Joinder of all members  
16 of the proposed Class is not practicable.

17 **B. Commonality**

18 40. There are questions of law and fact common to Class Members. These common  
19 questions include, but are not limited to:

20 a. Did Defendants violate Labor Code sections 510 and 1194 by not  
21 compensating Class Members who worked greater than 8 hours in a  
22 workday, 40 hours in a workweek, and/or seven (7) consecutive work days  
23 in a workweek with all overtime wages due by failing to track and/or pay  
24 for all hours actually worked?

25 b. Did Defendants violate Labor Code sections 510 and 1194 by not  
26 compensating Class Members who worked greater than 12 hours in a  
27 workday or greater than 8 hours on the seventh straight day of work with all  
28 double time wages due by failing to accurately track and/or pay for all hours

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- actually worked?
- c. Did Defendants violate Labor Code section 510 and 1194 by not compensating Class Members with overtime wages at the proper overtime rate(s)?
- d. Did Defendants violate Labor Code sections 510, 1194 and 1197 by failing to adequately track (and therefore adequately pay minimum wages) for time worked by Class Members?
- e. Did Defendants violate Labor Code sections 510, 1194, and 1197 by failing to adequately track and/or pay Class Members for reporting time pay?
- f. Did Defendants violate Labor Code sections 510, 1194 and 1197 by editing, manipulating or otherwise deducting Class Members' time entries or time worked to reflect less hours than actually worked?
- g. Did Defendants violate Labor Code sections 510, 1194 and 1197 by detrimentally rounding or auto-deducting Class Members' work hours or time worked?
- h. Did Defendants violate Labor Code sections 510, 1194 and 1197 by engaging, suffering, or permitting Class Members to work off the clock?
- i. Did Defendants violate Labor Code sections 510, 1194, and 1197 by failing to accurately track and/or pay for all travel time hours?
- j. Are Class Members entitled to liquidated damages under Labor Code section 1194.2 for Defendants' failure to pay minimum wages for all hours worked?
- k. Did Defendants violate Labor Code section 512 by not providing Class Members with compliant meal periods?
- l. Did Defendants violate Labor Code section 226.7 by not providing Class Members with additional wages for missed, untimely, incomplete or interrupted meal periods?
- m. Did Defendants violate the applicable Wage Order(s) by not providing

- 1 Class Members with compliant rest periods?
- 2 n. Did Defendants violate Labor Code section 226.7 by not providing Class
- 3 Members with additional wages for missed, untimely, incomplete or
- 4 interrupted rest periods?
- 5 o. Did Defendants violate Labor Code section 226, subdivision (a) by not
- 6 furnishing Class Members with accurate wage statements?
- 7 p. Did Defendants violate Labor Code section 2802 by not indemnifying Class
- 8 Members for their costs incurred in purchase and/or use of a personal cell-
- 9 phone, including maintenance of cellular plans, in furtherance of their work
- 10 duties?
- 11 q. Did Defendants violate Labor Code section 2802 by not indemnifying Class
- 12 Members for their costs incurred in laundering their work uniforms
- 13 separately from their regular or other clothes?
- 14 r. Did Defendants violate Labor Code sections 201 and 202 by failing to pay
- 15 Class Members upon termination or resignation all wages earned?
- 16 s. Are Defendants liable to Class Members for penalties under Labor Code
- 17 section 203?
- 18 t. Are Defendants liable to Class Members for penalties under Labor Code
- 19 section 210?
- 20 u. Did Defendants violate the Unfair Competition Law, Business and
- 21 Professions Code section 17200, *et seq.*, by their unlawful practices as
- 22 alleged herein?
- 23 v. Are Class Members entitled to restitution of penalty wages under Business
- 24 and Professions Code section 17203?
- 25 w. Are Class Members entitled to attorneys' fees?
- 26 x. Are Class Members entitled to costs?
- 27 y. Are Class Members entitled to interest?

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1           **C.     Typicality**

2           41.     The claims of Plaintiff herein alleged are typical of those claims which could be  
3 alleged by any member of the classes, and the relief sought is typical of the relief which would be  
4 sought by each of the members of the classes in separate actions. Plaintiff and all members of the  
5 Classes sustained injuries and damages arising out of and caused by Defendants' common course  
6 of conduct in violation of laws and regulations that have the force and effect of law and statutes as  
7 alleged herein.

8           **D.     Adequacy of Representation**

9           42.     Plaintiff will fairly and adequately represent and protect the interest of the members  
10 of the Classes. Counsel who represents Plaintiff is competent and experienced in litigating wage  
11 and hour class actions.

12           **E.     Superiority of Class Action**

13           43.     A class action is superior to other available means for the fair and efficient  
14 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and  
15 questions of law and fact common to the Classes predominate over any questions affecting only  
16 individual members of each Class. Each member of each Class has been damaged and is entitled  
17 to recovery by reason of Defendants' illegal policy and/or practice of failing to pay minimum,  
18 overtime and double time wages, failing to provide meal and rest breaks or compensation in lieu  
19 thereof, failing to provide accurate itemized wage statements, failing to pay all wages due upon  
20 termination and/or resignation, and failing to reimburse or indemnify Class Members' costs  
21 incurred in discharging their duties.

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

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1 **PAGA REPRESENTATIVE ALLEGATIONS**

2 45. Plaintiff is an “aggrieved employee” under PAGA, as Plaintiff was employed by  
3 Defendants during the applicable statutory period and suffered one or more of the Labor Code  
4 violations set forth herein. Accordingly, Plaintiff seeks to recover, on behalf of himself and all  
5 other aggrieved current and former employees of Defendants, the civil penalties provided by  
6 PAGA plus reasonable attorneys’ fees and costs, as the term “civil penalty” is defined under *ZB*  
7 *N.A. v. Superior Court* (2019) 8 Cal.5th 175.

8 46. Plaintiff seeks to recover the PAGA civil penalties through a representative action  
9 permitted by PAGA and the California Supreme Court in, among other authorities, *Arias v.*  
10 *Superior Court* (2009) 46 Cal.4th 969. According to the same authorities, class certification of the  
11 PAGA allegations described herein is not required.

12 47. During the period beginning one (1) year preceding the provision of notice to the  
13 LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”),  
14 Defendants violated, *inter alia*, Labor Code sections 200, 201, 202, 203, 204, 210, 226, 226.3,  
15 226.7, 246, 432, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198.5, 2699, 2802, and 2810.5, among  
16 others.

17 48. Labor Code section 2699, subdivisions (a) and (g), authorizes aggrieved employees  
18 such as Plaintiff, on behalf of himself and all other aggrieved current and former employees within  
19 the statutory period, to bring a civil action to recover civil penalties pursuant to the procedures  
20 specified in Labor Code section 2699.3.

21 49. Plaintiff has complied with the procedures for bringing suit specific to Labor Code  
22 section 2699.3. On or around September 3, 2020, Plaintiff provided written notice by certified  
23 mail, with return receipt requested, of Defendants’ violations of various, including the herein  
24 described, provisions of the Labor Code, to the Labor and Workforce Development Agency  
25 (“LWDA”), as well as to Defendants, and each of them.

26 50. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not  
27 provide notice of intention to investigate Defendants’ alleged violations within sixty-five (65)  
28 calendar days of the September 3, 2020 postmarked date of the herein-described written notice

1 sent by Plaintiff to the LWDA and Defendants.

2        51. Plaintiff is informed and believes, and based thereon alleges that Plaintiff and other  
3 aggrieved employees or former employees have not been paid, during the relevant liability  
4 periods, wages for all time worked, including overtime wages, as a result of, including but not  
5 limited to, a consistent policy or practice by Defendants of failing to pay overtime wages to  
6 Plaintiff and other non-exempt employees in the State of California in violation of California state  
7 wage and hour laws as a result of, without limitation, Plaintiff and other aggrieved employees  
8 routinely working over eight (8) hours per day, twelve (12) hours per day, forty (40) hours per  
9 week, and/or seven (7) consecutive work days in a work week without being properly  
10 compensated for all hours worked in excess of eight (8) hours per day in a work day, twelve (12)  
11 hours per day in a work day, forty (40) hours per week in a work week, and/or hours worked on  
12 the seventh consecutive work day in a workweek by, as a result of, among other things,  
13 Defendants failing to accurately track and/or pay for all hours actually worked, failing to pay  
14 overtime for hours worked above eight (8) in a workday or above forty (40) in a workweek, failing  
15 to pay double time for hours worked above twelve (12) in a workday or greater than eight (8) on  
16 the seventh straight day of work, failing to pay overtime for the first eight (8) hours of work on the  
17 seventh straight work day, detrimental rounding or auto-deduction of time worked, engaging,  
18 suffering, or permitting employees to work off the clock, failing to accurately track and/or pay for  
19 all travel time hours, failing to pay all reporting time pay, editing and/or manipulating time  
20 worked to reflect lesser hours worked by employees than actually worked, and/or paying overtime  
21 hours at the regular rate or otherwise improper rate(s) of pay, resulting in underpayment of wages  
22 to Plaintiff and other aggrieved employees. Consequently, Plaintiff is informed and believes, and  
23 based thereon alleges, that Defendants violated Labor Code sections 510, 1194, and applicable  
24 Wage Orders based on their practice of failing to pay overtime wages, entitling Plaintiff and other  
25 aggrieved employees to relief under these sections, and Labor Code section 558.1. In addition,  
26 Defendants would also be liable for civil penalties pursuant to Labor Code sections 558 and 2699.

27        52. Plaintiff is informed and believes, and based thereon alleges, that Plaintiff and  
28 other aggrieved employees or former employees have not been paid, during the relevant time

1 period, wages for all time worked, including minimum wages as a result of, among other things,  
2 Defendants routinely failing to accurately track and/or pay for all hours actually worked or  
3 otherwise under Defendants' control, detrimental rounding or auto-deduction of time worked,  
4 engaging, suffering, or permitting employees to work off the clock, failing to accurately track  
5 and/or pay for all travel time hours, failing to pay all reporting time pay, and editing and/or  
6 manipulation of time worked to reflect lesser hours worked by employees than actually worked,  
7 all to the detriment of Plaintiff and other aggrieved employees. As such, Plaintiff is informed and  
8 believes, and based thereon alleges that Defendants violated, without limitation, Labor Code  
9 section 1197 and applicable Wage Orders, based on their continued failure to pay minimum  
10 wages, entitling Plaintiff and other aggrieved employees to relief under, without limitation, Labor  
11 Code sections 558.1, 1194 and 1194.2. Defendants would also be liable for civil penalties  
12 pursuant to Labor Code sections 558, 1197.1, and 2699.

13         53. At all relevant times mentioned herein, Defendants had and have a policy or  
14 practice of compelling their employees to work in excess of five (5) and ten (10) hours per day  
15 without being afforded uninterrupted, timely, and complete 30-minute meal periods or  
16 compensation in lieu thereof. Consequently, Plaintiff alleges that Defendants violated Labor Code  
17 section 512, entitling Plaintiff and other aggrieved employees to premium payments under Labor  
18 Code section 226.7 and 558.1. Defendants would also be liable for civil penalties pursuant to  
19 Labor Code sections 558 and 2699.

20         54. At all relevant times mentioned herein, Defendants had and have a policy or  
21 practice of compelling their non-exempt employees, including, without limitation, Plaintiff, to  
22 work over four-hour periods (or major fractions thereof) without authorizing and permitting their  
23 employees to take paid, timely, uninterrupted, and complete ten-minute rest periods in which the  
24 employees are completely relieved of all of their duties. As such, Plaintiff alleges that he and  
25 other aggrieved employees are entitled to relief under, without limitation, Labor Code section  
26 226.7 and 558.1. Defendants would also be liable for civil penalties pursuant to Labor Code  
27 sections 558 and 2699.

28 / / /

1           55. At all relevant times mentioned herein, Defendants had and have a policy or  
2 practice of failing and refusing to indemnify Plaintiff and other aggrieved employees or former  
3 employees for their necessary costs incurred in direct consequence of the discharge of their duties,  
4 or of their obedience to the directions of Defendants, including, without limitation, costs incurred  
5 for purchase and use of a personal cell-phone, including maintenance of cellular plans, as well as  
6 laundering mandatory work uniforms separately from their other clothes as necessitated by the  
7 construction and industrial tasks that resulted in cement, dirt, and debris on their uniforms, as  
8 known by Defendants, in violation of, among other authorities, Labor Code section 2802, and  
9 other statutory and common law offenses, including conversion. Among other relief that Plaintiff  
10 and aggrieved employees may collect from Defendants in connection with these violations are  
11 civil penalties pursuant to Labor Code sections 558, 558.1, and 2699.

12           56. At all relevant times mentioned herein, Defendants had and have a policy or  
13 practice of failing to provide Plaintiff and other aggrieved employees with, or permit them  
14 inspection of, records pertaining to their employment, including wage statements and similar  
15 payroll documents under Labor Code section 226, documents signed to obtain or hold  
16 employment under Labor Code section 432, personnel records under Labor Code section 1198.5,  
17 and time records under Labor Code section 1174, to the detriment of Plaintiff and all other  
18 aggrieved employees. Defendants also had and have a policy or practice of failing to keep  
19 adequate, accurate, and/or non-fraudulent time records as required by Labor Code sections 226  
20 and 1174, making it difficult for Plaintiff and other aggrieved employees to calculate their unpaid  
21 wages and/or premium payments.

22           57. At all relevant times mentioned herein, Defendants have had a policy or practice of  
23 failing to provide Plaintiff and other aggrieved employees with the amount of paid sick leave  
24 required to be provided pursuant to California law, including, without limitation, Labor Code  
25 section 246, *et seq.*), and also did not permit its use upon request as contemplated under California  
26 law, to the detriment of Plaintiff and all other aggrieved employees.

27           58. At all relevant times mentioned herein, Defendants have had a policy or practice of  
28 failing to comply with the notice requirements of Labor Code section 2810.5 (*i.e.*, the Wage Theft

1 Protection Act of 2011) by, among other things, failing to provide Plaintiff and other aggrieved  
2 employees with the various rates of pay and overtime rates of pay applicable to their employment;  
3 allowances claimed as part of the minimum wage; the regular payday designated by Defendants;  
4 the name, address, and telephone number of the workers' compensation insurance carrier;  
5 information regarding paid sick leave; and other pertinent information required to be disclosed by  
6 Defendants under Labor Code section 2810.5.

7         59. At all relevant times mentioned herein, Defendants had and have a policy or  
8 practice of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing  
9 to furnish Plaintiff and other aggrieved employees with itemized wage statements that accurately  
10 reflect gross wages earned; total hours worked; net wages earned; and all applicable hourly rates  
11 in effect during the pay period and the corresponding number of hours worked at each hourly rate,  
12 and other such information, as required by Labor Code section 226, subdivision (a).  
13 Consequently, since Defendants would have failed to comply with Labor Code section 226,  
14 subdivision (a), Plaintiff and other aggrieved employees would be entitled to recover penalties  
15 under, without limitation, Labor Code section 226, subdivision (e) and 558.1. Defendants would  
16 also be liable for civil penalties pursuant to Labor Code sections 226.3, 558, and 2699.

17         60. Plaintiff is informed and believes and based thereon alleges that at all relevant  
18 times mentioned herein, Defendants also failed and refused, and continue to fail and refuse, to  
19 timely pay compensation to Plaintiff and other terminated or resigned employees, including but  
20 not limited to, all wages owed as a result of Plaintiff's information and belief regarding  
21 Defendants' practice or policy of failing to pay, among other wages, overtime wages, double time  
22 wages, minimum wages, and one hour of wages in lieu of each untimely, unprovided or  
23 interrupted meal period and each untimely, unprovided or interrupted rest period. Consequently,  
24 Defendants would be liable for waiting time penalties for having violated California Labor Code  
25 sections 201, 202, 203, and 558.1. Defendants would also be liable for civil penalties pursuant to  
26 Labor Code sections 558 and 2699.

27         61. Plaintiff and other aggrieved employees or former employees at all times pertinent  
28 hereto were not exempt from overtime wage requirements, double time wage requirements,

1 minimum wage requirements, provision of meal breaks or compensation in lieu thereof, provision  
2 of rest breaks or compensation in lieu thereof, provision of accurate, itemized wage statements,  
3 provision of reimbursements for expenses incurred in furtherance of work duties, provision of all  
4 wages before resignation or termination, and other such provisions of California law, and the  
5 implementing rules and regulations of the IWC California Wage Orders. As a result of these  
6 violations, Defendants are liable for civil penalties under PAGA.

7 62. Plaintiff, in his representative capacity, seeks civil penalties under Labor Code  
8 sections 210, 226.3, 558, 1197.1, and 2699 for the herein-described acts, which violate the  
9 California Labor Code as described above, including on behalf of himself and other aggrieved  
10 employees pursuant to PAGA.

### 11 **FIRST CAUSE OF ACTION**

#### 12 **(Failure to Pay Overtime Wages – Against All Defendants)**

13 63. Plaintiff realleges and incorporates by reference all of the allegations contained in  
14 the preceding paragraphs of this Complaint as though fully set forth hereat.

15 64. At all times relevant to this Complaint, Labor Code section 510 was in effect and  
16 provided: “(a) Eight hours of labor constitutes a day’s work. Any work in excess of eight hours in  
17 one workday and any work in excess of forty hours in any one workweek and the first eight hours  
18 on the seventh day of work in any one workweek shall be compensated at the rate of no less than  
19 one and one-half times the regular rate of pay for an employee.”

20 65. At all times relevant to this Complaint, Labor Code section 510 further provided  
21 that “[a]ny work in excess of twelve (12) hours in one day shall be compensated at the rate of no  
22 less than twice the regular rate of pay for an employee. In addition, any work in excess of eight  
23 (8) hours on any seventh day of a workweek shall be compensated at the rate of no less than twice  
24 the regular rate of pay of an employee.”

25 66. Plaintiff is informed and believes and thereon alleges that at all times mentioned,  
26 Plaintiff and the Non-Exempt Class worked for Defendants during shifts that consisted of more  
27 than eight (8) hours in a work day, twelve (12) hours per day, and/or more than forty (40) hours in  
28 a work week, and on seven straight work days were not paid overtime wages for all hours worked

1 as a result of, including but not limited to, Defendants detrimental rounding or auto-deduction of  
2 time worked; engaging, suffering, or permitting employees to work off the clock; failing to  
3 accurately track and/or pay for all travel time hours; failing to pay all reporting time pay; editing  
4 and/or manipulating time worked to reflect lesser hours worked by employees than actually  
5 worked; and/or paying overtime hours at the regular rate or otherwise improper rate(s) of pay  
6 resulting in underpayment of wages to Plaintiff and similarly situated employees in violation of  
7 the Labor Code, including, among others, sections 1194, 1197 and applicable Wage Orders.

8 67. Accordingly, by requiring Plaintiff and the Non-Exempt Class to work in excess of  
9 eight (8) hours per day, twelve (12) hours per day, forty (40) hours per week, and seven straight  
10 work days without properly compensating for overtime wages, as described above, Defendants  
11 willfully violated the provisions of the Labor Code, among others, sections 510, 1194, 1197 and  
12 applicable IWC Wage Orders, and California law.

13 68. As a result of the unlawful acts of Defendants, Plaintiff and the Non-Exempt Class  
14 have been deprived of overtime wages in amounts to be determined at trial, and are entitled to  
15 recovery of such amounts, plus interest and penalties thereon, attorneys' fees and costs, pursuant  
16 to Labor Code sections 1194 and 1199, Code of Civil Procedure sections 1021.5 and 1032, and  
17 Civil Code section 3287.

## 18 **SECOND CAUSE OF ACTION**

### 19 **(Failure to Provide Minimum Wages – Against All Defendants)**

20 69. Plaintiff realleges and incorporates by reference all of the allegations contained in  
21 the preceding paragraphs of this Complaint as though fully set forth hereat.

22 70. At all relevant times, Plaintiff and the members of the Non-Exempt Class were  
23 employees of Defendants covered by Labor Code section 1197 and applicable Wage Orders.  
24 Pursuant to Labor Code section 1197 and applicable Wage Orders, Plaintiff and the members of  
25 the Non-Exempt Class were entitled to receive minimum wages for all hours worked or otherwise  
26 under Defendants' control.

27 71. Plaintiff is informed and believes and thereon alleges that Defendants failed to pay  
28 Plaintiff and members of the Non-Exempt Class minimum wages for all hours worked as a result

1 of, including but not limited to, failing to accurately track and/or pay for all hours actually worked;  
2 detrimental rounding or auto-deduction of time worked; engaging, suffering, or permitting  
3 employees to work off the clock; failing to accurately track and/or pay for all travel time hours;  
4 failing to pay all reporting time pay; and by editing and/or manipulating time worked to reflect  
5 lesser hours worked by employees than actually worked in violation of the Labor Code, including,  
6 among others, sections 1194, 1194.2, 1197 and applicable Wage Orders.

7 72. As a result of Defendants' unlawful conduct, Plaintiff and members of the Non-  
8 Exempt Class have suffered damages in an amount, subject to proof, to the extent they were not  
9 paid minimum wages for all hours worked or otherwise under Defendants' control.

10 73. Pursuant to Labor Code section 1194 and 1194.2, Code of Civil Procedure sections  
11 1021.5 and 1032, and Civil Code section 3287, Plaintiff and members of the Non-Exempt Class  
12 are entitled to recover the full amount of unpaid minimum wages, interest and penalties thereon,  
13 liquidated damages, reasonable attorneys' fees and costs of suit.

### 14 **THIRD CAUSE OF ACTION**

#### 15 **(Failure to Provide Meal Periods or Compensation in Lieu Thereof – Against All** 16 **Defendants)**

17 74. Plaintiff realleges and incorporates by reference all of the allegations contained in  
18 the preceding paragraphs of this Complaint as though fully set forth hereat.

19 75. Pursuant to Labor Code section 512 and applicable Wage Orders, no employer  
20 shall employ an employee for a work period of more than five (5) hours without a timely meal  
21 break of not less than thirty (30) minutes in which the employee is relieved of all of his or her  
22 duties. Furthermore, no employer shall employ an employee for a work period of more than ten  
23 (10) hours per day without providing the employee with a second timely meal period of not less  
24 than thirty (30) minutes in which the employee is relieved of all of his or her duties. Plaintiff and  
25 other members of the Meal Period Class were not provided with requisite timely, complete, and  
26 uninterrupted meal periods as contemplated under the law.

27 76. Pursuant to Labor Code section 226.7, if an employer fails to provide an employee  
28 with a meal period as provided in the applicable Wage Order of the Industrial Welfare

1 Commission, the employer shall pay the employee one additional hour of pay at the employee's  
2 regular rate of compensation for each work day that the meal period is not provided.

3 77. Pursuant to Labor Code section 1198, "[t]he maximum hours of work and the  
4 standard conditions of labor fixed by the commission shall be the maximum hours of work and the  
5 standard conditions of labor for employees. The employment of any employee for longer hours  
6 than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

7 78. Plaintiff is informed and believes and thereon alleges by their failure to provide  
8 Plaintiff and members of the Meal Period Class with the meal periods contemplated by Labor  
9 Code section 512, among other California authorities, and failing to provide compensation for  
10 such unprovided meal periods, as alleged above, Defendants willfully violated the provisions of  
11 Labor Code sections 512 and 1198, and applicable Wage Orders.

12 79. As a result of Defendants' unlawful conduct, Plaintiff and the other members of the  
13 Meal Period Class have suffered damages in an amount, subject to proof, to the extent they were  
14 not paid additional pay owed for missed, untimely, interrupted, and/or incomplete meal periods.

15 80. Plaintiff and the other members of the Meal Period Class are entitled to recover the  
16 full amount of their unpaid additional pay for missed meal periods, in amounts to be determined at  
17 trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys'  
18 fees, and costs, under Labor Code sections 226, 226.7 and 1198, Code of Civil Procedure sections  
19 1021.5 and 1032, and Civil Code section 3287.

#### 20 **FOURTH CAUSE OF ACTION**

#### 21 **(Failure to Provide Rest Periods or Compensation in Lieu Thereof – Against All** 22 **Defendants)**

23 81. Plaintiff realleges and incorporates by reference all of the allegations contained in  
24 the preceding paragraphs of this Complaint as though fully set forth hereat.

25 82. California law and applicable Wage Orders require that employers "authorize and  
26 permit" employees to take ten (10) minute rest periods in about the middle of each four (4) hour  
27 work period "or major fraction thereof." Accordingly, employees who work shifts of three and-a-  
28 half (3 ½) to six (6) hours must be provided ten (10) minutes of paid rest period, employees who

1 work shifts of more than six (6) and up to ten (10) hours must be provided with twenty (20)  
2 minutes of paid rest period, and employees who work shifts of more than ten (10) hours must be  
3 provided thirty (30) minutes of paid rest period. Plaintiff and other members of the Rest Period  
4 Class were not provided with requisite timely, complete, and uninterrupted rest periods as  
5 contemplated under the law.

6 83. Pursuant to Labor Code section 226.7, if an employer fails to provide an employee  
7 with a rest period as provided in the applicable Wage Order of the Industrial Welfare Commission,  
8 the employer shall pay the employee one additional hour of pay at the employee's regular rate of  
9 compensation for each work day that the timely meal period or rest period is not provided.

10 84. Pursuant to Labor Code section 1198, "[t]he maximum hours of work and the  
11 standard conditions of labor fixed by the commission shall be the maximum hours of work and the  
12 standard conditions of labor for employees. The employment of any employee for longer hours  
13 than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

14 85. Plaintiff is informed and believes and thereon alleges by their failure to provide  
15 Plaintiff and other members of the Rest Period Class with the timely complete rest periods  
16 contemplated by California law, and failing to provide compensation for such unprovided rest  
17 periods, as alleged above, Defendants willfully violated the provisions of Labor Code sections  
18 226.7 and 1198, and applicable Wage Orders.

19 86. As a result of Defendants' unlawful conduct, Plaintiff and the other members of the  
20 Rest Period Class have suffered damages in an amount, subject to proof, to the extent they were  
21 not paid additional pay owed for missed, untimely, interrupted, and/or incomplete rest periods.

22 87. Pursuant to Labor Code sections 226.7 and 1198, Code of Civil Procedure sections  
23 1021.5 and 1032, and Civil Code section 3287, Plaintiff and members of the Rest Period Class are  
24 entitled to recover the full amount of their premium pay for unprovided rest periods, interest and  
25 penalties thereon, and costs of suit.

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1 **FIFTH CAUSE OF ACTION**

2 **(Waiting Time Penalties – Against All Defendants)**

3 88. Plaintiff realleges and incorporates by reference all of the allegations contained in  
4 the preceding paragraphs of this Complaint as though fully set forth hereat.

5 89. At all relevant times, Plaintiff and other members of the Late Pay Class were  
6 employees of Defendants covered by Labor Code sections 201 and 202.

7 90. Pursuant to Labor Code sections 201 and 202, Plaintiff and other members of the  
8 Late Pay Class were entitled upon termination to timely payment of all wages earned and unpaid  
9 prior to termination, including overtime, double time, and minimum wages. Discharged  
10 employees were entitled to payment of all wages earned and unpaid, including without limitation,  
11 overtime, double time, and minimum wages, prior to discharge immediately upon termination.  
12 Employees who resigned were entitled to payment of all wages earned and unpaid, including,  
13 without limitation, overtime, double time, and minimum wages, prior to resignation within 72  
14 hours after giving notice of resignation or, if they gave 72 hours previous notice, they were  
15 entitled to payment of all wages earned and unpaid, including overtime, double time, and  
16 minimum wages, at the time of resignation.

17 91. Plaintiff is informed and believes, and based thereon alleges that Defendants, due  
18 to a pattern and practice of not paying all wages earned and owed, including minimum, double  
19 time, and overtime wages, prior to resignation or termination, failed to pay Plaintiff and other  
20 members of the Late Pay Class all wages earned and unpaid, including overtime wages, double  
21 time wages, and minimum wages prior to resignation or termination in accordance with Labor  
22 Code sections 201 or 202.

23 92. Defendants' failure to pay Plaintiff and members of the Late Pay Class all wages  
24 earned prior to termination or resignation in accordance with Labor Code sections 201 and 202  
25 was willful. Defendants had the ability to pay all wages earned by Plaintiff and other members of  
26 the Late Pay Class at the time of termination or resignation in accordance with Labor Code  
27 sections 201 and 202, but intentionally adopted policies or practices incompatible with the  
28 requirements of Labor Code sections 201 and 202.

93. Pursuant to Labor Code sections 201 and 202, Plaintiff and other members of the Late Pay Class are entitled to all wages earned prior to termination or resignation that Defendants failed to pay them.

94. Pursuant to Labor Code section 203, Plaintiff and other members of the Late Pay Class are entitled to penalties from the date their earned and unpaid wages were due, upon termination or resignation, until paid, up to a maximum of 30 days.

95. As a result of Defendants' unlawful conduct, Plaintiff and other members of the Late Pay Class have suffered damages in an amount subject to proof, to the extent they were not paid for all wages earned prior to termination or resignation.

96. As a result of Defendants' unlawful conduct, Plaintiff and the other members of the Late Pay Class have suffered damages in an amount subject to proof, to the extent they were not paid all waiting time penalties and penalty wages owed under Labor Code section 203.

97. Pursuant to Labor Code sections 203, 218, 218.5, 218.6, Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287, Plaintiff and the other members of the Late Pay Class are entitled to recover the full amount of their unpaid wages and waiting time penalties under Labor Code section 203, reasonable attorneys' fees on their unpaid wages, interest, and costs of suit.

### **SIXTH CAUSE OF ACTION**

**(Failure to Provide Accurate Wage Statements – Against All Defendants)**

98. Plaintiff realleges and incorporates by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth hereat.

99. At all relevant times, Plaintiff and the other members of the Wage Statement Class were employees of Defendants covered by Labor Code section 226.

100. Pursuant to Labor Code section 226, subdivision (a), Plaintiff and the other members of the Wage Statement Class were entitled to receive, semi-monthly or at the time of each payment of wages, an accurate itemized statement showing gross wages earned net wages earned, all applicable (and accurate) hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, the last four digits of

1 employees' social security numbers, the accurate name and address of the legal entity that is the  
2 employer, and other information necessary to accurately appear on wage statements.

3 101. Plaintiff is informed and believes and thereon alleges that Defendants failed to  
4 provide Plaintiff and the other members of the Wage Statement Class accurate itemized wage  
5 statements in accordance with Labor Code section 226, subdivision (a).

6 102. Plaintiff and the other members of the Wage Statement Class are informed and  
7 believe and thereon allege that at all relevant times, Defendants maintained and continue to  
8 maintain a policy and practice of issuing wage statements that do not accurately reflect: gross  
9 wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect  
10 during the pay period and the corresponding number of hours worked at each hourly rate as  
11 required by California wage and hour laws. Defendants' practices resulted and continue to result  
12 in the issuance of wage statements to Plaintiff and other members of the Wage Statement Class  
13 that do not comply with the itemization requirement.

14 103. Defendants' failure to provide Plaintiff and other members of the Wage Statement  
15 Class with accurate wage statements was knowing, intentional, and willful. Defendants had the  
16 ability to provide Plaintiff and the other members of the Wage Statement Class with accurate wage  
17 statements, but willfully provided wage statements that Defendants knew were not accurate.

18 104. As a result of Defendants' unlawful conduct, Plaintiff and the other members of the  
19 Wage Statement Class have suffered injury. The absence of accurate information on their wage  
20 statements has delayed timely challenge to Defendants' unlawful pay practices, requires discovery  
21 and mathematical computations to determine the amount of wages owed, causes difficulty and  
22 expense in attempting to reconstruct time and pay records, and led to submission of inaccurate  
23 information about wages and amounts deducted from wages to state and federal governmental  
24 agencies.

25 105. Pursuant to Labor Code section 226, subdivision (e), Plaintiff and other members  
26 of the Wage Statement Class are entitled to recover \$50 for the initial pay period during the period  
27 in which violation of Labor Code section 226 occurred and \$100 for each violation of Labor Code  
28 section 226 in a subsequent pay period, not to exceed an aggregate \$4,000.00 per employee.

106. Pursuant to Labor Code sections 226, subdivisions (e) and (g), Code of Civil Procedure section 1032, Civil Code section 3287, Plaintiff and the other members of the Wage Statement Class are entitled to recover the full amount of penalties due under Labor Code section 226, subdivision (e), reasonable attorneys' fees and costs of suit.

### SEVENTH CAUSE OF ACTION

**(Violation of Labor Code § 2802 – Against All Defendants)**

107. Plaintiff realleges and incorporates by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth hereat.

108. At all relevant times, Plaintiff and the other members of the Expense Class were employees of Defendants covered by Labor Code section 2802.

109. California Labor Code section 2802, subdivision (a) provides that “an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties . . .”

110. Plaintiff is informed and believes and thereon alleges that at all relevant times, Plaintiff and other members of the Expense Class were required to separately launder their mandatory work uniforms from their regular clothes in furtherance of their work duties for Defendants.

111. Plaintiff is informed and believes and thereon alleges that at all relevant times, Defendants failed and refused, and still fail and refuse, to reimburse Plaintiff and other members of the Expense Class for their costs incurred in laundering their mandatory work uniforms separately from their regular clothes while discharging their duties for Defendants.

112. Plaintiff is informed and believes and thereon alleges that at all relevant times, Plaintiff and other members of the Expense Class were required to purchase and use their personal cell-phones, as well as maintain cellular phone plans, in furtherance of their work duties for Defendants.

113. Plaintiff is informed and believes and thereon alleges that at all relevant times, Defendants failed and refused, and still fail and refuse, to reimburse Plaintiff and other members of the Expense Class for their costs incurred in purchasing and using their personal cell-phones, as

1 well as maintaining cellular phone plans, while discharging their duties for Defendants.

2 114. As a result of Defendants' unlawful conduct, Plaintiff and the other members of the  
3 Expense Class have suffered damages in an amount subject to proof, to the extent they were not  
4 reimbursed for the actual cost of laundering their uniforms separately from their regular clothes,  
5 and to the extent that they were not reimbursed for the actual cost of purchasing and/or using their  
6 personal cell-phones, including costs incurred in purchase and/or maintenance of a cellular plan, in  
7 furtherance of their work duties.

8 **EIGHTH CAUSE OF ACTION**

9 **(Unfair Competition – Against All Defendants)**

10 115. Plaintiff realleges and incorporates by reference all of the allegations contained in  
11 the preceding paragraphs of this Complaint as though fully set forth hereat.

12 116. The unlawful conduct of Defendants alleged herein constitutes unfair competition  
13 within the meaning of Business and Professions Code section 17200. Due to their unlawful  
14 business practices in violation of the Labor Code, Defendants have gained a competitive  
15 advantage over other comparable companies doing business in the State of California that comply  
16 with their obligations to compensate employees in accordance with the Labor Code.

17 117. Plaintiff is informed and believes and thereon alleges that as a result of Defendants'  
18 unfair competition as alleged herein, Plaintiff and similarly situated Class Members have suffered  
19 injury in fact and lost money or property. Plaintiff and similarly situated Class Members have  
20 been deprived of overtime, double time, and minimum wage compensation, provision of meal and  
21 rest breaks or compensation in lieu thereof, reimbursement or indemnification of costs incurred in  
22 laundering their mandatory work uniforms separately from their regular clothes and purchasing  
23 and/or using their personal cell-phones, including costs incurred in purchase and/or maintenance  
24 of a cellular plan, in furtherance of their work duties, and from being provided with inaccurate  
25 wage statements, among other things.

26 118. Pursuant to Business and Professions Code section 17203, Plaintiff and similarly  
27 situated Class Members are entitled to restitution of all wages and other monies owed to them  
28 under the Labor Code, including interest thereon, in which they had a property interest and which

1 Defendants nevertheless failed to pay them and instead withheld and retained for themselves.  
2 Restitution of the money owed to Plaintiff and similarly situated Class Members is necessary to  
3 prevent Defendants from becoming unjustly enriched by their failure to comply with the Labor  
4 Code.

5 119. Plaintiff and similarly situated Class Members are entitled to costs of suit under  
6 Code of Civil Procedure section 1032 and interest under Civil Code section 3287.

7 **NINTH CAUSE OF ACTION**

8 **(Violation of Labor Code § 204 – Against All Defendants)**

9 120. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs  
10 and incorporates each by reference as though fully set forth hereat.

11 121. Defendants have had a consistent policy or practice of failing to comply with Labor  
12 Code section 204, which requires that: “[l]abor performed between the 1<sup>st</sup> and 15<sup>th</sup> days, inclusive,  
13 of any calendar month shall be paid for between the 16<sup>th</sup> and 26<sup>th</sup> day of the month during which  
14 the labor was performed, and labor performed between the 16<sup>th</sup> and the last day, inclusive, of any  
15 calendar month, shall be paid for between the 1<sup>st</sup> and 10<sup>th</sup> day of the following month.”

16 122. Labor Code section 210, subdivision (a) states that “[i]n addition to, and entirely  
17 independent and apart from, any other penalty provided in this article, every person who fails to  
18 pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205,  
19 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one  
20 hundred dollars (\$100) for each failure to pay each employee” and “(2) For each subsequent  
21 violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay  
22 each employee, plus 25 percent of the amount unlawfully withheld.”

23 123. Plaintiff is informed and believes, and based thereon alleges, that Defendants did  
24 not and do not pay their employees in accordance with Labor Code section 204.

25 124. Pursuant to Labor Code section 210, Plaintiff and other similarly situated current  
26 and former employees he seeks to represent are entitled to recover penalties for Defendants’  
27 violations of Labor Code section 204, in the amount of one hundred dollars (\$100) for each  
28 current or former employee for each initial violation per employee, and two hundred dollars

1 (\$200) for each current or former employee for each subsequent violation in connection with each  
2 payment that was made in violation of Labor Code section 204, plus 25 percent of the amount  
3 unlawfully withheld.

4 **TENTH CAUSE OF ACTION**

5 **(Violation of Labor Code § 226.3 – Against All Defendants)**

6 125. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs  
7 and incorporates each by reference as though fully set forth hereat.

8 126. Defendants have had a consistent policy or practice of failing to comply with Labor  
9 Code section 226, subdivision (a) by intentionally failing to furnish employees with itemized wage  
10 statements that accurately reflect gross wages earned; total hours worked; net wages earned; the  
11 accurate name(s) and address(es) of the legal entity(ies) that is or are the employer(s); all  
12 applicable (and accurate) hourly rates in effect during the pay period and the corresponding  
13 number of hours worked at each hourly rate by the employee; the last four digits of employees'  
14 social security numbers; and other such information as required by California wage and hour laws.

15 127. Labor Code section 226.3 states that “[a]ny employer who violates subdivision (a)  
16 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)  
17 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee  
18 for each violation in a subsequent citation, for which the employer fails to provide the employee a  
19 wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.”

20 128. Labor Code section 226.3 further provides that “[t]he civil penalties provided for in  
21 this section are in addition to any other penalty provided by law.”

22 129. Plaintiff is informed and believes and based thereon alleges that Defendants failed  
23 and continue to fail to furnish non-exempt employees, including, without limitation, Plaintiff, with  
24 itemized wage statements that accurately reflect gross wages earned; total hours worked; net  
25 wages earned; the accurate name(s) and address(es) of the legal entity(ies) that is or are the  
26 employer(s); all applicable (and accurate) hourly rates in effect during the pay period and the  
27 corresponding number of hours worked at each hourly rate by the employee, the last four digits of  
28 employees' social security numbers, and other such information as required by Labor Code section

1 226, subdivision (a).

2 130. Pursuant to Labor Code section 226.3, Plaintiff and other aggrieved employees or  
3 former employees he seeks to represent are entitled to recover civil penalties for Defendants'  
4 violation of Labor Code section 226, subdivision (a) in the amount of two hundred fifty dollars  
5 (\$250) for each aggrieved employee or former employee per pay period for the initial violation,  
6 and one thousand dollars (\$1,000) for each aggrieved employee or former employee per pay  
7 period for each subsequent violation.

8 **ELEVENTH CAUSE OF ACTION**

9 **(Violation of Labor Code § 558 – Against All Defendants)**

10 131. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs  
11 and incorporates each by reference as though fully set forth hereat.

12 132. Pursuant to Labor Code section 558, subdivision (a): "Any employer or other  
13 person acting on behalf of an employer who violates, or causes to be violated . . . any provision  
14 regulating hours and days of work in any order of the Industrial Welfare Commission" shall be  
15 subject to a civil penalty as follows:

- 16 a. For any initial violation, fifty dollars (\$50) for each underpaid employee and for  
17 each pay period for which the employee was underpaid in addition to an amount  
18 sufficient to recover underpaid wages;
- 19 b. For each subsequent violation, one hundred dollars (\$100) for each underpaid  
20 employee for each pay period for which the employee was underpaid in addition to  
21 an amount sufficient to recover underpaid wages;
- 22 c. Wages recovered pursuant to this section shall be paid to the affected employee."

23 133. Plaintiff believes, and thereupon alleges, that Defendants, and each of them, made  
24 the decision that Plaintiff would not be paid the wages owed to Plaintiff as alleged herein,  
25 including but not limited to wages owed to Plaintiff for all hours worked, including overtime and  
26 minimum wages, and premium wages for missed meal and rest periods. As a direct and proximate  
27 result of Defendants' conduct, Plaintiff is entitled to recover directly from Defendants civil  
28 penalties pursuant to Labor Code section 558.

134. For violation of Labor Code section 558, Plaintiff is entitled to recover civil penalties in amounts to be determined at trial, as proscribed under Labor Code section 558, subdivision (a).

## TWELFTH CAUSE OF ACTION

**(Violation of Labor Code § 1197.1 – Against All Defendants)**

135. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs and incorporates each by reference as though fully set forth hereat.

136. Pursuant to Labor Code section 1197.1, subdivision (a): “Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203 as follows:

- a. For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203.
- b. For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203.
- c. Wages, liquidated damages, and any applicable penalties imposed pursuant to Section 203, recovered pursuant to this section shall be paid to the affected employee.”

/ / /

137. Plaintiff believes, and thereupon alleges, that Defendants, and each of them, made the decision that Plaintiff would not be paid his due minimum wages as required due to, among other things, Defendants routinely failing to accurately track and/or pay for all hours actually worked, including, without limitation, for all employee time spent under the direction, supervision and control of Defendants while on and/or off-the-clock, employee time spent working on the clock but deducted through manual adjustments and/or automated timekeeping policies, practices, or procedures, and/or for all hours employees were otherwise engaged, suffered, and/or permitted to work while on and/or off-the-clock; detrimental rounding or auto-deduction of employee work hours; for all travel time hours; for all reporting time pay; editing and/or manipulation of time worked to reflect lesser hours worked by employees than actually worked, all to the detriment of Plaintiff and other aggrieved employees. As a direct and proximate result of Defendants' conduct, Plaintiff is entitled to recover directly from Defendants, civil penalties, as set forth above, pursuant to Labor Code section 1197.1.

### THIRTEENTH CAUSE OF ACTION

**(Civil Penalties Under Labor Code § 2699 – Against All Defendants)**

138. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs and incorporates each by reference as though fully set forth hereat.

139. Plaintiff is an “aggrieved employee” under PAGA, as he was employed by Defendants during the applicable statutory period and suffered one or more of the Labor Code violations set forth herein. Accordingly, Plaintiff seeks to recover, on behalf of himself and all other aggrieved current and former employees of Defendants, the civil penalties provided by PAGA, plus reasonable attorneys’ fees and costs.

140. Plaintiff seeks to recover the PAGA civil penalties through a representative action permitted by PAGA and the California Supreme Court in, among other authorities, *Arias v. Superior Court* (2009) 46 Cal.4th 969. According to the same authorities, class certification of the PAGA allegations described herein is not required.

141. During the period beginning one (1) year preceding the filing of the PAGA Notice in this action (the “Civil Penalty Period”), which was filed on September 3, 2020, Defendants

1 violated, *inter alia*, 200, 201, 202, 203, 204, 226, 226.3, 226.7, 432, 510, 512, 1174, 1194, 1194.2,  
2 1197, 1198.5, 2802, and 2810.5, among others.

3 142. Labor Code section 2699, subdivisions (a) and (g), authorizes aggrieved employees  
4 such as Plaintiff, on behalf of themselves and other current and former employees within the  
5 statutory period, to bring a civil action to recover civil penalties pursuant to the procedures  
6 specified in Labor Code section 2699.3.

7 143. Plaintiff has complied with the procedures for bringing suit specified in Labor  
8 Code section 2699.3. Specifically, on or about September 3, 2020, Plaintiff gave written notice to  
9 the LWDA and to Defendants of the specified provisions of the Labor Code alleged to have been  
10 violated and those included herein, and the LWDA has elected not to investigate.

11 144. Pursuant to Labor Code section 2699, subdivisions (a) and (f), Plaintiff seeks to  
12 represent and is entitled to recover civil penalties for and on behalf of himself and other aggrieved  
13 employees and former employees, for Defendants' violations of the herein and therein described  
14 Labor Code violations during the Civil Penalty Period and all relevant liability periods in the  
15 amount of one hundred dollars (\$100) for each employee or former employee per pay period for  
16 the initial violation, and two hundred dollars (\$200) for each employee or former employee per  
17 pay period for each subsequent violation.

18 145. Pursuant to Labor Code section 2699, subdivision (g), Plaintiff and other aggrieved  
19 employees and former employees he seeks to represent are entitled to an award of reasonable  
20 attorneys' fees and costs in connection with their herein-described claims for civil penalties.

21 **DEMAND FOR JURY TRIAL**

22 146. Plaintiff demands a trial by jury on all causes of action contained herein.

23 **PRAYER**

24 **WHEREFORE**, on behalf of himself and all others similarly situated and aggrieved,  
25 Plaintiff prays for judgment against Defendants as follows:

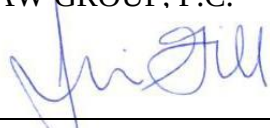
26 A. An Order certifying this case as a Class Action;

27 B. An Order appointing Plaintiff as Class representative and appointing Plaintiff's  
28 counsel as class counsel;

- 1 C. Damages for all wages earned and owed, including minimum wages, double time  
2 wages, and overtime wages under Labor Code sections 203, 510, 558.1, 1194,  
3 1197, 1198, and 1199;
- 4 D. Liquidated damages pursuant to Labor Code sections 558.1 and 1194.2;
- 5 E. Damages for unpaid premium wages from missed meal and rest periods under,  
6 among other Labor Code sections, 512, 558.1, and 226.7;
- 7 F. Penalties for inaccurate wage statements under Labor Code section 226,  
8 subdivision (e) and 558.1;
- 9 G. Damages for unpaid penalties under Labor Code sections 203 and 558.1;
- 10 H. Waiting time penalties under Labor Code sections 203 and 558.1;
- 11 I. Civil Penalties pursuant to Labor Code sections 210, 226.3, 558, 558.1, 1197.1, and  
12 2699;
- 13 J. Damages for failure to reimburse for costs and expenses incurred in furtherance of  
14 work duties as required under Labor Code sections 558.1 and 2802;
- 15 K. Preliminary and permanent injunction(s) prohibiting Defendants from further  
16 violating the Labor Code and requiring the establishment of appropriate and  
17 effective means to prevent further violations;
- 18 L. Restitution under Business and Professions Code section 17203;
- 19 M. Pre-judgment and post-judgment interest at the maximum rate allowed by law;
- 20 N. For costs of suit incurred herein;
- 21 O. For reasonable attorneys' fees; and
- 22 P. For such other and further relief as the Court deems just and proper.

23 Dated: November 30, 2020

J. GILL LAW GROUP, P.C.

25 BY: 

26 JASMIN K. GILL

Attorneys for Plaintiff GUSTAVO ROSETE

27 HEREDIA, on behalf of himself and all others similarly  
28 situated or aggrieved

1 **PROOF OF SERVICE**

2 I am employed in the County of Los Angeles, State of California, over the age of 18 and not  
3 a party to the within action. My business address is 515 South Flower Street, Suite 1800, Los  
4 Angeles, California 90071.

5 On November 30, 2020, I served the following document(s) described as: **FIRST  
6 AMENDED COMPLAINT** on the interested parties to this action by placing a copy thereof  
7 enclosed in a sealed envelope addressed as follows:

8 Nancy Whitehead  
9 SCOTT & WHITEHEAD  
10 4675 MacArthur Court, Suite 1240  
11 Newport Beach, California 92660  
12 nwhitehead@employerlaw.com

13 **Attorneys for Defendants Alan Smith Pool Plastering, Inc. and Alan M. Smith**

14 David D. Bibiyan (*david@tomorrowlaw.com*)  
15 Sara Ehsani-Nia (*sara@tomorrowlaw.com*)  
16 Anton Swain-Gil (*anton@tomorrowlaw.com*)  
17 BIBIYAN LAW GROUP, P.C.  
18 8484 Wilshire Boulevard, Suite 500  
19 Beverly Hills, California 90211

20 **Co-Counsel for Plaintiff Gustavo Heredia**

21 ☒ **(BY E-MAIL OR ELECTRONIC TRANSMISSION)** In accordance with California Rules  
22 of Court, Rule 2.251(c) and Emergency Rule 12 of the Emergency Rules Related to COVID-  
23 19, I caused a copy of the document(s) listed above to be transmitted from my e-mail address  
24 (*jasmin@jkgilllaw.com*) to the person(s) at the e-mail address(es) set forth above. I did not  
25 receive, within reasonable time after transmission, any electronic message or other indication  
26 that the transmission was unsuccessful.

27 Executed this 30th day of November 2020 at Los Angeles, California.

28 I declare under penalty of perjury under the laws of the State of California that the above is  
true and correct.

29   
30 \_\_\_\_\_  
Jasmin K. Gill, Esq.