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on behalf of herself and all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**COUNTY OF LOS ANGELES**

ELANDER BARRON, on behalf of  
herself and all others similarly situated,

Plaintiff,

v.

WONDERFUL PISTACHIOS &  
ALMONDS, LLC, a Delaware  
Corporation, and DOES 1-50, inclusive,

Defendants.

Case No.

**COMPLAINT**

*Assigned for All Purposes To:*

Hon.

Dept.:

**COMPLAINT FOR DAMAGES FOR:**

- 1) **Failure to Pay Overtime;**
- 2) **Failure to Provide Lawful Meal Periods;**
- 3) **Failure To Authorize And Permit Rest Periods;**
- 4) **Failure To Timely Pay Wages Due And Payable During Employment;**
- 5) **Failure to Timely Pay Wages Owed Upon Separation From Employment;**
- 6) **Failure to Furnish Accurate Itemized Wage Statements;**
- 7) **Violation of the Unfair Competition Law;**

**DEMAND FOR JURY TRIAL**

1 Plaintiff ELANDER BARRON (“Plaintiff”), an individual, asserts claims against defendant  
2 WONDERFUL PISTACHIOS & ALMONDS, LLC, a Delaware Corporation, and DOES 1-50,  
3 inclusive (collectively “Wonderful” or “Defendants”) as follows:

#### 4 **INTRODUCTION**

5 1. This is a Class Action, pursuant to California Code of Civil Procedure section 382,  
6 on behalf of Plaintiff and any and all persons who are or were employed by Defendants as non-  
7 exempt employees, however titled, in the State of California within four (4) years prior to the filing  
8 of the Complaint in this action (as tolled by Emergency Rule 9) until the resolution of this lawsuit  
9 and whose job duties did not consist of over 50% administrative, executive or professional duties  
10 (collectively referred to as the “Class” or “Class Members” or “Non-Exempt Employees”).

11 2. During the relevant period, Defendants consistently maintained and enforced  
12 against its Non-Exempt Employees unlawful practices and policies in violation of California state  
13 wage and hour laws, including failing to lawfully and accurately pay Plaintiff and Class Members  
14 for all hours worked, including minimum wages and overtime; failing to lawfully provide meal  
15 periods and authorize and permit rest periods; failing to pay one hour of pay at the employee’s  
16 regular rate of pay when legally mandated meal or rest periods were not lawfully provided; failing  
17 to accurately pay overtime; failing to provide accurate itemized wage statements; and failing to  
18 keep accurate records.

19 3. Defendants implemented uniform policies and practices that deprived Plaintiff and  
20 Class Members of earned wages, including minimum wages; straight time wages; overtime wages;  
21 premium wages; and lawful meal and/or rest breaks.

22 4. Such actions and policies, as described above and further herein, were and continue  
23 to be in violation of the California Labor Code. Plaintiff, on behalf of herself and all Class members,  
24 bring this action pursuant to the California Labor Code, including sections 201, 202, 203, 204, 210,  
25 218.5, 218.6, 221-224, 226, 226.3, 226.7, 510, 512, 516, 558, 1174, 1194, 1194.2, 1195, 1197,  
26 1198, , applicable IWC California Wage Orders and California Code of Regulations, Title 8, section  
27 11000 *et seq.*, seeking unpaid wages, unpaid meal and rest period compensation, proper sick pay,  
28 penalties, liquidated damages, and reasonable attorneys’ fees and costs.

1           5.       Plaintiff, on behalf of herself and others similarly situated, pursuant to Business and  
2 Professions Code sections 17200-17208, also seeks injunctive relief and restitution from  
3 Defendants for their failure to pay to Plaintiff and the Class Members all of their wages, including  
4 minimum wages, overtime and premium wages, their failure to timely pay wages, failure to provide  
5 lawful meal and rest breaks, and their failure to reimburse expenses.

6                                   **JURISDICTION AND VENUE**

7           6.       This action is brought as a Class Action on behalf of Plaintiff and similarly situated  
8 employees of Defendants pursuant to California Code of Civ. Proc. Section 382. The monetary  
9 damages and restitution sought by Plaintiff exceeds the minimum jurisdiction limits of the  
10 California Superior Court and will be established according to proof at trial.

11          7.       This Court has jurisdiction over this action pursuant to the California Constitution  
12 Article VI §10, which grants the California Superior Court original jurisdiction in all causes except  
13 those given by statute to other courts. The statutes under which this action is brought do not give  
14 jurisdiction to any other court.

15          8.       This Court has jurisdiction over this Action pursuant to California Code of Civil  
16 Procedure, Section 410.10 and California Business & Professions Code, Section 17203.

17          9.       This Court has jurisdiction over Defendants because, upon information and belief,  
18 each Defendant is either a resident of California, has sufficient minimum contacts in California, or  
19 otherwise intentionally avails itself of the California market so as to render the exercise of  
20 jurisdiction over them by the California Courts consistent with traditional notions of fair play and  
21 substantial justice. Defendants have done and are doing business throughout California.

22          10.      The unlawful acts alleged herein have a direct effect on Plaintiff and the other  
23 similarly situated Non-Exempt Employees within Los Angeles County and it is believed that  
24 Defendants have employed hundreds of Class Members as Non-Exempt Employees throughout the  
25 state.

26          11.      The California Superior Court also has jurisdiction in this matter because the  
27 individual claims of the Class Members described herein are presently believed to be under the  
28 seventy-five thousand dollar (\$75,000.00) jurisdictional threshold for Federal Court and the

1 aggregate potential damages and recovery by all of the claims of the Plaintiff's Class, including  
2 attorneys' fees, placed in controversy by Plaintiff's class-wide claims, is presently believed to be  
3 under the five million dollar (\$5,000,000.00) threshold of the Class Action Fairness Act of 2005.  
4 Further, there is no federal question at issue, as the issues herein are based solely on California  
5 statutes and law, including the Labor Code, IWC Wage Orders, the California Code of Civil  
6 Procedure, the California Civil Code, and the California Business and Professions Code.

7 12. Venue is proper in this Court because one or more of the Defendants reside, transact  
8 business, or have offices in this County, and the acts or omissions alleged herein took place in this  
9 County.

#### 10 **PARTIES**

11 13. Wonderful Pistachios & Almonds, LLC is a Delaware Limited Liability Company  
12 with its headquarters located in Los Angeles, California.

13 14. Plaintiff Elander Barron is and during the liability period has been, a resident of  
14 the County of Los Angeles, California.

15 15. Plaintiff was employed by Defendants as a non-exempt employee during the liability  
16 period.

17 16. Plaintiff and the members of the putative class were employed by Defendants as  
18 non-exempt employees, however titled, (the "Class Members" or "Non-Exempt Employees")  
19 during the liability period.

20 17. Whenever in this complaint reference is made to any act, deed, or conduct of  
21 Defendants, the allegation means that Defendants engaged in the act, deed, or conduct by or through  
22 one or more of Defendants' officers, directors, agents, employees, or representatives, who was  
23 actively engaged in the management, direction, control, or transaction of the ordinary business and  
24 affairs of Defendants.

25 18. The true names and capacities of Defendants, whether individual, corporate,  
26 associate, or otherwise, sued herein as DOES 1 through 50, inclusive, are currently unknown to  
27 Plaintiff, who therefore sue Defendants by such fictitious names under Code of Civil Procedure §  
28 474. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and

capacities of the Defendants designated hereinafter as DOES when such identities become known.

19. Plaintiff is informed and believes, and thereon alleges, that the Doe Defendants are the partners, agents, or principals and co-conspirators of Defendants and of each other; that Defendants and the Doe Defendants performed the acts and conduct herein alleged directly, aided and abetted the performance thereof, or knowingly acquiesced in, ratified, and accepted the benefits of such acts and conduct, and therefore each of the Doe Defendants is liable to the extent of the liability of the Defendants as alleged herein.

20. Plaintiff is further informed and believes, and thereon alleges, that at all times material herein, each Defendant was completely dominated and controlled by its co-Defendants and each was the alter ego of the other. Whenever and wherever reference is made in this complaint to any conduct by Defendant or Defendants, such allegations and references shall also be deemed to mean the conduct of each of the Defendants, acting individually, jointly, and severally. Whenever and wherever reference is made to individuals who are not named as Defendants in this complaint, but were employees and/or agents of Defendants, such individuals, at all relevant times acted on behalf of Defendants named in this complaint within the scope of their respective employments.

### **FACTUAL ALLEGATIONS**

21. During the relevant time frame, Defendants compensated Plaintiff and the Non-Exempt Employees based upon an hourly wage.

22. Plaintiff and the Class Members were, and at all times pertinent hereto, have been non-exempt employees within the meaning of the California Labor Code, and the implementing rules and regulations of the IWC California Wage Orders. They are subject to the protections of the IWC Wage Orders and the Labor Code.

23. Plaintiff was employed as an hourly non-exempt employee from October 2017 through November 2019.

24. The members of the putative class worked as non-exempt employees for Defendants throughout the state of California during the liability period.

1           25.     Plaintiff typically worked five days a week, averaging over 40 hours a week.

2           26.     Plaintiff is informed and believes, and thereon alleges, that Defendants are and were  
3 advised by skilled lawyers and other professionals, employees, and advisors with knowledge of the  
4 requirements of California's wage and employment laws.

5           27.     All Class Members, including Plaintiff, are similarly situated in that they were and  
6 are all subject to Defendants' uniform policies and systemic practices as specified herein.

7           28.     Plaintiff and the Class Members were not properly compensated for all hours  
8 worked, in part because they were frequently required to work off the clock.

9           29.     In addition, the Class Members frequently worked in excess of eight (8) hours a day  
10 and/or over forty (40) hours in a workweek, but were not properly paid for such time at a rate of  
11 time and one-half the employee's regular rate of pay per hour. Plaintiff and the Class Members also  
12 often worked in excess of twelve (12) hours in one day and/or over eight (8) hours on the seventh  
13 day of the workweek, but were not properly paid for such time at a rate of two times the employee's  
14 regular rate of pay per hour.

15          30.     Defendants failed to properly calculate Plaintiff's and the Class Members' regular  
16 rate of pay because Defendants failed to include all forms of compensation in the regular rate  
17 including bonuses, incentives, differentials, commissions, and other compensation.

18          31.     Plaintiff and the Class Members were regularly required to work shifts in excess of  
19 five hours without being provided a lawful, timely meal period and over ten hours in a day  
20 without being provided a second lawful, timely meal period as required by law.

21          32.     Indeed, during the relevant time, as a consequence of Defendants' staffing and  
22 scheduling practices, lack of coverage, work demands, and Defendants' policies and practices,  
23 Defendants frequently failed to provide Plaintiff and the Class Members timely, legally complaint  
24 uninterrupted 30-minute meal periods on shifts over five hours and second meal periods on shifts  
25 over ten hours as required by law.

26          33.     On information and belief, Plaintiff and Class Members did not waive their rights  
27 to meal periods under the law.

28          34.     Plaintiff and the Class Members were not provided with valid lawful on-duty meal

1 periods.

2 35. Despite the above-mentioned meal period violations, Defendants failed to  
3 compensate Plaintiff, and on information and belief, failed to compensate Class Members, one  
4 additional hour of pay at their regular rate as required by California law when meal periods were  
5 not timely or lawfully provided in a compliant manner.

6 36. Plaintiff is informed and believes, and thereon alleges, that Defendants know,  
7 should know, knew, and/or should have known that Plaintiff and the other Class Members were  
8 entitled to receive premium wages based on their regular rate of pay under Labor Code §226.7 but  
9 were not receiving such compensation.

10 37. In addition, during the relevant time frame, Plaintiff and the Non-Exempt  
11 Employees were systematically not authorized and permitted to take one net ten-minute paid, rest  
12 period for every four hours worked or major fraction thereof, which is a violation of the Labor  
13 Code and IWC wage order.

14 38. Defendants maintained and enforced scheduling practices, policies, and imposed  
15 work demands that frequently required Plaintiff and Class Members to forego their lawful, paid  
16 rest periods of a net ten minutes for every four hours worked or major fraction thereof. Such  
17 requisite rest periods were not timely authorized and permitted.

18 39. Despite the above-mentioned rest period violations, Defendants did not  
19 compensate Plaintiff, and on information and belief, did not pay Class Members one additional  
20 hour of pay at their regular rate as required by California law, including Labor Code section 226.7  
21 and the applicable IWC wage order, for each day on which lawful rest periods were not  
22 authorized and permitted.

23 40. Defendants also failed to provide accurate, lawful itemized wage statements to  
24 Plaintiff and the Class Members in part because of the above specified violations. In addition,  
25 upon information and belief, Defendants omitted an accurate itemization of the total hours  
26 worked, the hours worked at each rate of pay, all applicable rates of pay, gross pay and net pay  
27 figures from Plaintiff and the Class Members' wage statements.

28 41. Defendants have also made it difficult to determine applicable rates of pay and

1 account with precision for the unlawfully withheld wages and deductions due to be paid to Non-  
2 exempt Employees, including Plaintiff, during the liability period because they did not implement  
3 and preserve a lawful record-keeping method to record all hours worked, meal periods, and non-  
4 provided rest and meal periods owed to employees as required for non-exempt employees by 29  
5 U.S.C. section 211(c), California Labor Code section 226, and applicable California Wage  
6 Orders.

7 42. Plaintiff is informed and believes, and thereon alleges, that at all times herein  
8 mentioned, Defendants knew that at the time of termination of employment (or within 72 hours  
9 thereof for resignations without prior notice as the case may be) they had a duty to accurately  
10 compensate Plaintiff and the Class Members for all wages owed including minimum wages, straight  
11 time wages, overtime, rest period premiums, and that Defendants had the financial ability to pay  
12 such compensation, but willfully, knowingly, recklessly, and/or intentionally failed to do so in part  
13 because of the above-specified violations.

14 43. Plaintiff and the Class Members are covered by applicable California IWC Wage  
15 Orders and corresponding applicable provisions of the California Code of Regulations, Title 8,  
16 section 11000 *et seq.*

### 17 **CLASS ACTION ALLEGATIONS**

18 44. Plaintiff brings this action on her own behalf, as well as on behalf of each and every  
19 other person similarly situated, and thus, seeks class certification under California Code of Civil  
20 Procedure §382.

21 45. All claims alleged herein arise under California law for which Plaintiff seeks relief  
22 as authorized by California law.

23 46. The **proposed class** is comprised of and defined as: All persons currently or  
24 formerly employed by Defendants as non-exempt employees, however titled, throughout the state  
25 of California within four (4) years prior to the filing of the Complaint in this action<sup>1</sup> until the  
26 resolution of this lawsuit (hereinafter collectively referred to as the “Class” or “Class Members”).

27 47. Plaintiff also seeks to represent Subclasses included in the Plaintiff’s Class, which

28 <sup>1</sup> As tolled by Emergency Rule 9.

are composed of Class Members satisfying the following definitions:

a. All Class Members who were not accurately paid overtime for hours worked over eight in a day or over forty in a workweek (**collectively “Overtime Subclass”**);

b. All Class Members who worked more than five (5) hours in a workday and were not provided with a timely, uninterrupted lawful meal period of net thirty (30) minutes, and were not paid compensation of one hour premium wages at the employee’s regular rate in lieu thereof (hereinafter collectively referred to as the **“First Meal Period Subclass”**);

c. All Class Members who worked more than ten (10) hours in a workday and were not provided with a timely, uninterrupted lawful second meal period of net thirty (30) minutes, and were not paid compensation of one hour premium wages at the employee’s regular rate in lieu thereof (hereinafter collectively referred to as the **“Second Meal Period Subclass”**);

d. All Class Members who worked more than three and a half hours in a workday and were not authorized and permitted to take a lawful net 10-minute rest period and were not paid compensation of one hour premium wages at the employee’s regular rate in lieu thereof (hereinafter collectively referred to as the **“First Rest Period Subclass”**);

e. All Class Members who worked more than six hours in a workday and were not authorized and permitted to take a second lawful net 10-minute rest period and were not paid compensation of one hour premium wages at the employee’s regular rate in lieu thereof (hereinafter collectively referred to as the **“Second Rest Period Subclass”**);

f. All Class Members who worked more than ten hours in a workday and were not authorized and permitted to take a third lawful net 10-minute rest period and were not paid compensation of one hour premium wages at the employee’s regular rate in lieu thereof (hereinafter collectively referred to as the **“Third Rest Period Subclass”**);

g. All Class Members who did not receive all owed wages at the time of separation or within 72 hours in the case of resignation (hereinafter collectively referred to as the **“Waiting Time Subclass”**);

h. All Class Members who were not provided with accurate and complete itemized wage statements (hereinafter collectively referred to as the **“Inaccurate Wage Statement**

Subclass”);

i. All Class Members who were employed by Defendants and subject to Defendant’s Unfair Business Practices (hereinafter collectively referred to as the “**Unfair Business Practices Subclass**”).

48. Plaintiff reserves the right, under Rule 3.765, California Rules of Court, to amend or modify the descriptions of the Class and Subclasses to provide greater specificity as appropriate, or if it should be deemed necessary by the Court or to further divide the Class Members into additional Subclasses or to limit the Subclasses to particular issues. Any reference herein to the Class Members or the Plaintiffs’ Class includes the members of each of the Subclasses.

49. As set forth in further detail below, this action has been brought and may properly be maintained as a class action under the provisions of section 382 of the Code of Civil Procedure because there is a well-defined community of interest in the litigation, and the proposed Class and Subclasses are easily ascertainable through Defendants’ records.

a. Numerosity: The members of the Class and Subclasses are so numerous that joinder of all members of the Class and Subclasses would be unfeasible and impractical. The membership of the entire Class and Subclasses is unknown to Plaintiff at this time, however, the Class is estimated to be hundreds of individuals. Accounting for employee turnover during the relevant periods necessarily increases this number substantially. Plaintiff alleges Defendants’ employment records would provide information as to the number and location of all Class Members. Joinder of all members of the proposed Class is not practicable.

b. The proposed class is easily ascertainable. The number and identity of the class members are determinable from Defendants’ payroll records and time records for each class member.

c. Commonality: There are common questions of law and fact as to the Class and Subclasses that predominate over questions affecting only individual Class Members. These common questions of law and fact include, without limitation:

1) Whether Defendants were required to incorporate bonuses, shift differentials, and incentives into the regular rate for overtime purposes;

- 2) Whether Defendants paid overtime using the proper regular rate;
- 3) Whether Defendants paid sick time pay using the proper regular rate;
- 4) Whether Defendants accurately calculated and paid all Class Members overtime premiums for the hours which Plaintiff and Class Members worked in excess of eight (8) hours per day and/or forty (40) hours per week;
- 5) Whether Defendants had a policy and practice of providing lawful, timely meal periods in accordance with Labor Code § 512, as well as the applicable Industrial Welfare Commission (“IWC”) wage order;
- 6) Whether Defendants had a policy and practice of complying with Labor Code section 226.7 and IWC Wage Order 1-2001, 4-2001 and 7-2001 on each instance that a lawful meal period was not lawfully provided;
- 7) Whether Defendants authorized and permitted lawful, net 10-minute rest period to the Class Members for every four (4) hours or major fraction thereof worked;
- 8) Whether Defendants had a policy and practice of complying with Labor Code section 226.7 and the IWC Wage Order 1-2001, 4-2001 and 7-2001 on each instance that a lawful rest period was not provided;
- 9) Whether Defendants timely paid wages earned during employment as required by the IWC Wage Order 1-2001, 4-2001 and 7-2001, Labor Code 204, and 210;
- 10) Whether Defendants failed to timely pay all wages upon separation in accordance with Labor Code sections 201-202;
- 11) Whether Defendants omitted required information from itemized wage statements;
- 12) Whether Defendants maintained accurate records of Class Members' earned wages, applicable hourly rates, hours worked, work periods, meal periods and deductions;
- 13) Whether Defendants engaged in unfair competition in violation of section 17200 et seq. of the Business and Professions Code;
- 14) Whether Defendants' conduct was willful and/or reckless;

1                   15) Whether Defendants provided accurate itemized wage statements in  
2 violation of Labor Code § 226; and

3                   16) The appropriate amount of damages, restitution, and/or monetary penalties  
4 resulting from Defendants' violations of California law.

5                   d.     Typicality: Plaintiff is qualified to, and will fairly and adequately protect the  
6 interests of each member of the Class and Subclasses with whom she has a well-defined community  
7 of interest. Plaintiff's claims herein alleged are typical of those claims which could be alleged by  
8 any member of the Class and/or Subclasses, and the relief sought is typical of the relief which  
9 would be sought by each member of the Class and/or Subclasses in separate actions. All members  
10 of the Class and/or Subclasses have been similarly harmed by Defendants' failure to provide lawful  
11 meal and rest periods, failure to provide accurate wage statements, failure to timely pay wages at  
12 termination, failure to properly pay overtime, failure to properly pay sick leave, failure to timely  
13 pay wages during employment, and failure to accurately pay all wages earned including all owed  
14 premium and overtime wages, all due to Defendants' policies and practices that affected each  
15 member of the Class and/or Subclasses similarly. Further, Defendants benefited from the same type  
16 of unfair and/or wrongful acts as to each member of the Class and/or Subclasses.

17                  e.     Adequacy: Plaintiff is qualified to, and will fairly and adequately protect the  
18 interests of each member of the Class and/or Subclasses with whom she has a well-defined  
19 community of interest and typicality of claims, as demonstrated herein. Plaintiff acknowledges that  
20 he has an obligation to make known to the Court any relationships, conflicts, or differences with  
21 any member of the Class and/or Subclasses, and no such relationships or conflicts are currently  
22 known to exist. Plaintiff's attorneys and the proposed counsel for the Class and Subclasses are  
23 versed in the rules governing class action discovery, certification, litigation, and settlement and  
24 experienced in handling such matters. Other former and current employees of Defendants may also  
25 serve as representatives of the Class and Subclasses if needed.

26                  f.     Superiority: The nature of this action makes the use of class action  
27 adjudication superior to other methods. A class action will achieve economies of time, effort,  
28 judicial resources, and expense, which would not be achieved with separate lawsuits. The

1 prosecution of separate actions by individual members of the Class and/or Subclasses would create  
2 a risk of inconsistent and/or varying adjudications with respect to the individual members of the  
3 Class and/or Subclasses, establishing incompatible standards of conduct for the Defendants, and  
4 resulting in the impairment of the rights of the members of the Class and/or Subclasses and the  
5 disposition of their interests through actions to which they were not parties. Thus, a class action is  
6 superior to other available means for the fair and efficient adjudication of this controversy because  
7 individual joinder of all Class Members is not practicable, and questions of law and fact common  
8 to the Class predominate over any questions affecting only individual Class Members. Each  
9 member of the Class has been damaged and is entitled to recovery by reason of Defendants'  
10 unlawful policies and practices, including Defendants' failure to provide lawful meal and rest  
11 periods, failure to provide accurate wage statements, failure to timely pay wages at termination,  
12 failure to properly pay overtime, failure to reimburse necessary expenses, failure to properly pay  
13 sick leave, failure to timely pay wages during employment, and failure to accurately pay all wages  
14 earned including all owed premium and overtime wages, all due to Defendants' policies and  
15 practices that affected each member of the Class and/or Subclasses similarly. Class action treatment  
16 will allow those similarly situated persons to litigate their claims in the manner that is most efficient  
17 and economical for both parties and the judicial system. Plaintiff is unaware of any difficulties that  
18 are likely to be encountered in the management of this action that would preclude its maintenance  
19 as a class action.

20 g. Public Policy Considerations: Employers in the state of California violate  
21 employment and labor laws every day. However, current employees are often afraid to assert their  
22 rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing actions  
23 because they believe their former employers may damage their future endeavors through negative  
24 references and/or other means. The nature of this action allows for the protection of current and  
25 former employees' rights without fear of retaliation or damage. Additionally, the citizens of  
26 California have a significant interest in ensuring employers comply with California's labor laws  
27 and in ensuring those employers who do not are prevented from taking further advantage of their  
28 employees.

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55. At all times relevant, Plaintiff and Class Members consistently worked hours for which they were not paid because Plaintiff and the Class Members were required to work off the clock—some of these hours were over eight hours in one workday or in excess of forty hours in a workweek and should have been paid at the overtime rate.

56. In addition, upon information and belief, Defendants failed to incorporate all forms of compensation, including without limitation bonuses and incentives, into the regular rate for overtime purposes.

57. As a result, Defendants failed to pay Plaintiff and the Class members earned overtime wages and such employees suffered damages as a result.

58. Defendants knew or should have known Plaintiffs and the Class Members were undercompensated as a result of these practices.

59. Due to Defendant's violations of the California Labor Code, Plaintiff and the Class members are entitled to recover from Defendants their unpaid overtime wages, reasonable attorneys' fees and costs in this action, and pre-judgment and post-judgment interest, statutory penalties, and liquidated damages.

## SECOND CAUSE OF ACTION

## **FAILURE TO PROVIDE LAWFUL MEAL PERIODS**

**(By Plaintiff and the Class Against All Defendants)**

60. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

61. Pursuant to Labor Code § 512, no employer shall employ an employee for a work period of more than five (5) hours without providing a meal break of not less than thirty (30) minutes in which the employee is relieved of all of his or her duties, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and employee.

62. Similarly, pursuant to Labor Code § 512, no employer shall employ an employee for a work period of more than ten (10) hours without providing a second meal break of not less than thirty (30) minutes in which the employee is relieved of all of his or her duties. A second meal

1 break may only be waived by mutual consent, and if the employee did not waive his or her first  
2 meal period, and the employee's work day will not exceed twelve hours.

3 63. During the liability period, Defendants failed to provide Plaintiff and Class  
4 Members timely and uninterrupted first meal periods of not less than thirty (30) minutes within the  
5 first five hours of a shift.

6 64. During the liability period, Defendants also failed to provide Plaintiff and Class  
7 Members timely and uninterrupted second meal periods of not less than thirty (30) minutes on shifts  
8 longer than ten hours.

9 65. Indeed, during the relevant time, upon information and belief, as a consequence of  
10 Defendants' staffing and scheduling practices, labor budgets, lack of coverage, work demands,  
11 and Defendants' policies and practices, Plaintiff and the Class Members were frequently not  
12 provided with legally required timely meal periods.

13 66. On information and belief, Plaintiff and Class Members did not waive their rights  
14 to meal periods under the law.

15 67. Plaintiff and the Class Members were not provided with valid lawful on-duty meal  
16 periods.

17 68. Plaintiff and the Class Members were not paid one hour of pay at their regular rate  
18 for each day that a first or second meal period was not lawfully provided.

19 69. As a proximate result of the aforementioned violations, Plaintiff and the Class  
20 Members have been damaged in an amount according to proof at time of trial.

21 70. Pursuant to Labor Code § 226.7, Plaintiff and Class Members are entitled to recover  
22 one (1) hour of premium pay for each day in which a meal period violation occurred. They are also  
23 entitled to recover reasonable attorneys' fees, cost, interest, and penalties as applicable.

24 71. As a result of the unlawful acts of Defendants, Plaintiffs and the Class they seek to  
25 represent have been deprived of premium wages in amounts to be determined at trial, and are  
26 entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs,  
27 under Labor Code sections 218.6, 226.7, 512 and the applicable IWC Wage Orders, and Civil Code  
28 section 3287.

1 **THIRD CAUSE OF ACTION**

2 **FAILURE TO AUTHORIZE AND PERMIT LAWFUL REST PERIODS**

3 **(By Plaintiff and the Class Against All Defendants)**

4 72. Plaintiff incorporates by reference and realleges each and every allegation contained  
5 above, as though fully set forth herein.

6 73. Pursuant to the IWC wage orders applicable to Plaintiff's and Class Members'  
7 employment by Defendants, "Every employer shall authorize and permit all employees to take rest  
8 periods, which insofar as practicable shall be in the middle of each work period.... [The] authorized  
9 rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net  
10 rest time per four (4) hours worked or major fraction thereof.... Authorized rest period time shall  
11 be counted as hours worked, for which there shall be no deduction from wages."

12 74. Labor Code §226.7(a) prohibits an employer from requiring any employee to work  
13 during any rest period mandated by an applicable order of the IWC.

14 75. Defendants were required to authorize and permit employees such as Plaintiff and  
15 Class Members to take rest periods during shifts in excess of 3.5 hours, based upon the total hours  
16 worked at a rate of ten (10) minutes net rest per four (4) hours worked, or major fraction thereof,  
17 with no deduction from wages.

18 76. Despite said requirements of the IWC wage orders applicable to Plaintiff's and Class  
19 Member's employment with Defendants, Defendants failed and refused to authorize and permit  
20 Plaintiff and Class Members to take lawful, net ten (10) minute rest periods for every four (4) hours  
21 worked, or major fraction thereof.

22 77. Defendants did not pay Plaintiff one additional hour of pay at his regular rate of pay  
23 for each day that a rest period violation occurred. On information and belief, the other members of  
24 the Class endured similar violations as a result of Defendants' rest period policies and practices and  
25 Defendant did not pay said Class Members premium pay as required by law.

26 78. By their failure to authorize and permit Plaintiff and the Class Members to take a  
27 lawful, net ten (10) minute rest period free from work duties every four (4) hours or major fraction  
28 thereof worked, including failure to provide two (2) total rest periods on six to ten hour shifts and

three (3) total ten (10) minute rest periods on days on which Plaintiff and the other Class Members work(ed) work a third rest period for shifts in excess of ten (10) hours, and by their failure to provide compensation for such unprovided rest periods as alleged herein, Defendants willfully violated the provisions of Labor Code sections 226.7 and the applicable IWC Wage Order(s).

79. As a result of the unlawful acts of Defendants, Plaintiffs and the Class they seek to represent have been deprived of premium wages in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs, under Labor Code sections 218.6, 226.7, the applicable IWC Wage Orders, and Civil Code 3287.

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

#### **FAILURE TO TIMELY PAY WAGES DUE AND PAYABLE DURING**

#### **EMPLOYMENT**

#### **(By Plaintiff and the Class Against All Defendants)**

80. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

81. Labor Code section 204 requires that all wages are due and payable twice in each calendar month.

82. The wages required by Labor Code §§ 226.7, 510, 1194 and other sections became due and payable to each employee in each month that he or she was not provided with a meal period or rest period or paid minimum wage, straight or overtime wages to which he or she was entitled.

83. Defendants violated Labor Code § 204 by systematically refusing to pay wages due under the Labor Code.

84. Labor Code section 210 (a) provides that "In addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and 1197.5, shall be subject to a penalty as follow:

(1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee.

1 (2) For each subsequent violation, or any willful or intentional violation, two hundred  
2 dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount  
3 unlawfully withheld.

4 103. As a result of the unlawful acts of Defendants, Plaintiff and the Class he seeks to  
5 represent have been deprived of wages in amounts to be determined at trial, and are entitled to  
6 recovery of such amounts, penalties, plus interest thereon, attorneys fees, and costs, pursuant to  
7 Labor Code § 210, 218.5, 218.6, 510, 1194.

## 8 **FIFTH CAUSE OF ACTION**

### 9 **FAILURE TO TIMELY PAY WAGES OWED AT SEPARATION**

#### 10 **(By Plaintiff and the Class Against All Defendants)**

11 85. Plaintiff incorporates by reference and realleges each and every allegation contained  
12 above, as though fully set forth herein.

13 86. Labor Code §§ 201 and 202 require Defendants to pay their employees all wages  
14 due within seventy-two (72) hours of separation of employment.

15 87. Section 203 of the Labor Code provides that if an employer willfully fails to timely  
16 pay such wages the employer must, as a penalty, continue to pay the subject employee's wages  
17 until the back wages are paid in full or an action is commenced. The penalty cannot exceed 30 days  
18 of wages.

19 88. Plaintiff and Class Members are entitled to compensation for all forms of wages  
20 earned, including but not limited to minimum wages, overtime, and premium meal and rest period  
21 compensation, but to date have not received such compensation, therefore entitling them to Labor  
22 Code § 203 penalties.

23 89. More than thirty (30) days have passed since affected Waiting Time Subclass  
24 Members have left Defendants' employ, and on information and belief, they have not received  
25 payment pursuant to Labor Code § 203.

26 90. Plaintiff and Waiting Time Subclass Members are thus entitled to 30 days' wages  
27 as a penalty under Labor Code § 203, together with interest thereon and attorneys' fees and costs.

28

1 **SIXTH CAUSE OF ACTION**

2 **KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED**  
3 **EMPLOYEE WAGE STATEMENT PROVISIONS**

4 **By Plaintiff and Class Against Defendants**

5 91. Plaintiff repeats and incorporates herein by reference each and every allegation set  
6 forth above, as though fully set forth herein.

7 92. Labor Code section 226(a) reads in pertinent part: "Every employer shall,  
8 semimonthly or at the time of each payment of wages, furnish each of his or her employees, either  
9 as a detachable part of the check, draft, or voucher paying the employee's wages, or separately  
10 when wages are paid by personal check or cash, an accurate itemized statement in writing  
11 showing (1) gross wages earned, (2) total hours worked by the employee... (4) all deductions...  
12 (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the  
13 name of the employee and only the last four digits of his or her social security number or an  
14 employee identification number other than a social security number, (8) the name and address of  
15 the legal entity that is the employer, and (9) all applicable hourly rates in effect during each the  
16 pay period and the corresponding number of hours worked at each hourly rate by the  
17 employee....".

18 93. Further, the IWC Wage Orders require in pertinent part: Every employer shall  
19 keep accurate information with respect to each employee including the following: (3) Time  
20 records showing when the employee begins and ends each work period. Meal periods, split shift  
21 intervals, and total daily hours worked shall also be recorded...(5) Total hours worked in the  
22 payroll period and applicable rates of pay...."

23 94. Labor Code section 1174 of the California also requires Defendants to maintain  
24 and preserve, in a centralized location, among other items, records showing the names and  
25 addresses of all employees employed and payroll records showing the hours worked daily by, and  
26 the wages paid to, its employees. On information and belief and based thereon, Defendants have  
27 knowingly and intentionally failed to comply with Labor Code section 1174, including by  
28 implementing the policies and procedures and committing the violations alleged in the preceding

1 causes of action and herein. Defendants' failure to comply with Labor Code section 1174 is  
2 unlawful pursuant to Labor Code section 1175.

3 95. Defendants have failed to record many of the items delineated in applicable  
4 Industrial Wage Orders and Labor Code section 226, and required under Labor Code section  
5 1174, including by virtue of the fact that each wage statement which failed to accurately  
6 compensate Plaintiff and Class Members for all hours worked and for missed and non-provided  
7 meal and rest periods, or which failed to include compensation for all minimum wages earned or  
8 overtime hours worked, was an inaccurate wage statement.

9 96. On information and belief, Defendants failed to implement and preserve a lawful  
10 record-keeping method to record all hours worked, meal periods, and non-provided meal and rest  
11 periods owed to employees, as required for Non-Exempt Employees under California Labor Code  
12 section 226 and applicable California Wage Orders. In order to determine if they had been paid  
13 the correct amount and rate for all hours worked, Plaintiff and Class Members have been, would  
14 have been, and are compelled to try to discover the required information missing from their wage  
15 statements and to perform complex calculations in light of the inaccuracies and incompleteness of  
16 the wage statements Defendants provided to them.

17 97. As a pattern and practice, in violation of Labor Code section 226(a) and the IWC  
18 Wage Orders, Defendants did not and still do not furnish each of the members of the Wage  
19 Statement Class with an accurate itemized statement in writing accurately reflecting all of the  
20 required information. Specifically, Defendants have omitted accurate itemizations of total hours  
21 worked, applicable hourly rates and hours worked at each hourly rate, net pay, and gross pay from  
22 Plaintiff and the Class Members' wage statements. In addition, Defendants have failed to provide  
23 accurate itemized wage statements as a consequence of the above-specified violations.

24 98. Moreover, upon information and belief, as a pattern and practice, in violation of  
25 Labor Code section 226(a) and the IWC Wage Orders, Defendants did not and do not maintain  
26 accurate records pertaining to the total hours worked for Defendants by the members of the Wage  
27 Statement Class, including but not limited to, beginning and ending of each work period, meal  
28 period and split shift interval, the total daily hours worked, and the total hours worked per pay

1 period and applicable rates of pay.

2 99. Plaintiffs and the members of the Wage Statement Class have suffered injury as a  
3 result of Defendants' failure to maintain accurate records for the members of the Wage Statement  
4 Class in that the members of the Wage Statement Class were not timely provided written accurate  
5 itemized statements showing all requisite information, such that the members of the Wage  
6 Statement Class were misled by Defendants as to the correct information regarding various items,  
7 including but not limited to the total hours worked by the employee, gross pay, net wages earned  
8 and all applicable hourly rates in effect during the pay period and the corresponding number of  
9 hours worked at each hourly rate. The lack of information hindered Plaintiff and the Class from  
10 determining the amount of wages owed to them and led them to believe they were not entitled to  
11 be paid wages for all hours worked, for overtime, missed meal and rest breaks, or for each hour of  
12 labor performed and the proper hourly rate, although they were so entitled.

13 100. Pursuant to Labor Code section 226, and in light of Defendants' violations  
14 addressed above, Plaintiff and the Wage Statement Class Members are each entitled to recover up  
15 to a maximum of \$4,000.00, along with an award of costs and reasonable attorneys' fees.

## 16 SEVENTH CAUSE OF ACTION

### 17 VIOLATION OF THE UNFAIR COMPETITION LAW

#### 18 **By Plaintiff and Class Against All Defendants**

19 101. Plaintiff incorporates by reference and realleges each and every allegation contained  
20 above, as though fully set forth herein.

21 102. Defendants' conduct, as alleged in this complaint, has been, and continues to be,  
22 unfair, unlawful, and harmful to Plaintiff and Class Members, Defendants' competitors, and the  
23 general public. Plaintiff also seeks to enforce important rights affecting the public interest within  
24 the meaning of the California Code of Civil Procedure § 1021.5.

25 103. Defendants' policies, activities, and actions as alleged herein are violations of  
26 California law and constitute unlawful, unfair, and deceptive business acts and practices in violation  
27 of California Business and Professions Code §§ 17200, *et seq.*

28 104. A violation of California Business and Professions Code §§ 17200, *et seq.*, may be

1 predicated on the violation of any state or federal law.

2       105. The state law violations, including violations of the relevant IWC Wage Order,  
3 detailed herein above are the predicate violations for this cause of action. By way of example only,  
4 in the instant case Defendants' policy of failing to lawfully provide Plaintiff and the Class with  
5 timely lawful meal and rest periods or pay one (1) hour of premium pay when a meal or rest period  
6 was not lawfully provided violates Labor Code § 512, 1198, and § 226.7, and the IWC Wage  
7 Orders. Defendants further violated the law through their policies of failing to fully and accurately  
8 compensate Plaintiff and the Class Members for all hours worked, including minimum wages and  
9 overtime as well as failing to timely pay wages during employment, failing to keep proper records,  
10 failing to pay all wages and compensation due at termination, and failing to provide accurate wage  
11 statements as specified above.

12       106. Plaintiff and the Class Members have been personally aggrieved by Defendants'  
13 unlawful and unfair business acts and practices alleged herein by the loss of money and/or property.

14       107. As a result of the unlawful acts specified herein, Defendants have reaped and  
15 continue to reap unfair benefits and unlawful profits at the expense of the Plaintiff and the Class  
16 Members he seeks to represent. Defendants have been unjustly enriched through Defendants'  
17 unlawful, unfair, and fraudulent business practices alleged herein.

18       108. Pursuant to California Business and Professions Code §§ 17200, *et seq.*, Plaintiff  
19 and the Class Members are entitled to an injunction and other equitable relief against such unlawful  
20 practices and are entitled to restitution of the wages withheld and retained by Defendants during a  
21 period that commences four (4) years prior to the filing of this complaint; an award of attorneys'  
22 fees pursuant to California Code of Civil Procedure §1021.5; interest; and an award of costs.

23                                   **PRAYER FOR RELIEF**

24       WHEREFORE, Plaintiff pray judgment against Defendants, as follows:

25                                   **Class Certification**

- 26       1. That this action be certified as a class action;
- 27       2. That Plaintiff be appointed as the representatives of the Class;
- 28       3. That Plaintiff be appointed as the representative of the Subclasses; and

1           4.       That counsel for Plaintiff be appointed as counsel for the Class and Subclasses.

2                               **On the First Cause of Action**

3                               **(Failure to Pay Overtime Owed)**

- 4           1.       For the unpaid balance of the full amount of overtime earned,  
5           2.       Penalties according to statute,  
6           3.       Liquidated damages,  
7           4.       Reasonable attorneys' fees, and costs of suit;  
8           5.       For interest; and  
9           6.       For such other and further relief as the Court deems proper.

10                           **On the Second Cause of Action**

11                           **(Failure to Provide Lawful Meal Periods)**

- 12           1.       For one (1) hour of premium pay for each day in which a required meal period was  
13 not lawfully provided;  
14           2.       For reasonable attorneys' fees and costs pursuant to statute;  
15           3.       For interest; and  
16           4.       For such other and further relief as the Court deems proper.

17                           **On the Third Cause of Action**

18                           **(Failure to Authorize and Permit Lawful Rest Periods)**

- 19           1.       For one (1) hour of premium pay for each day in which a required rest period was  
20 not lawfully authorized and permitted;  
21           2.       For interest; and  
22           3.       For reasonable attorneys' fees and costs pursuant to statute; and  
23           4.       For such other and further relief as the Court deems proper.

24                           **On the Fourth Cause of Action**

25                           **(Failure to Timely Pay Wages Due and Payable During Employment)**

- 26           1.       For unpaid wages;  
27           2.       For penalties pursuant to Labor Code § 210 and 25% of the amount of wages  
28 unlawfully withheld;

3. For interest;
4. For reasonable attorneys' fees and costs pursuant to statute; and
5. For such other and further relief as the Court deems proper.

**On the Fifth Cause of Action**

**(Failure to Timely Pay Wages At Separation)**

1. For unpaid wages;
2. For penalties pursuant to Labor Code § 203;
3. For interest;
4. For reasonable attorneys' fees and costs pursuant to statute; and
5. For such other and further relief as the Court deems proper.

**On the Sixth Cause of Action**

**(Failure to Provide Accurate Itemized Wage Statements)**

1. For statutory penalties, including penalties pursuant to Labor Code section 226;
2. For reasonable attorneys' fees and costs; and
3. For such other and further relief as the Court deems proper;

**On the Seventh Cause of Action**

**(Violation of the Unfair Competition Law)**

1. For an order enjoining Defendants from continuing to engage in the aforementioned unlawful business practice in violation of California Business & Professions Code §17200; and
2. That Defendants, jointly and/or severally, pay restitution and/or disgorgement of sums to Plaintiff and Class Members for the Defendants' past failure to pay minimum wages, overtime and regular wages, and for premium wages for meal and rest periods that were not provided to Plaintiff and Class Members over the last four (4) years (as tolled by Emergency Rule 9) in an amount according to proof;
3. For reasonable attorneys' fees that Plaintiff and Class Members are entitled to recover under California Code of Civil Procedure § 1021.5 and Labor Code section 1194;
4. For pre-judgment interest on any unpaid minimum wages, straight time wages, overtime wages and premium wages due from the day that such amounts were due;

5. For costs of suit incurred herein that Plaintiff and Class Members are entitled to recover under the Labor Code; and

6. For such other and further relief as the Court deems proper.

## DEMAND FOR JURY TRIAL

Plaintiff, on behalf of the Class and Subclasses, respectfully demand a jury trial in this matter.

Respectfully submitted,

**JAMES HAWKINS APLC**

Dated: November 5, 2020

James R. Hawkins, Esq.  
Christina M. Lucio, Esq.

Attorneys for Plaintiff ELANDER BARRON, on behalf of  
herself and all others similarly situated