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Attorneys for Plaintiff
Nick Brown on his own behalf and all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CRUZ**

NICK BROWN, as an individual and on behalf
of others similarly situated,

Plaintiff,
vs.

JANUS OF SANTA CRUZ, a California
Corporation; and DOES 1 through 50,
Inclusive,

Defendants.

Case No.: 20CV02522

**PLAINTIFF'S CLASS ACTION
COMPLAINT:**

- 1. UNPAID WAGES AND
COMPENSATION**
 - 2. FAILURE TO PROVIDE BONA FIDE
MEAL PERIODS**
 - 3. FAILURE TO PROVIDE BONA FIDE
REST PERIODS**
 - 4. UNFAIR COMPETITION**
 - 5. VIOLATIONS UNDER PAGA**
 - 6. FAILURE TO FURNISH
ACCURATE ITEMIZED WAGE
STATEMENTS**
- DEMAND FOR JURY TRIAL**

Plaintiff NICK BROWN, on behalf of himself and the class of others similarly situated
(hereinafter collectively referred to as "Plaintiff") hereby submits his Complaint against
Defendant JANUS OF SANTA CRUZ, a California Corporation; and DOES 1 through 50
(hereinafter collectively referred to as "Defendants"), as follows:

1 **INTRODUCTION**

2 1. This class action is within the Court’s jurisdiction under *Labor Code*, California
3 *Business and Professions Code* § 17200, et seq., (Unfair Practices Act) and the applicable wage
4 order(s) issued by the Industrial Welfare Commission (“IWC”).

5 2. This complaint challenges systemic illegal employment practices resulting in
6 violations of the *Labor Code*, *Business and Professions Code* and applicable IWC wage orders
7 against employees of Defendants.

8 3. Plaintiff is informed and believe and based thereon alleges that Defendants, jointly
9 and severally, have acted intentionally and with deliberate indifference and conscious disregard
10 to the rights of all employees in receiving all lawful wages, including but not limited to overtime
11 pay, and meal and rest periods.

12 4. Plaintiff is informed and believes and based thereon alleges Defendants have engaged
13 in, among other things a system of willful violations of the *Labor Code*, *Business and*
14 *Professions Code* and applicable IWC wage orders by creating and maintaining policies,
15 practices and customs that knowingly deny employees lawful wages, and meal and rest breaks.
16 The policies, practices, and customs of Defendants described above and below have resulted in
17 unjust enrichment of Defendants and an unfair business advantage over businesses that routinely
18 adhere to the strictures of the *Labor Code*, *Business and Professions Code* and applicable IWC
19 wage orders.

20 **JURISDICTION AND VENUE**

21 5. The Court has jurisdiction over the violations of the *Labor Code*, *Business and*
22 *Professions Code* § 17200, et seq., (Unfair Practices Act) and the applicable wage order(s) issued
23 by the Industrial Welfare Commission.

24 6. Venue is proper because the alleged wrongs occurred in Santa Cruz County.
25 Defendants are located within California and Santa Cruz County. Plaintiff worked for
26 Defendants in Santa Cruz County. The events that are the subject of this action took place in
27 Santa Cruz County.
28

PARTIES

7. Plaintiff NICK BROWN was employed by Defendants from about May 28, 2018, until about September 4, 2020, as a non-exempt employee.

8. Plaintiff and other similarly situated employees were victims of the policies, practices and customs of Defendants complained of in this action in ways that have deprived them of their rights guaranteed to them by *Labor Code, Business and Professions Code* § 17200, et seq., (Unfair Practices Act) and the applicable wage order(s) issued by the Industrial Welfare Commission.

9. Defendants employed Plaintiff and all others similarly situated at all times relevant to this complaint in Santa Cruz County.

10. Defendant Janus of Santa Cruz is doing business in the County of Santa Cruz, State of California at 200 Seventh Ave., Santa Cruz, CA 95062.

11. On information and belief, Defendant Janus of Santa Cruz owns and operates a total of five locations of substance abuse rehabilitation facilities within the County of Santa Cruz, State of California.

12. On information and belief, the illegal acts complained of herein impacted employees of all of the locations it operated.

13. Plaintiff is informed and believes and thereon alleges that at all times herein mentioned Defendants, are and were corporations, business entities, individuals, and partnerships, licensed to do business and actually doing business in the State of California. Defendants own and operate a substance abuse treatment facility. As such, and based upon all the facts and circumstances incident to Defendants' business in California, Defendants are subject to *Labor Code, Business and Professions Code* § 17200, et seq., (Unfair Practices Act) and the applicable wage order(s) issued by the Industrial Welfare Commission.

14. Plaintiff does not know the true names or capacities, whether individual, partner or corporate, of the Defendants sued herein as DOES 1 through 50, inclusive, and for that reason, said Defendants are sued under such fictitious names, and Plaintiff prays leave to amend this complaint when the true names and capacities are known. Plaintiff is informed and believes and

thereon alleges that each of said fictitious Defendants was responsible in some way for the matters alleged herein and proximately caused Plaintiff and members of the class to be subject to the illegal employment practices, wrongs and injuries complained of herein.

15. At all times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the Defendants, and each of them, were the agents, servants and employees of each of the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were acting within the course and scope of said agency and employment.

16. Plaintiff is informed and believes and based thereon alleges that at all times material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or joint venturer of, or working in concert with each of the other co-Defendants and was acting within the course and scope of such agency, employment, joint venture, or concerted activity. To the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of the remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting Defendant.

17. At all times herein mentioned, Defendants, and each of them, were members of, and engaged in, a joint venture, partnership and common enterprise, and acting within the course and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

18. At all times herein mentioned, the acts and omissions of various Defendants, and each of them, concurred and contributed to the various acts and omissions of each and all of the other Defendants in proximately causing the injuries and damages as herein alleged.

19. At all times herein mentioned, Defendants, and each of them, ratified each and every act or omission complained of herein. At all times herein mentioned, the Defendants, and each of them, aided and abetted the acts and omissions of each and all of the other Defendants in proximately causing the damages as herein alleged.

CLASS ACTION ALLEGATIONS

20. Definition: Plaintiff Nick Brown brings this action on behalf of himself and the class pursuant to California *Code of Civil Procedure* § 382 and is consistent with Fed. R. Civ. P.

Rules 23(a), (b)(1), (b)(2), and (b)(3). The class is defined as: “All current and former non-exempt employees who worked for Defendants in California within the last four years up to the time that class certification is granted.”

21. Numerosity: The members of the class are so numerous that joinder of all members would be impractical, if not impossible. The identity of the members of the class is readily ascertainable by review of Defendants’ records. Plaintiff is informed and believes and based thereon alleges that: (a) class members were not provided with bona fide meal breaks; (b) class members were not authorized and permitted to take bona fide rest breaks; and (c) class members were not paid all wages earned, including but not limited to appropriate overtime compensation.

22. Adequacy of Representation: The named Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the class defined above. Plaintiff’s attorneys are ready, willing, and able to fully and adequately represent the class and individual Plaintiff.

23. Defendants uniformly administered a company policy, practice, and/or custom regarding Plaintiff and the corresponding class members concerning staffing levels, duties, and responsibilities of the class members that caused class members not to be provide with bona fide meal breaks, and class members not to be authorized and permitted to take bona fide rest breaks. Further, Defendants’ policies and practices caused class members to not be paid all wages earned, specifically, Plaintiff and class members were not properly paid overtime for hours in a workday in excess of eight hours. Plaintiff is informed and believes and based thereon alleges this conduct is accomplished with the advance knowledge and designed intent to willfully withhold appropriate wages for work performed by class members.

24. Plaintiff is informed and believes and based thereon alleges that Defendants, in violation of *Labor Code* §§ 201 and 202, et seq., respectfully, had a consistent and uniform policy, practice, and custom of willfully failing to comply with *Labor Code* §§ 226.7 and 512, and 1198, as well as IWC Wage Order 5-2001, Section 5. Plaintiff and other members of the class did not secret or absent themselves from Defendants, nor refuse to accept the earned and

unpaid wages from Defendants. Accordingly, Defendants are liable for waiting time compensation for the unpaid wages to separated employees pursuant to *Labor Code* § 203.

25. Common Question of Law and Fact: There are predominant common questions of law and fact and a community of interest amongst Plaintiff and the claims of the class concerning whether: (a) class members were provided with bona fide meal breaks; (b) class members were authorized and permitted to take bona fide rest breaks; and (c) class members were paid all wages earned, including overtime compensation. Defendants' employment policies and practices wrongfully and illegally failed to compensate Plaintiff and the other members of the class as required by California law.

26. Typicality: Plaintiff's claims are typical of the claims of all members of the class. Plaintiff is a member of the class and has suffered the alleged violations of the Labor Code and California Industrial Welfare Commission wage orders, described herein.

27. The *Labor Code* and Wage Order provisions upon which Plaintiff bases his claims are broadly remedial in nature. These laws and labor standards serve an important public interest in establishing minimum working conditions and standards in California. These laws and labor standards protect the average working employee from exploitation by employers who may seek to take advantage of superior economic and bargaining power in setting onerous terms and conditions of employment.

28. The nature of this action and the format of laws available to Plaintiff and members of the respective classes identified herein make the class action format a particularly efficient and appropriate procedure to redress the wrongs alleged herein. If each employee were required to file an individual lawsuit, the corporate Defendants would necessarily gain an unconscionable advantage since it would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources. Requiring each class member to pursue an individual remedy would also discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former and/or current employer for real and justifiable fear of retaliation and permanent damage to their careers at subsequent employment.

1 **29.** The prosecution of separate actions by the individual class members, even if
2 possible, would create a substantial risk of: (a) inconsistent or varying adjudications with respect
3 to individual class members against the Defendants and which would establish potentially
4 incompatible standards of conduct for the Defendants, and/or (b) adjudications with respect to
5 individual class members which would, as a practical matter, be dispositive of the interest of the
6 other class members not parties to the adjudications or which would substantially impair or
7 impede the ability of the class members to protect their interests. Further, the claims of the
8 individual members of the class are not sufficiently large to warrant vigorous individual
9 prosecution considering all of the concomitant costs and expenses.

10 **30.** Proof of a common business practice or factual pattern, of which the named
11 Plaintiff experienced, are representative and will establish the right of each of the members of the
12 plaintiff class to recovery on the causes of action alleged herein.

13 **31.** The plaintiff class is commonly entitled to a specific fund with respect to the
14 compensation illegally and unfairly retained by Defendants. The plaintiff class is commonly
15 entitled to restitution of those funds being improperly withheld by Defendants. This action is
16 brought for the benefit of the entire class and will result in the creation of a common fund for the
17 class.

18 **FACTUAL ALLEGATIONS RELEVANT TO**
19 **PLAINTIFF'S CAUSES OF ACTION**

20 **32.** As a result of Defendants' policies and other factors, Plaintiff and Class Members
21 did not have, and were not provided, the opportunity to take all bona fide meal and rest breaks.
22 Plaintiff and Class Members worked for periods of more than four (4) hours or major fraction
23 thereof without a rest period of ten (10) minutes and worked in excess of five hours without a
24 meal break of thirty (30) minutes.

25 **33.** Also, as a result of Defendants' policies and other factors, Plaintiff and Class
26 Members were frequently scheduled to work a graveyard shift and then a second shift hours later
27 but on the same workday (as defined in Defendants' policies) – but were denied overtime for
28 those hours worked in excess of eight hours in a day, in violation of both Defendants' own

1 policies as well as the Labor Code.

2 **34.** These practices caused:

- 3 a. A failure to pay all wages earned at the time of separation from employment, in
4 violation of *Labor Code* § 203.
- 5 b. A failure to timely pay wages earned, in violation of *Labor Code* § 204.
- 6 c. Wage statements that did not accurately report hours worked, in violation of
7 *Labor Code* § 226.

8 **35.** Plaintiff and Class Members employees were denied the ability to take bona fide
9 meal and/or rest breaks due to business demands. No premium compensation was paid when the
10 facility failed to provide meal breaks or failed to permit rest breaks. These practices result
11 violations of *Labor Code* § 226.7, 512, and IWC Wage Order Sections 11 and 12.

12 **36.** At times, Defendants deduct thirty minutes from hours worked to reflect meal
13 breaks not provided or taken. This results in a failure to pay wages, in violation of *Labor Code*
14 §§ 221, 225.5, 558, 558.1, 1194, 1194.2, 1194.5, 1197, 1197.1, 1198, and IWC Wage Order No.
15 5 §§ 3, 4, 7, and 20.

16 **37.** Defendants violated *Labor Code* § 226(a) by failing to furnish Plaintiff and Class
17 Members with pay stubs that contain all nine pieces of information required by the statute by
18 neglecting to accurately state the number of hours worked by Plaintiff.

19 **38.** The prompt payment of wages is and has long been a fundamental policy of the
20 State of California. In *Gould v. Maryland Sound Industries* (1995) 31 Cal.App.4th 1137, 1147,
21 the court held that: “Statutory provisions and case law support [the former employees’]
22 contention that the prompt payment of wages to any employee is a fundamental public policy of
23 the state... ‘it is essential to the public welfare that the average worker receive her pay promptly,
24 thus the prompt payment of wages serves society’s interest ... to a more stable job market, in
25 which its most important policies are safeguarded.’” Similarly, the Supreme Court in *Pressler v.*
26 *Bren* (1992) 32 Cal. 3rd 831, 837 acknowledged California’s public policy in favor of full and
27 prompt payment of wages due to an employee. In that vein, *Labor Code* § 201, *et seq.* mandates
28 the immediate payment of wages upon separation from employment. *Labor Code* § 203 entitles

1 an employee to waiting time penalties if an employer willfully fails to pay all wages due upon
2 the employees' separation from employment. The penalty is equal to the employee's daily wage
3 rate and continues to accrue for thirty days.

4 **FIRST CAUSE OF ACTION**

5 **BY PLAINTIFF ON BEHALF OF HIMSELF AND THE CLASS FOR FAILURE TO**
6 **PAY WAGES AND COMPENSATION**

7 **(Against All Defendants)**

8 **39.** Plaintiff re-alleges and incorporates by reference each and every allegation set
9 forth in the preceding paragraphs.

10 **40.** This cause of action is brought pursuant to *Labor Code* § 200 *et seq.*, which
11 provides that employees are entitled to wages and compensation for work performed, and
12 provides a private right of action for failure to pay wages and compensation for said work
13 performed. *Labor Code* § 1194 entitles a plaintiff to recover unpaid wages. *Labor Code* §
14 1194.2 entitles a plaintiff to recover liquidated damages in an equal amount for unpaid minimum
15 wages.

16 **41.** *Labor Code* §§ 510, 1194 and 1198, *et seq.* further provide a private right of action
17 for failure to pay legal compensation for all hours worked. *Labor Code* § 558.1 provides for a
18 private right of action against persons who act on behalf of an employer who violate or cause the
19 employer to violate *Labor Code* §§ 203, and 1194.

20 **42.** *Labor Code* § 558.1 provides for a private right of action against persons who act on
21 behalf of an employer who violate or cause the employer to violate *Labor Code* §§ 203, and
22 1194.

23 **43.** At the time of the termination of Plaintiff's and Class Members' employment,
24 they are entitled to wages earned. Defendants failed to pay Plaintiff and Class members their
25 wages and compensation earned.

26 **44.** As a pattern and practice, in violation of the aforementioned labor laws and wage
27 orders, Plaintiff is informed and believes and based thereon alleges Defendants did not properly
28

maintain records pertaining to when Plaintiff and the putative class' total daily hours worked and the total hours worked per pay period and applicable rates of pay in violation of *Labor Code* §1174.

45. Such a pattern, practice and uniform administration of corporate policy regarding illegal employee compensation as described herein is unlawful and creates an entitlement to recovery by Plaintiff and Class Members in a civil action, for the unpaid balance of the full amount of straight time compensation and minimum wage owing, including interest thereon, penalties, reasonable attorneys' fees, and costs of suit according to the mandate of *Labor Code* §1194, et seq.

46. Defendants' willful failure to provide Plaintiff and Class Members the wages due and owing them upon separation from employment results in a continued payment of wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and Class Members are entitled to compensation pursuant to *Labor Code* § 203.

SECOND CAUSE OF ACTION

BY PLAINTIFF ON BEHALF OF HIMSELF AND THE CLASS FOR FAILURE TO PROVIDE BONA FIDE MEAL BREAKS IN VIOLATION OF *LABOR CODE* § 226.7

(Against All Defendants)

47. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

48. Plaintiff and Class Members regularly worked in excess of five (5) hours per workday and accordingly had a right to take a 30-minute meal period each day worked in excess of five (5) hours. As such, Defendants are responsible for paying premium compensation for missed meal periods pursuant to *Labor Code* § 226.7 and IWC Wage Order § 11(B). Defendants shall pay each affected employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal break was not provided.

49. *Labor Code* § 558.1 provides for a private right of action against persons who act on behalf of an employer who violate or cause the employer to violate *Labor Code* § 226.7.

50. Defendants failed to pay employees who were not provided the opportunity to

1 take meal breaks the premium compensation set out in *Labor Code* § 226.7 and IWC Wage
2 Order § 11(B).

3 **51.** Such a pattern, practice and uniform administration of corporate policy as
4 described herein is unlawful and creates an entitlement to recovery by the Plaintiff and Class
5 Members identified herein, in a civil action, for the unpaid balance of the unpaid premium
6 compensation pursuant to Labor Code § 226.7 and IWC Wage Order § 11(B).

7 **52.** Defendants' wrongful and illegal conduct in failing provide class members with
8 the opportunity to take meal breaks and to provide premium compensation in accordance with
9 *Labor Code* §§ 226.7 and 512 and IWC Wage Order § 11(B) despite the clear legal obligation to
10 do so, unless and until enjoined and restrained by order of this court, will cause great and
11 irreparable injury to Plaintiff and Class Members in that the Defendants will continue to violate
12 these California laws, represented by labor statutes and wage orders, unless specifically ordered
13 to comply with same. This expectation of future violations will require current and future
14 employees to repeatedly and continuously seek legal redress in order to gain compensation to
15 which they are entitled under California law. Plaintiff and Class Members have no other
16 adequate remedy at law to ensure future compliance with the California labor laws and wage
17 orders alleged to have been violated herein.

18 **THIRD CAUSE OF ACTION**

19 **BY PLAINTIFF ON BEHALF OF HIMSELF AND THE CLASS FOR DENIAL OF**
20 **BONA FIDE REST BREAKS IN VIOLATION OF *LABOR CODE* §§ 226.7**

21 **(Against All Defendants)**

22 **53.** Plaintiff re-alleges and incorporates by reference each and every allegation set
23 forth in the preceding paragraphs.

24 **54.** Defendants failed to authorize and permit Plaintiff and Class Members to take
25 legally mandated rest breaks. As such, Defendants are responsible for paying premium
26 compensation for missed rest periods pursuant to *Labor Code* § 226.7 and IWC Wage Order §
27 12(B). Defendants shall pay each affected employee one (1) hour of pay at the employee's
28 regular rate of compensation for each workday that the rest break was not provided.

1 **55.** Plaintiff and Class Members regularly worked in excess of three and half (3 ½)
2 hours per day. Defendants’ policies and practices prevented Plaintiff and Class Members from
3 enjoying their right to a ten (10) minute rest period in the middle of each four (4) hour work
4 period.

5 **56.** *Labor Code* § 558.1 provides for a private right of action against persons who act
6 on behalf of an employer who violate or cause the employer to violate *Labor Code* § 226.7.

7 **57.** Defendants failed to pay employees who were not provided the opportunity to
8 take rest breaks the premium compensation set out in *Labor Code* § 226.7 and IWC Wage Order
9 § 12(B).

10 **58.** Such a pattern, practice, and uniform administration of corporate policy as
11 described herein is unlawful and creates an entitlement to recovery by the Plaintiff and Class
12 Members, in a civil action, for the unpaid balance of the unpaid premium compensation pursuant
13 to *Labor Code* § 226.7 and IWC Wage Order § 12(B).

14 **59.** Defendants’ wrongful and illegal conduct in failing provide Class Members with
15 the opportunity to take rest breaks and to provide premium compensation in accordance with
16 *Labor Code* §§ 226.7 and 512 and IWC Wage Order § 12(B) despite the clear legal obligation to
17 do so, unless and until enjoined and restrained by order of this court, will cause great and
18 irreparable injury to Plaintiff and Class Members in that the Defendants will continue to violate
19 these California laws, represented by labor statutes and IWC wage orders, unless specifically
20 ordered to comply with same. This expectation of future violations will require current and
21 future employees to repeatedly and continuously seek legal redress in order to gain compensation
22 to which they are entitled under California law. Plaintiff and Class Members have no other
23 adequate remedy at law to ensure future compliance with the California labor laws and wage
24 orders alleged to have been violated herein.

1 **FOURTH CAUSE OF ACTION**

2 **BY PLAINTIFF ON BEHALF OF HIMSELF AND THE CLASS**

3 **FOR VIOLATIONS OF *BUSINESS AND PROFESSIONS CODE* § 17200 ET SEQ.**

4 **(Against All Defendants)**

5 **60.** Plaintiff re-alleges and incorporates by reference each and every allegation set
6 forth in the preceding paragraphs.

7 **61.** Defendants engaged and continue to engage in unfair business practices in
8 California by the following practices against the Plaintiff and Class Members: (a) not paying
9 wages for all hours worked; (b) making unlawful deductions from wages; (c) not properly paying
10 overtime pay for hours worked in a single day over eight hours; (d) not providing bona fide meal
11 breaks; and (e) not authorizing and permitting bona fide rest breaks.

12 **62.** Defendants' utilization of such unfair business practices constitutes unfair
13 competition and provides an unfair advantage over Defendants' competitors.

14 **63.** Plaintiff seeks, on his own behalf, and on behalf of other members of the class
15 similarly situated, full restitution of monies, as necessary and according to proof, to restore any
16 and all monies withheld, acquired and/or converted by the Defendants by means of the unfair
17 practices complained of herein.

18 **64.** Plaintiff seeks, on his own behalf, and on behalf of other members of the class
19 similarly situated, an injunction to prohibit Defendants from continuing to engage in the unfair
20 business practices complained of herein.

21 **65.** The restitution for Plaintiff and all members of the class similarly situated,
22 includes the equivalent of all unpaid premium compensation mandated by *Labor Code* § 226.7
23 and IWC Wage Order § 11(B) and 12(B); and all unpaid wages.

24 **66.** The acts complained of herein occurred within the last four years preceding the
25 filing of the complaint in this action.

26 **67.** Plaintiff is informed and believes and on that basis alleges that at all times herein
27 mentioned Defendants have engaged in unlawful, deceptive and unfair business practices, as
28 proscribed by California *Business and Professions Code* § 17200 et seq., including those set

1 forth herein above thereby depriving Plaintiff and other members of the class the minimum
2 working standards and conditions due to them under the California laws and Industrial Welfare
3 Commission Wage Order as specifically described therein.

4 **FIFTH CAUSE OF ACTION**

5 **BY PLAINTIFF ON BEHALF OF HIMSELF AND AGGRIEVED EMPLOYEES FOR**
6 **VIOLATIONS UNDER THE PRIVATE ATTORNEY GENERAL ACT**

7 **(Against All Defendants)**

8 **68.** Plaintiff re-alleges and incorporates by reference each and every allegation set
9 forth in the preceding paragraphs.

10 **69.** At all times herein mentioned, Labor Code § 2698 *et seq.*, “The Labor Code
11 Private Attorney General Act” (hereinafter “PAGA”), was applicable to Plaintiff’s employment
12 by Defendants and provides that for any provision of law under the Labor Code that provides for
13 a civil penalty to be assessed and collected by the Labor and Workforce Development Agency
14 (“LWDA”) for violation of the Labor Code, may, as an alternative, be recovered through a civil
15 action brought by an aggrieved employee pursuant to procedures outlines in *Labor Code* §
16 2699.3.

17 **70.** Plaintiff has satisfied the jurisdictional prerequisites to the maintenance of this
18 Cause of Action as more fully set out in Labor Code § 2699.3 in that on or about October 20,
19 2020, Plaintiff gave notice to the LWDA of Defendants’ violations of the Labor Code and IWC
20 Wage Order, including the facts and theories to support the alleged violation, and Plaintiff’s
21 intent to recover remedies based on the violation set forth herein. This same notice was served
22 upon Defendants in this Action by certified mail on or about October 20, 2020. Attached as
23 Exhibit A, and incorporated by reference, is a true and correct copy of Plaintiff’s October 20,
24 2020, correspondence to the LWDA.

25 **71.** The LWDA provided no Notice within sixty-five (65) calendar days of the online
26 filing date of the Notice that it intended to investigate the alleged violation. Plaintiff has,
27 therefore, satisfied the requirements of *Labor Code* § 2699.3 and may recover civil penalties, in
28 addition to other remedies, for violations of Labor Code and IWC Wage Order.

72. Plaintiff seeks remedies for violations of the *Labor Code* §§ 201-204, 210, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1182.12, 1194, 1194.2, 1197.1; *Violations of IWC Wage Order No. 5-2001*(1), (3), (4), (7), (11), (12), & (20), which are recoverable under *Labor Code* § 2699 et seq., on his own behalf and on behalf of all aggrieved employees.

73. Plaintiff will seek civil penalties under the PAGA pursuant to Labor Code § 558, which allows an award against “any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission...” Plaintiff will seek remedies against the employers and those individuals responsible for causing violations of *Labor Code* §§ 201-204, 210, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1182.12, 1194, 1194.2, 1197.1; *Violations of IWC Wage Order No. 5-2001*(1), (3), (4), (7), (11), (12), & (20), which are recoverable under Labor Code § 2699 et seq.

74. Pursuant to Labor Code § 2699(f) and (g), Plaintiff is entitled to recover civil penalties and wages, plus costs and attorneys' fees, for violations of Labor Code and IWC Wage Order.

SIXTH CAUSE OF ACTION

BY PLAINTIFF ON BEHALF OF HIMSELF AND CLASS MEMBERS FOR

VIOLATIONS OF LABOR CODE § 226

(Against All Defendants)

75. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

76. Plaintiff and all similarly situated employees have been harmed as described herein: (a) Class Members were not paid all minimum wages; (b) Class Members were not paid overtime pay; (c) Class Members were not authorized and permitted to take bona fide rest breaks; (d) Class Members were not permitted to take bona fide meal breaks; (e) Class Members were not provided with accurate itemized wage statements; and (f) Class Members were not paid all wages due at separation of employment.

77. *Labor Code* § 558.1 provides for a private right of action against persons who act

on behalf of an employer who violate or cause the employer to violate *Labor Code* § 226.

78. As a pattern and practice, Defendants failed to furnish Plaintiff and all similarly situated employees, either semimonthly or at the time of each payment of wages, either as a detachable part of the check or separately, an accurate, itemized statement in writing showing gross wages earned, total hours worked, and the applicable hourly rates and corresponding number of hours worked by Plaintiff and all similarly situated employees at each rate.

79. Defendants willfully and intentionally failed to provide Plaintiff and all similarly situated employees with accurate, itemized statements, to show on such itemized statements the proper total hours worked by Plaintiff and all similarly situated employees in that it required or suffered them to work and failed to pay wages to them for all hours worked. Defendants willfully and intentionally failed to show accurate gross wages earned, total hours worked by Plaintiff and all similarly situated employees, and all applicable hourly rates and the corresponding number of hours worked by Plaintiff and all similarly situated employees at each rate.

80. As such, Plaintiff and all similarly situated employees are entitled to payment from Defendants of the greater of actual damages or \$50 for the initial pay period in which the violation occurred and \$100 for each subsequent violation, up to a maximum of \$4000, pursuant to *Labor Code* § 226, as well as reasonable attorney's fees and costs of suit.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on his own behalf and on the behalf of the members of the respective class, prays for judgment as follows:

1. For all an order certifying the proposed class;
2. For all consequential damages according to proof, including unpaid wages;
3. For liquidated damages according to proof pursuant to *Labor Code* § 1194.2;
4. For waiting time wages according to proof pursuant to *Labor Code* § 203;
5. For consequential damages according to proof as set forth in *Labor Code* § 226.7 and IWC Wage Order § 11(B) related to meal breaks;
6. For consequential damages according to proof as set forth in *Labor Code* § 226.7 and

- 1 IWC Wage Order § 12(B) related to rest breaks;
- 2 7. That Defendants be ordered to show cause why they should not be enjoined and ordered
- 3 to comply with the applicable Labor Code provisions and California Industrial Welfare
- 4 Commission Wage Order related to providing bona fide meal breaks, rest breaks,
- 5 minimum wage compensation, overtime pay, and recordkeeping for Defendants’
- 6 employees related to same; and for an order enjoining and restraining Defendants and
- 7 their agents, servants and employees related thereto;
- 8 8. For restitution to Plaintiff and other similarly effected members of the class of all funds
- 9 unlawfully acquired by Defendants by means of any acts or practices declared by this
- 10 Court to be violative of the mandate established by *Business and Professions Code* §
- 11 17200 et seq.;
- 12 9. For an injunction to prohibit Defendants to engage in the unfair business practices
- 13 complained of herein;
- 14 10. For an injunction requiring Defendants to give notice to persons to whom restitution is
- 15 owing of the means by which to file for restitution;
- 16 11. For actual damages or statutory penalties according to proof as set forth in *Labor Code*
- 17 § 226 and IWC Wage Order § 7(B) related to record keeping;
- 18 12. For remedies including unpaid wages and civil and statutory penalties pursuant to *Labor*
- 19 *Code* §§ 203, 226, 226.3, 226.7, 226.8, 510, 512, 558, 1174, 1194, 1194.2, 1198, 2802
- 20 and IWC Wage Order §§ 3, 4, 7, 11 and 12, which are recoverable under *Labor Code* §
- 21 2699 et seq., and other applicable statutes, interest thereon, and reasonable attorneys’
- 22 fees and costs;
- 23 13. For pre-judgment interest as allowed by *Labor Code* §§ 218.5, 1194 and California *Civil*
- 24 *Code* § 3287;
- 25 14. For reasonable attorneys’ fees, expenses and costs as provided by *Labor Code* §§ 1194
- 26 and 2699 and *Civil Code* § 1021.5; and,
- 27 15. For such other and further relief the court may deem just and proper.
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Dated: December 1, 2020

By: 
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