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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF KERN**

JOSE PABLO JIMENEZ, as an individual
and on behalf of all others similarly
situated,

Plaintiff,

vs.

NESTLE WATERS NORTH AMERICA,
INC., a Delaware corporation; and DOES
1 through 50, inclusive,

Defendants.

Case No.: BCV-20-102561

**CLASS ACTION COMPLAINT FOR
DAMAGES FOR:**

- (1) **VIOLATION OF LABOR CODE §§ 510,
558, AND 1194;**
- (2) **VIOLATION OF LABOR CODE §§ 226.7
AND 512;**
- (3) **VIOLATION OF LABOR CODE § 226.7;**
- (4) **VIOLATION OF LABOR CODE §§ 201-
203;**
- (5) **VIOLATION OF LABOR CODE § 226(a);**
- (6) **VIOLATION OF BUSINESS AND
PROFESSIONS CODE § 17200, *ET SEQ.*;
AND**
- (7) **VIOLATION OF LABOR CODE § 2698,
*ET SEQ.***

DEMAND OVER \$25,000.00

1 Plaintiff Jose Pablo Jimenez (“Plaintiff”) hereby submits this Class Action Complaint
2 (“Complaint”) against Defendant Nestle Waters North America, Inc. and Does 1 through 50
3 (collectively, “Defendants”), on behalf of himself and a class of all other similarly situated
4 current and former employees of Defendants for penalties and/or damages for failure to properly
5 calculate the regular rate of pay for purposes of paying overtime, meal and rest period premiums,
6 and sick pay, provide off-duty meal and rest breaks, pay all wages owed upon separation of
7 employment, and provide accurate itemized wage statements under California Labor Code
8 statutes, and restitution for unfair business practices in violation of Business and Professions
9 Code § 17200, *et seq.*, as follows:

10 **INTRODUCTION**

11 1. This class action is within the Court’s jurisdiction under California Labor Code §§
12 201-203, 204, 226(a), 226.7, 246, 510, 512, 558, 1194, and 2698, *et seq.*, Business and
13 Professions Code § 17200, *et seq.* (the “UCL”), and the applicable Wage Orders of the California
14 Industrial Welfare Commission (“IWC”).

15 2. This Complaint challenges systemic illegal employment practices resulting in
16 violations of the California Labor Code and Business and Professions Code against individuals
17 who worked for Defendants.

18 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants,
19 jointly and severally, have acted intentionally and with deliberate indifference and conscious
20 disregard to the rights of all employees by failing to properly calculate the regular rate of pay for
21 purposes of paying overtime, meal and rest period premiums, and sick pay, provide off-duty
22 meal and rest breaks, pay all wages owed upon separation of employment, and provide accurate
23 itemized wage statements to Plaintiff and the Class.

24 4. Plaintiff is informed and believes, and based thereon alleges, that Defendants
25 have engaged in, among other things a system of willful violations of the California Labor Code
26 and the applicable IWC Wage Orders by creating and maintaining policies, practices, and
27 customs that knowingly deny employees the above stated rights and benefits.

28 5. The policies, practices and customs of Defendants described above and below

1 have resulted in unjust enrichment of Defendants and an unfair business advantage over
2 businesses that routinely adhere to the strictures of the California Labor Code and the California
3 Business and Professions Code.

4 **JURISDICTION AND VENUE**

5 6. The Court has jurisdiction over the violations of the California Labor Code §§
6 201-203, 204, 226(a), 226.7, 246, 510, 512, 558, 1194, and 2698, *et seq*, the UCL, and the
7 applicable Wage Orders.

8 7. Venue is proper in Kern County because Defendants are located in Bakersfield,
9 California.

10 **PARTIES**

11 8. Plaintiff was employed by Defendants as a driver from on or about July 2007 to
12 on or about July 2020. Plaintiff worked as an hourly, non-exempt employee.

13 9. Plaintiff was and is the victims of the policies, practices, and customs of
14 Defendant complained of in this action in ways that have deprived him of the rights guaranteed
15 by California Labor Code §§ 201-203, 204, 226(a), 226.7, 246, 510, 512, 558, 1194, and 2698, *et*
16 *seq.*, the applicable IWC Wage Orders, and the UCL.

17 10. Plaintiff is informed and believes, and based thereon alleges, that Nestle Waters
18 North America, Inc. was and is a Delaware corporation that maintains operations in the State of
19 California, including in Kern County, California.

20 11. Plaintiff is informed and believes, and based thereon alleges, that at all times
21 herein mentioned Does 1 through 50, are and were corporations, business entities, individuals,
22 and partnerships, licensed to do business and actually doing business in the State of California.
23 As such, and based upon all the facts and circumstances incident to Defendants' business,
24 Defendants are subject to the California Labor Code and the UCL.

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

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

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

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

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

19 16. At all times herein mentioned, the acts and omissions of various Defendants, and
20 each of them, concurred and contributed to the various acts and omissions of each and all of the
21 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
22 herein mentioned, Defendants, and each of them, ratified each and every act or omission
23 complained of herein. At all times herein mentioned, Defendants, and each of them, aided and
24 abetted the acts and omissions of each and all of the other Defendants in proximately causing the
25 damages as herein alleged.

26 **CLASS ACTION ALLEGATIONS**

27 17. **Definition:** The named individual Plaintiff seeks class certification, pursuant to
28 California Code of Civil Procedure section 382. Plaintiff proposes the following classes

(together, the “Class”):

- a. All current and former non-exempt employees of Defendants in the State of California, who earned non-discretionary remuneration, including but not limited to incentive pay, shift differentials, and/or shift premiums, and overtime wages during the same workweek, at any time from May 6, 2016, through the present (the “Overtime Regular Rate Class”);
- b. All current and former non-exempt employees of Defendants in the State of California, who worked more than 5 hours in any shift, at any time from May 6, 2016, through the present (the “Meal Period Class”);
- c. All current and former non-exempt employees of Defendants in the State of California, who worked more than 3.5 hours in any shift, at any time from May 6, 2016, through the present (the “Rest Period Class”);
- d. All current and former non-exempt employees of Defendants in the State of California who were paid “CA Meals/Breaks” premiums at any time from May 6, 2016, through the present (the “Break Premium Regular Rate Class”); and
- e. All former non-exempt employees of Defendants in the State of California who earned non-discretionary remuneration, including but not limited to incentive pay, shift differentials, and/or shift premiums, and sick pay during the same workweek, and whose employment ended at any time from May 6, 2017, through the present (the “Sick Pay Class”).

18. **Numerosity and Ascertainability:** 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, including payroll records. Plaintiff is informed and believes, and based thereon alleges, that Defendants: (a) failed to pay employees overtime wages at the correct regular rate of pay that included all non-discretionary remuneration, in violation of Labor Code §§ 201-203, 510, 558, and 1194; (b) failed to provide off-duty meal periods to employees who worked 5 hours or longer in one shift and/or pay meal

period premiums at the correct regular rate of pay that included all non-discretionary remuneration, in violation of Labor Code §§ 201-203, 226.7, and 512; (c) failed to provide off-duty rest periods to employees who worked 3.5 hours or longer in one shift and/or pay rest period premiums at the correct regular rate of pay that included all non-discretionary remuneration, in violation of Labor Code §§ 201-203 and 226.7; (d) failed to pay employees sick pay at the correct regular rate of pay that included all non-discretionary remuneration, in violation of Labor Code §§ 201-203 and 246; (e) failed to provide accurate, itemized wage statements, in violation of Labor Code § 226(a); and (f) engaged in Unfair Business Practices in violation of the UCL, the California Labor Code, and the applicable IWC Wage Orders.

19. **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 the individual Plaintiff. Plaintiff's attorneys have prosecuted and settled wage-and-hour class actions in the past and currently have a number of wage-and-hour class actions pending in California state and federal courts.

20. Defendants uniformly administered a corporate policy, practice of: (a) failing to pay employees overtime wages at the correct regular rate of pay that included all non-discretionary remuneration, in violation of Labor Code §§ 201-203, 510, 558, and 1194; (b) failing to provide off-duty meal periods to employees who worked 5 hours or longer in one shift and/or pay meal period premiums at the correct regular rate of pay that included all non-discretionary remuneration, in violation of Labor Code §§ 201-203, 226.7, and 512; (c) failing to provide off-duty rest periods to employees who worked 3.5 hours or longer in one shift and/or pay rest period premiums at the correct regular rate of pay that included all non-discretionary remuneration, in violation of Labor Code §§ 201-203 and 226.7; (d) failing to pay employees sick pay at the correct regular rate of pay that included all non-discretionary remuneration, in violation of Labor Code §§ 201-203 and 246; (e) failing to provide accurate, itemized wage statements, in violation of Labor Code § 226(a); and (f) engaging in Unfair Business Practices in violation of the UCL, the California Labor Code, and the applicable IWC Wage Orders.

1 21. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
2 a consistent and uniform policy, practice, and procedure of willfully failing to comply with
3 Labor Code §§ 201-203, 204, 226(a), 226.7, 246, 510, 512, 558, 1194, and 2698, *et seq.*, the
4 applicable IWC Wage Orders, and the UCL.

5 22. **Common Question of Law and Fact:** There are predominant common questions
6 of law and fact and a community of interest amongst Plaintiff and the claims of the Class
7 concerning Defendants' policy and practice of: (a) failing to pay employees overtime wages at
8 the correct regular rate of pay that included all non-discretionary remuneration, in violation of
9 Labor Code §§ 201-203, 510, 558, and 1194; (b) failing to provide off-duty meal periods to
10 employees who worked 5 hours or longer in one shift and/or pay meal period premiums at the
11 correct regular rate of pay that included all non-discretionary remuneration, in violation of Labor
12 Code §§ 201-203, 226.7, and 512; (c) failing to provide off-duty rest periods to employees who
13 worked 3.5 hours or longer in one shift and/or pay rest period premiums at the correct regular
14 rate of pay that included all non-discretionary remuneration, in violation of Labor Code §§ 201-
15 203 and 226.7; (d) failing to pay employees sick pay at the correct regular rate of pay that
16 included all non-discretionary remuneration, in violation of Labor Code §§ 201-203 and 246; (e)
17 failing to provide accurate, itemized wage statements, in violation of Labor Code § 226(a); and
18 (f) engaging in Unfair Business Practices in violation of the UCL, the California Labor Code,
19 and the applicable IWC Wage Orders.

20 23. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the
21 class in that Plaintiff has suffered the harms alleged in this Complaint in a similar and typical
22 manner as the Class Members. As with other non-exempt employees, Plaintiff earned non-
23 discretionary remuneration, including without limitation, incentive pay, shift differentials, and/or
24 shift premiums. During workweeks when Plaintiff worked in excess of eight hours in a workday
25 and/or forty hours in a workweek and received non-discretionary remuneration during the same
26 workweek, Defendants failed to include any non-discretionary remuneration earned into the
27 calculation of the regular rate. Thus, Plaintiff is owed additional overtime pay based on the
28 correct, higher regular rate of pay. Similarly, when Plaintiff received sick pay, it was disbursed at

1 an incorrect rate of pay. Sick pay was disbursed at the base rate of pay rather than the regular
2 rate, factoring in all non-discretionary remuneration earned during the same pay period.
3 Additionally, Defendants failed to provide proper meal and rest breaks and/or pay meal and rest
4 period premiums in lieu thereof. More specifically, as a pattern and practice, Defendants required
5 Plaintiff and other employees to carry cell phones and/or handheld computers and respond to
6 calls during meal and rest periods. Plaintiff's meal and rest periods were frequently interrupted
7 and shortened as a result of being required to respond to these work calls. Plaintiff was not
8 provided premium compensation at the regular rate of pay in lieu of these missed and/or
9 shortened breaks. To date, Plaintiff has yet to receive the underpaid overtime wages, sick pay,
10 and meal and rest premium compensation owed to him. Thus, Defendants are liable for waiting
11 time penalties under Labor Code § 203. Moreover, given the underpayment and/or nonpayment
12 of overtime wages, sick pay, and meal and rest premiums, the wage statements provided to
13 Plaintiff displayed inaccurate overtime rates of pay and net and gross wages earned. Therefore,
14 Plaintiff is a member of the Class and has suffered the alleged violations of Labor Code §§ 201-
15 203, 204, 226(a), 226.7, 246, 510, 512, 558, and 1194, and the UCL.

16 24. The California Labor Code upon which Plaintiff bases these claims are broadly
17 remedial in nature. These laws and labor standards serve an important public interest in
18 establishing minimum working conditions and standards in California. These laws and labor
19 standards protect the average working employee from exploitation by employers who may seek
20 to take advantage of superior economic and bargaining power in setting onerous terms and
21 conditions of employment.

22 25. The nature of this action and the format of laws available to Plaintiff and
23 members of the Class identified herein make the class action format a particularly efficient and
24 appropriate procedure to redress the wrongs alleged herein. If each employee were required to
25 file an individual lawsuit, the corporate defendants would necessarily gain an unconscionable
26 advantage since it would be able to exploit and overwhelm the limited resources of each
27 individual plaintiff with their vastly superior financial and legal resources. Requiring each Class
28 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.

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

27. Such a pattern, practice and uniform administration of corporate policy regarding illegal employee compensation described herein is unlawful and creates an entitlement to recovery by Plaintiff and the Class identified herein, in a civil action, for unpaid wages, including interest thereon, applicable penalties, reasonable attorneys' fees, and costs of suit according to the mandate of California Labor Code §§ 218.5, 226(a), and 1194, the applicable IWC Wage Orders, and Code of Civil Procedure § 1021.5.

28. Proof of a common business practice or factual pattern, which the named Plaintiff experienced and is representative of, will establish the right of each of the members of the Plaintiff Class to recovery on the causes of action alleged herein.

29. The Class is commonly entitled to a specific fund with respect to the compensation illegally and unfairly retained by Defendants. The Class is commonly entitled to restitution of those funds being improperly withheld by Defendants. This action is brought for the benefit of the entire class and will result in the creation of a common fund.

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1 **FIRST CAUSE OF ACTION**

2 **VIOLATION OF LABOR CODE §§ 510, 558, AND 1194**

3 **(BY PLAINTIFF AND THE OVERTIME REGULAR RATE CLASS AGAINST ALL**
4 **DEFENDANTS)**

5 30. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
6 though fully set forth herein.

7 31. This cause of action is brought pursuant to Labor Code § 510, which requires an
8 employer to pay employees overtime at a rate of one and one-half the employee's regular rate of
9 pay for any work in excess of eight hours in a workday or forty hours in a workweek.

10 32. As a pattern and practice, Defendants suffered and permitted employees to work
11 in excess of eight hours in a workday and/or over forty hours in a workweek without proper
12 overtime pay. During workweeks when Plaintiff and Class Members worked overtime and
13 earned non-discretionary remuneration such as incentive pay, shift differentials, and/or shift
14 premiums, Defendants failed to properly calculate the regular rate of pay for purposes of paying
15 overtime. Specifically, Defendants failed to factor any non-discretionary remuneration earned
16 into the calculation of the regular rate of pay for purposes of paying overtime wages. As a result
17 of such policy and practice, Defendants underpaid overtime wages to Plaintiff and the Class and
18 thus owe additional overtime wages.

19 33. Such a pattern, practice, and uniform administration of corporate policy regarding
20 illegal employee compensation as described herein is unlawful and creates an entitlement to
21 recovery by Plaintiff and the Class in a civil action, for the unpaid balance of the full amount of
22 damages owed, including interest thereon, penalties, attorneys' fees, and costs of suit according
23 to the mandate of California Labor Code §§ 218.5, 510, 558, and 1194.

24 34. Plaintiff is informed and believes, and based thereon alleges, that Defendants'
25 willful failure to provide all overtime wages due and owing to Plaintiff and Class Members upon
26 separation from employment results in a continued payment of wages up to thirty (30) days from
27 the time the wages were due. Therefore, Plaintiff and other members of the Class who have
28 separated from employment from Defendants are entitled to compensation pursuant to Labor

Code § 203.

SECOND CAUSE OF ACTION

VIOLATION OF LABOR CODE §§ 226.7 AND 512

**(BY PLAINTIFF, THE MEAL PERIOD CLASS, AND THE BREAK PREMIUM
REGULAR RATE CLASS AGAINST ALL DEFENDANTS)**

35. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as though fully set forth herein.

36. At all relevant times, Defendants failed in its affirmative obligation to ensure that Plaintiff and the Class had the opportunity to take and were provided with off-duty 30-minute meal periods in accordance with the mandates of the California Labor Code and the applicable IWC Wage Order. Specifically, as a pattern and practice, Defendants required Plaintiff and other employees to carry cell phones and/or handheld computers and respond to calls during meal periods. As a result, Plaintiff and Class Member's meal periods were frequently interrupted and shortened by these work calls.

37. Defendants further failed to pay Plaintiff and the Class meal period premium compensation at the regular rate of pay, as mandated by Labor Code § 226.7. For each workday that a meal period is not provided, employees are entitled to one additional hour of pay at the employee's regular rate of pay/compensation. Throughout their employment, Plaintiff and Class Members earned non-discretionary remuneration such as incentive pay, shift differentials, and/or shift premiums. Such non-discretionary remuneration, however, were not included in the regular rate of pay for purposes of paying meal period premium pay. Instead, the meal period premiums were paid at the base rate of pay. As such, Plaintiff and the Class are owed additional meal period premium pay.

38. Such a pattern, practice and uniform administration of corporate policy as described herein is unlawful and creates an entitlement to recovery by Plaintiff and the Class identified herein, in a civil action, for the unpaid balance of the premium compensation pursuant to Labor Code § 226.7, and the applicable IWC Wage Order, including interest thereon, penalties, reasonable attorneys' fees, and costs of suit.

1 39. Plaintiff is informed and believes, and based thereon alleges, that Defendants'
2 willful failure to provide all meal period premium wages due and owing to Plaintiff and the Class
3 upon separation from employment results in a continued payment of wages up to thirty (30) days
4 from the time the wages were due. Therefore, Plaintiff and members of the Class who have
5 separated from employment are entitled to compensation pursuant to Labor Code § 203.

6 **THIRD CAUSE OF ACTION**

7 **VIOLATION OF LABOR CODE § 226.7**

8 **(BY PLAINTIFF, THE REST PERIOD CLASS, AND THE BREAK PREMIUM**
9 **REGULAR RATE CLASS AGAINST ALL DEFENDANTS)**

10 40. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
11 though fully set forth herein.

12 41. At all relevant times, Defendants failed in their affirmative obligation to ensure
13 that Plaintiff and the Class had the opportunity to take and were provided with off-duty 10-
14 minute rest periods in accordance with the mandates of the California Labor Code and the
15 applicable IWC Wage Order. Specifically, as a pattern and practice, Defendants required
16 Plaintiff and other employees to carry cell phones and/or handheld computers and respond to
17 calls during rest periods. As a result, Plaintiff and Class Member's rest periods were frequently
18 interrupted and shortened by these work calls.

19 42. Defendants further failed to pay Plaintiff and the Class rest period premium
20 compensation, as mandated by Labor Code § 226.7. For each workday that a rest period is not
21 provided, employees are entitled to one additional hour of pay at the employee's regular rate of
22 pay/compensation. Throughout their employment, Plaintiff and Class Members earned non-
23 discretionary remuneration such as incentive pay, shift differentials, and/or shift premiums. Such
24 non-discretionary remuneration, however, were not included in the regular rate of pay for
25 purposes of paying rest period premium pay. Instead, the rest period premiums were paid at the
26 base rate of pay. As such, Plaintiff and the Class are owed additional rest period premium pay.

27 43. Such a pattern, practice and uniform administration of corporate policy as
28 described herein is unlawful and creates an entitlement to recovery by Plaintiff and the Class

1 identified herein, in a civil action, for the unpaid balance of the premium compensation pursuant
2 to Labor Code § 226.7, and the applicable IWC Wage Order, including interest thereon,
3 penalties, reasonable attorneys' fees, and costs of suit.

4 44. Plaintiff is informed and believes, and based thereon alleges, that Defendants'
5 willful failure to provide all meal period premium wages due and owing to Plaintiff and the Class
6 upon separation from employment results in a continued payment of wages up to thirty (30) days
7 from the time the wages were due. Therefore, Plaintiff and members of the Class who have
8 separated from employment are entitled to compensation pursuant to Labor Code § 203.

9 **FOURTH CAUSE OF ACTION**

10 **VIOLATION OF LABOR CODE §§ 201-203**

11 **(BY PLAINTIFF AND THE SICK PAY CLASS AGAINST ALL DEFENDANTS)**

12 45. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
13 though fully set forth herein.

14 46. Labor Code § 203 provides that if an employer willfully fails to pay wages owed
15 in accordance with Labor Code §§ 201 and 202, then the wages of the employee shall continue
16 as a penalty from the due date, and at the same rate until paid, but the wages shall not continue
17 for more than thirty (30) days.

18 47. Labor Code § 201 provides if an employer discharges an employee, the wages
19 earned and unpaid at the time of discharge are due and payable immediately.

20 48. Labor Code § 202 provides that an employee is entitled to receive all unpaid
21 wages no later than 72 hours after an employee quits his or her employment, unless the employee
22 has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the
23 employee is entitled to his or her wages at the time of quitting.

24 49. Labor Code § 246 provides that an employee is entitled to receive sick time pay.
25 The employer shall calculate paid sick leave by using one of two calculations: (1) "Paid sick time
26 for nonexempt employees shall be calculated in the same manner as the regular rate of pay for
27 the workweek in which the employee uses paid sick time, whether or not the employee actually
28 works overtime in that workweek;" or (2) "Paid sick time for nonexempt employees shall be

1 calculated by dividing the employee's total wages, not including overtime premium pay, by the
2 employee's total hours worked in the full pay periods of the prior 90 days of employment."

3 50. Whenever Defendants paid Plaintiff and the Class Members sick time pursuant to
4 California Labor Code § 246, Defendants did so at the incorrect rate of pay. Defendants paid
5 Plaintiff and the Class Members at the base hourly rate of pay, as opposed to the regular rate of
6 pay, which would take into account all non-discretionary remuneration, or by dividing the
7 employees' total wages, not including overtime premium pay, by the employees' total hours
8 worked in the full pay periods of the prior 90 days of employment, as required by Labor Code §
9 246. This resulted in the employees being underpaid for sick time, and resulted in violations of
10 California Labor Code §§ 201, 202, and 203, and other derivative Labor Code violations,
11 because Defendants did not pay, or timely pay, Plaintiff and the Class Members all owing and
12 unpaid wages for work performed by them during their employment and at the end of their
13 employment.

14 51. Defendants willfully failed to pay Plaintiff and the Class Members all their wages
15 due, as alleged hereinabove and hereinafter, upon the termination of their employment within the
16 times prescribed by Labor Code §§ 201 and 202 and are therefore subject to a waiting time
17 penalty. Plaintiff and the Class Members are entitled to recover from Defendants the statutory
18 penalty for each day they were not paid at their regular hourly rate of pay, up to a thirty (30) day
19 maximum pursuant to California Labor Code § 203.

20 **FIFTH CAUSE OF ACTION**

21 **VIOLATION OF LABOR CODE § 226(a)**

22 **(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)**

23 52. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
24 though fully set forth herein.

25 53. Defendants failed in their affirmative obligation to provide accurate itemized
26 wage statements. Defendants, as a matter of policy and practice, did not provide accurate records
27 in violation of Labor Code § 226(a) by failing to provide accurate payroll records to employees.

28 54. Here, Plaintiff and the Class were paid hourly. As such, the wage statements

1 should have reflected the applicable hourly rates of pay and gross and net wages earned, pursuant
2 to Labor Code section 226(a). However, the wage statements provided to Plaintiff and other
3 employees failed to identify such information. More specifically, as a result of the
4 aforementioned violations of the Labor Code the wages statements identified incorrect wage
5 rates and net and gross wages earned, in violation of Labor Code § 226(a).

6 55. Such a pattern, practice and uniform administration of corporate policy as
7 described herein is unlawful and creates an entitlement to recovery by the Plaintiff and the Class
8 in a civil action, for all damages or penalties pursuant to Labor Code § 226, including interest
9 thereon, attorneys' fees, and costs of suit according to the mandate of California Labor Code
10 § 226.

11 **SIXTH CAUSE OF ACTION**

12 **VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200, *ET SEQ.***

13 **(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)**

14 56. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
15 though fully set forth herein.

16 57. Defendants, and each of them, have engaged and continue to engage in unfair and
17 unlawful business practices in California by practicing, employing, and utilizing the employment
18 practices outlined above, including by: (a) failing to pay employees overtime wages at the
19 correct regular rate of pay that included all non-discretionary remuneration, in violation of Labor
20 Code §§ 201-203, 510, 558, and 1194; (b) failing to provide off-duty meal periods to employees
21 who worked 5 hours or longer in one shift and/or pay meal period premiums at the correct
22 regular rate of pay that included all non-discretionary remuneration, in violation of Labor Code
23 §§ 201-203, 226.7, and 512; (c) failing to provide off-duty rest periods to employees who
24 worked 3.5 hours or longer in one shift and/or pay rest period premiums at the correct regular
25 rate of pay that included all non-discretionary remuneration, in violation of Labor Code §§ 201-
26 203 and 226.7; (d) failing to pay employees sick pay at the correct regular rate of pay that
27 included all non-discretionary remuneration..

28 58. Defendants' utilization of such unfair and unlawful business practices constitutes

1 unfair and unlawful competition and provides an unfair advantage over Defendants' competitors.

2 59. Plaintiff seeks, individually and on behalf of other members of the Class similarly
3 situated, full restitution of monies, as necessary and according to proof, to restore any and all
4 monies withheld, acquired and/or converted by the Defendants by means of the unfair practices
5 complained of herein.

6 60. Plaintiff is informed and believes, and based thereon alleges, that at all times
7 herein mentioned Defendants have engaged in unlawful, deceptive and unfair business practices,
8 as proscribed by California Business & Professions Code § 17200, *et seq.*, including those set
9 forth herein above thereby depriving Plaintiff and other members of the Class the minimum
10 working condition standards and conditions due to them under the California laws as specifically
11 described therein.

12 **SEVENTH CAUSE OF ACTION**

13 **VIOLATION OF LABOR CODE § 2698, *ET SEQ.***

14 **(BY PLAINTIFF, ON BEHALF OF THE STATE AND AGGRIEVED EMPLOYEES,**
15 **AGAINST ALL DEFENDANTS)**

16 61. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
17 though fully set forth herein.

18 62. Plaintiff brings this cause of action as a proxy for the State of California and in
19 this capacity, seeks penalties on behalf of all Aggrieved Employees from May 5***, 2019,
20 through the present, for Defendants' violations of Labor Code §§ 201-203, 204, 226(a), 226.7,
21 246, 510, 512, 558, 1194, arising from Defendants' policy and practice of: (a) failing to pay
22 employees overtime wages at the correct regular rate of pay that included all non-discretionary
23 remuneration, in violation of Labor Code §§ 201-203, 510, 558, and 1194; (b) failing to provide
24 off-duty meal periods to employees who worked 5 hours or longer in one shift and/or pay meal
25 period premiums at the correct regular rate of pay that included all non-discretionary
26 remuneration, in violation of Labor Code §§ 201-203, 226.7, and 512; (c) failing to provide off-
27 duty rest periods to employees who worked 3.5 hours or longer in one shift and/or pay rest
28 period premiums at the correct regular rate of pay that included all non-discretionary

remuneration, in violation of Labor Code §§ 201-203 and 226.7; (d) failing to pay employees sick pay at the correct regular rate of pay that included all non-discretionary remuneration, in violation of Labor Code §§ 201-203 and 246; and (e) failing to provide accurate, itemized wage statements, in violation of Labor Code § 226(a).

63. On or about October 16, 2020, Plaintiff sent written notice to the California Labor & Workforce Development Agency (“LWDA”) of Defendants’ violations of Labor Code §§ 201-203, 204, 226(a), 226.7, 246, 510, 512, 558, 1194, pursuant to Labor Code § 2698, *et seq.*, the Private Attorneys General Act (“PAGA”). To date, the LWDA has not responded to Plaintiff’s written notice.

64. As such, pursuant to Labor Code section 2699(a), Plaintiff seeks recovery of any and all applicable civil penalties for Defendants’ violation of Labor Code §§ 201-203, 204, 226(a), 226.7, 246, 510, 512, 558, 1194, for the time period described above, on behalf of himself and other Aggrieved Employees.

PRAYER FOR RELIEF

1. WHEREFORE, Plaintiff prays for judgment for himself and all others on whose behalf this suit is brought against Defendants, jointly and severally, as follows:

2. For an order certifying the proposed Class;

3. For an order appointing Plaintiff as the representative of the Class as described herein;

4. For an order appointing counsel for Plaintiff as class counsel;

5. Upon the First Cause of Action, for damages and/or penalties pursuant to California Labor Code §§ 201-203, 510, 558, and 1194, and for costs and attorneys’ fees;

6. Upon the Second Cause of Action, for damages and/or penalties pursuant to California Labor Code §§ 201-203, 226.7, and 512, and for costs and attorneys’ fees;

7. Upon the Third Cause of Action, for damages and/or penalties pursuant to California Labor Code §§ 201-203 and 226.7, and for costs and attorneys’ fees;

8. Upon the Fourth Cause of Action, for damages and/or penalties pursuant to California Labor Code §§ 201, 202, and 203, and for costs and attorneys’ fees pursuant to Labor

1 Code § 218.5;

2 9. Upon the Fifth Cause of Action, for damages or penalties pursuant to California
3 Labor Code § 226(a), and for costs and attorneys' fees;

4 10. Upon the Sixth Cause of Action, for restitution to Plaintiff and other similarly
5 affected members of the general public of all funds unlawfully acquired by Defendants by means
6 of any acts or practices declared by this Court to be in violation of Business & Professions Code
7 § 17200, *et seq.*, and for costs and attorneys' fees;

8 11. Upon the Seventh Cause of Action, for civil penalties according to proof pursuant
9 to Labor Code §§ 226.3 and 2698, *et seq.*, and for costs and attorneys' fees;

10 12. On all causes of action for attorneys' fees and costs as provided by California
11 Labor Code §§ 218.5, 226(a), 1194, and 2699, and Code of Civil Procedure § 1021.5; and

12 13. For such other and further relief the Court may deem just and proper.
13

14 DATED: November 2, 2020

DIVERSITY LAW GROUP, P.C.

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16 By: 

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Kristen M. Agnew

Nicholas Rosenthal

Attorneys for Plaintiff and the Class
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