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Case #20CV370922
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA

JOSE HERNANDEZ, individually, and on
behalf of other members of the general
public similarly situated,

Plaintiff,

vs.

EUROMARKET DESIGNS, INC., an
Illinois corporation; and DOES 1 through
10, inclusive,

Defendants.

Case No.: 20CV370922

**FIRST AMENDED CLASS ACTION
COMPLAINT & ENFORCEMENT
ACTION UNDER THE PRIVATE
ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698, ET
SEQ.**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
- (4) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
- (5) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
- (6) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (7) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);
- (8) Violation of Labor Code § 1198 and California Code of Regulations Title 8, Section 11010 Subdivision 5(A) (Failure to

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- Provide Reporting Time Pay);
- (9) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);
 - (10) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, *et seq.*;
 - (11) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and
 - (12) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unfair Business Practices)

Jury Trial Demanded

1 Plaintiff Jose Hernandez, individually and on behalf of all other members of the public
2 similarly situated and as an aggrieved employee and on behalf of all other aggrieved employees,
3 alleges as follows:

4 JURISDICTION AND VENUE

5 1. This class action is brought pursuant to California Code of Civil Procedure
6 section 382 and California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil
7 penalties and any other available relief on behalf of Plaintiff, the State of California, and other
8 current and former employees who worked for Defendants as non-exempt, hourly paid
9 employees at one of Defendants’ distribution centers in California (to include housewares and
10 furniture buildings located in Tracy (Locations #491 & 499) and an LA cross-dock located in
11 Santa Fe Springs (Location # 591)) and received at least one wage statement and against whom
12 one or more violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any
13 provision regulating hours and days of work in the applicable Industrial Welfare Commission
14 (“IWC”) Wage Order were committed, as set forth in this complaint. The monetary damages,
15 penalties, and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the
16 Superior Court and will be established according to proof at trial. This Court has jurisdiction
17 over this action pursuant to the California Constitution, Article VI, section 10. The statutes
18 under which this action is brought do not specify any other basis for jurisdiction. Plaintiff’s
19 share of damages, penalties, and other relief sought in this action does not exceed \$75,000.

20 2. This Court has jurisdiction over Defendants because Defendants are either
21 citizens of California, have sufficient minimum contacts in California, or otherwise
22 intentionally avail themselves of the California market so as to render the exercise of jurisdiction
23 over them by the California courts consistent with traditional notions of fair play and substantial
24 justice.

25 3. Venue is proper in this Court because Defendants employ persons in this county,
26 and thus a substantial portion of the transactions and occurrences related to this action occurred
27 in this county.

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4. Further, venue is proper in this Court because Defendants are non-California citizens and have their principal place of business in Illinois, and because they have not filed a statement with the California Secretary of State designating a county in which they maintain a principal place of business in accordance with California Corporations Code sections 16959 and 18200. Cal. Code Civ. P. § 395.2. Thus, Defendants have no right to any particular venue and Plaintiff may file this complaint in any county in California. *See Juneau Spruce Corp. v. International Longshoremen's & Warehousemen's Union*, 37 Cal.2d 760, 763-764 (1951); *see also, Easton v. Sup.Ct. (Schneider Bros., Inc.)*, 12 Cal. App. 3d 243, 246-247 (1970). Cal. Code Civ. P. § 395.5.

THE PARTIES

5. Plaintiff Jose Hernandez is a resident of Manteca, in San Joaquin County, California. Defendants employed Plaintiff as an hourly paid, non-exempt employee from approximately September 2007 to May 2020. Most recently, Defendants employed Plaintiff as a Shop Finisher from approximately June 2013 to the end of his employment. Plaintiff worked for Defendants at their warehouse/distribution center location in Tracy, California. During his employment, Plaintiff typically worked eight (8) to ten (10) hours or more per day, and five (5) to six (6) days per week. Plaintiff's primary job duties included, without limitation, examining and repairing furniture, sanding and trimming wood pieces, operating handheld burners, mixing paints and lacquers, and occasionally operating forklifts and other heavy machinery.

6. EUROMARKET DESIGNS, INC. was and is, upon information and belief, an Illinois corporation, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county, the State of California, or the various states of the United States of America.

7. Plaintiff is unaware of the true names or capacities of the Defendants sued herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to amend the complaint and serve such fictitiously named Defendants once their names and capacities become known.

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8. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10 were the partners, agents, owners, or managers of EUROMARKET DESIGNS, INC. at all relevant times.

9. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and omissions alleged herein was performed by, or is attributable to, EUROMARKET DESIGNS, INC. and/or DOES 1 through 10 (collectively, “Defendants” or “CRATE & BARREL”), each acting as the agent, employee, alter ego, and/or joint venturer of, or working in concert with, each of the other co-Defendants and was acting within the course and scope of such agency, employment, joint venture, or concerted activity with legal authority to act on the others’ behalf. The acts of any and all Defendants were in accordance with, and represent, the official policy of Defendants.

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

11. Plaintiff is informed and believes, and thereon alleges, that each of said Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts, omissions, occurrences, and transactions alleged herein.

GENERAL ALLEGATIONS

12. Defendants are a leading home furnishings specialty retailer that own and operate “Crate & Barrel” branded stores in the United States and Canada. Upon information and belief, Defendants maintain a single, centralized Human Resources (“HR”) department at their company headquarters in Northbrook, Illinois, which is responsible for the recruiting and hiring of new employees, and communicating and implementing Defendants’ company-wide policies, including timekeeping policies and meal and rest period policies, to employees throughout California.

13. In particular, Plaintiff and class members, on information and belief, received the same standardized documents and/or written policies. Upon information and belief, the

1 usage of standardized documents and/or written policies, including new-hire documents,
2 indicate that Defendants dictated policies at the corporate level and implemented them
3 company-wide, regardless of their employees' assigned locations or positions. Upon
4 information and belief, Defendants set forth uniform policies and procedures in several
5 documents provided at an employee's time of hire.

6 14. Upon information and belief, Defendants maintain a centralized Payroll
7 department at their company headquarters in Northbrook, Illinois, which processes payroll for
8 all non-exempt, hourly paid employees working for Defendants at their various locations and
9 jobsites in California, including Plaintiff and class members. Based upon information and
10 belief, Defendants issue the same formatted wage statements to all non-exempt, hourly paid
11 employees in California, irrespective of their work locations. Upon information and belief,
12 Defendants process payroll for departing employees in the same manner throughout the State
13 of California, regardless of the manner in which each employee's employment ends.

14 15. Defendants continue to employ non-exempt or hourly paid employees in
15 California.

16 16. Plaintiff is informed and believes, and thereon alleges, that at all times herein
17 mentioned, Defendants were advised by skilled lawyers and other professionals, employees and
18 advisors knowledgeable about California labor and wage law, employment and personnel
19 practices, and about the requirements of California law.

20 17. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and class
21 members were not paid for all hours worked because all hours worked were not recorded.

22 18. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
23 should have known that Plaintiff and class members were entitled to receive certain wages for
24 overtime compensation and that they were not receiving certain wages for overtime
25 compensation.

26 19. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
27 should have known that Plaintiff and class members were entitled to receive at least minimum
28 wages for compensation and that they were not receiving at least minimum wages for work that

1 was required to be done off-the-clock. In violation of the California Labor Code, Plaintiff and
2 class members were not paid at least minimum wages for work done off-the-clock.

3 20. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
4 should have known that Plaintiff and class members were entitled to meal periods in accordance
5 with the Labor Code or payment of one (1) additional hour of pay at their regular rates of pay
6 when they were not provided with timely, uninterrupted, thirty (30) minute meal periods and
7 that Plaintiff and class members were not provided with all meal periods or payment of one (1)
8 additional hour of pay at their regular rates of pay when they did not receive a timely,
9 uninterrupted, thirty (30) minute meal period.

10 21. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
11 should have known that Plaintiff and class members were entitled to rest periods in accordance
12 with the Labor Code and applicable IWC Wage Order or payment of one (1) additional hour of
13 pay at their regular rates of pay when they were not authorized and permitted to take a compliant
14 rest period. In violation of the California Labor Code, Plaintiff and class members were not
15 authorized and permitted to take compliant rest periods, nor did Defendants provide Plaintiff
16 and class members with payment of one (1) additional hour of pay at their regular rates of pay
17 when they were not authorized and permitted to take a compliant rest period.

18 22. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
19 should have known that Plaintiff and class members were entitled to receive complete and
20 accurate wage statements in accordance with California law. In violation of the California
21 Labor Code, Plaintiff and class members were not provided complete and accurate wage
22 statements.

23 23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
24 should have known that they had a duty to maintain accurate and complete payroll records in
25 accordance with the Labor Code and applicable IWC Wage Order, but willfully, knowingly,
26 and intentionally failed to do so.

27 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
28 should have known that Plaintiff and class members were entitled to timely payment of all

1 wages earned upon termination of employment. In violation of the California Labor Code,
2 Plaintiff and class members did not receive payment of all wages due, including, but not limited
3 to, overtime wages, minimum wages, meal and rest period premium wages, and/or reporting
4 time pay, within permissible time periods.

5 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
6 should have known that Plaintiff and class members were entitled to timely payment of wages
7 during their employment. In violation of the California Labor Code, Plaintiff and class members
8 did not receive payment of all wages, including, but not limited to, overtime wages, minimum
9 wages, meal and rest period premium wages, and/or reporting time pay, within permissible time
10 periods.

11 26. Plaintiff is informed and believes, and thereon alleges, that at all times herein
12 mentioned, that Defendants knew or should have known that they had a duty to cover the costs
13 and expenses Plaintiff and/or class members incurred obtaining mandatory physical
14 examinations and/or drug tests, but willfully, knowingly, and intentionally failed to do so.

15 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
16 should have known that Plaintiff and class members were entitled to receive all reporting time
17 pay when Defendants required Plaintiff and class members were required to report to work but
18 were put to work for less than half of their regular scheduled shift. In violation of the California
19 Labor Code, Plaintiff and class members were not paid all reporting time pay.

20 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
21 should have known that Plaintiff and class members were entitled to receive full reimbursement
22 for all business-related expenses and costs they incurred during the course and scope of their
23 employment and that they did not receive full reimbursement of applicable business-related
24 expenses and costs incurred.

25 29. Plaintiff is informed and believes, and thereon alleges, that at all times herein
26 mentioned, Defendants knew or should have known that they had a duty to provide Plaintiff
27 and/or class members with safety devices and safeguards, such as personal protective
28 equipment, to protect their life, safety, and health in the workplace, but willfully, knowingly,

1 and intentionally failed to do so.

2 30. Plaintiff is informed and believes, and thereon alleges, that at all times herein
3 mentioned, Defendants knew or should have known that they had a duty to compensate Plaintiff
4 and class members for all hours worked, and that Defendants had the financial ability to pay
5 such compensation, but willfully, knowingly, and intentionally failed to do so, and falsely
6 represented to Plaintiff and class members that they were properly denied wages, all in order to
7 increase Defendants' profits.

8 **PAGA REPRESENTATIVE ALLEGATIONS**

9 31. At all times herein set forth, PAGA provides that any provision of law under the
10 Labor Code and applicable IWC Wage Order that provides for a civil penalty to be assessed and
11 collected by the LWDA for violations of the California Labor Code and applicable IWC Wage
12 Order may, as an alternative, be recovered by aggrieved employees in a civil action brought on
13 behalf of themselves and other current or former employees pursuant to procedures outlined in
14 California Labor Code section 2699.3.

15 32. PAGA defines an "aggrieved employee" in Labor Code section 2699(c) as "any
16 person who was employed by the alleged violator and against whom one or more of the alleged
17 violations was committed."

18 33. Plaintiff and other current and former employees of Defendants who worked at
19 one of Defendants' distribution centers in California (to include housewares and furniture
20 buildings located in Tracy (Locations #491 & 499) and an LA cross-dock located in Santa Fe
21 Springs (Location # 591)) are "aggrieved employees" as defined by Labor Code section 2699(c)
22 in that they are all Defendants' current or former employees and one or more of the alleged
23 violations were committed against them.

24 34. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
25 employee, including Plaintiff, may pursue a civil action arising under PAGA after the following
26 requirements have been met:

- 27 (a) The aggrieved employee or representative shall give written notice by
28 online filing with the LWDA and by certified mail to the employer of the

specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violation.

(b) An aggrieved employee's notice filed with the LWDA pursuant to 2699.3(a) and any employer response to that notice shall be accompanied by a filing fee of seventy-five dollars (\$75).

(c) The LWDA shall notify the employer and the aggrieved employee or representative by certified mail that it does not intend to investigate the alleged violation ("LWDA's Notice") within sixty (60) calendar days of the postmark date of the aggrieved employee's notice. Upon receipt of the LWDA Notice, or if no LWDA Notice is provided within sixty-five (65) calendar days of the postmark date of the aggrieved employee's notice, the aggrieved employee may commence a civil action pursuant to California Labor Code section 2699 to recover civil penalties.

35. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees, through Plaintiff, may pursue a civil action arising under PAGA for violations of any provision other than those listed in Section 2699.5 after the following requirements have been met:

(a) The aggrieved employee or representative shall give written notice by online filing with the LWDA and by certified mail to the employer of the specific provisions of the California Labor Code alleged to have been violated (other than those listed in Section 2699.5), including the facts and theories to support the alleged violation.

(b) An aggrieved employee's notice filed with the LWDA pursuant to 2699.3(c) and any employer response to that notice shall be accompanied by a filing fee of seventy-five dollars (\$75).

(c) The employer may cure the alleged violation within thirty-three (33) calendar days of the postmark date of the notice sent by the aggrieved employee or representative. The employer shall give written notice within that period of time by certified mail to the aggrieved employee or

1 representative and by online filing with the LWDA if the alleged violation
2 is cured, including a description of actions taken, and no civil action
3 pursuant to Section 2699 may commence. If the alleged violation is not
4 cured within the 33-day period, the aggrieved employee may commence
5 a civil action pursuant to Section 2699.

6 36. On October 7, 2020, Plaintiff provided written notice by online filing to the
7 LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor
8 Code alleged to have been violated, including facts and theories to support the alleged
9 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written notice
10 was accompanied with the applicable filing fee of seventy-five dollars (\$75). The LWDA
11 PAGA Administrator confirmed receipt of Plaintiff's written notice and assigned Plaintiff
12 PAGA Case Number LWDA-CM-808930-20. A true and correct copy of Plaintiff's written
13 notice to the LWDA and Defendants is attached hereto as "Exhibit 1."

14 37. As of the filing date of this complaint, over 65 days have passed since Plaintiff
15 sent the notice described above to the LWDA, and the LWDA has not responded that it intends
16 to investigate Plaintiff's claims and Defendants have not cured the violations.

17 38. Thus, Plaintiff has satisfied the administrative prerequisites under California
18 Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
19 violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510,
20 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, 6401, and 6403.

21 39. Labor Code section 558(a) provides "[a]ny employer or other person acting on
22 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
23 provision regulating hours and days of work in any order of the Industrial Welfare Commission
24 shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for
25 each underpaid employee for each pay period for which the employee was underpaid. . . . (2)
26 For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for
27 each pay period for which the employee was underpaid. . . ." Labor Code section 558(c)
28 provides "[t]he civil penalties provided for in this section are in addition to any other civil or

1 criminal penalty provided by law.”

2 40. Defendants, at all times relevant to this complaint, were employers or persons
3 acting on behalf of an employer(s) who violated Plaintiff’s and other aggrieved employees’
4 rights by violating various sections of the California Labor Code as set forth above.

5 41. As set forth below, Defendants have violated numerous provisions of both the
6 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage
7 Order.

8 42. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
9 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiff, acting in the public interest as a
10 private attorney general, seeks assessment and collection of civil penalties for himself, all other
11 aggrieved employees, and the State of California against Defendants for violations of California
12 Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d),
13 1182.12, 1194, 1197, 1197.1, 1198, 2802, 6401, and 6403.

14 **CLASS ACTION ALLEGATIONS**

15 43. Plaintiff brings this action on his own behalf, as well as on behalf of each and all
16 other persons similarly situated, and thus seeks class certification under California Code of Civil
17 Procedure section 382.

18 44. All claims alleged herein arise under California law for which Plaintiff seeks
19 relief authorized by California law.

20 45. Plaintiff’s proposed class consists of and is defined as follows:

21 All persons who worked for Defendants as non-exempt, hourly
22 paid employees at one of Defendants’ distribution centers in
23 California (to include housewares and furniture buildings located
24 in Tracy (Locations #491 & 499) and an LA cross-dock located in
Santa Fe Springs (Location # 591)) at any time from September
28, 2016 to December 31, 2021, inclusive (“Class”).

25 46. Members of the Class are referred to herein as “class members.”

26 47. Plaintiff reserves the right to redefine the Class to add additional subclasses as
27 appropriate based on further investigation, discovery, and specific theories of liability.

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1 48. There are common questions of law and fact as to class members that
2 predominate over questions affecting only individual members, including, but not limited to:

- 3 (a) Whether Defendants required Plaintiff and class members to work over
4 eight (8) hours per day, over twelve (12) hours per day, or over forty (40)
5 hours per week and failed to pay all legally required overtime
6 compensation to Plaintiff and class members;
- 7 (b) Whether Defendants failed to pay Plaintiff and class members at least
8 minimum wages for all hours worked;
- 9 (c) Whether Defendants failed to provide Plaintiff and class members with
10 meal periods;
- 11 (d) Whether Defendants failed to authorize and permit Plaintiff and class
12 members to take rest periods;
- 13 (e) Whether Defendants provided Plaintiff and class members with complete
14 and accurate wage statements as required by California Labor Code
15 section 226(a);
- 16 (f) Whether Defendants maintained accurate payroll records as required by
17 California Labor Code section 1174(d);
- 18 (g) Whether Defendants failed to pay earned overtime wages, minimum
19 wages, meal and rest period premium wages, and/or reporting time pay
20 due to Plaintiff and class members upon their discharge;
- 21 (h) Whether Defendants failed timely to pay overtime wages, minimum
22 wages, meal and rest period premium wages, and/or reporting time pay
23 due to Plaintiff and class members during their employment;
- 24 (i) Whether Defendants failed to pay Plaintiff and/or class members for the
25 costs of mandatory physical examinations and/or drug testing;
- 26 (j) Whether Defendants required Plaintiff and class members to report to
27 work, but failed to provide them with work or provided them with less
28 than half their scheduled day's work, without properly compensating

1 them as required by California Code of Regulations, Title 8, section
2 11010, subsection 5;

3 (k) Whether Defendants failed to reimburse Plaintiff and class members for
4 necessary and required business-related expenditures and/or losses
5 incurred by them in the scope of their employment;

6 (l) Whether Defendants failed to provide Plaintiff and/or class members with
7 safety devices and safeguards, such as personal protective equipment;

8 (m) Whether Defendants engaged in unlawful and unfair business practices in
9 violation of California Business & Professions Code sections 17200, *et*
10 *seq.*; and

11 (n) The appropriate amount of damages, restitution, or monetary penalties
12 resulting from Defendants' violations of California law.

13 49. There is a well-defined community of interest in the litigation and the class
14 members are readily ascertainable:

15 (a) Numerosity: The class members are so numerous that joinder of all
16 members would be unfeasible and impractical. The membership of the
17 entire class is unknown to Plaintiff at this time; however, the class is
18 estimated to be greater than one hundred (100) individuals and the
19 identity of such membership is readily ascertainable by inspection of
20 Defendants' employment records.

21 (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately protect
22 the interests of each class member with whom he has a well-defined
23 community of interest, and Plaintiff's claims (or defenses, if any) are
24 typical of all class members as demonstrated herein.

25 (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect
26 the interests of each class member with whom he has a well-defined
27 community of interest and typicality of claims, as demonstrated herein.
28 Plaintiff acknowledges that he has an obligation to make known to the

1 Court any relationship, conflicts or differences with any class member.
2 Plaintiff's attorneys, the proposed class counsel, are versed in the rules
3 governing class action discovery, certification, and settlement. Plaintiff
4 has incurred, and throughout the duration of this action, will continue to
5 incur costs and attorneys' fees that have been, are, and will be necessarily
6 expended for the prosecution of this action for the substantial benefit of
7 each class member.

8 (d) Superiority: The nature of this action makes the use of class action
9 adjudication superior to other methods. A class action will achieve
10 economies of time, effort, and expense as compared with separate
11 lawsuits, and will avoid inconsistent outcomes because the same issues
12 can be adjudicated in the same manner and at the same time for the entire
13 class.

14 (e) Public Policy Considerations: Employers in the State of California
15 violate employment and labor laws every day. Current employees are
16 often afraid to assert their rights out of fear of direct or indirect retaliation.
17 Former employees are fearful of bringing actions because they believe
18 their former employers might damage their future endeavors through
19 negative references and/or other means. Class actions provide the class
20 members who are not named in the complaint with a type of anonymity
21 that allows for the vindication of their rights while simultaneously
22 protecting their privacy.

23 **FIRST CAUSE OF ACTION**

24 **Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime**

25 **(Against all Defendants)**

26 50. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
27 and every allegation set forth above.

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1 51. Labor Code section 1198 makes it illegal to employ an employee under
2 conditions of labor that are prohibited by the applicable wage order. California Labor Code
3 section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall
4 be the . . . standard conditions of labor for employees. The employment of any employee . . .
5 under conditions of labor prohibited by the order is unlawful.”

6 52. California Labor Code section 1198 and the applicable IWC Wage Order provide
7 that it is unlawful to employ persons without compensating them at a rate of pay either time-
8 and-one-half or two-times that person’s regular rate of pay, depending on the number of hours
9 worked by the person on a daily or weekly basis.

10 53. Specifically, the applicable IWC Wage Order provides that Defendants are and
11 were required to pay Plaintiff and class members working more than eight (8) hours in a day or
12 more than forty (40) hours in a workweek, at the rate of time and one-half (1½) for all hours
13 worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek.

14 54. The applicable IWC Wage Order further provides that Defendants are and were
15 required to pay Plaintiff and class members working more than twelve (12) hours in a day,
16 overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s
17 regular rate of pay includes all remuneration for employment paid to, or on behalf of, the
18 employee, including nondiscretionary bonuses and incentive pay.

19 55. California Labor Code section 510 codifies the right to overtime compensation
20 at one and one-half (1½) times the regular rate of pay for hours worked in excess of eight (8)
21 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh
22 (7th) day of work, and to overtime compensation at twice the employee’s regular rate of pay for
23 hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on
24 the seventh (7th) day of work.

25 56. During the relevant time period, Defendants willfully failed to pay all overtime
26 wages owed to Plaintiff and class members. During the relevant time period, Plaintiff and class
27 members were not paid overtime premiums for all of the hours they worked in excess of eight
28 (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours

1 in a week, because all hours worked were not recorded.

2 57. First, on information and belief, Defendants had, and continue to have, a
3 company-wide policy of strictly staffing their locations based on the labor hours allocated by
4 each location's labor or payroll budget, which, combined with heavy workloads and stringent
5 deadlines, has resulted in, and continues to result in, chronic understaffing and a lack of
6 adequate meal period coverage, because there were too few employees on duty to handle the
7 workload. As a result of this inadequate meal period coverage, Plaintiff and class members
8 were not always afforded uninterrupted 30-minute meal periods during shifts when they were
9 entitled to receive a meal period. For example, Defendants instructed Plaintiff to work through
10 part of his meal period in order to repair custom furniture that had to meet strict delivery
11 deadlines. Moreover, Defendants had a practice of failing to adhere to a schedule of meal
12 periods, which further caused Plaintiff and class members to not be relieved of their duties for
13 compliant meal periods.

14 58. Second, on information and belief, because Defendants frowned upon employees
15 accruing meal period penalties, Defendants' management would adjust Plaintiff's and class
16 members' time records and/or pressured employees to clock out for meal periods to reflect
17 compliant meal periods, regardless of whether they had actually received a compliant meal
18 period, in order to strictly limit meal penalties that Defendants would otherwise owe.
19 Consequently, Plaintiff and class members performed work during meal periods for which they
20 were not paid.

21 59. Third, during the relevant period, Defendants had, and continue to have, a
22 company-wide policy and/or practice of requiring employees to complete work-related tasks
23 while off-the-clock. For example, during his employment, Defendants routinely instructed
24 Plaintiff to perform furniture repairs prior to clocking in, or after clocking out, in order to meet
25 strict delivery deadlines. Moreover, Plaintiff was required to respond to phone calls from his
26 manager to discuss details about his previous shifts. Thus, Defendants failed to track this time
27 spent working before and after scheduled shifts, and Plaintiff and class members received no
28 compensation for this time.

60. Fourth, Defendants had, and continue to have, a loss prevention policy requiring Plaintiff and class members to undergo security checks at the beginning of their meal periods and/or at the end of their shifts before leaving the premises. Before meal periods and/or at the end of their shifts, Plaintiff and class members were required to wait off-the-clock to undergo a security check before they could leave. As a result, Plaintiff and class members were subject to Defendants' control until being released by a security guard, but were not compensated for this time.

61. Defendants knew or should have known that as a result of these company-wide practices and/or policies, Plaintiff and class members were performing their assigned duties off-the-clock before and after their shifts and during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Plaintiff and class members worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Plaintiff and class members were not paid overtime wages for all of the overtime hours they actually worked.

62. Defendants' failure to pay Plaintiff and class members the balance of overtime compensation as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiff and class members are entitled to recover their unpaid overtime compensation, as well as interest, costs, and attorneys' fees.

SECOND CAUSE OF ACTION

**Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid
Minimum Wages
(Against all Defendants)**

63. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

64. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage to be paid to employees, and the payment of a wage less than the minimum so

1 fixed is unlawful. Compensable work time is defined in Wage Order No. 1 as “the time during
2 which an employee is subject to the control of an employer, and includes all the time the
3 employee is suffered or permitted to work, whether or not required to do so.” Cal. Code. Regs.
4 tit. 8, § 11010(2)(G) (defining “Hours Worked”).

5 65. As stated above, due to Defendants’ practice of utilizing labor budgets,
6 assignment of heavy workloads and stringent deadlines, failure to adhere to a schedule of meal
7 periods, and subsequent lack of meal period coverage, Plaintiff and class members were
8 impeded from taking all uninterrupted meal periods to which they were entitled and were
9 required to work off-the-clock. Additionally, as set forth, Defendants systematically failed to
10 pay Plaintiff and class members for actual hours worked during unpaid meal periods, because
11 these hours were not always correctly recorded. In addition, as set forth above, Defendants
12 required Plaintiff and class members to complete work-related tasks and undergo security
13 checks while off-the-clock, but did not compensate them for this time.

14 66. Defendants did not pay minimum wages for off-the-clock hours that Plaintiff and
15 class members worked through that qualified for overtime premium payment. To the extent
16 that these off-the-clock hours did not qualify for overtime premium payment, Defendants did
17 not pay at least minimum wages for those hours worked off-the-clock in violation of California
18 Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

19 67. Defendants’ failure to pay Plaintiff and class members minimum wages violates
20 California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to California
21 Labor Code section 1194.2, Plaintiff and class members are entitled to recover liquidated
22 damages in an amount equal to the wages unlawfully unpaid and interest thereon.

23 **THIRD CAUSE OF ACTION**

24 **Violations of California Labor Code, §§ 226.7, 512(a), 516, and 1198—Meal Period**

25 **Violations**

26 **(Against all Defendants)**

27 68. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
28 and every allegation set forth above.

1 69. At all relevant times herein set forth, California Labor Code section 512(a)
2 provides that an employer may not require, cause, or permit an employee to work for a period
3 of more than five (5) hours per day without providing the employee with a meal period of not
4 less than thirty (30) minutes, except that if the total work period per day of the employee is not
5 more than six (6) hours, the meal period may be waived by mutual consent of both the employer
6 and the employee. Under California law, first meal periods must start after no more than five
7 hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal. 2012).

8 70. At all relevant times herein set forth, California Labor Code sections 226.7,
9 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
10 meal period mandated by an applicable order of the IWC.

11 71. At all relevant times herein set forth, Labor Code sections 226.7 and 512(a) and
12 the applicable IWC Wage Order also require employers to provide a second meal period of not
13 less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an
14 employee one (1) additional hour of pay at the employee's regular rate, except that if the total
15 hours worked is no more than twelve (12) hours, the second meal period may be waived by
16 mutual consent of the employer and the employee only if the first meal period was not waived.

17 72. First, as stated, Defendants had, and continue to have, a company-wide policy of
18 utilizing labor budgets, assigning heavy workloads and stringent deadlines, and failing to adhere
19 to a schedule of meal periods, which prevented Plaintiff and class members from taking all
20 timely, uninterrupted meal periods to which they were entitled. As a result, Plaintiff and class
21 members had to work through part or all of their meal periods, have their meal periods
22 interrupted, and wait extended periods of time before taking meal periods. For example,
23 Defendants interrupted Plaintiff's meal periods to instruct him to spend time repairing custom
24 furniture that needed to be completed to meet delivery deadlines. Additionally, Plaintiff would
25 not be able to take his meal period until 15-30 minutes after his 5th hour of work due to the
26 number of repair orders Defendants required him to complete.

27 73. Second, as stated, upon information and belief, because Defendants frowned
28 upon employees accruing meal period penalties, Defendants' management would adjust

1 Plaintiff's and class members' time records and/or pressured employees to clock out for meal
2 periods to reflect compliant meal periods, regardless of whether they had received a compliant
3 meal period, in order to strictly limit meal penalties that Defendants would otherwise owe.

4 74. Third, as stated, Defendants required their employees to be subject to loss
5 prevention policies, which resulted in Plaintiff and class members receiving shortened meal
6 periods, because they were required to undergo mandatory security checks before leaving the
7 premises. For example, when Plaintiff was carrying a personal bag and intended to take his
8 meal period off-premises, he would have to wait off-the-clock during his meal period
9 undergoing a security check before Defendants permitted him to leave.

10 75. In addition, during the relevant time period, Defendants did not provide Plaintiff
11 and class members with second 30-minute meal periods on days that they worked in excess of
12 ten (10) hours in one day. For example, Plaintiff would work shifts in excess of ten (10) hours
13 per day, and was not provided his second meal period during these shifts. Plaintiff and class
14 members did not sign valid meal period waivers on days that they were entitled to meal periods
15 and were not relieved of all duties.

16 76. Moreover, Defendants implemented a company-wide policy of requiring all
17 employees, including Plaintiff and class members, to sign blanket meal period waivers.
18 Defendants took the position that non-exempt, hourly paid employees working six (6) hour
19 shifts had waived their rights to take a 30-minute meal period on these particular shifts, for the
20 entirety of their employment and, on that basis, did not provide them with all meal periods to
21 which they were entitled. Specifically, Defendants' "Meal Period Waiver Agreement" provides
22 that the waiver remains in effect until the employee provides written notice of his or her decision
23 to revoke. Defendants' imposition of the burden on employees to revoke the meal period waiver
24 in writing discouraged and prevented Plaintiff and class members from taking meal periods.

25 77. In addition, an employer's obligation to provide a meal period is only "triggered"
26 when the employer "employs an employee for a work period of more than five hours per day."
27 *Brinker*, 53 Cal. 4th at 1039 ("If an employer engages, suffers, or permits anyone to work for a
28 full five hours, its meal break obligation is triggered.").

1 [A]fter the meal break obligation is triggered . . . an employer is put to a
2 choice: it must (1) afford an off-duty meal period; (2) consent to a
3 mutually agreed-upon waiver if one hour or less will end the shift; or (3)
4 obtain written agreement to an on-duty meal period if circumstances
5 permit. Failure to do one of these will render the employer liable for
6 premium pay. *Id.* (citing Cal. Labor Code § 226.7; Wage Order No. 5,
7 subd. 11(A), (B)).

8 78. That Defendants require employees to sign meal period waivers in advance (as
9 opposed to on a specific work day) renders them invalid and unenforceable, because
10 Defendants' obligation to provide Plaintiff and class members with meal periods did not arise
11 until Defendants had employed them for a full five (5) hours.

12 79. At all times herein mentioned, Defendants knew or should have known that, as a
13 result of these policies, Plaintiff and class members were prevented from being relieved of all
14 duties and required to perform some of their assigned duties during meal periods. Defendants
15 further knew or should have known that Defendants did not pay Plaintiff and class members
16 meal period premium wages when meal periods were late, interrupted, shortened, or missed.

17 80. Furthermore, Defendants engaged in a company-wide practice and/or policy of
18 not paying all meal period premiums owed when compliant meal periods are not provided.
19 Because of this practice and/or policy, Plaintiff and class members have not received premium
20 pay for all missed, interrupted, or late meal periods. Defendants failed to provide Plaintiff and
21 class members compliant meal periods in violation of California Labor Code sections 226.7,
22 512, and 516 and failed to pay the full meal period premiums due.

23 81. Defendants' conduct violates the applicable IWC Wage Order, and California
24 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and class members are therefore
25 entitled to recover from Defendants one (1) additional hour of pay at the employee's regular
26 rate of compensation for each work day that the meal period was not provided.

27 **FOURTH CAUSE OF ACTION**

28 **Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations** **(Against all Defendants)**

82. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
and every allegation set forth above.

1 83. At all relevant times herein set forth, the applicable IWC Wage Order and
2 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff and class
3 members' employment by Defendants.

4 84. At all relevant times, the applicable IWC Wage Order provides that "[e]very
5 employer shall authorize and permit all employees to take rest periods, which insofar as
6 practicable shall be in the middle of each work period" and that the "rest period time shall be
7 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
8 hours or major fraction thereof" unless the total daily work time is less than three and one-half
9 (3½) hours.

10 85. At all relevant times, California Labor Code section 226.7 provides that no
11 employer shall require an employee to work during any rest period mandated by an applicable
12 order of the California IWC. To comply with its obligation to authorize and permit rest periods
13 under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer
14 must "relinquish any control over how employees spend their break time, and relieve their
15 employees of all duties—including the obligation that an employee remain on call. A rest
16 period, in short, must be a period of rest." *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th
17 257, 269-270 (2016). Pursuant to the applicable IWC Wage Order and California Labor Code
18 section 226.7(b), Plaintiff and class members are entitled to recover from Defendants one (1)
19 additional hour of pay at their regular rates of pay for each work day that a required rest period
20 was not authorized and permitted.

21 86. During the relevant time period, Defendants regularly failed to authorize and
22 permit Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour
23 period worked or major fraction thereof. As with meal periods, Defendants' company-wide
24 policy of utilizing labor budgets, assigning heavy workloads, and imposing stringent deadlines
25 prevented Plaintiff and class members from being relieved of all duty in order to take compliant
26 rest periods.

27 87. Furthermore, during the relevant time period, Defendants maintained a company-
28 wide on-premises rest period policy, which mandated that Plaintiff and class members remain

1 on Defendants' premises during their rest periods. Because Plaintiff and class members were
2 restricted from leaving the premises during rest periods, they were denied the ability to use their
3 rest periods freely for their own purposes. Thus, Defendants effectively maintained control
4 over Plaintiff and class members during rest periods.

5 88. As a result of Defendants' practices and policies, Plaintiff and class members
6 worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without
7 receiving all uninterrupted 10-minute rest periods to which they were entitled. For example,
8 throughout his employment, Plaintiff missed rest periods and had his rest periods cut short in
9 order to complete all of the furniture repair orders Defendants assigned to him. Additionally,
10 Plaintiff did not receive a third rest period when working shifts in excess of 10 hours.

11 89. Defendants have also engaged in a company-wide practice and/or policy of not
12 paying all rest period premiums owed when compliant rest periods are not authorized and
13 permitted. As a result, Defendants denied Plaintiff and class members rest periods and failed
14 to pay them rest period premium wages due, in violation of Labor Code section 226.7, 516, and
15 the applicable IWC Wage Order.

16 90. Defendants' conduct violates the applicable IWC Wage Order and California
17 Labor Code sections 226.7, 516, and 1198. Plaintiff and class members are therefore entitled
18 to recover from Defendants one (1) additional hour of pay at the employee's regular rate of
19 compensation for each work day that a compliant rest period was not authorized and permitted.

20 **FIFTH CAUSE OF ACTION**

21 **Violation of California Labor Code §§ 226(a), 1174(d), and 1198—Non-Compliant Wage**

22 **Statements and Failure to Maintain Accurate Payroll Records**

23 **(Against all Defendants)**

24 91. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
25 and every allegation set forth above.

26 92. At all relevant times herein set forth, California Labor Code section 226(a)
27 provides that every employer shall furnish each of his or her employees an accurate and
28 complete itemized wage statement in writing, including, but not limited to, the name and address

1 of the legal entity that is the employer, the inclusive dates of the pay period, total hours worked,
2 and all applicable rates of pay.

3 93. At all relevant times, Defendants have knowingly and intentionally provided
4 Plaintiff and Class members with uniform, incomplete, and inaccurate wage statements. For
5 example, Defendants issued uniform wage statements to Plaintiff and Class members that fail
6 to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable
7 hourly rates in effect during the pay period, including overtime rates of pay, and the
8 corresponding number of hours worked at each hourly rate. Specifically, Defendants violated
9 sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

10 94. Because Defendants did not record the time Plaintiff and Class members spent
11 working off-the-clock and deducted time from their records for meal periods that were
12 interrupted and/or missed (and therefore time for which they should have been paid),
13 Defendants did not list the correct amount of gross wages and net wages earned by Plaintiff and
14 Class members in compliance with section 226(a)(1) and section 226(a)(5), respectively. For
15 the same reason, Defendants failed to accurately list the total number of hours worked by
16 Plaintiff and Class members, in violation of section 226(a)(2), and failed to list the applicable
17 hourly rates of pay in effect during the pay period and the corresponding accurate number of
18 hours worked at each hourly rate, in violation of section 226(a)(9)).

19 95. The wage statement deficiencies also include, among other things, failing to list
20 the number of piece-rate units earned and any applicable piece rate if the employee is paid on a
21 piece-rate basis; failing to list all deductions; failing to list the name of the employee and only
22 the last four digits of his or her social security number or an employee identification number
23 other than a social security number; failing to list the name and address of the legal entity that
24 is the employer; failing to list the inclusive dates of the period for which aggrieved employees
25 were paid; and/or failing to state all hours worked as a result of not recording or stating the
26 hours they worked off-the-clock.

27 96. California Labor Code section 1198 provides that the maximum hours of work
28 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set

1 forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he employment
2 of any employees for longer hours than those fixed by the order or under conditions of labor
3 prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers
4 are required to keep accurate time records showing when the employee begins and ends each
5 work period and meal period. During the relevant time period, Defendants failed, on a
6 company-wide basis, to keep accurate records of work period and meal period start and stop
7 times for Plaintiff and Class members, in violation of section 1198. As stated, Defendants
8 engaged in a company-wide practice and/or policy of falsifying Plaintiff’s and Class members’
9 time records by recording that compliant meal periods were taken regardless of if or when meal
10 periods were actually taken, and thereby failed to keep accurate records of meal start and end
11 times for Plaintiff and Class members. Furthermore, in light of Defendants’ failure to provide
12 Plaintiff and Class members with second 30-minute meal periods to which they were entitled,
13 Defendants kept no records of meal start and end times for second meal periods.

14 97. California Labor Code section 1174(d) provides that “[e]very person employing
15 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
16 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
17 plants or establishments at which employees are employed, payroll records showing the hours
18 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
19 applicable piece rate paid to, employees employed at the respective plants or establishments.
20 . . .” At all relevant times, and in violation of Labor Code section 1174(d), Defendants willfully
21 failed to maintain accurate payroll records for Plaintiff and Class members showing the daily
22 hours they worked and the wages paid thereto as a result of failing to record the off-the-clock
23 hours that they worked.

24 98. Plaintiff and Class members are entitled to recover from Defendants the greater
25 of their actual damages caused by Defendants’ failure to comply with California Labor Code
26 section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per
27 employee.

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1 **SIXTH CAUSE OF ACTION**

2 **Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid**

3 **Upon Termination**

4 **(Against all Defendants)**

5 99. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
6 and every allegation set forth above.

7 100. This cause of action is dependent upon, and wholly derivative of, the overtime
8 wages, minimum wages, meal and rest period premium wages, and/or reporting time pay that
9 were not timely paid to Plaintiff and those class members no longer employed by Defendants
10 upon their termination.

11 101. At all times relevant herein set forth, Labor Code sections 201 and 202 provide
12 that if an employer discharges an employee, the wages earned and unpaid at the time of
13 discharge are due and payable immediately, and that if an employee voluntarily leaves his or
14 her employment, his or her wages shall become due and payable not later than seventy-two (72)
15 hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his
16 or her intention to quit, in which case the employee is entitled to his or her wages at the time of
17 quitting.

18 102. Defendants willfully failed to pay Plaintiff and class members who are no longer
19 employed by Defendants the earned and unpaid wages set forth above, including but not limited
20 to, overtime wages, minimum wages, meal and rest period premium wages, and/or reporting
21 time pay either at the time of discharge, or within seventy-two (72) hours of their leaving
22 Defendants' employ.

23 103. Defendants' failure to pay Plaintiff and class members who are no longer
24 employed by Defendants their wages earned and unpaid at the time of discharge, or within
25 seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201
26 and 202. Plaintiff and class members are therefore entitled to recover from Defendants the
27 statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a
28 thirty (30) day maximum pursuant to California Labor Code section 203.

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SEVENTH CAUSE OF ACTION
Violation of California Labor Code § 204—Failure to Timely Pay Wages During
Employment
(Against all Defendants)

104. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

105. This cause of action is dependent upon, and wholly derivative of, the overtime wages, minimum wages, meal and rest period premium wages, and/or reporting time pay that were not timely paid to Plaintiff and those class members.

106. At all times relevant herein set forth, Labor Code section 204 provides that all wages earned by any person in any employment between the first (1st) and the fifteenth (15th) days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of the month during which the labor was performed.

107. At all times relevant herein, Labor Code section 204 provides that all wages earned by any person in any employment between the sixteenth (16th) and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the first (1st) and the tenth (10th) day of the following month.

108. At all times relevant herein, Labor Code section 204 provides that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, at all times relevant herein, Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

109. During the relevant time period, Defendants willfully failed to pay Plaintiff and class members all wages due including, but not limited to, overtime wages, minimum wages, meal and rest period premium wages, and/or reporting time pay within the time periods specified by California Labor Code section 204.

110. Defendants' failure to pay Plaintiff and class members all wages due violates Labor Code section 204. Plaintiff and class members are therefore entitled to recover from Defendants the statutory penalty wages pursuant to California Labor Code section 210.

EIGHTH CAUSE OF ACTION

Violation of Labor Code § 1198 and California Code of Regulations Title 8, Section 11010 Subdivision 5(A)—Failure to Provide Reporting Time Pay (Against all Defendants)

111. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

112. California Labor Code section 1198 dictates that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC wage order. California Labor Code section 1198 further requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

113. The applicable IWC wage order, California Code of Regulations, Title 8, section 11010(5)(A), provides that “[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee’s usual or scheduled day’s work, the employee shall be paid for half the usual or scheduled day’s work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee’s regular rate of pay, which shall not be less than the minimum wage.”

114. During the relevant time period, Defendants violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11010(5)(A), because Defendants failed to pay Plaintiff and class members reporting time pay when they reported to work for their scheduled shift but were put to work for less than half of the regularly scheduled day’s work.

115. Defendants had a company-wide practice of sending Plaintiff and class members home early from their shifts, including before they had worked at least half of their regular shift, but would not pay Plaintiff and class members for half of their scheduled shift. For example,

1 Plaintiff would report to work, but would be sent home after two (2) hours by Defendants’
2 management because work was slow. Although Plaintiff and class members would report to
3 work based on the schedule that Defendants provided to them, Defendants would send them
4 home before they had worked at least half of their scheduled shifts without giving them
5 reporting time pay.

6 116. Accordingly, Plaintiff and class members were not properly compensated with
7 reporting time pay in violation of California Labor Code section 1198.

8 **NINTH CAUSE OF ACTION**

9 **Violation of California Labor Code § 2802—Unpaid Business-Related Expenses**

10 **(Against all Defendants)**

11 117. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
12 and every allegation set forth above.

13 118. At all times herein set forth, California Labor Code section 2802 provides that
14 an employer must reimburse employees for all necessary expenditures and losses incurred by
15 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
16 to prevent employers from passing off their cost of doing business and operating expenses on
17 to their employees. *Cochran v. Schwan’s Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
18 (2014). The applicable wage order, IWC Wage Order 1-2001, provides that: “[w]hen tools or
19 equipment are required by the employer or are necessary to the performance of a job, such tools
20 and equipment shall be provided and maintained by the employer, except that an employee
21 whose wages are at least two (2) times the minimum wage provided herein may be required to
22 provide and maintain hand tools and equipment customarily required by the trade or craft.”

23 119. During the relevant time period, Defendants, on a company-wide basis, required
24 that Plaintiff and class members use their own personal cellular phones and/or cellular data to
25 carry out their job duties, but failed to reimburse them for the costs of their work-related cellular
26 phone expenses. As stated, Plaintiff and class members were required to use their personal
27 cellular phones to complete their tasks, such as discussing work-related matters with supervisors
28 off-the-clock. For example, as stated, Defendants required Plaintiff to respond to phone calls

1 from his manager on his personal cellular phone to discuss details about his previous shifts.
2 Although Defendants required Plaintiff and class members to utilize their personal cellular
3 phones to carry out their work-related responsibilities, Defendants failed to fully reimburse them
4 for this cost.

5 120. Defendants could have provided Plaintiff and class members with the actual tools
6 for use on the job, such as company phones, or Defendants could have fully reimbursed
7 employees for their cellular phone expenses. Instead, Defendants passed these operating costs
8 off onto Plaintiff and class members.

9 121. Defendants' company-wide policy and/or practice of passing on their operating
10 costs to Plaintiff and class members violates California Labor Code section 2802. Defendants
11 have intentionally and willfully failed to reimburse Plaintiff and other class members for
12 necessary business-related expenses and costs.

13 122. Plaintiff and class members are entitled to recover from Defendants their
14 business-related expenses incurred during the course and scope of their employment, plus
15 interest.

16 **TENTH CAUSE OF ACTION**

17 **For Civil Penalties Pursuant to California Labor Code §§ 2698, *et seq.***

18 **(Against all Defendants)**

19 123. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
20 and every allegation set forth above.

21 124. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover
22 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section
23 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 222.5, 226(a),
24 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Labor Code section 2699.3(c)
25 permits aggrieved employees, including Plaintiff, to recover civil penalties for violations of
26 those Labor Code sections not found in section 2699.5, including sections 516, 1182.12, 6401,
27 and 6403.

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1 125. Defendants' conduct, as alleged herein, violates numerous sections of the
2 California Labor Code, including, but not limited to, the following:

- 3 (f) Violation of Labor Code sections 510, 1198, and the applicable IWC
4 wage order for Defendants' failure to compensate Plaintiff and other
5 aggrieved employees with all required overtime pay, as alleged herein;
- 6 (g) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, 1198, and
7 the applicable IWC wage order for Defendants' failure to compensate
8 Plaintiff and other aggrieved employees with at least minimum wages for
9 all hours worked, as alleged herein;
- 10 (h) Violation of Labor Code sections 226.7, 512, 516, 1198, and the
11 applicable IWC wage order for Defendants' failure to provide Plaintiff
12 and other aggrieved employees with meal periods, as alleged herein;
- 13 (i) Violation of Labor Code sections 226.7, 516, 1198, and the applicable
14 IWC wage order for Defendants' failure to authorize and permit Plaintiff
15 and other aggrieved employees to take rest periods, as alleged herein;
- 16 (j) Violation of Labor Code sections 226(a), 1198, and the applicable IWC
17 wage order for failure to provide accurate and complete wage statements
18 to Plaintiff and other aggrieved employees, as alleged herein;
- 19 (k) Violation of Labor Code sections 1174(d), 1198, and the applicable IWC
20 wage order for failure to maintain payroll records as alleged herein;
- 21 (l) Violation of Labor Code sections 201, 202, and 203 for failure to pay all
22 earned wages upon termination, as alleged herein;
- 23 (m) Violation of Labor Code section 204 for failure to pay all earned wages
24 during employment, as alleged herein;
- 25 (n) Violation of Labor Code section 222.5 for failure to compensate other
26 aggrieved employees for mandatory physical examinations and/or drug
27 testing as set forth below;
- 28 (o) Violation of Labor Code section 1198 and the applicable IWC wage order

1 for failure to pay reporting time pay when Plaintiff and other aggrieved
2 employees were put to work for less than half of their regular scheduled
3 shifts, as alleged herein;

4 (p) Violation of Labor Code section 2802 for failure to reimburse Plaintiff
5 and other aggrieved employees for all business expenses necessarily
6 incurred, as alleged herein; and

7 (q) Violation of Labor Code sections 6401 and 6403 for failure to provide
8 safety devices and safeguards, such as personal protective equipment, to
9 other aggrieved employees, as set forth below.

10 126. At all relevant times herein, California Labor Code section 222.5 requires
11 employers to pay for the costs an employee incurs for obtaining any medical or physical
12 examination taken.

13 127. At all times relevant herein, Defendants implemented, on a company-wide basis,
14 an employer-imposed requirement that other aggrieved employees undergo a mandatory
15 physical examination and/or drug test, but required them to do so at their own expense. As
16 stated, Defendants had a company-wide policy requiring that all employees travel to a specified
17 medical facility using their own personal vehicles to undergo drug testing and/or physical
18 examinations. At all times, Defendants were in control of scheduling the date and time for the
19 examination and/or testing, selecting the provider/facility where the examination and/or testing
20 was to take place, and determining the scope of the examination and/or testing.

21 128. During the relevant time period, other aggrieved employees were required to
22 travel in their own personal vehicles or use alternate forms of transportation to designated
23 medical facilities and spend time undergoing Defendants' mandatory drug test and/or physical
24 examination. However, Defendants did not compensate other aggrieved employees for the time
25 they spent traveling to and from the medical facilities; for the time they spent undergoing the
26 drug testing and/or physical examinations; or reimburse them for the travel expenses they
27 incurred getting to and from the medical facilities. Defendants' policy and/or practice of not
28 paying for all costs other aggrieved employees incurred obtaining mandatory drug tests and/or

1 physical examinations violates California Labor Code section 222.5. Other aggrieved
2 employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
3 2699(a), (f), and (g).

4 129. At all times herein set forth, California Labor Code section 6401 provides that
5 employers must furnish and use safety devices and safeguards, and adopt and use practices,
6 means, methods, operations, and processes which are reasonably adequate to render the
7 employment and place of employment safe and healthy. California Labor Code Section 6401
8 further provides that an employer must to everything reasonably necessary to protect the life,
9 safety and health of its employees. California Labor Code section 6403(a) requires that
10 employers provide and use safety devices and safeguards reasonably adequate to render the
11 employment and place of employment safe.

12 130. Defendants, on a company-wide basis, failed to provide other aggrieved
13 employees with safety devices and safeguards such as steel-toed boots, to keep them safe in the
14 workplace. Despite the fact that Defendants required employees to wear certain personal
15 protective equipment, including steel-toed boots, Defendants failed to provide such reasonably
16 necessary equipment to other aggrieved employees to keep them safe.

17 131. Defendants' failure to provide other aggrieved employees with safety devices
18 and safeguards for the workplace violates Labor Code sections 6401 and 6403. Other aggrieved
19 employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
20 2699(a), (f), and (g).

21 **ELEVENTH CAUSE OF ACTION**

22 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

23 **Unlawful Business Practices**

24 **(Against all Defendants)**

25 132. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
26 and every allegation set forth above.

27 133. Defendants are "persons" as defined by California Business & Professions Code
28 sections 17201, as they are corporations, firms, partnerships, joint stock companies, and/or

1 associations.

2 134. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
3 unlawful and harmful to Plaintiff, class members, and to the general public. Plaintiff has
4 suffered injury in fact and has lost money as a result of Defendants' unlawful business practices.
5 Plaintiff seeks to enforce important rights affecting the public interest within the meaning of
6 Code of Civil Procedure section 1021.5.

7 135. Defendants' activities, as alleged herein, are violations of California law, and
8 constitute unlawful business acts and practices in violation of California Business & Professions
9 Code sections 17200, *et seq.*

10 136. A violation of California Business & Professions Code sections 17200, *et seq.*
11 may be predicated on the violation of any state or federal law. In the instant case, Defendants'
12 policies and practices have violated state law in at least the following respects:

- 13 (a) Requiring non-exempt, hourly paid employees, including Plaintiff and
14 class members, to work overtime without paying them proper
15 compensation in violation of California Labor Code sections 510 and
16 1198 and the applicable IWC Order, as alleged herein;
- 17 (b) Failing to pay at least minimum wage to Plaintiff and class members in
18 violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1,
19 and 1198 and the applicable IWC Order, as alleged herein;
- 20 (c) Failing to provide uninterrupted meal periods to Plaintiff and class
21 members in violation of California Labor Code sections 226.7, 512(a),
22 516, 1198, and the applicable IWC Order, as alleged herein;
- 23 (d) Failing to authorize and permit Plaintiff and class members to take
24 uninterrupted rest periods in violation of California Labor Code sections
25 226.7, 516, 1198, and the applicable IWC Order, as alleged herein;
- 26 (e) Failing to provide Plaintiff and class members with accurate wage
27 statements and failing to maintain accurate payroll records in violation of
28 California Labor Code sections 226(a), 1174(d), 1198, and the applicable

IWC Order, as alleged herein;

(f) Failing timely to pay all earned wages to Plaintiff and class members in violation of California Labor Code section 204 and the applicable IWC Order, as alleged herein;

(g) Failing to pay reporting time pay in violation of California Labor Code section 1198 and the applicable Industrial Welfare Commission Order, as alleged herein; and

(h) Failing to reimburse Plaintiff and class members for all business expenses necessarily incurred in violation of California Labor Code sections 2802, as alleged herein.

137. As a result of the violations of California law herein described, Defendants unlawfully gained an unfair advantage over other businesses. Plaintiff and class members have suffered pecuniary loss by Defendants' unlawful business acts and practices alleged herein.

138. Pursuant to California Business & Professions Code sections 17200 *et seq.*, Plaintiff and class members are entitled to restitution of the wages withheld and retained by Defendants during a period that commences four years prior to the filing of this complaint; a permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and class members; and an award of attorneys' fees pursuant to California Code of Civil Procedure section 1021.5 and other applicable laws; and an award of costs.

TWELFTH CAUSE OF ACTION

Violation of California Business & Professions Code §§ 17200, *et seq.* –

Unfair Business Practices

(Against all Defendants)

139. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

140. Defendants are "persons" as defined by California Business & Professions Code sections 17201, as they are corporations, firms, partnerships, joint stock companies, and/or associations.

141. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair, and harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered injury in fact and has lost money as a result of Defendants’ unfair business practices. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

142. Defendants’ activities, namely Defendants’ company-wide practice and/or policy of not paying Plaintiff and class members all meal and rest period premium wages due to them under Labor Code section 226.7, deprived Plaintiff and class members of the compensation guarantee and enhanced enforcement implemented by section 226.7. The statutory remedy provided by section 226.7 is a “‘dual-purpose’ remedy intended primarily to compensate employees, and secondarily to shape employer conduct. *Safeway, Inc. v. Superior Court*, 238 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7 were guaranteed to Plaintiff and class members as part of their employment with Defendants, and thus Defendants’ practice and/or policy of denying these statutory benefits constitutes an unfair business practice in violation of California Business & Professions Code sections 17200, *et seq.* (*Id.*)

143. A violation of California Business & Professions Code sections 17200, *et seq.* may be predicated on any unfair business practice. In the instant case, Defendants’ policies and practices have violated the spirit of California’s meal and rest period laws and constitute acts against the public policy behind these laws.

144. Pursuant to California Business & Professions Code sections 17200 *et seq.*, Plaintiff and class members are entitled to restitution for the class-wide loss of the statutory benefits implemented by section 226.7 withheld and retained by Defendants during a period that commences four years prior to the filing of this complaint; a permanent injunction requiring Defendants to pay all statutory benefits implemented by section 226.7 due to Plaintiff and class members; an award of attorneys’ fees pursuant to California Code of Civil Procedure section 1021.5 and other applicable laws; and an award of costs.

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REQUEST FOR JURY TRIAL

Plaintiff requests a trial by jury.

PRAYER FOR RELIEF

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

1. For damages, unpaid wages, penalties, injunctive relief, and attorneys’ fees in excess of twenty-five thousand dollars (\$25,000), exclusive of interest and costs. Plaintiff reserves the right to amend his prayer for relief to seek a different amount.

Class Certification

- 2. That this case be certified as a class action;
- 3. That Plaintiff be appointed as the representative of the Class;
- 4. That counsel for Plaintiff be appointed as class counsel.

As to the First Cause of Action

5. That the Court declare, adjudge, and decree that Defendants violated California Labor Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all overtime wages due to Plaintiff and class members;

6. For general unpaid wages at overtime wage rates and such general and special damages as may be appropriate;

7. For pre-judgment interest on any unpaid overtime compensation commencing from the date such amounts were due, or as otherwise provided by law;

8. For reasonable attorneys’ fees and for costs of suit incurred herein pursuant to California Labor Code section 1194(a); and

9. For such other and further relief as the Court may deem equitable and appropriate.

As to the Second Cause of Action

10. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 by willfully failing to pay minimum wages to Plaintiff and class members;

11. For general unpaid wages and such general and special damages as may be appropriate;

12. For pre-judgment interest on any unpaid compensation from the date such amounts were due, or as otherwise provided by law;

13. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California Labor Code section 1194(a);

14. For liquidated damages pursuant to California Labor Code section 1194.2; and

15. For such other and further relief as the Court may deem equitable and appropriate.

As to the Third Cause of Action

16. That the Court declare, adjudge, and decree that Defendants violated California Labor Code sections 226.7, 512(a), 516, and 1198 and applicable IWC Wage Order(s) by willfully failing to provide all meal periods to Plaintiff and class members;

17. That the Court make an award to the Plaintiff and class members of one (1) hour of pay at each employee's regular rate of pay for each workday that a meal period was not provided;

18. For all actual, consequential, and incidental losses and damages, according to proof;

19. For premiums pursuant to California Labor Code section 226.7(c);

20. For pre-judgment interest on any unpaid meal period premiums from the date such amounts were due, or as otherwise provided by law;

21. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

22. For such other and further relief as the Court may deem equitable and appropriate.

As to the Fourth Cause of Action

23. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7, 516, and 1198 and applicable IWC Wage Orders by willfully failing

1 to authorize and permit Plaintiff and class members to take all rest periods;

2 24. That the Court make an award to the Plaintiff and class members of one (1) hour
3 of pay at each employee's regular rate of pay for each workday that a rest period was not
4 authorized and permitted;

5 25. For all actual, consequential, and incidental losses and damages, according to
6 proof;

7 26. For premiums pursuant to California Labor Code section 226.7(c);

8 27. For pre-judgment interest on any unpaid rest period premiums from the date such
9 amounts were due, or as otherwise provided by law;

10 28. For attorneys' fees pursuant to California Code of Civil Procedure section
11 1021.5, or as otherwise provided by law; and

12 29. For such other and further relief as the Court may deem equitable and
13 appropriate.

14 **As to the Fifth Cause of Action**

15 30. That the Court declare, adjudge and decree that Defendants violated the
16 recordkeeping provisions of California Labor Code section 226(a) and applicable IWC Wage
17 Orders as to Plaintiff and Class members, and willfully failed to provide accurate itemized wage
18 statements thereto;

19 31. For all actual, consequential, and incidental losses and damages, according to
20 proof;

21 32. For injunctive relief pursuant to California Labor Code section 226(h);

22 33. For statutory penalties pursuant to California Labor Code section 226(e);

23 34. For attorneys' fees and costs pursuant to California Labor Code section
24 226(e)(1); and

25 35. For such other and further relief as the Court may deem equitable and
26 appropriate.

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1 47. For such other and further relief as the Court may deem equitable and
2 appropriate.

3 **As to the Eighth Cause of Action**

4 48. That the Court declare, adjudge and decree that Defendants violated California
5 Labor Code section 1198 and California Code of Regulations, Title 8, section 11010(5)(A) by
6 failing to provide Plaintiff and class members with reporting time pay;

7 49. For all actual, consequential and incidental losses and damages, according to
8 proof;

9 50. For pre-judgment interest on any unpaid wages from the date such amounts were
10 due, or as otherwise provided by law; and

11 51. For such other and further relief as the Court may deem equitable and
12 appropriate.

13 **As to the Ninth Cause of Action**

14 52. That the Court declare, adjudge and decree that Defendants violated California
15 Labor Code section 2802 by willfully failing to reimburse and/or indemnify all business-related
16 expenses and costs incurred by Plaintiff and class members;

17 53. For unpaid business-related expenses and such general and special damages as
18 may be appropriate;

19 54. For pre-judgment interest on any unpaid business-related expenses from the date
20 such amounts were due, or as otherwise provided by law;

21 55. For all actual, consequential, and incidental losses and damages, according to
22 proof;

23 56. For attorneys' fees and costs pursuant to California Labor Code section 2802(c),
24 or as otherwise provided by law; and

25 57. For such other and further relief as the Court may deem equitable and
26 appropriate.

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1 **As to the Tenth Cause of Action**

2 58. That the Court declare, adjudge and decree that Defendants violated the
3 following California Labor Code provisions as to Plaintiff and/or other aggrieved employees:
4 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, 1197.1, and
5 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512, 516, and
6 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and
7 permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
8 statements and maintain accurate payroll records); 201, 202, and 203 (by failing timely to pay
9 all earned wages upon termination); 204 (by failing timely to pay all earned wages during
10 employment); 222.5 (by failing to pay the costs of mandatory drug testing and/or physical
11 examinations); 1198 (by failing to provide reporting time pay); 2802 (by failing to reimburse
12 business expenses); and 6401 and 6403 (by failing to provide safety devices and safeguards);

13 59. For civil penalties pursuant to California Labor Code sections 210, 226.3, 256,
14 558, 1174.5, 1197.1, and/or 2699(a), (f) and (g), for violations of California Labor Code sections
15 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197,
16 1197.1, 1198, 2802, 6401, and 6403;

17 60. For attorneys' fees and costs pursuant to California Labor Code section
18 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
19 Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d),
20 1182.12, 1194, 1197, 1197.1, 1198, 2802, 6401, and 6403;

21 61. For pre-judgment and post-judgment interest as provided by law; and

22 62. For such other and further relief as the Court may deem equitable and
23 appropriate.

24 **As to the Eleventh Cause of Action**

25 63. That the Court declare, adjudge and decree that Defendants' conduct of failing
26 to provide Plaintiff and class members all overtime wages due to them, failing to provide
27 Plaintiff and class members all minimum wages due to them, failing to provide Plaintiff and
28 class members all meal periods, failing to authorize and permit Plaintiff and class members to

1 take all rest periods, failing to provide Plaintiff and class members accurate and complete wage
2 statements, failing to maintain accurate payroll records for Plaintiff and class members, failing
3 timely to pay Plaintiff and class members all earned wages during employment, failing to pay
4 Plaintiff and class members reporting time pay, and failing to reimburse Plaintiff and class
5 members for business-related expenses, constitutes an unlawful business practice in violation
6 of California Business and Professions Code sections 17200, *et seq.*;

7 64. For restitution of unpaid wages to Plaintiff and all class members and
8 prejudgment interest from the day such amounts were due and payable;

9 65. For the appointment of a receiver to receive, manage and distribute any and all
10 funds disgorged from Defendants and determined to have been wrongfully acquired by
11 Defendants as a result of violations of California Business & Professions Code sections 17200
12 *et seq.*;

13 66. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
14 California Code of Civil Procedure section 1021.5; and

15 67. For such other and further relief as the Court may deem equitable and
16 appropriate.

17 **As to the Twelfth Cause of Action**

18 68. That the Court declare, adjudge and decree that Defendants' conduct of denying
19 Plaintiff and class members the statutory benefits guaranteed under section 226.7 constitutes an
20 unfair business practice in violation of California Business and Professions Code sections
21 17200, *et seq.*;

22 69. For restitution of the statutory benefits under section 226.7 unfairly withheld
23 from Plaintiff and class members and prejudgment interest from the day such amounts were due
24 and payable;

25 70. For the appointment of a receiver to receive, manage and distribute any and all
26 funds disgorged from Defendants and determined to have been wrongfully acquired by
27 Defendants as a result of violations of California Business & Professions Code sections 17200
28 *et seq.*;

1 71. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
2 California Code of Civil Procedure section 1021.5;

3 72. For pre-judgment and post-judgment interest as provided by law; and

4 73. For such other and further relief as the Court may deem equitable and
5 appropriate.

6
7 Dated: January 12, 2022

Respectfully submitted,

8 Capstone Law APC

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10 By: 
11 Bevin Allen Pike
12 Daniel Jonathan
13 Trisha K. Monesi

14 Attorneys for Plaintiff Jose Hernandez
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EXHIBIT “1”

JULIAN QUATTLEBAUM
310.712.8154 Direct
Julian.Quattlebaum@capstonelawyers.com

October 7, 2020

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/295>)

Subject: *Jose Hernandez v. Euromarket Designs, Inc.*

Dear PAGA Administrator:

This office represents Jose Hernandez in connection with his claims under the California Labor Code. Mr. Hernandez was an employee of EUROMARKET DESIGNS, INC. ("CRATE & BARREL").

The employer may be contacted directly at the addresses below:

EUROMARKET DESIGNS, INC.
1250 TECHNY RD
NORTHBROOK, IL 60062

Mr. Hernandez intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Hernandez seeks relief on behalf of himself, the State of California, and other persons who are or were employed by CRATE & BARREL as a non-exempt, hourly paid employee in California and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

CRATE & BARREL employed Mr. Hernandez as an hourly paid, non-exempt employee from approximately September 2007 to May 20, 2020. Most recently, CRATE & BARREL employed Mr. Hernandez as a Shop Finisher from approximately June 2013 to the end of his employment. Mr. Hernandez worked for CRATE & BARREL at its warehouse/distribution center location in Tracy, California. During his employment, Mr. Hernandez typically worked eight (8) to ten (10) hours per day, and five (5) to six (6) days per week. At the time Mr. Hernandez's employment with CRATE & BARREL ended, he earned approximately \$25.47 per hour. His job duties included, without limitation, examining and repairing furniture, sanding and trimming wood pieces, operating handheld burners, mixing paints and lacquers, and occasionally operating forklifts and other heavy machinery.

CRATE & BARREL committed one or more of the following Labor Code violations against Mr. Hernandez, the facts and theories of which follow, making him an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

CRATE & BARREL’s Company-Wide and Uniform Payroll and HR Practices

EUROMARKET DESIGNS, INC. is an Illinois corporation and a leading home furnishings specialty retailer that owns and operates “Crate & Barrel” branded stores in the United States and Canada. Upon information and belief, CRATE & BARREL maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Northbrook, Illinois, for all non-exempt, hourly paid employees working for CRATE & BARREL in California, including Mr. Hernandez and other aggrieved employees. At all relevant times, CRATE & BARREL issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Hernandez and other aggrieved employees, regardless of their location or position.

Upon information and belief, CRATE & BARREL maintains a centralized Payroll department at its corporate headquarters in Northbrook, Illinois, which processes payroll for all non-exempt, hourly paid employees working for CRATE & BARREL in California, including Mr. Hernandez and other aggrieved employees. Further, CRATE & BARREL issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Mr. Hernandez and other aggrieved employees, irrespective of their location, position, or manner in which each employee’s employment ended. In other words, CRATE & BARREL utilized the same methods and formulas when calculating wages due to Mr. Hernandez and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

CRATE & BARREL willfully failed to pay all overtime wages owed to Mr. Hernandez and other aggrieved employees. During the relevant time period, Mr. Hernandez and other aggrieved

¹ These facts, theories, and claims are based on Mr. Hernandez’s experience and counsel’s review of those records currently available relating to Mr. Hernandez’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Mr. Hernandez reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, CRATE & BARREL had, and continues to have, a company-wide policy of strictly staffing its warehouse locations based on the labor hours allocated by each location's labor or payroll budget. This practice of labor budgeting, combined with the assignment of heavy workloads and stringent deadlines, has resulted in, and continues to result in, chronic understaffing and a lack of adequate meal period coverage, because there were too few employees on duty to handle the workload. As a result of this inadequate meal period coverage, Mr. Hernandez and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. For example, at least once per month, CRATE & BARREL instructed Mr. Hernandez to work through part of his meal period in order to repair custom furniture that had to meet strict delivery deadlines. Moreover, CRATE & BARREL had a practice of failing to adhere to a schedule of meal periods, which further caused Mr. Hernandez and other aggrieved employees to not be relieved of their duties for compliant meal periods.

Second, on information and belief, because CRATE & BARREL frowned upon employees accruing meal period penalties, CRATE & BARREL's management would adjust Mr. Hernandez's and other aggrieved employees' time records and/or pressured employees to clock out for meal periods to reflect compliant meal periods, regardless of whether they had actually received a compliant meal period, in order to strictly limit meal penalties that CRATE & BARREL would otherwise owe. Consequently, Mr. Hernandez and other aggrieved employees performed work during meal periods for which they were not paid.

Third, during the relevant period, CRATE & BARREL had, and continues to have, a company-wide policy and/or practice of requiring employees to complete work-related tasks while off-the-clock. For example, during his employment, CRATE & BARREL routinely instructed Mr. Hernandez to spend 15-30 minutes performing furniture repairs prior to clocking in or after clocking out, in order to meet strict delivery deadlines. Moreover, Mr. Hernandez spent 10 minutes off-the-clock per month responding to phone calls from his manager to discuss details about his previous shifts. Thus, CRATE & BARREL failed to track this time spent working before and after scheduled shifts, and Mr. Hernandez and other aggrieved employees received no compensation for this time.

Fourth, CRATE & BARREL had, and continues to have, a loss prevention policy requiring Mr. Hernandez and other aggrieved employees to undergo security checks at the beginning of their meal periods and/or at the end of their shifts before leaving the warehouse premises. Before meal periods and/or at the end of their shifts, Mr. Hernandez and other aggrieved employees were required to wait off-the-clock for several minutes in order to undergo a security check before they could leave. As a result, Mr. Hernandez and other aggrieved employees were subject to CRATE & BARREL's control until being released by a security guard, but were not compensated for this time.

CRATE & BARREL knew or should have known that as a result of these company-wide practices and/or policies, Mr. Hernandez and/or other aggrieved employees were performing their assigned duties off-the-clock and/or were working during their meal periods, and were suffered or permitted to perform work for which they were not paid. Because Mr. Hernandez and other aggrieved employees worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Mr. Hernandez and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Furthermore, CRATE & BARREL did not pay other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, CRATE & BARREL paid other aggrieved employees shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, CRATE & BARREL failed to incorporate all compensation, including, but not limited to, shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when other aggrieved employees worked overtime and received these other forms of pay, CRATE & BARREL failed to pay all overtime wages by paying a lower overtime rate than required.

Mr. Hernandez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 1 as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code. Regs. tit. 8, § 11010(2)(G) (defining “Hours Worked”).

As stated above, due to CRATE & BARREL's practice of utilizing labor budgets, assignment of heavy workloads and stringent deadlines, failure to adhere to a schedule of meal periods, and subsequent lack of meal period coverage, Mr. Hernandez and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock. Additionally, as set forth, CRATE & BARREL systematically failed to pay Mr. Hernandez and other aggrieved employees for actual hours worked during unpaid meal periods, because these hours were not always correctly recorded. In addition, as set forth above, CRATE & BARREL required Mr. Hernandez and other aggrieved employees to complete work-related tasks and undergo security checks while off-the-clock, but did not compensate them for this time.

Furthermore, CRATE & BARREL maintained and implemented a company-wide policy of requiring all employees to travel to a medical facility on their own time and using their own personal vehicles to undergo mandatory drug testing and/or physical examinations. At all times, CRATE & BARREL was in control of scheduling the time period for the testing and/or physical examinations, selecting the provider or facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations. CRATE & BARREL gave other aggrieved employees strict instructions to obtain drug testing and/or physical examinations, and other aggrieved employees underwent the testing and/or examinations for the sole benefit of CRATE & BARREL. Other aggrieved employees were required to travel in their personal vehicles or obtain alternate transportation and spend time undergoing the requisite testing and/or examinations. However, CRATE & BARREL did not compensate other aggrieved employees for the time they spent traveling to and from the medical facilities and for the time they spent undergoing the mandatory drug testing and/or physical examinations.

Thus, CRATE & BARREL did not pay at least minimum wages for off-the-clock hours that qualified for overtime premium payment. Also, to the extent that these off-the-clock hours did not qualify for overtime premium payment, CRATE & BARREL did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, and 1197.1. Accordingly, CRATE & BARREL regularly failed to pay at least minimum wages to Mr. Hernandez and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Mr. Hernandez and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, 1198 and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal. 2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

First, as stated, CRATE & BARREL had, and continues to have, a company-wide policy of utilizing labor budgets, assigning heavy workloads and stringent deadlines, and failing to adhere to a schedule of meal periods, which prevented Mr. Hernandez and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. As a result, Mr. Hernandez and other aggrieved employees had to work through part or all of their meal periods, have their meal periods interrupted, and/or wait extended periods of time before taking meal periods. For example, once per month, CRATE & BARREL interrupted Mr. Hernandez's meal periods to instruct him to spend 10-15 minutes repairing custom furniture that needed to be completed to meet delivery deadlines. Additionally, once per month, Mr. Hernandez would not be able to take his meal period until 15-30 minutes after his 5th hour of work due to the number of repair orders CRATE & BARREL required him to complete.

Second, as stated, upon information and belief, because CRATE & BARREL frowned upon employees accruing meal period penalties, CRATE & BARREL's management would adjust Mr. Hernandez's and other aggrieved employees' time records and/or pressured employees to clock out for meal periods to reflect compliant meal periods, regardless of whether they had received a compliant meal period, in order to strictly limit meal penalties that CRATE & BARREL would otherwise owe.

Third, as stated, CRATE & BARREL required its employees to be subject to loss prevention policies, which resulted in Mr. Hernandez and other aggrieved employees receiving shortened meal periods, because they were required to undergo mandatory security checks before leaving the warehouse premises. For example, when Mr. Hernandez was carrying a personal bag and intended to take his meal period off premises, he would have to spend several minutes off the clock during his meal period waiting for and undergoing a security check before CRATE & BARREL permitted him to leave.

In addition, CRATE & BARREL did not schedule second meal periods and had no policy for permitting Mr. Hernandez and other aggrieved employees to take second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. For example, Mr. Hernandez would work shifts in excess of ten (10) hours per day, and was not provided his second meal period during these shifts. Mr. Hernandez and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

Moreover, CRATE & BARREL implemented a company-wide policy of requiring all employees, including Mr. Hernandez and other aggrieved employees, to sign blanket meal period waivers. CRATE & BARREL took the position that non-exempt, hourly paid employees working six (6) hour shifts had waived their rights to take a 30-minute meal period on these particular shifts, for the entirety of their employment and, on that basis, did not provide them with all meal periods to which they were entitled. Specifically, CRATE & BARREL's "Meal Period Waiver Agreement" provides that the waiver remains in effect until the employee provides written notice of his or her decision to revoke. CRATE & BARREL's imposition of the burden on employees to revoke the meal period waiver in writing discouraged and prevented Mr. Hernandez and other aggrieved employees from taking meal periods.

In addition, an employer's obligation to provide a meal period is only "triggered" when the employer "employs an employee for a work period of more than five hours per day." *Brinker*, 53 Cal. 4th at 1039 ("If an employer engages, suffers, or permits anyone to work for a full five hours, its meal break obligation is triggered.").

[A]fter the meal break obligation is triggered . . . an employer is put to a choice: it must (1) afford an off-duty meal period; (2) consent to a mutually agreed-upon waiver if one hour or less will end the shift; or (3) obtain written agreement to an on-duty meal period if circumstances permit. Failure to do one of these will render the employer liable for premium pay. *Id.* (citing Cal. Labor Code § 226.7; Wage Order No. 5, subd. 11(A), (B)).

That CRATE & BARREL requires employees to sign meal period waivers in advance (as opposed to on a specific work day) renders them invalid and unenforceable, because CRATE & BARREL's obligation to provide Mr. Hernandez and other aggrieved employees with meal periods did not arise until CRATE & BARREL had employed them for a full five (5) hours.

CRATE & BARREL knew or should have known that, as a result of its company-wide policies and/or practices, Mr. Hernandez and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. CRATE & BARREL further knew or should have known that it did not pay Mr. Hernandez and other aggrieved employees meal period premium wages when meal periods were late, interrupted, shortened, and/or missed.

Furthermore, CRATE & BARREL engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Hernandez and other aggrieved employees have not received premium pay for all missed, interrupted, or late meal periods. Alternatively, to the extent that CRATE & BARREL did pay other aggrieved employees premium pay for missed, late, and interrupted meal periods, CRATE & BARREL did not pay other aggrieved employees at the correct rate of pay for premium wages because CRATE & BARREL systematically failed to include all forms of compensation, such as shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, CRATE & BARREL failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Hernandez and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, 1198 and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties — including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

During the relevant time period, CRATE & BARREL regularly failed to authorize and permit Mr. Hernandez and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, CRATE & BARREL's company-wide policies of utilizing labor budgets, assigning heavy workloads, and imposing stringent deadlines prevented Mr. Hernandez and other aggrieved employees from being relieved of all duty in order to take compliant rest periods.

Furthermore, during the relevant time period, CRATE & BARREL maintained a company-wide on-premises rest period policy, which mandated that Mr. Hernandez and other aggrieved employees remain on CRATE & BARREL's premises during their rest periods. Because Mr. Hernandez and other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes. Thus, CRATE & BARREL effectively maintained control over Mr. Hernandez and other aggrieved employees during rest periods.

As a result, Mr. Hernandez and other aggrieved employees would work shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without being permitted and authorized to take all ten (10) minute rest periods to which they were entitled. For example, throughout his employment, Mr. Hernandez missed his rest periods three (3) times per month and had his rest periods cut short three (3) times per month, in order to complete all of the furniture repair orders CRATE & BARREL assigned to him. Additionally, Mr. Hernandez did not receive a third rest period when working shifts in excess of 10 hours.

CRATE & BARREL has also engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Alternatively, to the extent that CRATE & BARREL did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, CRATE & BARREL did not pay other aggrieved employees at the correct rate of pay for premium wages because CRATE & BARREL failed to include all forms of compensation, such as shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, CRATE & BARREL failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Hernandez and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. CRATE & BARREL has not provided Mr. Hernandez and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wages statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50.00 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, CRATE & BARREL has knowingly and intentionally provided Mr. Hernandez and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, CRATE & BARREL issued uniform wage statements to Mr. Hernandez and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including overtime rates of pay, and the corresponding number of hours worked at each hourly rate. Specifically, CRATE & BARREL violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because CRATE & BARREL did not record the time Mr. Hernandez and other aggrieved employees spent working off-the-clock and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), CRATE & BARREL did not list the correct amount of gross wages and net wages earned by Mr. Hernandez and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively.

For the same reason, CRATE & BARREL failed to accurately list the total number of hours worked by Mr. Hernandez and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Also, because CRATE & BARREL did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime, CRATE & BARREL did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, CRATE & BARREL also failed to list the correct amount of net wages in violation of section 226(a)(5). CRATE & BARREL also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct overtime rates of pay and correct rates of pay for meal and rest premium wages, in violation of section 226(a)(9).

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name and address of the legal entity that is the employer; failing to list the inclusive dates of the period for which aggrieved employees were paid; and/or failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock.

California Labor Code section 1174(d) provides that "[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors" and "[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments" Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), CRATE & BARREL willfully failed to maintain accurate payroll records for Mr. Hernandez and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Orders. Section 1198 further provides that "[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful." Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, CRATE & BARREL failed, on a company-wide basis, to keep accurate records of work period and meal period start and stop times for Mr. Hernandez and other aggrieved employees, in violation of section 1198. As stated, CRATE & BARREL engaged in a company-wide practice and/or policy of falsifying Mr. Hernandez's and other aggrieved employees' time records by deducting meal periods or recording that compliant meal periods were taken regardless of if or when meal periods were actually taken, and thereby failed to keep accurate records of meal start and end times for Mr. Hernandez and other aggrieved employees. Furthermore, in light of CRATE & BARREL's failure to provide Mr. Hernandez and other aggrieved employees with second 30-minute meal periods to which they were entitled, CRATE & BARREL kept no records of meal start and end times for second meal periods.

Because CRATE & BARREL failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Hernandez and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mr. Hernandez and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. Hernandez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, CRATE & BARREL failed to pay Mr. Hernandez and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, meal and rest period premium wages, and/or reporting time pay, within any time period specified by California Labor Code section 204.

Mr. Hernandez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201, 202, and 203 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201, 202, and 203 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

CRATE & BARREL willfully failed to pay Mr. Hernandez and other aggrieved employees who are no longer employed by CRATE & BARREL all their earned wages, including, but not limited to, overtime wages, minimum wages, meal and rest period premium wages, and/or reporting time pay, either at the time of discharge, or within seventy-two (72) hours of their leaving CRATE & BARREL's employ in violation of California Labor Code sections 201, 202, and 203.

Mr. Hernandez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 222.5 – Failure to Pay for Costs of Mandatory Physical Exams and/or Drug Testing

At all times herein set forth, California Labor Code section 222.5 requires employers to pay for the costs an employee incurs for obtaining any required medical or physical examination.

During the relevant time period, CRATE & BARREL implemented, on a company-wide basis, an employer-imposed requirement that other aggrieved employees undergo a mandatory physical examination and/or drug test, but required them to do so at their own expense. As stated, CRATE & BARREL had a company-wide policy requiring that all employees travel to a specified medical facility using on their own time and using their own personal vehicles or alternate form of transportation to undergo physical examinations and/or drug testing. At all times, CRATE & BARREL was in control of scheduling the date and time for the examination and/or testing, selecting the provider/facility where the examination and/or testing was to take place, and determining the scope of the examination and/or testing.

Other aggrieved employees were required to travel in their own personal vehicles or use alternate forms of transportation to designated medical facilities and spend time undergoing CRATE & BARREL's mandatory drug test and/or physical examination. However, CRATE & BARREL did not compensate other aggrieved employees for the time they spent traveling to and from their drug tests and/or physical examinations, or for the time they spent undergoing the testing and/or examinations, or reimburse them for the travel expenses they incurred getting to and from the medical facilities. CRATE & BARREL's policy and/or practice of not paying for all costs other aggrieved employees incurred in obtaining mandatory physical examinations and/or drug testing violates California Labor Code section 222.5.

Other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11010 Subdivision 5(A) – Failure to Pay Reporting Time Pay

California Labor Code section 1198 dictates that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC wage order. California Labor Code section 1198 further requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

California Code of Regulations, Title 8, section 11010(5)(A) provides that “[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage.” The “primary purpose of the reporting time regulation” is “to guarantee at least partial compensation for employees who report to work expecting to work a specified number of hours, and who are deprived of that

amount because of inadequate scheduling or lack of proper notice by the employer.” *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012)

CRATE & BARREL violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11010(5), because CRATE & BARREL failed to pay Mr. Hernandez and other aggrieved employees reporting time pay when they reported to work for their scheduled shifts, but were put to work for less than half of the regular schedule. CRATE & BARREL had a company-wide practice of sending Mr. Hernandez and other aggrieved employees home early from their shifts, including before they had worked at least half of their regular shift, but would not pay Mr. Hernandez and other aggrieved employees for half of their scheduled shift. For example, 2-3 times per year, Mr. Hernandez would report to work, but would be sent home after two (2) hours by CRATE & BARREL’s management because work was slow. Although Mr. Hernandez and other aggrieved employees would report to work based on the schedule that CRATE & BARREL provided to them, CRATE & BARREL would send them home before they had worked at least half of their scheduled shifts without giving them reporting time pay. Accordingly, Mr. Hernandez and other aggrieved employees were not properly compensated with reporting time pay in violation of California Labor Code section 1198.

Mr. Hernandez and other aggrieved employees are therefore entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan’s Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order provides that: “[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.”

First, during the relevant time period, CRATE & BARREL, on a company-wide basis, required that Mr. Hernandez and other aggrieved employees use their own personal cellular phones and/or cellular data to carry out their job duties, but failed to reimburse them for the costs of their work-related cellular phone expenses. As stated, Mr. Hernandez and other aggrieved employees were required to use their personal cellular phones to complete their work-related tasks, such as discussing work-related matters with supervisors off the clock. For example, as stated, CRATE & BARREL required Mr. Hernandez to spend 10 minutes off-the-clock per month responding to phone calls from his manager on his personal cellular phone to discuss details about his previous shifts. Although CRATE & BARREL required Mr. Hernandez and other aggrieved employees to utilize their personal cellular phones to carry out their work-related responsibilities, CRATE & BARREL failed to fully reimburse them for this cost.

Second, as stated, CRATE & BARREL had a company-wide policy of requiring other aggrieved employees to travel in their own personal vehicles or use alternate means of transportation to obtain mandatory drug testing and/or physical examinations, but did not reimburse them for their travel expenses, including mileage. At all times, CRATE & BARREL was in control of scheduling the date

and time for the testing and/or physical examinations, selecting the provider or facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations. CRATE & BARREL gave other aggrieved employees strict instructions to obtain drug testing and physical examinations, and other aggrieved employees underwent the testing and physical examinations for the sole benefit of CRATE & BARREL. Although CRATE & BARREL required other aggrieved employees to undergo drug testing, CRATE & BARREL never reimbursed them for all of their travel expenses.

Third, CRATE & BARREL, on a company-wide basis, required other aggrieved employees to purchase basic supplies and equipment that were necessary for completion of their work-related duties. For example, other aggrieved employees were required to purchase screws, repair liquids, and sandpaper in order to complete furniture repairs. Additionally, CRATE & BARREL required other aggrieved employees to purchase special safety shoes such as steel-toed boots, which they were required to wear while at work, but did not fully reimburse them for these costs. CRATE & BARREL failed to provide these basic supplies and equipment to other aggrieved employees, forcing them to procure their own, and failed to reimburse other aggrieved employees for the costs of these supplies and equipment.

CRATE & BARREL could have provided Mr. Hernandez and other aggrieved employees with the actual tools for use on the job, such as company phones, company vehicles, supplies and equipment, and steel-toed boots. Or, CRATE & BARREL could have fully reimbursed employees for the costs their cellular phone expenses, travel expenses and mileage, supply and equipment expenses, and steel-toed boots. Instead, CRATE & BARREL passed these operating costs off onto Mr. Hernandez and other aggrieved employees.

Thus, CRATE & BARREL had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Mr. Hernandez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code §§ 6401 and 6403 – Failure to Provide Safety Devices and Safeguards

California Labor Code section 6401 provides that employers must furnish and use safety devices and safeguards, and adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render the employment and place of employment safe and healthy. California Labor Code Section 6401 further provides that an employer must do everything reasonably necessary to protect the life, safety, and health of its employees. California Labor Code section 6403(a) requires that employers provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe.

CRATE & BARREL, on a company-wide basis, failed to fully provide other aggrieved employees with personal protective equipment, such as steel-toed boots. Despite the fact that CRATE & BARREL required other aggrieved employees to wear certain personal protective equipment, including steel-toed boots, CRATE & BARREL failed to fully provide such reasonably necessary equipment to other aggrieved employees to keep them safe.

CRATE & BARREL's failure to provide other aggrieved employees with safety devices and safeguards, including basic personal protective equipment, for the workplace violates Labor Code

sections 6401 and 6403. Other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid . . ." Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." CRATE & BARREL, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Hernandez's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Hernandez seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Hernandez, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against CRATE & BARREL for violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, 6401, and 6403.

Therefore, on behalf of all aggrieved employees, Mr. Hernandez seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Julian Quattlebaum
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

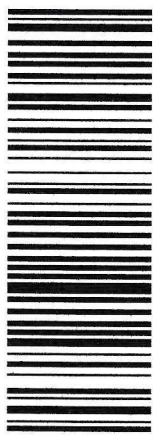
Best Regards,

A handwritten signature in black ink, appearing to read "Julian Quattlebaum", enclosed within a rectangular border.

Julian Quattlebaum

Copy: EUROMARKET DESIGNS, INC. (via U.S. Certified Mail)

tone
LAW APC
ury Park East, Ste 1000
s, CA 90067



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EUROMARKET DESIGNS, INC.
1250 TECHNY RD
NORTHBROOK, IL 60062



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PS Form 3811, July 2015 PSN 7530-02-000-9053

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☐ Agent

☐ Addressee

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D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

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- ☐ Collect on Delivery
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Extra Services & Fees (check box, add fee as appropriate)

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- ☐ Certified Mail Restricted Delivery \$
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Postage

\$ 1.63

Total Postage and Fees

\$ 7.93

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EUROMARKET DESIGNS, INC.

1250 TECHNY RD

City, State, ZIP+4®

NORTHBROOK, IL 60062

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

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Hernandez v.
Euromarket Designs
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1. Article Addressed to:

EUROMARKET DESIGNS, INC.
1250 TECHNY RD
NORTHBROOK, IL 60062



9590 9402 5816 0034 8467 24

2. Article Number (Transfer from service label)

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COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

- ☐ Agent
- ☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

10/13/20

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
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- ☐ Signature Confirmation™
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PS Form 3811, July 2015 PSN 7530-02-000-9053

Domestic Return Receipt

PROOF OF SERVICE

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1875 Century Park East, Suite 1000 Los Angeles, California 90067.

On **January 14, 2022**, I served the document described as: **FIRST AMENDED CLASS ACTION COMPLAINT & ENFORCEMENT ACTION UNDER THE PRIVATE ATTORNEYS GENERAL ACT, CALIFORNIA LABOR CODE §§ 2698, ET SEQ.** on the interested parties in this action by sending ☐ the original [or] ☒ a true copy thereof ☒ to interested parties as follows [or] ☐ as stated on the attached service list:

Jessica R. Perry (SBN: 209321)
jperry@orrick.com
ORRICK, HERRINGTON & SUTCLIFFE LLP
1000 Marsh Road
Menlo Park, CA 94025-1015
Tel.: (650) 614-7400
Fax: (650) 614-7401

Attorneys for Defendant
EUROMARKET DESIGNS, INC.

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405 Howard Street
San Francisco, CA 94105-2669
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Fax: (415) 773-5759

Attorneys for Defendant
EUROMARKET DESIGNS, INC.

☐ **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am "readily familiar" with this firm's practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.

☐ **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.

☒ **BY ELECTRONIC SERVICE:** I caused the document(s) to be transmitted electronically via One Legal eService to the individuals listed above, as they exist on that database. This will constitute service of the document(s).

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

Executed on **January 14, 2022**, at Los Angeles, California.

Xochitl Tapia
Type/Print Name


Signature