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FILED
Superior Court of California
County of Riverside

4/23/2021
V. Lupercio
Electronically Filed

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF RIVERSIDE**

10 LUIS ARAMBULA individually and on
11 behalf of others similarly situated,

12 Plaintiff,

13 vs.

14 EXCEL CABINETS, INC., a California
15 corporation; and DOES 1 through 50,
16 inclusive,

17 Defendants.
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Case No.: RIC2001588

**FIRST AMENDED CLASS ACTION
COMPLAINT**

- (1) VIOLATION OF CALIFORNIA
LABOR CODE §§ 510 AND 1198
(UNPAID OVERTIME)
- (2) VIOLATION OF CALIFORNIA
LABOR CODE §§ 226.7 AND 512(a)
(UNPAID MEAL PERIOD
PREMIUMS)
- (3) VIOLATION OF CALIFORNIA
LABOR CODE § 226.7 (UNPAID
REST PERIOD PREMIUMS)
- (4) VIOLATION OF CALIFORNIA
LABOR CODE §§ 1194, 1197 AND
1197.1 (UNPAID MINIMUM
WAGES)
- (5) VIOLATION OF CALIFORNIA
LABOR CODE §§ 201, 202 AND 203
(FINAL WAGES NOT TIMELY
PAID)
- (6) VIOLATION OF CALIFORNIA
LABOR CODE §§ 204 (WAGES
NOT TIMELY PAID DURING
EMPLOYMENT)
- (7) VIOLATION OF CALIFORNIA
LABOR CODE § 226(a) (FAILURE
TO PROVIDE ACCURATE WAGE

STATEMENTS)

- (8) VIOLATION OF CALIFORNIA
LABOR CODE § 1174 (d)
(FAILURE TO KEEP ACCURATE
PAYROLL RECORDS)**
- (9) VIOLATION OF CALIFORNIA
LABOR CODE §§ 2800 AND 2802
(FAILURE TO REIMBURSE
EXPENSES)**
- (10) VIOLATION OF CALIFORNIA
BUSINESS AND PROFESSIONS
CODE § 17200, ET SEQ.**
- (11) VIOLATION OF CALIFORNIA
LABOR CODE § 2698 ET SEQ.
(PAGA)**

1
2 Plaintiff LUIS ARAMBULA ("Plaintiff") individually and on behalf of other members of
3 the general public similarly situated, alleges as follows:

4 **JURISDICTION AND VENUE**

5 1. Plaintiff brings this action against Defendants EXCEL CABINETS, INC. and
6 DOES 1 THROUGH 50 (hereinafter also collectively referred to as "Defendants") for California
7 Labor Code violations, unfair business practices, and civil penalties stemming from Defendants'
8 failure to pay overtime compensation, failure to provide meal periods, failure to authorize and
9 permit rest periods, failure to pay minimum wage, failure to timely pay wages, failure to provide
10 accurate wage statements, failure to maintain accurate payroll records, and failure to reimburse
11 necessary business-related expenses.

12 2. Plaintiff's First through Tenth Causes of Action are brought as a class action on
13 behalf of himself and similarly situated current and former employees of Defendants (hereinafter
14 collectively referred to as the "Class" or "Class Members", as defined more fully in paragraph
15 14, below) pursuant to California Code of Civil Procedure section 382. The monetary damages
16 and restitution sought by Plaintiff exceeds the minimal jurisdiction limits of the Superior Court
and will be established according to proof at trial.

17 3. The Court has jurisdiction over this action pursuant to the California Constitution,
18 Article VI, Section 10, which grants the superior court "original jurisdiction in all other causes"
19 except those given by statute to other courts. The statutes under which this action is brought do
20 not specify any other basis for jurisdiction.

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

26 5. Venue is proper in this Court because, upon information and belief, Defendants
27 maintain offices, have agents, and/or transact business in the State of California, County of
28

1 Riverside.

2 **PARTIES**

3 6. Plaintiff LUIS ARAMBULA is an individual residing in the County of Riverside,
4 State of California.

5 7. Defendant EXCEL CABINETS, INC. is and at all times herein mentioned was, a
6 corporation organized and existing under the laws of the State of California, and registered to do
7 business in the state of California.

8 8. Plaintiff is ignorant of the identities of defendants Does 1 through 50, inclusive,
9 and therefore sues these defendants by such fictitious names. The Doe defendants may be
10 individuals, partnerships, or corporations. Plaintiff is informed and believe, and thereon alleges,
11 that, at all times mentioned herein, each of the Doe defendants was the parent, subsidiary, agent,
12 servant, employee, co-venturer, and/or co-conspirator of each of the other defendants, and was at
13 all times mentioned acting within the scope, purpose, consent, knowledge, ratification and
14 authorization of such agency, employment, joint venture and conspiracy. Plaintiff will amend this
15 Complaint to allege their true names and capacities when ascertained. Plaintiff is informed and
16 believes and thereon alleges that each of the fictitiously named Doe defendants is responsible in
17 some manner for the occurrences herein alleged, and that Plaintiff's damages as herein alleged
18 were proximately caused by its conduct. Defendant EXCEL CABINETS, INC. and Doe
19 Defendants 1 through 50 are collectively referred to herein as "Defendants."

20 9. Defendants are and at all times herein mentioned were, (a) conducting business in
21 the County of Riverside State of California, and (b) the employer of Plaintiff consistent with the
22 California Labor Code and Industrial Welfare Commission Wage Orders ("Wage Orders").

23 10. Plaintiff further alleges that Defendants, directly or indirectly controlled or
24 affected the working conditions, wages, working hours, and conditions of employment of Plaintiff
25 and the Class so as to make each of said Defendants employers and employers jointly liable under
26 the statutory provisions set forth herein.

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CLASS ACTION ALLEGATIONS

11. Plaintiff brings the First through Tenth Causes of Action as class action on his own behalf and on behalf of all other members of the general public similarly situated, and, thus, seeks class certification under Code of Civil Procedure section 382.

12. The proposed class is defined as follows: All current and former non-exempt employees of any of the Defendants within the State of California at any time commencing four (4) years preceding the filing of Plaintiff's complaint up until the time that notice of the certified class action is provided to the class (hereinafter referred to as the "Class" or "Class Members.")

13. Plaintiff reserves the right to establish other subclasses as appropriate.

14. The Class is ascertainable and there is a well-defined community of interest in the litigation:

- a. Numerosity: The Class Members are so numerous that joinder of all Class Members is impracticable. The membership of the entire Class is unknown to Plaintiff at this time; however, the Class is estimated to be over fifty (50) individuals and the identity of such membership is readily ascertainable by inspection of Defendants' employment records.
- b. Typicality: Plaintiff's claims are typical of all other Class Members demonstrated herein. Plaintiff will fairly and adequately protect the interests of the other Class Members with whom he has a well-defined community of interest.
- c. Adequacy: Plaintiff will fairly and adequately protect the interests of each Class Member, with whom he has a well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiff has no interest that is antagonistic to the other Class Members. Plaintiff's attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement. Plaintiff has incurred, and during the pendency of this action will continue to incur, costs and attorneys' fees, that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each Class Member.

1 d. Superiority: A class action is superior to other available methods for the fair and
2 efficient adjudication of this litigation because individual joinder of all Class
3 Members is impractical.

4 e. Public Policy Considerations: Certification of this lawsuit as a class action will
5 advance public policy objectives. Employers of this great state violate
6 employment and labor laws every day. Current employees are often afraid to
7 assert their rights out of fear of direct or indirect retaliation. However, class
8 actions provide the Class Members who are not named in the complaint
9 anonymity that allows for the vindication of their rights.

10 15. There are common questions of law and fact as to the Class that predominate over
11 questions affecting only individual members. The following common questions of law or fact,
12 among others, exist as to the members of the Class:

- 13 a. Whether Defendants' failure to pay wages, without abatement, or reduction, in
14 accordance with the California Labor Code was willful;
- 15 b. Whether Defendants had a corporate policy and practice of failing to pay Plaintiff
16 and the other Class Members for all hours worked, and missed, short, late or
17 interrupted meal periods and rest breaks in violation of California law;
- 18 c. Whether Defendants required Plaintiff and the other Class Members to work more
19 than eight (8) hours per day and/or more than forty (40) hours per week and failed
20 to pay the legally required overtime compensation to Plaintiff and the other Class
21 Members;
- 22 d. Whether Defendants deprived Plaintiff and the other Class Members of meal
23 and/or rest periods or required Plaintiff and the other Class Members to work
24 during meal and/or rest periods without compensation;
- 25 e. Whether Defendants failed to pay meal period premium wages to Class Members
26 when they were not provided with a legally compliant meal period;
- 27 f. Whether Defendants failed to pay rest period premium wages to class Members
28 when they were not authorized and permitted to take legally compliant rest

1 periods.

- 2 g. Whether Defendants failed to pay minimum wages to Plaintiff and the other Class
3 Members for all hours worked;
- 4 h. Whether Defendants failed to pay Plaintiff and the other Class Members the
5 required minimum wage pursuant to California law;
- 6 i. Whether Defendants failed to pay Plaintiff and the other Class Members proper
7 overtime compensation pursuant to California law;
- 8 j. Whether Defendants failed to pay all wages due to Plaintiff and the other Class
9 Members within the time required upon their discharge or resignation from
10 employment;
- 11 k. Whether Defendants failed to reimburse Plaintiff and the other Class Members
12 for all necessary business-related expenses and costs in violation of Cal. Labor
13 Code section 2802;
- 14 l. Whether Defendants failed to timely pay all wages due to Plaintiff and the other
15 Class Members during their employment;
- 16 m. Whether Defendants complied with wage reporting as required by the California
17 Labor Code, including section 226;
- 18 n. Whether Defendants kept complete and accurate payroll records as required by
19 the California Labor Code, including section 1174(d);
- 20 o. Whether Defendants' conduct was with malice, fraud or oppression;
- 21 p. Whether Defendants' conduct was willful or reckless;
- 22 q. Whether Defendants engaged in unfair business practices in violation of
23 California Business & Professions Code section 17200, et seq. based on its
24 improper withholding of compensation and deduction of wages;
- 25 r. The appropriate amount of damages, restitution, and/or monetary penalties
26 resulting from Defendants' violation of California law; and
- 27 s. Whether Plaintiff and the other Class Members are entitled to compensatory
28 damages pursuant to the California Labor Code.

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1 from taking a second thirty (30) minute uninterrupted meal break no later than their tenth hour of
2 work for shifts lasting more than ten (10) hours. Defendants also failed to maintain accurate
3 records of meal periods taken by Plaintiff and the Class.

4 23. Throughout the time period involved in this case, Defendants did not adequately
5 inform Plaintiff and the Class of their right to take meal periods under California law. Moreover,
6 Defendants systematically disregarded their own written policies regarding the provision and
7 timing of meal periods for Plaintiff and the Class. Instead, Defendants' actual policy and practice
8 was to schedule Plaintiff and the Class in a way the prohibited them from taking timely and duty-
9 free meal periods, and to require Plaintiff and the Class to work through their meal periods, for
10 which they were not compensated. In addition, Defendants required Plaintiff and Class Members
11 to carry and monitor their cell phones at all times, including during purported meal periods.

12 24. Throughout the time period involved in this case, Defendants failed to pay Plaintiff
13 and the Class premium wages for meal periods that were missed, late, interrupted, or shortened
14 in violation of California law. Defendants knew or should have known that Plaintiff and the Class
15 were entitled to receive all meal periods or payment of one additional hour of pay at their regular
16 rate of pay when a meal period was missed, short, late, and/or interrupted. Notwithstanding this
17 knowledge, Defendants routinely failed to provide legally compliant meal periods to Plaintiff and
18 the Class, and routinely failed pay one additional hour of pay to Plaintiff and the Class at their
19 regular rate of pay when a meal period was missed, short, late, and/or interrupted.

20 25. Throughout the time period involved in this case, Defendants have implemented
21 policies and practices which prohibited Plaintiff and the Class from taking timely and duty-free
22 rest periods. Defendants regularly failed to provide, authorize, and permit Plaintiff and the Class
23 to take full, uninterrupted, off-duty rest periods for every shift lasting three and one-half (3.5) to
24 six (6) hours and/or two full, uninterrupted, off-duty rest periods for every shift lasting six (6) to
25 ten (10) hours, and failed to make a good faith effort to authorize, permit, and provide such rest
26 breaks in the middle of each work period.

27 26. Throughout the time period involved in this case, Defendants did not adequately
28 inform Plaintiff and the Class of their right to take rest periods under California law. Moreover,

1 Defendants systematically disregarded their own written policies regarding the provision and
2 timing of rest periods for Plaintiff and the Class. Instead, Defendants' actual policy and practice
3 was to schedule Plaintiff and the Class in a way that regularly prohibited them from taking timely
4 and duty free rest periods, and to regularly require Plaintiff and the Class to work through their
5 rest periods. In addition, Defendants required Plaintiff and Class Members to carry and monitor
6 their cell phones at all times, including during purported rest periods.

7 27. Throughout the time period involved in this case, Defendants failed to pay Plaintiff
8 and the Class premium wages for rest periods that were missed, late, interrupted, or shortened in
9 violation of California law. Defendants knew or should have known that Plaintiff and the Class
10 were entitled to receive all rest periods or payment of one additional hour of pay at their regular
11 rate of pay when a rest period was missed, short, late, and/or interrupted. Notwithstanding this
12 knowledge, Defendants routinely failed to authorize and permit Plaintiff and the Class to take
13 duty-free rest periods, and failed to pay one additional hour of pay to Plaintiff and the Class at
14 their regular rate of pay when a rest period was missed, short, late and/or interrupted.

15 28. Throughout the time period involved in this case, Defendant regularly required
16 Plaintiff and the Class to perform work off-the-clock. Although Defendants prohibited overtime,
17 Defendants still regularly required that Plaintiff and the Class complete all of their assigned duties.
18 To do so, Plaintiff and the Class were regularly required to perform work off-the-clock for which
19 they were not compensated.

20 29. Throughout the time period involved in this case, Defendants implemented policies
21 that prohibited Plaintiff and the Class from accurately recording the actual time worked, resulting
22 in a failure to pay Plaintiff and the Class all wages owed.

23 30. Throughout the time period involved in this case, Plaintiff and the Class worked
24 more than eight (8) hours in a day, and/or forty (40) hours in a week.

25 31. Throughout the time period involved in this case, Defendants regularly failed to
26 pay overtime compensation to Plaintiff and the Class when they worked in excess of eight (8)
27 hours in a single work day and/or forty (40) hours in a single work week. Defendants knew or
28 should have known that Plaintiff and the Class were entitled to receive certain wages for overtime

1 compensation and that they were not receiving wages for overtime compensation.

2 32. Throughout the time period involved in this case, Defendants regularly failed to
3 pay Plaintiff and the Class at least minimum wages for all hours worked. Defendants knew or
4 should have known that Plaintiff and the Class were entitled to receive at least minimum wages
5 for all hours worked and that they were not receiving at least minimum wages for all hours
6 worked. Defendants' failure to pay minimum wages included, *inter alia*, requiring Plaintiff and
7 the Class to perform work off the clock.

8 33. Throughout the time period involved in this case, Defendants regularly failed to
9 pay Plaintiff and the Class all wages owed to them upon discharge or resignation. Defendant knew
10 or should have known that Plaintiff and the Class were entitled to receive all wages owed to them
11 upon termination within the time permissible under California Labor Code section 202. Plaintiff
12 and the Class did not receive payment of all final wages owed to them upon discharge or
13 resignation, including overtime compensation and minimum wages within any time permissible
14 under California Labor Code section 202.

15 34. Throughout the time period involved in this case, Defendants regularly failed to
16 pay Plaintiff and the Class all wages within any time permissible under California law, including,
17 *inter alia*, California Labor Code section 204. Defendants knew or should have known that
18 Plaintiff and the Class were entitled to receive all wages owed to them during their employment.
19 Plaintiff and the Class did not receive payment of all wages, including overtime compensation,
20 minimum wages, and meal and rest period premiums, within any time permissible under
21 California Labor Code section 204.

22 35. Throughout the time period involved in this case, Defendants regularly failed to
23 provide complete or accurate wage statements to Plaintiff and the Class. Defendants knew or
24 should have known that Plaintiff and the Class were entitled to receive complete and accurate
25 wage statements in accordance with California law, but, in fact, they did not receive complete and
26 accurate wage statements from Defendants. The deficiencies included, *inter alia*, the failure to
27 include the total number of hours worked and the actual gross wages earned.

28 36. Throughout the time period involved in this case, Defendants regularly failed to

1 keep complete or accurate payroll records for Plaintiff and the Class. Defendants knew or should
2 have known that Defendants were required keep complete and accurate payroll records for
3 Plaintiff and the Class in accordance with California law, but, in fact, did not keep complete and
4 accurate payroll records.

5 37. Throughout the time period involved in this Case, Defendants failed to reimburse
6 Plaintiff and the Class for all necessary business-related expenses, including but not limited to
7 costs incurred in the use of their personal cell phones and tools. Defendants knew or should have
8 known that Defendants were required to reimburse Plaintiff and the Class for all necessary
9 business-related expenses and costs, but, in fact, failed to do so in violation of California law.

10 38. Throughout the time period involved in this case, Defendants knew or should have
11 known that they had a duty to compensate Plaintiff and the Class pursuant to California law.
12 Defendants had the financial ability to pay such compensation, but willfully, knowingly, and
13 intentionally failed to do so, and falsely represented to Plaintiff and the Class that they paid all
14 wages owed to them, all in order to increase Defendants' profits.

15 39. California Labor Code section 218 states that nothing in Article 1 of the Labor
16 Code shall limit the right of any wage claimant to "sue directly ... for any wages or penalty due
17 to him [or her] under this article."

18 **FIRST CAUSE OF ACTION**

19 **(Violation of California Labor Code §§ 510 and 1198)**

20 **(Against All Defendants)**

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

23 41. California Labor Code section 1198 and the applicable Industrial Welfare
24 Commission ("IWC") Wage Order provide that it is unlawful to employ persons without
25 compensating them at a rate of pay either time-and-one-half or two-times that person's regular
26 rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

27 42. Specifically, the applicable IWC Wage Order provides that Defendants are and
28 were required to pay Plaintiff and the other Class Members employed by Defendants, and working

1 more than eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of
2 time-and-one-half for all hours worked in excess of eight (8) hours in a day or more than forty
3 (40) hours in a workweek.

4 43. The applicable IWC Wage Order further provides that Defendants are and were
5 required to pay Plaintiff and the Class overtime compensation at a rate of two times their regular
6 rate of pay for all hours worked in excess of twelve (12) hours in a day and for all hours worked
7 in excess of eight (8) hours on the seventh day of work in a workweek.

8 44. California Labor Code section 510 codifies the right to overtime compensation at
9 one-and-one-half times the regular hourly rate for hours worked in excess of eight (8) hours in a
10 day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh day of
11 work, and no overtime compensation at twice the regular hourly rate for hours worked in excess
12 of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day of work.

13 45. During the relevant time period, Plaintiff and the other Class Members regularly
14 worked in excess of eight (8) hours in a day, and/or in excess of forty (40) hours in a week.

15 46. During the relevant time period, Defendants intentionally and willfully failed to
16 pay overtime wages owed to Plaintiff and the other Class Members.

17 47. Defendants' failure to pay Plaintiff and the other Class Members the unpaid
18 balance of overtime compensation, as required by California laws, violates the provisions of
19 California Labor Code sections 510 and 1198, and is therefore unlawful.

20 48. Pursuant to California Labor Code section 1194, Plaintiff and the other Class
21 Members are entitled to recover unpaid overtime compensation, as well as interest, costs, and
22 attorneys' fees.

23 **SECOND CAUSE OF ACTION**

24 **(Violation of California Labor Code §§ 226.7 and 512(a))**

25 **(Against All Defendants)**

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

28 50. At all relevant times, the relevant IWC Order and California Labor Code sections

226.7 and 512(a) were applicable to Plaintiff and the other Class Members' employment by Defendants.

51. At all relevant times, California Labor Code section 226.7 provides that no employer shall require an employee to work during any meal or rest period mandated by an applicable order of the California IWC.

52. At all relevant times, the applicable IWC Wage Order and California Labor Code section 512(a) provide that an employer may not require, cause or permit an employee to work for a work period of more than five (5) hours per day without providing the employee with a meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is no more than six (6) hours, the meal period may be waived by mutual consent of both the employer and employee.

53. At all relevant times, California Labor Code section 512(a) further provides that an employer may not require, cause or permit an employee to work for a work period of more than ten (10) hours per day without providing the employee with a second uninterrupted meal period of not less than thirty (30) minutes, 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.

54. During the relevant time period, Plaintiff and the other Class Members who were scheduled to work for a period of time longer than six (6) hours, and who did not waive their legally-mandated meal periods by mutual consent, were required to work for periods longer than five (5) hours without an uninterrupted meal period of not less than thirty (30) minutes.

55. During the relevant time period, Plaintiff and the other Class Members who were scheduled to work for a period of time in excess of ten (10) hours were required to work for periods longer than ten (10) hours without a second uninterrupted meal period of not less than thirty (30) minutes.

56. During the relevant time period, Defendants intentionally and willfully required Plaintiff and the other Class Members to miss their meal periods and to take meal periods that were late, shortened, or interrupted, and failed to compensate Plaintiff and the other Class

1 Members the full meal period premium for missed, shortened, late, or interrupted meal periods.

2 57. During the relevant time period, Defendants failed to pay Plaintiff and the other
3 Class Members the full meal period premiums due pursuant to California Labor Code section
4 226.7.

5 58. Defendants' conduct violates the applicable IWC Wage Order and California
6 Labor Code sections 226.7 and 512(a).

7 59. Pursuant to the applicable IWC Wage Order and California Labor Code section
8 226.7(b), Plaintiff and the other Class Members are entitled to recover from Defendants one
9 additional hour of pay at the employee's regular rate of compensation for each work day that the
10 meal period was not provided.

11 **THIRD CAUSE OF ACTION**

12 **(Violation of California Labor Code § 226.7)**

13 **(Against All Defendants)**

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

16 61. At all times herein set forth, the applicable IWC Wage Order and California Labor
17 Code section 226.7 were applicable to Plaintiff and the other class members' employment by
18 Defendants.

19 62. At all relevant times, California Labor Code section 226.7 provides that no
20 employer shall require an employee to work during any rest period mandated by an applicable
21 order of the California IWC.

22 63. At all relevant times, the applicable IWC Wage Order provides that "[e]very
23 employer shall authorize and permit all employees to take rest periods, which insofar as
24 practicable shall be in the middle of each work period" and that the "rest period time shall be
25 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
26 hours or major fraction thereof unless the total daily work time is less than three and one-half
27 (3.5) hours."

28 64. During the relevant time period, Defendants required Plaintiff and other Class

Members to work four (4) or more hours without authorizing or permitting a ten (10) minute rest period per each four (4) hour period worked.

65. During the relevant time period, Defendants willfully required Plaintiff and the other Class Members to work during rest periods, failed to allow Plaintiff and the other class Member to take any rest period and/or failed to authorize and permit Plaintiff and the other Class members to take uninterrupted, duty-free rest breaks.

66. During the relevant time period, Defendants failed to pay Plaintiff and the other Class Members the full rest period premium due pursuant to California Labor Code section 226.7 for work performed during rest periods, and/or for failure to authorize and permit Plaintiff and other Class Members from taking uninterrupted rest periods.

67. Defendants' conduct violates applicable IWC Wage Orders and California Labor Code section 226.7.

68. Pursuant to the applicable IWC Wage Orders and California Labor Code section 226.7(b), Plaintiff and the other Class Members are entitled to recover from Defendants one additional hour of pay at the employees' regular hourly rate of compensation for each work day that the rest period was not provided.

FOURTH CAUSE OF ACTION

(Violation of California Labor Code §§ 1194, 1197, and 1197.1)

(Against All Defendants)

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

70. At all relevant times, California Labor Code sections 1194, 1197, and 1197.1 provide that the minimum wage to be paid to employees and the payment of a lesser wage than the minimum so fixed is unlawful.

71. During the relevant time period, Defendants regularly failed to pay minimum wage to Plaintiff and the other Class Members as required pursuant to California Labor Code sections 1194, 1197, and 1197.1.

72. Defendants' failure to pay Plaintiff and the other Class Members the minimum

1 wage as required violates California Labor Code sections 1194, 1197, and 1197.1. Pursuant to
2 those sections, Plaintiff and the other Class Members are entitled to recover the unpaid balance
3 of their minimum wage compensation as well as interest, costs, and attorneys' fees, and liquidated
4 damages in an amount equal to the wages unlawfully unpaid and interest thereon.

5 73. Pursuant to California Labor Code section 1194.2, Plaintiff and the other Class
6 Members are entitled to recover liquidated damages in an amount equal to the wages unlawfully
7 unpaid and interest thereon.

8 **FIFTH CAUSE OF ACTION**

9 **(Violation of California Labor Code §§ 201, 202, 203)**

10 **(Against All Defendants)**

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

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

19 76. During the relevant time period, the employment of Plaintiff and many other Class
20 Members with Defendant ended, i.e. was terminated by quitting or discharge. Defendants
21 intentionally and willfully failed to pay Plaintiff and other Class Members who are no longer
22 employed by Defendants all of their wages, earned and unpaid, including but not limited to
23 minimum wages, straight time wages, and overtime wages, within seventy-two (72) hours of their
24 leaving Defendants' employ.

25 77. Defendants' failure to pay Plaintiff and other Class Members who are no longer
26 employed by Defendants their wages, earned and unpaid, within seventy-two (72) hours of their
27 leaving Defendants' employ, is in violation of California Labor Code sections 201 and 202.

28 78. California Labor Code section 203 provides that if an employer willfully fails to

1 pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall
2 continue as a penalty from the due date thereof at the same rate until paid or until an action is
3 commenced; but the wages shall not continue for more than thirty (30) days.

4 79. Plaintiff and other Class Members who are no longer employed by Defendants are
5 entitled to recover from Defendants the statutory penalty wages for each day they were not paid,
6 up to a thirty (30) day maximum pursuant to California Labor Code section 203.

7 **SIXTH CAUSE OF ACTION**

8 **(Violation of California Labor Code § 204)**

9 **(Against All Defendants)**

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

12 81. At all times herein set forth, California Labor Code section 204 provides that all
13 wages earned by any person in any employment between the 1st and 15th days, inclusive, of any
14 calendar month, other than those wages due upon termination of an employee, are due and payable
15 between the 16th and 26th day of the month during which the labor was performed.

16 82. At all times herein set forth, California Labor Code section 204 provides that all
17 wages earned by any person in any employment between the 16th and the last day, inclusive, of
18 any calendar month, other than those wages due upon termination of an employee, are due and
19 payable between the 1st and the 10th day of the following month.

20 83. At all times herein set forth, California Labor Code section 204 provides that all
21 wages earned for labor in excess of the normal work period shall be paid no later than the payday
22 for the next regular payroll period.

23 84. During the relevant time period, Defendants intentionally and willfully failed to
24 pay Plaintiff and other Class Members all wages due to them, within any time period permissible
25 under California Labor Code section 204.

26 85. Plaintiff and other Class Members are entitled to recover all available remedies for
27 Defendant's violations of California Labor Code section 204.

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1 actual damages caused by Defendants' failure to comply with California Labor Code section
2 226(a), or an aggregate penalty not exceeding four thousand dollars per employee.

3 92. Plaintiff and the Class are also entitled to injunctive relief to ensure compliance
4 with this section, pursuant to California Labor Code section 226(g).

5 **EIGHTH CAUSE OF ACTION**

6 **(Violation of California Labor Code § 1174(d))**

7 **(Against All Defendants)**

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

10 94. Pursuant to California Labor Code section 1174(d), an employer shall keep, at a
11 central location in the state or at the plants or establishments at which employees are employed,
12 payroll records showing the hours worked daily by and the wages paid to, and the number of
13 piece-rate units earned by and any applicable piece rate paid to, employees employed at the
14 respective plants or establishments. These records shall be kept in accordance with rules
15 established for this purpose by the commission, but in any case, shall be kept on file for not less
16 than three years.

17 95. Defendants have intentionally and willfully failed to keep accurate and complete
18 payroll records showing the hours worked and the wages paid to Plaintiff and the Class.

19 96. Because of Defendants' violation of California Labor Code section 1174(d),
20 Plaintiff and the Class have suffered injury and damage to their statutorily-protected rights.

21 97. More specifically, Plaintiff and the Class have been injured by Defendants'
22 intentional and willful violation of California Labor Code section 1174(d) because they were
23 denied both their legal right and protected interest, in having available, accurate and complete
24 payroll records pursuant to California Labor Code section 1174(d).

25 **NINTH CAUSE OF ACTION**

26 **(Violation of California Labor Code §§ 2800 and 2802)**

27 **(Against All Defendants)**

28 98. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and

1 every allegation set forth above.

2 99. Pursuant to California Labor Code sections 2800 and 2802, an employer must
3 reimburse its employee for all necessary expenditures incurred by the employee in direct
4 consequence of the discharge of his or her job duties or in direct consequence of his or her job
5 duties or in direct consequence of his or her obedience to the directions of the employer.

6 100. Plaintiff and the Class incurred necessary business-related expenses and costs that
7 were not fully reimbursed by Defendants. Defendants' failure to reimburse for all necessary
8 business-related expenses and costs including its failure to reimburse Plaintiff and the Class for
9 costs incurred as a result of, including not limited, simple negligence.

10 101. Defendants have intentionally and willfully failed to reimburse Plaintiff and the
11 Class for all necessary business-related expenses and costs. Plaintiff and the Class are entitled to
12 recover from Defendants their business-related expenses and costs incurred during the course and
13 scope of their employment, plus interest accrued from the date on which the employee incurred
14 the necessary expenditures at the same rate as judgments in civil actions in the State of California.

15 **TENTH CAUSE OF ACTION**

16 **(Violation of Cal. Business & Professions Code §§ 17200, et seq.)**

17 **(Against All Defendants)**

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

20 103. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
21 unlawful and harmful to Plaintiff and the Class, to the general public, and Defendants'
22 competitors. Accordingly, Plaintiff seeks to enforce important rights affecting the public interest
23 within the meaning of Code of Civil Procedure section 1021.5.

24 104. Defendants' activities as alleged herein are violations of California law, and
25 constitute unlawful business acts and practices in violation of California Business & Professions
26 Code section 17200, *et seq.*

27 105. A violation of California Business & Professions Code section 17200, *et seq.* may
28 be predicated on the violation of any state or federal law. In this instant case, Defendants' policies

1 and practices of requiring employees, including Plaintiff and the Class, to work overtime without
2 paying them proper compensation violate California Labor Code sections 510 and 1198.
3 Additionally, Defendants' policies and practices of requiring employees, including Plaintiff and
4 the Class, to work through their meal and rest periods without paying them proper compensation
5 violate California Labor Code sections 226.7 and 512(a). Moreover, Defendants' policies and
6 practices of failing to timely pay wages to Plaintiff and the Class violate California Labor Code
7 sections 201, 202, 203 and 204.

8 106. Defendants also violated California Labor Code sections, 221, 226(a), 1194, 1197,
9 1197.1, 510, 1174(d), 2800, and 2802.

10 107. As a result of the herein described violations of California law, Defendants
11 unlawfully gained an unfair advantage over other businesses.

12 108. Plaintiff and the Class have been personally injured by Defendants' unlawful
13 business acts and practices as alleged herein, including but not necessarily limited to the loss of
14 money and/or property.

15 109. Pursuant to California Business & Professions Code sections 17200, et seq.,
16 Plaintiff and the Class are entitled to restitution of the wages withheld and retained by Defendants
17 during a period that commences four years prior to the filing of this Complaint; an award of
18 attorneys' fees pursuant to California Code of Civil procedure section 1021.5 and other applicable
19 laws; and an award of costs.

20 **ELEVENTH CAUSE OF ACTION**

21 **(Violation of California Labor Code § 2699, et seq.)**

22 **(Against All Defendants)**

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

25 111. Plaintiff brings his eleventh cause of action as a representative action on behalf of
26 himself, individually as an aggrieved employee, and on behalf of similarly situated Aggrieved
27 Employees in the capacity as a private attorney general pursuant to the Private Attorneys General
28 Act of 2004, California Labor Code section 2698, *et seq.* in accord with California Labor Code

1 2699.3 ("PAGA").

2 112. PAGA specifically provides for a private right of action to recover civil penalties
3 for violations of the Labor Code as follows: "Notwithstanding any other provision of law, any
4 provision of this code that provides for a civil penalty to be assessed and collected by the Labor
5 and Workforce Development Agency or any of its departments, divisions, commissions, boards,
6 agencies, or employees, for a violation of this code, may, as an alternative, be recovered through
7 a civil action brought by an aggrieved employee on behalf of himself or herself and other current
8 or former employees pursuant to the procedures specified in Section 2699.3." Cal. Lab. Code §
9 2699(a).

10 113. Plaintiff was employed by Defendants and the Labor Code violations alleged
11 above were committed against him during his time of employment. Plaintiff is therefore, an
12 "aggrieved employee" under PAGA. Plaintiff and the other employees are "aggrieved
13 employees" as defined by California Labor Code section 2699(c) in that they are all current or
14 former employees of Defendants, and one or more of the alleged violations were committed
15 against them.

16 114. As set forth in detail above, during all times relevant to this Action, Defendants
17 have routinely subjected Plaintiff and the Aggrieved Employees to violations of California Labor
18 Codes by:

- 19 a. Failing to pay Plaintiff and the Aggrieved Employees all earned minimum wage
20 compensation in violation of Labor Code §§ 1194 and 1198, *et seq.*;
- 21 b. Failing to pay Plaintiff and the Aggrieved Employees all earned overtime
22 compensation in violation of Labor Code §§ 204, 510, 1194, and 1198, *et seq.*;
- 23 c. Failing to provide legally required meal periods to Plaintiff and the Aggrieved
24 Employees, and failing to pay Plaintiff and the Aggrieved Employees an additional
25 hour of premium pay for meal period violations in violation of Labor Code §§
26 226.7 and 512;
- 27 d. Failing to provide, authorize and permit Plaintiff and the Aggrieved Employees to
28 take duty-free rest periods, and failing to pay Plaintiff and the Aggrieved

1 Employees an additional hour of premium pay for rest period violations in
2 violation of Labor Code §§ 226.7 and 512;

- 3 e. Failing to timely pay Plaintiff and the Aggrieved Employees all wages at end of
4 their employment in violation of Labor Code § 203;
- 5 f. Failing to timely pay Plaintiff and the Aggrieved Employees all wages owed
6 during employment in violation of Labor Code § 204;
- 7 g. Failing to furnish Plaintiff and the Aggrieved Employees with complete, accurate,
8 itemized wage statements in violation of Labor Code § 226;
- 9 h. Failing to maintain accurate records relating to Plaintiff and the Aggrieved
10 Employees' work periods, meal periods, total daily hours, hours per pay period,
11 and applicable pay rates; and
- 12 i. Failing to reimburse employees for necessary business-related expenses and costs
13 in violation of California Labor Code 2800 and 2802.

14 115 Pursuant to California Labor Code sections 2699 and 2699.5, Plaintiff,
15 individually as an aggrieved employee, and on behalf of other Aggrieved Employees and the State
16 of California, requests and is entitled to recover penalties against Defendants for the Labor Code
17 violations described above, including but not limited to penalties under California Code of
18 Regulations Title section 11050, penalties under California Labor Code sections 2699, 558, 210,
19 1197.1, 226, 226.3 and 1174.5, and any and all additional penalties and sums as provided by the
20 California Labor Code and/or other statutes. The exact amount of the applicable penalties, in all,
21 is in an amount to be shown according to proof at trial.

22 116 Plaintiff has exhausted his administrative remedies pursuant to Labor Code §
23 2699.3. On or about December 31, 2020, Plaintiff, through his counsel of record, by online filing
24 with the Labor and Workforce Development Agency ("LWDA") and by certified mail to the
25 Defendants, notified Defendants and the LWDA of the specific provisions of the Labor Code and
26 IWC Wage Orders that Defendants have violated, including the facts and theories to support the
27 violations, and of Plaintiff's intent to bring a claim for civil penalties under PAGA. Plaintiff also
28 paid the filing fee required under Labor Code § 2699.3. It has been more than 65 days since the

1 filing of this notice and the Labor and Workforce Development Agency has not indicated that it
2 intended to investigate the violations discussed in the notice. Accordingly, Plaintiff is entitled to
3 commence a civil action to recover penalties for himself and other Aggrieved Employees pursuant
4 to Labor Code § 2699.3.

5 117 Plaintiff was compelled to retain the services of counsel to file this court action to
6 protect his interests and the Aggrieved Employees, and to assess and collect the civil penalties
7 owed by Defendants. Plaintiff therefore seeks an award of reasonable attorneys' fees and costs
8 pursuant to Labor Code § 2699(g)(1), and any other applicable statute.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff, individually and on behalf of all other members of the general
11 public similarly situated, prays for relief and judgment against Defendants, jointly and severally,
12 as follows:

13 **Class Certification**

- 14 1. That this action be certified as a class action;
15 2. That Plaintiff be appointed as the representative of the Class;
16 3. That counsel for Plaintiff be appointed as Class Counsel; and
17 4. That Defendants provide to Class Counsel immediately the names and most
18 current/last known contact information (address, e-mail and telephone numbers) of all class
19 members.

20 **As to the First Cause of Action**

- 21 5. That the Court declare, adjudge and decree that Defendants violated California
22 Labor Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay
23 all overtime wages due to Plaintiff and other Class Members;

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

- 26 7. For pre-judgment interest on any unpaid overtime compensation commencing
27 from the date such amounts were due;
28

1 8. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
2 California Labor Code section 1194;

3 9. For such other and further relief as the Court may deem just and proper.

4 **As to the Second Cause of Action**

5 10. That the Court declare, adjudge and decree that Defendants violated California
6 Labor Code sections 226.7 and 512 and applicable IWC Wage Orders by willfully failing to
7 provide all meal periods (including second meal periods) to Plaintiff and the Class;

8 11. That the Court make an award to Plaintiff and the Class of one (1) hour of pay at
9 each employee's regular rate of compensation for each workday that a meal period was not
10 provided;

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

13 13. For premium wages pursuant to California Labor Code section 226.7(b);

14 14. For pre-judgment interest on any unpaid wages from the date such amounts were
15 due;

16 15. For reasonable attorneys' fees and costs of suit incurred herein;

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

18 **As to the Third Cause of Action**

19 17. That the Court declare, adjudge and decree that Defendants violated California
20 Labor Code section 226.7 and applicable IWC Wage Orders by willfully failing to provide all rest
21 periods to Plaintiff and the Class;

22 18. That the Court make an award to Plaintiff and the Class of one (1) hour of pay at
23 each employee's regular rate of compensation for each workday that a rest period was not
24 provided;

25 19. For all actual, consequential, and incidental losses and damages, according to
26 proof;

27 20. For premium wages pursuant to California Labor Code section 226.7(b);

28 21. For pre-judgment interest on any unpaid wages from the date such amounts were

1 due;

2 22. For such other and further relief as the Court may deem just and proper.

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

4 23. That the Court declare, adjudge and decree that Defendants violated California
5 Labor Code sections 1194, 1197, and 1197.1 by willfully failing to pay minimum wages to
6 Plaintiff and the Class;

7 24. For general unpaid wages and such general and special damages as may be
8 appropriate;

9 25. For statutory wage penalties pursuant to California Labor Code section 1197.1 for
10 Plaintiff and the Class in the amount as may be established according to proof at trial;

11 26. For pre-judgment interest on any unpaid compensation from the date such amounts
12 were due;

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

15 28. For liquidated damages pursuant to California Labor Code section 1194.2;

16 29. For such other and further relief as the Court may deem just and proper.

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

18 30. That the Court declare, adjudge and decree that Defendants violated California
19 Labor Code sections 201, 202, and 203 by willfully failing to pay all compensation owed at the
20 time of termination of the employment of Plaintiff and other Class Members no longer employed
21 by Defendants;

22 31. For all actual, consequential, and incidental losses and damages, according to
23 proof;

24 32. For statutory wage penalties pursuant to California Labor Code section 203 for
25 Plaintiff and other Class Members who have left Defendants' employ;

26 33. For pre-judgment interest on any unpaid compensation from the date such amounts
27 were due;

28 34. For such other and further relief as the Court may deem just and proper.

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

2 35. That the Court declare, adjudge and decree that Defendants violated California
3 Labor Code section 204 by willfully failing to pay all compensation owed at the time required by
4 California Labor Code section 204 to Plaintiff and the Class;

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

7 37. For pre-judgment interest on any unpaid compensation from the date such amounts
8 were due including interest pursuant to California Labor Code section 218.6;

9 38. For such other and further relief as the Court deems just and proper.

10 **As to the Seventh Cause of Action**

11 39. That the Court declare, adjudge and decree that Defendants violated the record
12 keeping provisions of California Labor Code section 226(a) and applicable IWC Wage Orders as
13 to Plaintiff and the Class, and willfully failed to provide accurate itemized wage statements
14 thereto;

15 40. For actual, consequential and incidental losses and damages, according to proof;

16 41. For statutory penalties pursuant to California Labor Code section 226(e);

17 42. For such other and further relief as the Court may deem just and proper.

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

19 43. That the Court declare, adjudge and decree that Defendants violated California
20 Labor Code section 1174(d) by willfully failing to keep accurate and complete payroll records for
21 Plaintiff and the Class as required by California Labor Code section 1174(d);

22 44. For actual, consequential and incidental losses and damages, according to proof;

23 45. For statutory penalties pursuant to California Labor Code section 1174.5;

24 46. For such other and further relief as the court may deem just and proper.

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

26 47. That the Court declare, adjudge and decree that Defendants violated California
27 Labor Code sections 2800 and 2802 by willfully failing to reimburse Plaintiff and the Class for
28

1 all necessary business-related expenses as required by California Labor Code sections 2800 and
2 2802;

3 48. For actual, consequential and incidental losses and damages, according to proof;

4 49. For the imposition of civil penalties and/or statutory penalties;

5 50. For reasonable attorneys' fees and costs of suit incurred herein; and

6 51. For such other and further relief as the Court may deem just and proper.

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

8 52. That the Court decree, adjudge and decree that Defendants violated California
9 Business and Professions Code sections 17200, et seq. by failing to provide Plaintiff and the Class
10 all overtime compensation due to them, failing to provide all meal and rest periods to Plaintiff
11 and the Class, failing to pay at least minimum wages to Plaintiff and the Class, failing to pay
12 Plaintiff and other Class Members' wages timely as required by California Labor Code section
13 201, 202 and 204 and by violating California Labor Code sections 226(a), 1174(d), 2800, and
14 2082.

15 53. For restitution of unpaid wages to Plaintiff and the Class and all pre-judgment
16 interest from the day such amounts were due and payable;

17 54. For the appointment of a receiver to receive, manage and distribute any and all
18 funds disgorged from Defendants and determined to have been wrongfully acquired by
19 Defendants as a result of violation of California Business and Professions Code sections 17200,
20 et seq.;

21 55. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
22 California Code of Civil Procedure section 1021.5

23 56. For injunctive relief to ensure compliance with this section, pursuant to California
24 Business and Professions Code sections 17200, et seq.; and

25 57. For such other and further relief as the Court may deem just and proper.

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

27 59. For statutory attorneys' fees and costs pursuant to California Labor Code section
28 2699(g)(1);

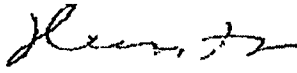
1 60. Prejudgment interest at the legal rate pursuant to California Labor Code section
2 218.6;

3 61. For the imposition of civil penalties pursuant to California Labor Code section
4 2699, 210, 558, 226, 226.3, 1174.5, 1197.1, and all other penalties allowed by the California
5 Labor Code and/or other applicable statutes; and

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

7
8 Dated: March 18, 2021

PROTECTION LAW GROUP

9
10 By: 

11 Heather Davis
12 Amir Nayebdadash

13 Attorneys for Plaintiff
14 LUIS ARAMBULA
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FILED
Superior Court of California
County of Riverside
4/23/2021
V. Lupercio
Electronically Filed

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **COUNTY OF RIVERSIDE**

14 LUIS ARAMBULA individually and on
15 behalf of others similarly situated,

16 Plaintiff,

17 vs.

18 EXCEL CABINETS, INC., a California
19 corporation; and DOES 1 through 50,
20 inclusive,

21 Defendants.

Case No.: RIC2001588

*Assigned for all purposes to: Hon. Sunshine S
Sykes, Dept. 6*

CLASS ACTION

PROOF OF SERVICE

Complaint filed: June 9, 2020

Trial: None Set

PROOF OF SERVICE

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PROOF OF SERVICE

Arambula v. Excel Cabinets, Inc. – Case No. RIC2001588

STATE OF CALIFORNIA, COUNTY OF RIVERSIDE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 237 California Street, El Segundo, California 90245.

On April 23, 2021, I served the following document:

FIRST AMENDED CLASS ACTION COMPLAINT

by placing a true copy thereof enclosed in a sealed envelope and deposited in the mail with postage thereon fully prepaid for USPS First Class Mail addressed as follows:

Jenna M. Warden (jwarden@fisherphillips.com)

John Mavros (jmavros@fisherphillips.com)

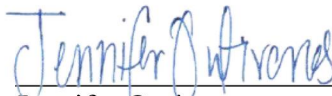
FISHER PHILLIPS, LLP

2050 Main Street, Suite 1000

Irvine, California 92614

I deposited such envelope in the mail at El Segundo, California. I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on April 23, 2021, at El Segundo, California.


Jennifer Ontiveros