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15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **FOR THE COUNTY OF ALAMEDA**

17 OSCAR ESTRADA & PABLO CALDERON,
18 on behalf of themselves and all others
similarly situated,

19 Plaintiffs,

20 v.

21 HHM FACILITY MANAGEMENT, LLC., a
California Limited Liability corporation; and
22 DOES 1-50, inclusive.

23 Defendants.

CASE NO.: RG20078429

**FIRST AMENDED CONSOLIDATED
CLASS AND PAGA REPRESENTATIVE
ACTION COMPLAINT:**

- (1) MEAL PERIOD VIOLATIONS;
- (2) REST PERIOD VIOLATIONS;
- (3) FAILURE TO PAY SPLIT SHIFT
PREMIUM WAGES;
- (4) WAITING TIME PENALTIES;
- (5) WAGE STATEMENT VIOLATIONS;
- (6) FAILURE TO INDEMNIFY ALL
NECESSARY BUSINESS
EXPENDITURES;

ENDORSED
FILED
ALAMEDA COUNTY
JUN 30 2021
CLERK OF THE SUPERIOR COURT
By TANIA PIERCE Deputy

FILED

-
- (7) UNLAWFUL MISCLASSIFICATION AS EXEMPT EMPLOYEE;
- (8) FAILURE TO PROVIDE ONE DAY OF REST IN SEVEN;
- (9) UNFAIR COMPETITION; and
- (10) CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT

DEMAND FOR JURY TRIAL

Plaintiffs Oscar Estrada and Pablo Calderon (“Plaintiffs”) on behalf of themselves, and all others similarly situated, complain and allege as follows:

INTRODUCTION

1. Defendant HHM Facility Management, LLC, a California limited liability corporation, and DOES 1-50 (collectively “Defendants”), provide a full line of maintenance services including; Energy Management, Janitorial, Electrical, HVAC, Facility Engineering, Mechanical Services, Landscaping, Security, Recycling Services, and Parking Management.

2. Plaintiffs brings this class and Private Attorneys General Act (“PAGA”) action lawsuit against Defendants for alleged violations of the Labor Code and Business and Professions Code. As set forth below, Plaintiffs allege that Defendants’ uniform policies and practices (a) failed to provide Plaintiffs and all other similarly situated employees compliant meal periods, (b) failed to provide Plaintiffs and all other similarly situated employees with complaint rest periods, (c) failed to pay Plaintiffs and all other similarly situated employees premium wages for missed meal and/or rest periods, (d) failed to pay Plaintiffs and all other similarly situated employees split shift premium wages for working split shifts, (e) failed to provide Plaintiffs and all other similarly situated employees with accurate itemized wage statements, (f) failed to timely pay Plaintiffs and all other similarly situated employees all of their final wages following separation of employment, and (g) failed to provide one day of rest in seven days. Plaintiff Calderon further alleges that Defendant in a uniform policy and systematic scheme of misclassifying the “Supervisors”

1 including Plaintiff Calderon as “exempt” managerial/administrative employees for purposes of the
2 payment of overtime compensation when, in fact, they were “non-exempt” non-managerial
3 employees according to California law. Based on these alleged violations, Plaintiffs now bring
4 this class and PAGA representative action to recover unpaid wages, restitution, civil penalties, and
5 other related relief on behalf of themselves and all others similarly situated.

6 **JURISDICTION AND VENUE**

7 3. Plaintiffs, on behalf of themselves and all others similarly situated non-exempt
8 employees hereby brings this class and PAGA action for recovery of unpaid wages and penalties
9 under California Labor Code §§ 200, 201-203, 204, 226(a), 226.7, 510, 512, 515, 551, 552, 558,
10 2802, and 2698, *et. seq.*, and applicable Industrial Welfare Commission Wage Orders (‘Wage
11 Orders’), in addition to seeking declaratory relief and restitution pursuant to California Business
12 and Professions Code § 17200, *et. seq.* This class action is brought pursuant to California Code of
13 Civil Procedure § 382. This Court has jurisdiction over Defendant’s’ violations of the California
14 Labor Code and applicable Wage Orders because the amount in controversy exceeds this Court’s
15 jurisdictional minimum.

16 4. Venue is proper in this judicial district pursuant to California Code of Civil
17 Procedure §§ 395(a) and 395.5, as most of the acts and omissions complained of herein occurred
18 in the County of Alameda. Defendants own, maintain offices, transact business, have an agent or
19 agents within the County of Alameda, and/or otherwise are found within the County of Alameda,
20 and Defendants are within the jurisdiction of this Court for purposes of service of process.

21 **PARTIES**

22 5. At all relevant times herein, Plaintiffs, who are over the age of 18, were and
23 currently are California residents residing in the State of California. Defendants employed Plaintiff
24 Estrada as non-exempt employee in California in the County of Alameda, amongst other counties
25 in the Bay Area. Plaintiffs are victims of Defendants’ policies and/or practices complained of
26 herein, lost money and/or property, and have been deprived of the rights guaranteed to them by
27 California Labor Code §§ 201-203, 204, 226a, 226.7, 510, 512, 515, 551, 552, 558, 2802, and
28

1 2698, *et. seq.* and California Business and Professions Code § 17200 *et seq.* (Unfair Competition),
2 and all applicable Industrial Welfare Commission Wage Orders (“Wage Orders”).

3 6. Plaintiffs are informed and believe, and based thereon allege, that during the four
4 years preceding the filing of the Complaint and continuing to the present, Defendants did (and
5 continue to do) business in the State of California, County of Alameda.

6 7. Plaintiffs do not know the true names or capacities, whether individual, partner, or
7 corporate, of the Defendants sued herein as DOES 1 to 50, inclusive, and for that reason, said
8 Defendants are sued under such fictitious names, and Plaintiffs will seek leave from this Court to
9 amend this Complaint when such true names and capacities are discovered. Plaintiffs are
10 informed, and believe, and thereon allege, that each of said fictitious Defendants, whether
11 individual, partners, or corporate, were responsible in some manner for the acts and omissions
12 alleged herein, and proximately caused Plaintiffs and the Classes to be subject to the unlawful
13 employment practices, wrongs, injuries and damages complained of herein.

14 8. Plaintiffs are informed, and believe, and there allege, that at all times mentioned
15 herein, Defendants were and are the employers of Plaintiffs and all members of the Classes. At all
16 times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter
17 alleged to have been done by the named Defendants; and furthermore, the Defendants, and each of
18 them, were the agents, servants, and employees of each and every one of the other Defendants, as
19 well as the agents of all Defendants, and at all times herein mentioned were acting within the
20 course and scope of said agency and employment. Defendants, and each of them, approved of,
21 condoned, and/or otherwise ratified each and every one of the acts or omissions complained of
22 herein.

23 9. At all times mentioned herein, Defendants, and each of them, were members of and
24 engaged in a joint venture, partnership, and common enterprise, and acting within the course and
25 scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
26 Plaintiffs alleges that all Defendants were joint employers for all purposes of Plaintiffs and all
27 members of the Classes.

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1 **COMMON FACTUAL ALLEGATIONS**

2 10. Defendants serve Fortune 100 companies' facility management needs for over 25
3 years. With offices throughout California and 394 locations served, Defendants provide a full line
4 of building maintenance and janitorial services to its customers. Plaintiff Oscar Estrada worked for
5 Defendants as a non-exempt employee from on or about March 2020 until his termination in
6 approximately August 2020. Plaintiff Pablo Calderon was employed by Defendant, in California,
7 from approximately June 2019 through April 27, 2020.

8 11. From one year ago and continuing until the present, Defendants failed and continue
9 to fail to authorize and permit Plaintiffs and other non-exempt employees from taking legally
10 complaint meal periods due to its facially invalid meal period policy and practices. As stated in the
11 Defendants' Employee Handbook:

12 **MEAL PERIODS**

13 "Normally, unpaid meal periods are scheduled for one-half hour. Your
14 supervisor will assign your meal period. Whether you leave or remain on the
15 premises during the meal period, you are required to clock out when taking meal
16 period and clock in upon your return. If it becomes necessary for you to change
17 or alter your assigned meal period, you should notify your supervisor for
approval. All employees working over five (5) hours are required to take a 30-
minute meal period. All employees working over nine (9) hours are required to
take a 1-hour meal period."

18 12. At all relevant times, Plaintiffs and other non-exempt employees were and are
19 regularly unable to take their first meal period before the end of the fifth hour of work due to
20 Defendants' invalid meal period policy which fails to state that employees are to take their first
21 meal period before the end of the fifth hour of work. Additionally, non-exempt employees were
22 and are often unable to take complaint 30-minute uninterrupted meal periods due to the demands
23 and requirements of the job.

24 13. Further, Defendants also failed to allow and permit Plaintiffs and other non-exempt
25 employees from taking a second 30-minute uninterrupted meal period before the end of the tenth
26 hour of work due to Defendants' invalid meal period policies and practices that fail to allow for
27 second meal periods at all or provide for the timing of when employees must take second meal
28 periods.

1 14. Moreover, Plaintiffs and other non-exempt employees were also not “relinquished
2 of all control” during their meal periods due to Defendants’ meal period policies and practices that
3 required and/or pressed non-exempt employees to take their meal periods on the premises, in
4 designated break rooms and not off the premises.

5 15. Finally, Defendants also failed and continued to fail to maintain any mechanism for
6 the payment of meal period premium payments for missed meal periods as required by Labor
7 Code § 226.7.

8 16. Labor Code § 512 requires employers to provide employees with a thirty (30)
9 minute uninterrupted and duty-free meal period within the first five hours of work. An employee
10 who works more than ten (10) hours per day is entitled to receive a second thirty (30) minute
11 uninterrupted and duty-free meal period. (*Brinker Rest. Corp. v. Superior Court*, (2012) 53 Cal.
12 4th 1004, 1042[“Accordingly, first meal periods must start after no more than five hours.”]; see
13 also *Munoz v. Giumarra Vineyards Corp.*, 2015 WL 5350563 at *3 (E.D. Cal. Sept. 11, 2015)
14 [holding that meal periods must be taken within the first five hours of work].)

15 17. Labor Code § 226.7 provides “an employer shall not require an employee to work
16 during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
17 regulation, standard, or order of the Industrial Welfare Commission (“IWC”) (See *Brinker*
18 *Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1016-17 “[T]he wage order’s meal
19 period requirement is satisfied if the employee (1) has at least 30 minutes uninterrupted, (2) is free
20 to leave the premises, and (3) is relieved of all duty for the entire period. . .The employer satisfies
21 the [meal period] obligation if it relieves its employees of all duty, relinquishes control over their
22 activities and permits them a reasonable opportunity to take an uninterrupted 30-minute break, and
23 does not impede or discourage them from doing so”].)

24 18. As a result of Defendants’ unlawful meal period policies and practices, Plaintiffs
25 seek to recover on behalf of themselves and all non-exempt employees, meal period premiums and
26 penalties. Consequently, Defendants has violated Labor Code §§ 226.7, 512 and applicable Wage
27 Orders. Defendants would also be liable for civil penalties pursuant to Labor Code § 2698.

1 19. Furthermore, from at least one year ago and continuing until the present,
2 Defendants failed and continues to fail to authorize and permit Plaintiffs and other non-exempt
3 employees from taking complaint ten (10) minute duty free rest periods for every major fraction of
4 four hours worked due to Defendants' unlawful rest period policy and practices as stated in the
5 Defendants' Employee Handbook as follows:

6 **BREAKS**

7 **"You are entitled to one ten (10) minute break for every four (4) hour**
8 **shift.** Breaks may not be taken at the beginning of, or at the end of, a
9 normal shift and may not be carried over to the next shift. Your supervisor
10 will assign the time of your break. If it becomes necessary for you to
11 change or alter your assigned break time you must notify your supervisor
12 for approval. When circumstances require such as a heavy workload due
to excessive absenteeism or staff shortages, etc., you may be asked to
work through your rest periods. Every effort will be made to accommodate
break periods. **All breaks must be taken only in designated areas.** No
smoking o eating is permitted while you are working." (emphasis added.)

13 20. First, Defendants' rest period policy is invalid insofar as it fails to state the timing
14 by which non-exempt employees are to take their respective ten-minute rest periods. Defendants'
15 rest period policy is facially unlawful because it only authorizes and permits non-exempt
16 employees a ten-minute rest period only when they work shifts in excess of four (4) hours, rather
17 than "a major fraction thereof," as required by the Labor Code. Additionally, Defendants' rest
18 period policy only authorizes a second ten-minute rest periods for shifts in excess of eight (8.0)
19 hours. Again, the policy fails to authorize and permit second rest periods for every major fraction
20 of 4 hours worked. To the extent that Plaintiffs and other non-exempt employees are authorized
21 and permitted to take any ten-minute rest periods, Defendants fail to relinquish control over non-
22 exempt employees during their rest periods because it requires non-exempt employees to remain
23 "only in designated areas" in violation of Labor Code § 226.7's requirement of rest periods
24 "relinquished from all duties."

25 21. Under the applicable Wage Order, an employer must authorize and permit all
26 employees to take ten (10) minute duty free rest periods for every major fraction of four hours
27 worked. This includes a second rest period for shifts in excess of six hours, and a third rest period
28

1 for shifts in excess of 10.0 hours in a workday. (See *Augustus v. ABM Security Services, Inc.*
2 (2016) 2 Cal. 5th 257, 269 [concluding that “during rest periods employers must relieve
3 employees of all duties and relinquish control over how employees spend their time.”]) In
4 Augustus, the court expressly rejected the employer’s assertion that it could provide an on-duty
5 rest period to employees who worked as security guards and further explained “that employers
6 [must] relinquish any control over how employees spend their break time, and relieve their
7 employees of all duties.” (*Id.* at 273.)

8 22. As stated herein, Defendants’ rest period policies and practices fail to authorize and
9 permit Plaintiff and other non-exempt employees from taking ten-minute rest periods to which
10 they are entitled to, including a second rest period for shifts in excess of six hours, and a third rest
11 period for shifts in excess ten hours. Further, Defendants’ policy fails to indicate the timing of
12 aggrieved employee’s rest periods resulting in aggrieved employee’s not being authorized and
13 permitted to take rest periods in the middle of each work period “insofar as practicable.” To the
14 extent non-exempt employees are authorized and permitted to take any ten-minute rest periods,
15 Defendants fail to relinquish control over non-exempt employees during their rest periods because
16 it requires non-exempt employees to remain “only in designated areas” in violation of Labor Code
17 § 226.7’s requirement of rest periods “relinquished from all duties.” Finally, Defendants also fail
18 to maintain a mechanism for the payment of rest period premium payments for missed rest periods
19 as required by Labor Code § 226.7.

20 23. As a result of Defendants’ unlawful rest period policy and practices, Plaintiffs seek
21 to recover on behalf of themselves and all non-exempt employees rest period premiums and
22 penalties. Consequently, Defendants have violated Labor Code §§ 226.7, 512 and applicable Wage
23 Orders. Defendants would also be liable for civil penalties pursuant to Labor Code § 2698.

24 24. Next, from at least one year ago and continuing until the present, Defendants
25 required Plaintiff Leonard and other non-exempt employees to work a split shift, “a work
26 schedule, which is interrupted by non-paid non-working periods established by the employer,
27 other than bona fide rest or meal periods.” For instance, Plaintiff Leonard and other non-exempt
28 employees regularly worked a split shift from 8:00am to 12:00pm and then from 5:00pm to

1 9:00pm. However, Defendants failed and continue to fail to pay Plaintiff Leonard and other non-
2 exempt employees who work split shifts one (1) hour's pay a split shift premium at the minimum
3 wage as required by the IWC Wage Orders Section 4. This includes numerous occasions where the
4 total amount paid to non-exempt employees was less than the minimum wage for all hours worked
5 plus one (1) hour. (*See Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556, 575 (2012))

6 25. In accordance with IWC Wage Orders Section 4, a split shift is "a work schedule,
7 which is interrupted by non-paid non-working periods established by the employer, other than
8 bona fide rest or meal periods." When an employer requires an employee to work a split shift, the
9 employer must pay the employee a split shift premium, which is one hour's pay at the state
10 minimum wage, or the local minimum wage if there is one, in addition to the employee's regular
11 earnings paid for that shift. Further, unlike a claim for rest or meal period violations, a split shift
12 claim is one brought to recover unpaid minimum wage compensation—one hour's pay—at the
13 minimum wage, in addition to the minimum wage for that workday.

14 26. As a result of Defendants' failure to pay Plaintiff Leonard and other non-exempt
15 employees split shift premiums, Plaintiff seek to recover on behalf of himself and all non-exempt
16 employees all unpaid split shift premium pay. Consequently, Defendants have violated Section 4
17 of the applicable Wage Orders. Defendants would also be liable for civil penalties pursuant to
18 Labor Code § 2698.

19 27. Moreover, from at least one year ago and continuing until the present, Defendants
20 failed and continue to fail to properly reimburse Plaintiffs and other non-exempt employees for
21 necessary expenditures incurred as a direct consequence and requirement of performing their job
22 duties, including, but not limited to the costs associated with suitable work clothes/uniforms,
23 including company t-shirts and non-skid soles. Although Defendants required non-exempt
24 employees to wear company t-shirts, Defendants took a payroll deduction from each of the non-
25 exempt employees' pay checks as stated in the Defendants' Employee Handbook. Defendants also
26 failed to reimburse Plaintiffs and other non-exempt employees for the costs of purchasing special
27 shoes with non-skid soles.

1 28. Consequently, since Defendants failed to comply with Labor Code § 2802 and the
2 applicable Wage Order, Plaintiffs and other non-exempt employees would be entitled to recover
3 penalties under Labor Code §§ 2802 and 2698.

4 29. Furthermore, from at least one year ago and continuing until the present,
5 Defendants failed and continues to fail to pay Plaintiff Estrada and the waiting time non-exempt
6 employees all wages owed at their time of separation from employment with Defendants in
7 violation of Labor Code §§ 201-203 and applicable Wage Orders. Specifically, as provided in
8 Defendants' Employee Handbook "[w]henver an employee terminates for any reason, or is
9 terminated, all wages owed all wages due after proper deductions will be paid on the next regular
10 scheduled payday." (See Labor Code §§ 201-203 ["the wages earned and unpaid at the time of
11 discharge are due and payable immediately"].) As such, Plaintiff Estrada and other non-exempt
12 employees would be entitled to recover penalties under Labor Code §§ 201-203 and/or 2698.

13 30. As a result of Defendants' failure to provide Plaintiffs and other non-exempt
14 employees with legally complaint meal and rest periods or compensation in lieu thereof and failure
15 to pay split shift premium pay, Defendants also intentionally failed and continue to fail to furnish
16 non-exempt employees with itemized wage statements that accurately reflect the correct amount of
17 gross wages earned, net wages earned, or the applicable hourly rates in effect during the pay
18 period and premium wages due for missed meal and rest periods as required by Labor Code §
19 226(a). Consequently, because Defendants failed to comply with Labor Code § 226(a) and
20 applicable Wage Orders, Plaintiffs and other non-exempt employees would be entitled to recover
21 penalties under Labor Code §§ 226(e) and 2698.

22 31. As a further result of Defendants' failure to pay all split shift premium wages, meal
23 and rest period premium wages, Defendants also failed to pay Plaintiff Estrada and other non-
24 exempt employees all wages owed at their time of separation from employment with Defendants
25 in violation of Labor Code §§ 201-203 and applicable Wage Orders.

26 32. Furthermore, and in addition to the above, as a matter of company policy, practice,
27 and procedure, Defendants have unlawfully, unfairly and/or deceptively treated Plaintiff Calderon
28 and the other members of the Misclassification Class as exempt employees, failed to pay the

1 required overtime compensation and otherwise failed to comply with all applicable labor laws as
2 described herein above with respect to Plaintiff and the other members of the Misclassification
3 Class. Plaintiff Calderon and members of the Misclassification Class were required to clock in and
4 out from each location that they were cleaning, however, paystubs show artificial eighty (80),
5 eighty-eight (88), and ninety-six (96), hours every two weeks but the pay is the same salary.
6 Defendant failed to properly classify Plaintiff Calderon and members of the Misclassification
7 Class as non-exempt, Central to Plaintiff's position in the conjunctive nature of the test for an
8 exemption in the applicable Wage Order. Plaintiff Calderon alleges that he has been and is
9 currently classified as an "exempt" employee, however, clocks-in and clocks-out, and performs his
10 job duties in a "non-exempt" capacity. Specifically, Plaintiff Calderon receives a salary of
11 \$1,906.67 per pay statement, even though his hours fluctuate as can be seen on his wage
12 statements. Plaintiff Calderon does not meet the salary test, or the job duty test imposed by
13 California courts. As such, Plaintiff does not meet an exemption specified under California law,
14 including, the professional exemption. As a result of being misclassified, Plaintiff Calderon and
15 other members of the Misclassification Class are entitled to unpaid overtime compensation.

16 33. Finally, Plaintiff Calderon and other similarly situated employees worked seven (7)
17 consecutive days without a single day of rest. Working seven days a week was not optional and
18 occurred on an emergency basis. Plaintiff and other members of the Plaintiff Class were required
19 to work seven (7) consecutive days in a row by Defendants, in violation of California Labor Code
20 §§ 551 and 552.

21 **CLASS ACTION ALLEGATIONS**

22 34. Class Definitions: Plaintiffs bring this action on themselves and the following
23 Classes pursuant to § 382 of the Code of Civil Procedure:

- 24 (1) All non-exempt hourly employees who worked for Defendants in California,
25 during the four years immediately preceding the filing of the Complaint
through the date of trial. ("Class")
- 26 (2) All non-exempt hourly employees who worked for Defendants in California,
27 and who worked at least one split shift, during the four years immediately
28 preceding the filing of the Complaint through the date of trial. ("Split Shift
Class")

- (3) All non-exempt hourly employees who worked for Defendants in California, and who have left Defendants' employ, during one year immediately preceding the filing of the Complaint through the date of trial. ("Waiting Time Penalty Class")
- (4) All individuals who have been, or currently are, employed by Defendants and who held, or hold, the job position of Route Supervisor and who were classified as "exempt" in the State of California during the Class Period. ("Misclassification Class") (collectively "Classes")

35. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the Classes is unknown to Plaintiffs at this time; however, it is estimated that the Classes number greater than one hundred (100) individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

36. **Common Questions of Law and Fact Predominate/Well Defined Community of Interest:** There are common questions of law and fact as to Plaintiffs and all other similarly situated employees, which predominate over questions affecting only individual members including, without limitation to:

1. Whether Defendants provided legally compliant and timely meal periods to members of the Class;
2. Whether Defendants provided legally compliant rest periods to members of the Class;
3. Whether Defendants' meal and rest period policies and/or practices were unlawful
4. Whether Defendants provided split shift premium pay to members of the Split Shift Class pursuant to Section 4 of the applicable Wage Orders;
5. Whether Defendants furnished legally compliant wage statements to members of the Class pursuant to Labor Code § 226;
6. Whether Defendants failed to reimburse the Class for all necessary business expenditures pursuant to Labor Code § 2802 ;

1 7. Whether the timing and amount of payment of final wages to members of the
2 Waiting Time Penalty Class at the time of separation from employment were
3 unlawful;

4 8. Whether Defendants unlawfully failed to provide one day of rest in seven pursuant
5 to Labor Code § 551;and

6 9. Whether Defendants unlawfully misclassified Plaintiff Calderon and members of
7 the Misclassification Class in violation of Labor Code Section 515.

8 37. **Predominance of Common Questions:** Common questions of law and fact
9 predominate over questions that affect only individual members of the Classes. The common
10 questions of law set forth above are numerous and substantial and stem from Defendants' policies
11 and/or practices applicable to each individual class member, such as Defendants' uniform method
12 of failing to provide meal/rest periods, failing to pay split shift premiums, failing to reimburse for
13 necessary business expenditures, failing to provide accurate wage statements, and
14 misclassification of employees. As such, the common questions predominate over individual
15 questions concerning each individual class member's showing as to his or her eligibility for
16 recovery or as to the amount of his or her damages.

17 38. **Typicality:** The claims of Plaintiffs are typical of the claims of the Classes because
18 Plaintiffs were or should have been employed by Defendants as non-exempt employees in
19 California during the statute(s) of limitation applicable to each cause of action pled in the
20 Complaint in this action. As alleged herein, Plaintiffs, like the members of the Classes were
21 deprived of required meal and rest period premium wages, were subject to Defendants' uniform
22 meal and rest period practices, were not paid split shift premiums for split shifts worked, were not
23 provided accurate wage statements, were not adequately reimbursed for purchase of necessary
24 business expenditures, were not provided one day of rest in seven, and were not paid all wages
25 owed at the time of their separation of employment.

26 39. **Adequacy of Representation:** Plaintiffs are fully prepared to take all necessary
27 steps to represent fairly and adequately the interests of the members of the Classes. Moreover,
28 Plaintiffs' attorneys are ready, willing and able to fully and adequately represent the members of

1 the Classes and Plaintiffs. Plaintiffs' attorneys have prosecuted several wage-and- hour class
2 actions in state and federal courts in the past and are committed to vigorously prosecuting this
3 action on behalf of the members of the Classes.

4 40. **Superiority:** The California Labor Code is broadly remedial in nature and serves
5 an important public interest in establishing minimum working conditions and standards in
6 California. These laws and labor standards protect the average working employee from
7 exploitation by employers who have the responsibility to follow the laws and who may seek to
8 take advantage of superior economic and bargaining power in setting onerous terms and
9 conditions of employment. The nature of this action and the format of laws available to Plaintiffs
10 and members of the Classes make the class action format a particularly efficient and appropriate
11 procedure to redress the violations alleged herein. If each employee were required to file an
12 individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they
13 would be able to exploit and overwhelm the limited resources of each individual Plaintiffs with
14 their vastly superior financial and legal resources. Moreover, requiring each member of the
15 Classes to pursue an individual remedy would also discourage the assertion of lawful claims by
16 employees who would be disinclined to file an action against their former and/or current employer
17 for real and justifiable fear of retaliation and permanent damages to their careers at subsequent
18 employment. Further, the prosecution of separate actions by the individual class members, even if
19 possible, would create a substantial risk of inconsistent or varying verdicts or adjudications with
20 respect to the individual class members against Defendants herein; and which would establish
21 potentially incompatible standards of conduct for Defendants; and/or legal determinations with
22 respect to individual class members which would, as a practical matter, be dispositive of the
23 interest of the other class members not parties to adjudications or which would substantially
24 impair or impede the ability of the class members to protect their interests. Further, the claims of
25 the individual members of the class are not sufficiently large to warrant vigorous individual
26 prosecution considering all of the concomitant costs and expenses attending thereto. As such, the
27 Classes identified in Paragraph 32 are maintainable as Classes under § 382 of the Code of Civil
28 Procedure.

1 **FIRST CAUSE OF ACTION**

2 **MEAL PERIOD VIOLATIONS**

3 *(Plaintiffs and the Class Against All Defendants)*

4 41. Plaintiffs re-allege and incorporate by reference each and every allegation set forth
5 in the preceding paragraphs.

6 42. Plaintiffs and members of the Class are and/or were “non-exempt” employees of
7 Defendants who did not receive proper protections and benefits of the laws governing mandatory
8 meal periods.

9 43. Labor Code § 512(a), in part, provides that employers, including Defendants, may
10 not employ an employee for a work period of more than five hours per day without providing an
11 employee the opportunity to take an uninterrupted meal period of not less than 30 minutes, except
12 that if the total work period per day of the employee is no more than six hours, the meal period
13 may be waived by mutual consent of both the employer and the employee. Employers may not
14 employ an employee for a work period more than 10 hours per day without providing the
15 employee with a second meal period of not less than 30 minutes.

16 44. Pursuant to Labor Code § 226.7(b) and the applicable IWC Wage Order § 11(B),
17 Defendants shall pay an employee one additional hour of pay at the employee’s regular rate of
18 compensation for each meal period that is missed.

19 45. At all relevant times herein, Plaintiffs and members of the Class were denied the
20 30-minute off-duty meal periods to which they were entitled.

21 46. At all relevant times, any purported meal period provided to the Plaintiffs and the
22 Class was provided after the fifth hour of the workday. Plaintiffs and the Class therefore were not
23 provided with full 30-minute meal periods as required by California law.

24 47. Plaintiffs and the Class also worked in excess of 10 hours in a shift yet were not
25 provided mandated second meal periods on such occasions.

26 48. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage
27 Order every pay period with respect to Plaintiffs and the Class because Plaintiffs and the Meal
28 Period Subclass were not provided with all mandatory meal periods and Defendants failed to pay

1 Plaintiffs and the Class one additional hour of compensation in lieu thereof.

2 49. On information and belief, Plaintiffs and the Class did not voluntarily or willfully
3 waive the mandated meal periods. Any expressed or implied waivers obtained from Plaintiffs and
4 the Meal Period Subclass were not willfully obtained, were not voluntarily agreed to, were a
5 condition of employment, or were a part of a contract of unlawful adhesion. Defendants did not
6 permit or authorize Plaintiffs and the Class to take meal periods in accordance with California law.

7 50. By their failure to provide Plaintiffs and the Class with meal periods as required by
8 California law, and failing to pay one hour of additional wages in lieu of each meal period not
9 provided, Defendants willfully violated Labor Code §§ 226.7 and 512, and IWC Wage Order § 11.
10 Accordingly, Defendants are liable for one hour of additional wages at the employee's regular rate
11 of compensation for each workday that a meal period was not lawfully provided in an amount to
12 be proven at time of trial.

13 51. Also, as a direct result of Defendant's violations of Labor Code §§ 226.7 and 512,
14 and IWC Wage Order § 11, Defendants, and each DOE, are liable to Plaintiffs and the Class for
15 unpaid wage premiums, penalties, costs, and interest.

16 **SECOND CAUSE OF ACTION**

17 **REST PERIOD VIOLATIONS**

18 *(Plaintiffs and the Class Against All Defendants)*

19 52. Plaintiffs re-allege and incorporate by reference each and every allegation set forth
20 in the preceding paragraphs.

21 53. Plaintiffs and members of the Class are and/or were "non-exempt" employees of
22 Defendants who did not receive proper protections and benefits of the laws governing mandatory
23 rest breaks.

24 54. Labor Code § 226.7 requires employers, including Defendants, to provide rest breaks
25 to its non-exempt employees as mandated by Order of the Industrial Welfare Commission.

26 55. IWC Wage Order No. 1, § 12 states, in part, that every employer shall authorize and
27 permit all employees to take rest periods, which insofar as practicable shall be in the middle of each
28 work period. Employees shall receive a 10-minute rest period every four hours or major fraction

1 thereof that they are required to work. Authorized rest period time shall be counted, as hours
2 worked, for which there shall be no deduction from wages.

3 56. Pursuant to Labor Code § 226.7(b) and Section 12(B) of the applicable Wage Order,
4 Defendants shall pay Plaintiffs and the Class one additional hour of pay at his regular rate of
5 compensation for each day that the rest period is not provided.

6 57. At all relevant times, Plaintiffs and the Class were not provided with 10 minutes of
7 net rest break time for every 4 hours worked, or major fraction thereof, as mandated by California
8 law. Instead, Defendants promulgated a written policy stating that only one rest break will be
9 provided for every four hours, and that all rest periods must be taken on the premises. Moreover,
10 Plaintiffs and the Class Members were not provided rest break premiums for their missed rest
11 breaks. Accordingly, Plaintiffs and the Class Members were also regularly denied their rest breaks
12 in violation of Labor Code 226.7, 512, and the applicable IWC Wage Order. As a result, Plaintiffs
13 and the Class were not provided net rest periods of at least 10 minutes for each 4-hour work period,
14 or major fraction thereof.

15 58. Furthermore, on occasions when Plaintiffs and the Class worked in excess of 10
16 hours in a shift, Defendants failed to authorize and/or permit a third mandated rest break.

17 59. Defendants violated Labor Code §§ 226.7 and applicable IWC Wage Orders every
18 pay period with respect to Plaintiffs and the Class because Plaintiffs and the Class were not
19 provided with all mandatory rest periods and Defendants failed to pay Plaintiffs and the Class one
20 additional hour of compensation in lieu thereof.

21 60. By their failure to provide Plaintiffs and the Class with rest breaks as required by
22 California law, and failing to pay one hour of additional wages in lieu of each rest break not
23 provided, Defendants willfully violated Labor Code §§ 226.7 and 512, and applicable IWC Wage
24 Order § 12. Accordingly, Defendants are liable for one hour of additional wages at the employee's
25 regular rate of compensation for each workday that a meal period and/or paid rest break was not
26 lawfully provided in an amount to be proven at time of trial.

27 61. Also, as a direct result of Defendant's violations of Labor Code §§ 226.7 and
28 applicable IWC Wage Order § 12, Defendants, and each of them, are liable to Plaintiffs and the

1 Class for unpaid wage premiums, penalties, costs, and interest.

2 **THIRD CAUSE OF ACTION**

3 **FAILURE TO PAY SPLIT SHIFT PREMIUMS**

4 *(Plaintiff Leonard and the Split Shift Class Against All Defendants)*

5 62. Plaintiffs re-allege and incorporate by reference each and every allegation set forth
6 in the preceding paragraphs.

7 63. IWC Wage Order 4 Subdivision 4(C) requires that when an employee works a split
8 shift, one hour's pay at the minimum wage shall be paid in addition to the minimum wage for that
9 workday. (See Cal.Code Regs., tit. 8, § 11040, subd. 4(C).)

10 64. A "split shift" is defined as "a work schedule, which is interrupted by non-paid
11 non-working periods established by the employer, other than bona fide rest or meal periods."

12 65. "The [split shift] provision provides that one hour at the 'minimum wage shall be
13 paid in addition to the minimum wage for that workday' (italics added)— not the regular wage for
14 that workday." (*Aleman*, 202 Cal. App. 4th 117, 133.) "This provision also applies to employees
15 paid more than the minimum wage. However, such employees are only entitled to the difference
16 between what they actually earned and what they would have earned had they been paid the
17 minimum wage for their entire shift plus an extra hour." (*Id.* at 134 (citing *Chin et al.*, Cal.
18 Practice Guide: Employment Litigation (The Rutter Group 2011) at ¶ 11:683, p. 11-69).

19 66. As further detailed herein above, on the days Plaintiff Leonard and other non-
20 exempt employees were regularly required to work a split shift, they were not compensated for
21 that time and are not paid a split shift premium of one hour at the minimum wage. Plaintiffs did
22 not reside at their place of employment. Plaintiff Leonard and other non-exempt employees
23 worked split shifts but were not compensated at least the amount they would have earned had they
24 been paid minimum wage for the hours worked and one additional hour.

25 **FOURTH CAUSE OF ACTION**

26 **WAITING TIME PENALTIES**

27 *(Plaintiffs and the Class Against All Defendants)*

67. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

68. The actionable period for this cause of action is three years prior to the filing of this Complaint through the present, and on-going until the violation are corrected or the class is certified.

69. Sections 201 and 202 of the California Labor Code require Defendants to pay all compensation due and owing to Plaintiffs and the Waiting Timeline Penalty Subclass during the actionable period for this cause of action at or around the time that their employment is or was terminated or ended.

70. Section 203 of the California Labor Code provides that if an employer willfully fails to pay compensation promptly upon discharge or resignation, as required by Sections 201 and 202, then the employer is liable for penalties in the form of continued compensation up to thirty (30) workdays.

71. Defendants willfully failed to pay Plaintiffs and the Waiting Timeline Penalty Subclass for their meal period premiums, rest period premiums, and unpaid wages, prior to or upon termination or separation from employment with Defendants as required by California Labor Code §§ 201 and 202.

72. As a result, Defendants are liable to Plaintiffs and the Waiting Timeline Penalty Subclass for waiting time penalties amounting to thirty (30) days wages for Plaintiffs and the Waiting Timeline Penalty Subclass pursuant to California Labor Code § 203. *See, e.g.* DLSE Manual, 4.3.4 (Failure to pay any sort of wages due upon termination entitles an employee to recover waiting time penalties).

FIFTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS

(Plaintiffs and the Class Against All Defendants)

73. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

74. Labor Code 226(a) states in pertinent part the following:

1 “(a) An employer, semimonthly or at the time of each payment of wages,
2 shall furnish to his or her employee, either as a detachable part of the
3 check, draft, or voucher paying the employee’s wages, or separately if
4 wages are paid by personal check or cash, an accurate itemized statement in
5 writing showing (1) gross wages earned, (2) total hours worked by the
6 employee, except as provided in subdivision (j), (3) the number of piece-
7 rate units earned and any applicable piece rate if the employee is paid on a
8 piece-rate basis, (4) all deductions, provided that all deductions made on
9 written orders of the employee may be aggregated and shown as one item,
10 (5) net wages earned, (6) the inclusive dates of the period for which the
11 employee is paid, (7) the name of the employee and only the last four digits
12 of his or her social security number or an employee identification number
13 other than a social security number, (8) the name and address of the legal
14 entity that is the employer and, if the employer is a farm labor contractor,
15 as defined in subdivision (b) of Section 1682, the name and address of the
16 legal entity that secured the services of the employer, and (9) all applicable
17 hourly rates in effect during the pay period and the corresponding number
18 of hours worked at each hourly rate by the employee. . .”

19 75. As set forth above, during the Class Period, Defendants issued and continue to issue
20 wage statements to its non-exempt employees including Plaintiffs and the Classes, which are
21 inadequate under Labor Code Section 226(a). Here, by failing to pay Plaintiffs and the Classes for
22 their missed meal and rest period premiums, and split shift premiums, Defendants failed to include
23 required information on Plaintiffs and the Classes’ wage statements, including the gross wages
24 earned, the total hours worked, the net wages earned, all applicable hourly rates in effect during the
25 pay period, itemization of sick leave, and the corresponding number of hours worked at each hourly
26 rate in violation of Labor Code section 226a (1, 2, 5 and 9).

27 76. Defendants’ failure to comply with section 226(a) of the Labor Code was knowing
28 and intentional.

77. As a result of Defendants’ issuance of inaccurate itemized wage statements to
Plaintiffs and the Class in violation of section 226(a) of the California Labor Code, Plaintiffs and
the Class are each entitled to recover an initial penalty of \$50, and subsequent penalties of \$100, up
to an amount not exceeding an aggregate penalty of \$4,000 per Plaintiff and per every member of
the Class from Defendants pursuant to section 226(e) of the Labor Code, costs and reasonable

1 attorney's fees.

2 **SIXTH CAUSE OF ACTION**

3 **FAILURE TO REIMBURSE BUSINESS EXPENDITURES**

4 *(Plaintiffs and the Class Against All Defendants)*

5 78. Plaintiffs re-allege and incorporate by reference each and every allegation set forth
6 in the preceding paragraphs.

7 79. It was necessary for Plaintiffs and members of the Class to incur various expenses
8 are outlined herein in the discharge of their job duties as detailed herein above. Although Plaintiffs
9 and members of the Classes incurred these expenses at the direction of Defendants and/or in the
10 direct discharge of their job duties, Defendants did not reimburse these employees for such
11 necessary work expenditures during the four years preceding the filing of the Complaint.

12 80. At all relevant times herein, Defendants were subject to Labor Code § 2802, which
13 states that "an employer shall indemnify his or her employees for all necessary expenditures or
14 losses incurred by the employee in direct consequence of the discharge of his or her duties, or of
15 his or her obedience to the directions of the employer."

16 81. At all relevant times herein, Defendants were subject to Labor Code § 2804, which
17 states that "any contract or agreement, express or implied, made by any employee to waive the
18 benefits of this article or any part thereof, is null and void, and this article shall not deprive any
19 employee or his personal representative of any right or remedy to which he is entitled under the
20 laws of this State."

21 82. As a proximate result of Defendants' policies and/or practices in violation of Labor
22 Code §§ 2802 and 2804, Plaintiffs and members of the Classes were damaged in sums, which will
23 be shown according to proof at trial.

24 83. Plaintiffs and members of the Classes are entitled to attorneys' fees and costs of
25 suit pursuant to Labor Code § 2802(c) for bringing this action.

26 84. Pursuant to Labor Code § 2802(b), any action brought for the reimbursement of
27 necessary expenditures carries interest at the same rate as judgments in civil actions. Thus,
28

1 Plaintiffs and members of the Class are entitled to interest, which shall accrue from the date on
2 which they incurred the initial necessary expenditure.

3 **SEVENTH CAUSE OF ACTION**

4 **UNLAWFUL MISCLASSIFICATION OF NON-EXEMPT EMPLOYEES AS**
5 **EXEMPT EMPLOYEES**

6 *(Plaintiff Calderon and the Members of the Misclassification Class Against Defendants)*

7 85. Plaintiffs re-allege and incorporate by reference each and every allegation set forth
8 in the preceding paragraphs.

9 86. Plaintiff was and is employed by Defendants as a “Supervisor.”

10 87. Plaintiff was and has been misclassified as a salaried, exempt employee for the
11 duration of his employment.

12 88. Plaintiff and members of the Misclassification Class were “non-exempt” employees
13 and/or misclassified as “exempt” employees during the entirety of their respective employments,
14 and performed their job duties in a “non-exempt” capacity pursuant to California Labor Code §
15 515.

16 89. California Labor Code § 515 states:

17 (a) The Industrial Welfare Commission may establish exemptions from the
18 requirement that an overtime rate of compensation be paid pursuant to Sections 510
19 and 511 for executive, administrative, and professional employees, if the employee
20 is primarily engaged in the duties that meet the test of the exemption, customarily
and regularly exercises discretion and independent judgment in performing those
duties, and earns a monthly salary equivalent to no less than two times the state
minimum wage for full-time employment.

21 (c) For the purposes of subdivision (a), “full-time employment” means employment
22 in which an employee is employed for 40 hours per week.

23 (d)(1) For the purpose of computing the overtime rate of compensation required to
be paid to a nonexempt full-time salaried employee, the employee's regular hourly
rate shall be 1/40th of the employee's weekly salary.

24 (2) Payment of a fixed salary to a nonexempt employee shall be deemed to provide
25 compensation only for the employee's regular, non-overtime hours, notwithstanding
any private agreement to the contrary.

26 (e) For the purposes of this section, “primarily” means more than one-half of the
employee's worktime.

27 90. Plaintiff was misclassified as a salaried, exempt employee, as Plaintiff spend eighty
28 percent (80%) of his time doing the same tasks as hourly employees. Thus, plaintiff works in a

1 “non-exempt” capacity. Further, Plaintiff was required to clock in and clock out, and paystubs
2 show artificial eighty (80), eighty-eight (88), or ninety-six (96) hours every two weeks but the pay
3 is the same salary.

4 91. The applicable Wage Order Section 1 sets forth detailed requirements for three
5 allowable exceptions: executive, administrative and professional. Further, the applicable Wage
6 Order provides that to qualify as exempt under any of these three categories the employee must be
7 primarily engaged in exempt duties and earn a monthly salary equivalent to no less than two (2)
8 times the state minimum wage for full-time employment.

9 92. The applicable Wage Order refers to compensation in the form of a "salary." It does
10 not define the term. The regulation does not use a more generic term, such as "compensation" or
11 "pay." Either of these terms would encompass hourly wages, a fixed annual salary, and anything in
12 between. "Salary" is a more specific form of compensation. A salary is generally understood to be
13 a fixed rate of pay as distinguished from an hourly wage. Thus, use of the word "salary" implies
14 that an exempt employee's pay must be something other than an hourly wage. California's Labor
15 Commission noted in an opinion letter dated March 1, 2002, that the Division of Labor Standards
16 Enforcement (DLSE) construes the IWC wage orders to incorporate the federal salary-basis test
17 for purposes of determining whether an employee is exempt or nonexempt. (Dept. of Industrial
18 Relations, DLSE Opn. Letter No. 2002.03.01 (Mar. 1, 2002)
19 <<http://www.dir.ca.gov/dlse/opinions/2002-03-01.pdf>> [as of March 6, 2020].

20 93. Plaintiff does not meet the salary test, or the job duty test imposed by California
21 courts.

22 94. As way of example, Plaintiff alleges that eighty percent (80%) of his work time
23 was and non-managerial. Plaintiff alleges that the only additional work he would be required to do
24 would be to fill out forms of work performed, take photos of the completed work and wash the
25 outside of the banks.

26 95. As such, Plaintiff does not meet an exemption specified under California law,
27 including, the professional exemption. As a result of being misclassified, Plaintiff and other
28 members of the Misclassification Class are entitled to unpaid overtime compensation.

1 96. Plaintiff seeks unpaid wages and interest in amounts to be proven at trial.

2 **EIGHTH CAUSE OF ACTION**

3 **FAILURE TO PROVIDE ONE DAY’S REST IN SEVEN**

4 **IN VIOLATION OF CAL. LABOR CODE §§ 551, 552**

5 *(Plaintiffs and the Members of the Class Against All Defendants)*

6 97. Plaintiffs re-allege and incorporate by reference each and every allegation set
7 forth in the preceding paragraphs.

8 98. California *Labor Code* §551 provides, “Every person employed in any
9 occupation of labor is entitled to one day’s rest therefrom in seven.” To that end,
10 California *Labor Code* §552 states, “No employer of labor shall cause his employees to
11 work more than six days in seven.”

12 99. As detailed above, Defendants violated California *Labor Code* §§551 and 552
13 when it caused Plaintiff and other members of the Plaintiff Class to work seven or more
14 consecutive days in a row.

15 100. As set forth above, Defendants have committed, and continues to
16 commit, violations for which the California *Labor Code* entitles Plaintiff, to recover, on
17 behalf of himself, all aggrieved employees, and the general public, interest, attorneys’
18 fees and costs, as well as all statutory penalties against Defendants, for violations of
19 California *Labor Code* §§551 and 552.

20 **NINTH CAUSE OF ACTION**

21 **UNFAIR COMPETITION BUSINESS & PROFESSIONS CODE § 17200 et seq.**

22 *(Plaintiffs and the Class Against All Defendants)*

23 101. Plaintiffs re-allege and incorporate by reference each and every allegation set forth
24 in the preceding paragraphs.

25 102. Defendants have engaged and continue to engage in unfair and/or unlawful
26 business practices in California in violation of California Business and Professions Code § 17200
27 et seq., by failing to provide all legally required meal periods, failing to authorize and permit all
28 legally required rest periods or make premium payments in lieu thereof, failing to pay split shift

1 premiums, failing to provide accurate wage statements, failing to reimburse Plaintiffs and the
2 Classes for all necessary business expenditures, misclassifying Plaintiff Calderon and members of
3 the Misclassification Class as exempt, and failing to pay Plaintiffs and members of the Waiting
4 Time Class all earned wages at the time of their separation, amongst others.

5 103. Defendants' utilization of these unfair and/or unlawful business practices deprived
6 Plaintiffs and continues to deprive members of the Classes of compensation to which they are
7 legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage
8 over Defendants' competitors who have been and/or are currently employing workers and
9 attempting to do so in honest compliance with applicable wage and hour laws.

10 104. Because Plaintiffs are victims of Defendants' unfair and/or unlawful conduct
11 alleged herein, Plaintiffs for themselves and on behalf of the members of the Classes, seeks full
12 restitution of monies, as necessary and according to proof, to restore any and all monies withheld,
13 acquired and/or converted by Defendants pursuant to Business and Professions Code §§ 17203
14 and 17208.

15 105. The acts complained of herein occurred within the last four years immediately
16 preceding the filing of the Complaint in this action.

17 106. Plaintiffs were compelled to retain the services of counsel to file this court action to
18 protect her interests and those of the Classes, to obtain restitution and injunctive relief on behalf of
19 Defendants' current hourly non-exempt employees and to enforce important rights affecting the
20 public interest. Plaintiffs have thereby incurred the financial burden of attorneys' fees and costs,
21 which she is entitled to recover under Code of Civil Procedure § 1021.5.

22 **EIGHTH CAUSE OF ACTION**

23 **PRIVATE ATTORNEYS GENERAL ACT**

24 *(Plaintiffs and Similarly Aggrieved Employees Against All Defendants)*

25 107. Plaintiffs re-allege and incorporate by reference each and every allegation set forth
26 in the preceding paragraphs.

27 108. Defendants have committed several Labor Code violations against Plaintiffs and
28 other similarly aggrieved employees. Plaintiffs, "aggrieved employees" within the meaning of

1 Labor Code § 2698 et seq., acting on behalf of themselves and other similarly aggrieved employees,
2 bring this representative action against Defendants to recover the civil penalties due to Plaintiffs,
3 other similarly aggrieved employees, and the State of California according to proof pursuant to
4 Labor Code § 2699 (a) and (f) including, but not limited to (1) \$100 for each initial violation and
5 \$200 for each subsequent violation per employee per pay period for those violations of the Labor
6 Code for which no civil penalty is specifically provided based on the following Labor Code
7 violations:

8 a. Failing to provide Plaintiffs and other similarly aggrieved employees with all of their
9 statutorily-mandated meal periods in violation of Labor Code §§ 204, 510, 558, 1194 and 1198;

10 b. Failing to authorize and permit Plaintiffs and other similarly aggrieved employees
11 with all of their statutorily-mandated rest periods in violation of Labor Code §§ 226.7, and 516.

12 c. Failing to pay Plaintiff and other similarly aggrieved employees with all split shift
13 premiums in violation of the applicable IWC Wage Order Section 4;

14 d. Failing to furnish Plaintiffs and other similarly aggrieved employees with complete,
15 accurate, itemized wage statements in violations of Labor Code § 226;

16 e. Failing to compensate Plaintiffs and similarly aggrieved employees with all earnings
17 at their separation of employment in violation of Labor Code §§ 201-203;

18 f. Failing to adequately reimburse Plaintiffs and similarly aggrieved employees for all
19 necessary business expenditures in violation of Labor Code §§ 2802-2804;

20 g. Misclassifying Plaintiff Calderon and other similarly aggrieved employees as
21 exempt in violation of Labor Code § 515; and

22 h. Failing to allow one day's rest in seven in violation of Labor Code §§ 551 and 552.

23 109. On or about August 31, 2020, and again on October 16, 2020, Plaintiffs separately
24 notified Defendant HHM Facility Management, LLC via certified mail and the California Labor
25 and Workforce Development Agency ("LWDA") via electronic submission of Defendant's
26 violations of the California Labor Code § 2698 *et. seq.* with respect to violations of the California
27 Labor Code identified herein above. More than 65 days has passed since the notices were delivered
28 to the LWDA and no response has been received.

110. Plaintiffs were compelled to retain the services of counsel to file this court action to protect her interests and the interests of other similarly aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiffs have hereby incurred attorneys' fees and costs, which they are entitled to receive under California Labor Code § 2699.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment for themselves and for all others on whose behalf this suit is brought against Defendants, as follows:

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiffs as representatives of the Classes;
3. For an order appointing Counsel for Plaintiffs as Counsel for the Classes;
4. Upon the First Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7 and 512;
5. Upon the Second Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7 and 516;
6. Upon the Third Cause of Action, for all split shift premiums that were due and not paid pursuant to the applicable IWC Wage Order Section 4, and reasonable costs and attorneys' fees;
7. Upon the Fourth Cause of Action, for statutory waiting time penalties pursuant to Labor Code §§ 201-203;
9. Upon the Fifth Cause of Action, penalties pursuant to Labor Code § 226(a), and reasonable costs and attorneys' fees.
10. Upon the Sixth Cause of Action, all unreimbursed expenses recoverable under Labor Code § 2802, along with interest from the date the expense was incurred, and reasonable costs attorneys' fees;
11. Upon the Seventh Cause of Action, for restitution of all overtime and premium wages and compensatory damages due to Plaintiff Calderon and the members of the Misclassification Class

1 12. Upon the Eighth Cause of Action, for all penalties and damages pursuant to Labor
2 Code §§ 551 and 552.

3 13. Upon the Ninth Cause of Action, for restitution to Plaintiffs and members of the
4 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
5 practices declared by this Court to be in violation of Business and Professions Code § 17200 *et*
6 *seq.*;

7 14. Upon the Tenth Cause of Action, for civil penalties due to Plaintiffs, other similarly
8 non-exempt employees , and the State of California according to proof pursuant to Labor Code §
9 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation and \$200 for
10 each subsequent violation per employee per pay period for those violations of the Labor Code for
11 which no civil penalty is specifically provided;

12 15. Prejudgment interest on all due and unpaid wages pursuant to California Labor
13 Code § 218.6 and Civil Code §§ 3287 and 3289;

14 16. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§
15 218.5, 226, 2699 and Code of Civil Procedure § 1021.5; and

16 17. For such other and further relief, the Court may deem just and proper.

17 Dated: June 21, 2021

FALAKSSA LAW, P.C.
BOKHOUR LAW GROUP, P.C.
BRADLEY/GROMBACHER LLP

18
19
20 By: _____

21 Joshua Falakassa Esq.
22 Mehrdad Bokhour, Esq.
23 Marcus Bradley, Esq.
24 Attorneys for Plaintiffs and the Putative Classes
25
26
27
28

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

3 I am employed in the County of Los Angeles, State of California. I am over the age of
4 eighteen years and not a party to the within action; my business address is 287 S. Robertson
Blvd., Suite 303, Beverly Hills, California 90211.

5 On June 30, 2021, I served the following document(s) described as **FIRST AMENDED**
6 **CONSOLIDATED CLASS AND REPRESENTATIVE ACTION COMPLAINT** on the
7 interested parties in this action by placing true copies thereof enclosed in sealed envelopes
addressed as follows:

8 David A. Wimmer, Esq.
9 Lori Yankelvits, Esq.
10 Swerdlow Florence Sanchez Swerdlow &
11 Wimmer, A Law Corporation
9401 Wilshire Boulevard, Suite 828
Beverly Hills, California 90212

Joshua Falakassa, Esq.
FALAKASSA LAW, P.C.
1901 Avenue of the Stars, Suite 450
Los Angeles, California 90067

**Co-counsel for Plaintiffs on behalf of
themselves and all others similarly situated**

12 **Counsel for defendant**
13 **HHM Facility Management, LLC**

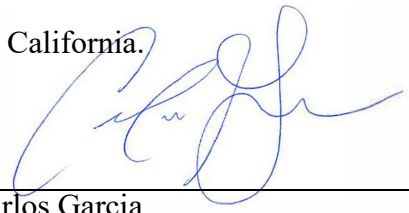
14 Marcus J. Bradley, Esq.
15 Kiley L. Grombacher, Esq.
16 Lirit L. Grombacher, Esq.
Bradley/Grombacher, LLP
31365 Oak Crest Drive, Suite 240
Westlake Village, CA 91361

17 **Counsel for Plablo Calderon**

18 **BY MAIL:** I caused such envelope to be deposited in the mail at Los Angeles, California.
19 The envelope was mailed with postage thereon fully pre-paid. I am readily familiar with the
20 firm's practice of collection and processing of correspondence for mailing. Under that practice,
the correspondence is deposited with the U.S. Postal Service on that same day in the ordinary
course of business.

21 I declare under penalty of perjury under the laws of the State of California that the
22 foregoing is true and correct.

23 Executed on June 30, 2021, at Los Angeles, California.

24 
25 _____
26 Carlos Garcia
27
28