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Attorneys for Plaintiffs CHRISTIAN HEADLEY,
AMERICA BANDA, and ERICKA ESPINOZA

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO**

CHRISTIAN HEADLEY, AMERICA
BANDA individually and on behalf of all
similarly situated employees of Defendants in
the State of California; and ERICKA
ESPINOZA, on behalf of all similarly situated
and/or aggrieved employees of Defendants in
the state of California,

Plaintiff,

v.

PROFESSIONAL MAINTENANCE
SYSTEMS, INC.; and DOES 1 THROUGH
50, inclusive,

Defendants.

Case No.: 37-2019-00045619-CU-OE-CTL

FIRST AMENDED COMPLAINT

CLASS ACTION
[Cal. Code Civ. Proc. § 382]

1. Failure to Provide Meal Periods;
2. Failure to Provide Rest Periods;
3. Failure to Pay Minimum and Regular Wages;
4. Failure to Pay All Overtime Wages;
5. Failure to Pay Reporting Time Pay;
6. Failure to Indemnify Necessary Business Expenses;
7. Failure to Provide Accurate Itemized Wage Statements;
8. Failure to Timely Pay All Wages Due Upon Separation of Employment;
9. Violation of Business & Professions Code §17200, *et seq.*; and

**REPRESENTATIVE ACTION FOR PAGA
PENALTIES**

[Labor Code §§ 2698, *et seq.*]

10. Representative Claims under the Labor Code Private Attorneys General Act

– JURY TRIAL DEMANDED –

CHRISTIAN HEADLEY and AMERICA BANDA, individually and on behalf of all other similarly situated employees of PROFESSIONAL MAINTENANCE SYSTEMS, INC., and DOES 1 through 50, inclusive, and ERICKA ESPINOZA, on behalf of all similarly situated and/or aggrieved employees of PROFESSIONAL MAINTENANCE SYSTEMS, INC., and DOES 1 through 50, inclusive, allege as follows:

I. INTRODUCTION

1. Plaintiff CHRISTIAN HEADLEY, AMERICA BANDA, and ERICKA ESPINOZA (collectively, “Plaintiffs”) bring this individual and putative class action against Defendants PROFESSIONAL MAINTENANCE SYSTEMS, INC., and DOES 1 through 50, inclusive (collectively, “Defendants”), for engaging in a pattern of wage and hour violations under the California Labor Code and the applicable Industrial Welfare Commission (“IWC”) Wage Orders; on information and belief, IWC Wage Order No. 5.

2. Plaintiffs bring this action on behalf of all non-exempt employees, who were employed by Defendants in the State of California and who worked as a non-exempt employee during the applicable relevant time period (hereinafter “similarly situated employees”).

3. Plaintiff Espinoza brings this representative action pursuant to the Private Attorneys General Act of 2004, California Labor Code section 2698, *et seq.* (“PAGA”) against Defendants for engaging in a pattern of wage and hour violations under the California Labor Code and the applicable IWC Wage Order. Plaintiff Espinoza brings this action on behalf of all other current and former non-exempt employees of Defendants in the State of California (hereinafter “aggrieved employees”).

4. Plaintiffs are informed and believe, and on that basis allege, that Defendants decreased their employment-related costs by systematically violating California wage and hour laws and engaging in unlawful and unfair business practices.

5. Defendants’ systematic pattern of Labor Code and IWC Wage Order violations toward Plaintiffs and other similarly situated and/or aggrieved employees in California include, but are not limited to:

- a. Failure to provide a first off-duty meal period of at least 30-minutes before the commencement of the sixth hour of work;

- b. Failure to authorize and permit off-duty paid rest periods;
- c. Failure to pay all minimum and regular wages for all hours worked;
- d. Failure to pay all overtime wages;
- e. Failure to pay reporting time pay;
- f. Failure to indemnify necessary business expenses;
- g. Failure to maintain accurate records;
- h. Failure to provide accurate itemized wage statements; and
- i. Failure to timely pay all wages due during and upon separation of employment.

6. Plaintiffs bring this lawsuit against Defendants seeking damages, restitution, declaratory judgment, injunctive relief, statutory penalties, and monetary relief on behalf of themselves and all other similarly situated employees of Defendants in California. Plaintiffs seek to recover, *inter alia*, unpaid wages, interest, attorney's fees, damages, liquidated damages, statutory penalties, and costs pursuant to Labor Code §§ 201, 202, 203, 204, 210, 218.5, 218.6, 221, 223, 224, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2802, the California Business and Professions Code § 17200, *et seq.*, and the provisions of the applicable IWC Wage Order.

7. Plaintiffs reserve the right to name additional representatives.

II. PARTIES

A. Plaintiffs

8. Plaintiff Headley is a former employee of Defendants, who, at all relevant times, was employed as a janitor and worked for Defendants in a non-exempt position in San Diego County.

9. Plaintiff Headley is a resident of the State of California and currently resides in San Diego County.

10. Plaintiff Banda is a former employee of Defendants, who, at all relevant times, was employed as a janitor and worked for Defendants in a non-exempt position in California.

11. Plaintiff Banda is a resident of the State of California and currently resides in Orange County.

12. Plaintiff Espinoza is a current employee of Defendants, who, at all relevant times, has been employed as a janitor and worked for Defendants in a non-exempt position in California.

13. Plaintiff Espinoza is a resident of the State of California and currently resides in San Diego. At all relevant times, Plaintiffs and, on information and belief, other similarly situated and/or aggrieved employees of Defendants in California were subject to the same policies, practices, and procedures governing their employment and their payment of wages and hours worked.

B. Defendants

14. Defendant PROFESSIONAL MAINTENANCE SYSTEMS, INC. is a California company with its principal place of business in San Diego, California, operating and doing business in the state of California, including San Diego County, California.

15. Defendants' wrongful conduct, as alleged herein, occurred in the County of San Diego and in the State of California.

16. Plaintiffs are informed and believe, and thereon allege, that each Defendant, whether named or fictitious, is and, at all relevant times, was authorized to do business and did business in the State of California and was Plaintiffs' and other similarly situated and/or aggrieved employees' "employer" as defined in and subject to the California Labor Code and the applicable IWC Wage Order.

17. Each of the fictitiously named Defendants participated in the acts alleged in this First Amended Complaint. The true names and capacities of the Defendants named as DOES 1 through 50, inclusive, are presently unknown to Plaintiffs. Plaintiffs will amend this Complaint, setting forth the true names and capacities of the fictitious Defendants, if and when their true names and capacities are ascertained. Plaintiffs are informed and believe, and on that basis allege, that each of the fictitious Defendants participated in the acts alleged in this First Amended Complaint.

18. Plaintiffs and all other similarly situated and/or aggrieved employees are, and at all relevant times were, non-exempt employees of each Defendants, including DOES 1 through 50, within the meanings set forth in the California Labor Code and applicable IWC Wage Order.

19. Plaintiffs are informed and believe that at all relevant times, each Defendant, whether named or fictitious, was the agent, employee or other person acting on behalf of every other Defendants, and, in participating in the acts alleged in this First Amended Complaint, acted within the scope of such agency or employment and ratified the acts of each other Defendant.

20. Plaintiffs are informed and believe that at all relevant times, each Defendant, whether

1 named or fictitious, exercised control over Plaintiffs' and other similarly situated and/or aggrieved
2 employees' wages, hours and/or working conditions.

3 21. Plaintiffs are further informed and believe that at all relevant times, each Defendant,
4 whether named or fictitious, acted as the agent for the other Defendants, carried out a joint scheme,
5 business plan or policy, and the acts of each Defendant are legally attributable to the other Defendants.

6 22. Each Defendant, whether named or fictitious, was the alter ego of each of the other
7 Defendants at all relevant times herein.

8 23. A unity of interest and ownership between each Defendant, whether named or fictitious,
9 exists such that all Defendants acted as a single employer of Plaintiffs and all other similarly situated
10 and/or aggrieved employees.

11 **III. JURISDICTION AND VENUE**

12 24. This Court has subject-matter jurisdiction to hear this case because Plaintiffs are informed
13 and believe that the monetary damages and restitution sought herein for Defendants' conduct exceeds the
14 minimum jurisdictional limits of the Superior Court.

15 25. Venue is proper in San Diego County pursuant to Code of Civil Procedure §§ 395(a) and
16 395.5 because Defendants maintain offices and transact substantial business in San Diego County,
17 Defendants employed Plaintiffs and other similarly situated and/or aggrieved employees in San Diego
18 County, and the unlawful acts alleged herein that arose in San Diego County have a direct effect on
19 Plaintiffs and other similarly situated and/or aggrieved employees within San Diego County.

20 **IV. GENERAL ALLEGATIONS**

21 26. Plaintiff Headley is a former employee of Defendants who worked as a day porter/glass
22 washer from approximately January 2016 through May 2017. Plaintiff was assigned and placed to work
23 at Ambrix, Inc. in La Jolla, California.

24 27. As a day porter/glass washer, Plaintiff Headley was responsible for lab operations, lab
25 maintenance, facilities operations, and facilities maintenance.

26 28. At all times, Plaintiff Headley was a non-exempt employee and was compensated on an
27 hourly basis. Plaintiff Headley initially earned \$11.50 per hour, and ended his employment earning
28 approximately \$15.00 per hour.

1 29. Plaintiff Banda is a former employee of Defendants who worked as a janitor from
2 approximately July 2018 through July 2019. As a janitor, Plaintiff Banda was responsible for cleaning
3 clinics and offices.

4 30. At all times, Plaintiff Banda was a non-exempt employee and was compensated on an
5 hourly basis. Plaintiff Banda earned \$12.00 per hour

6 31. Plaintiff Espinoza is a current employee of Defendants who began work as a janitor in
7 approximately January 2016.

8 32. As a janitor, Plaintiff Espinoza was responsible for three separate locations.

9 33. At all times, Plaintiff Espinoza was a non-exempt employee and was compensated on an
10 hourly basis. At all times, Defendant has compensated Plaintiff Espinoza at the minimum wage.

11 34. Defendants denied Plaintiffs and, on information and belief, other similarly situated and/or
12 aggrieved current and former non-exempt employees, certain rights afforded to them under the California
13 Labor Code and IWC Wage Order. Specifically, Defendants did not properly compensate Plaintiffs and
14 other similarly situated current and former non-exempt employees for all hours worked, failed to provide
15 compliant meal and rest periods, failed to indemnify all necessary business expenses, failed to provide
16 accurate itemized wage statements, and failed to pay all wages due and owing by the times set forth by
17 law.

18 35. Plaintiffs and, on information and belief, other similarly situated and/or aggrieved
19 employees of Defendants did not sign a valid on-duty meal period agreement at any point during their
20 employment with Defendants, nor did they properly waive any of their meal periods.

21 36. Defendants did not have a written meal break policy that complied with California law.

22 37. Defendants had a pattern and practice of not providing Plaintiffs and, on information and
23 belief, other similarly situated and/or aggrieved employees with legally compliant meal periods, even
24 though Plaintiffs and other similarly situated and/or aggrieved employees worked more than six (6) hours
25 during their workday.

26 38. Pursuant to Defendants' policies and procedures, Defendants did not provide Plaintiffs and,
27 on information and belief, other similarly situated and/or aggrieved employees the opportunity to take
28 compliant 30-minute, off-duty meal periods before the end of the fifth hour of work. Instead, Defendants

1 expected Plaintiffs and, on information and belief, other similarly situated and/or aggrieved employees to
2 work through meal periods.

3 39. Upon information and belief, Defendants employed the use of an auto-deduct system,
4 thereby automatically deducting 30 minutes of time for an uncompensated meal period even though
5 Plaintiffs and, on information and belief, other similarly situated and/or aggrieved employees, were not
6 provided meal periods.

7 40. As a result, Plaintiffs and, on information and belief, other similarly situated and/or
8 aggrieved employees were regularly required to work through their meal periods, take a meal period more
9 than five hours after they started working, take a meal period that was less than thirty minutes long, or did
10 not receive a meal period at all.

11 41. Thus, as a result of Defendants' illegal policies, Plaintiffs and, on information and belief,
12 other similarly situated and/or aggrieved employees were denied the opportunity to take legally compliant
13 thirty-minute meal periods, in violation of the applicable Wage Order.

14 42. Defendants did not have a written rest break policy that complied with California law.

15 43. For the same reasons Defendants did not authorize or permit Plaintiffs and, on information
16 and belief, other similarly situated and/or aggrieved employees to take legally compliant meal periods,
17 Defendants also had a pattern and practice of failing to authorize and permit Plaintiffs and, on information
18 and belief, other similarly situated and/or aggrieved employees to take legally compliant rest periods of at
19 least 10 minutes for every four-hour work period, or major fraction thereof.

20 44. Thus, as a result of Defendants' illegal policies, Plaintiffs and, on information and belief,
21 other similarly situated and/or aggrieved employees were not authorized or permitted to take legally
22 compliant rest periods, in violation of the applicable Wage Order.

23 45. Although Plaintiffs and, on information and belief, other similarly situated and/or
24 aggrieved employees' meal and rest periods were regularly late, short, interrupted, or not provided at all,
25 Defendants did not compensate Plaintiffs and, on information and belief, other similarly situated and/or
26 aggrieved employees an additional hour of pay at their regular rate of pay for the times that Plaintiffs and
27 other similarly situated and/or aggrieved employees were not authorized or permitted to take a compliant
28 and timely meal or rest period, in violation of Labor Code § 226.7.

1 46. Plaintiffs and, on information and belief, other similarly situated and/or aggrieved
2 employees regularly worked more than eight hours a day and/or more than forty hours a week.

3 47. Defendants failed to properly pay Plaintiffs and, on information and belief, other similarly
4 situated and/or aggrieved employees at least minimum, regular and overtime wages owed for all time
5 suffered or permitted to work through and during their meal periods and rest periods. Despite the fact that
6 all time spent performing these duties was compensable work hours, Defendant did not count this time as
7 hours worked and provided no remuneration.

8 48. Furthermore, Plaintiffs and, on information and belief, other similarly situated and/or
9 aggrieved employees were not paid all minimum, regular, and overtime wages because Defendants failed
10 to pay them for various tasks that they performed while they were off-duty. For example, Defendants
11 required Plaintiff Headley to be on call and to report back to work when an alarm went off in his
12 department and was not compensated for his time responding to the call.

13 49. Defendants failed to pay Plaintiffs and, on information and belief, other similarly situated
14 and/or aggrieved employees reporting time pay for being on-call. For example, after Plaintiff Headley's
15 scheduled shift ended, Defendants required Plaintiff Headley to remain on call and respond to any calls
16 from Ambrix. As a result, Plaintiffs and, on information and belief, other similarly situated and/or
17 aggrieved employees were required to make time available for Defendants and refrain from making other
18 arrangements or plans for the day, but were not paid any amount for this on-call time.

19 50. Defendants failed to indemnify Plaintiffs and, on information and belief, other similarly
20 situated and/or aggrieved employees for all necessary expenses that were incurred in the discharge of their
21 job duties. For example, Plaintiffs and, on information and belief, other similarly situated and/or aggrieved
22 employees were required to use their personal cell phones to communicate with their supervisors, clients,
23 and vendors. In addition, Plaintiffs and, on information and belief, other similarly situated and/or
24 aggrieved employees were required to use their personal vehicles to travel between different job sites.
25 Plaintiffs and, on information and belief, other similarly situated and/or aggrieved employees did not
26 receive any reimbursement for the use of their personal cell phones or vehicles, as required by California
27 law.

28 51. As a direct result of Defendants' illegal policies and procedures, Defendants failed to

maintain accurate records reflecting all of Plaintiffs' and, on information and belief, other similarly situated and/or aggrieved employees' time worked and wages earned, in violation of California law. On information and belief, Defendants failed to keep accurate records of Plaintiffs' and other similarly situated and/or aggrieved employees' hours worked when Defendants failed to record the proper beginning and ending of each work and meal period, in addition to the total hours worked during the pay period, among others.

52. Defendants similarly failed to provide Plaintiffs and, upon information and belief, other similarly situated and/or aggrieved employees with accurate itemized wage statements. For example, the wage statements issued by Defendants do not include the accurate total regular and overtime hours worked, the accurate hourly rates and corresponding number of hours worked at each hourly rate, or the correct amount of gross and net wages earned. The wage statements issued by Defendants also do not accurately set forth the hours worked during meal breaks and their correct corresponding rates of pay.

53. On information and belief, the wage statement omissions and inaccuracies were not a result of an isolated and unintentional payroll error due to an inadvertent mistake, but rather a result of knowing and intentional omissions by Defendants. In addition, and as a result of these omissions and inaccuracies, Plaintiffs and, on information and belief, other similarly situated and/or aggrieved employees were not promptly and easily able to determine the correct hours worked and/or determine the accurate wages due and owing without reference to other documents and information.

54. To this date, Defendants have not paid Plaintiffs and, on information and belief, other similarly situated and/or aggrieved employees all wages owed, including all minimum, regular and overtime wages, and meal and rest period premium wages.

55. Defendants maintained a pattern and practice of failing to pay Plaintiffs and, on information and belief, other similarly situated and/or aggrieved employees all wages due and owing at the time of their separation of employment within the time specified by Labor Code §§ 201 and 202 because Defendants failed to pay Plaintiffs and, on information and belief, other similarly situated and/or aggrieved employees all wages due and owing at the time of termination of their employment.

56. Based on the foregoing violations of the Labor Code and the applicable IWC Wage Order, Defendants engaged in unfair business practices in California and willingly and knowingly engaged in an

1 employment pattern and practice that violated Business & Professions Code § 17200 *et seq.* Plaintiffs and,
2 on information and belief, other similarly situated and/or aggrieved employees suffered damages due to
3 Defendants’ unfair, unlawful and/or fraudulent actions.

4 **V. THE LABOR CODE PRIVATE ATTORNEYS GENERAL ACT (“PAGA”)**

5 **REPRESENTATIVE ACTION DESIGNATION**

6 57. Plaintiff Espinoza hereby incorporates by reference all preceding paragraphs set forth
7 above as though fully set forth herein

8 58. The Causes of Action alleged herein is appropriately suited for a Labor Code Private
9 Attorneys General Act of 2004 (“PAGA”) action because:

- 10 **a.** Pursuant to California Labor Code section 2699(a), any provision of the
11 California Labor Code that provides for a civil penalty to be assessed and
12 collected by the Labor and Workforce Development Agency or any of its
13 departments, divisions, commissions, boards, agencies, or employees, for a
14 violation of the California Labor Code, may, as an alternative, be recovered
15 through a civil action brought by an aggrieved employee on behalf of himself or
16 herself and all other current or former employees pursuant to the procedures
17 specified in section 2699;
- 18 **b.** This action involves allegations of violations of provisions of the California Labor
19 Code that provide or do not provide for a civil penalty to be assessed and
20 collected by the LWDA or any departments, divisions, commissions, boards,
21 agencies or employees;
- 22 **c.** Plaintiff Espinoza is an “aggrieved employee” because she was employed by the
23 alleged violators and had one or more of the alleged violations committed against
24 her;
- 25 **d.** On March 3, 2021, Plaintiff Espinoza satisfied the procedural requirements of
26 section 2699.3 by serving the LWDA electronically and Defendant
27 PROFESSIONAL MAINTENANCE SYSTEMS, INC. via Certified Mail with
28 his notice for wage and hour violations and penalties, including the facts and

theories to support each violation. A true and correct copy of Plaintiff Espinoza's notices and proof of service is attached as Exhibit A.

- e. More than 65 days have passed since Plaintiff Espinoza served notice via Certified Mail to the LWDA and his employers. Therefore, Plaintiff Espinoza satisfied all the administrative requirements to pursue civil penalties against Defendants pursuant to California Labor Code section 2698, *et seq.*;
- f. Plaintiff Espinoza filed this action pursuant to California Labor Code section 2699(a) and (f), on behalf of herself and all other aggrieved employees of Defendants to recover civil penalties, including unpaid wages, which are to be paid to the affected employees pursuant to California Labor Code sections 558 and 1197.1;
- g. Defendants were Plaintiff Espinoza's employer or person acting on behalf of Plaintiff Espinoza's employer, within the meaning of California Labor Code section 558, who violated or caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating hours and days of work in any order of the Industrial Welfare Commission and, as such, is subject to civil penalties for each underpaid employee, as set forth in California Labor Code section 558, at all relevant times;
- h. Defendants were Plaintiff Espinoza's employer or person acting on behalf of Plaintiff Espinoza's employer either individually or as an officer, agent, or employee of another person, within the meaning of California Labor Code section 1197.1, who paid or caused to be paid to any employee a wage less than the minimum fixed by California state law, and as such, is subject to civil penalties for each underpaid employee, as well as liquidated damages pursuant to California Labor Code section 1194.2, and any applicable penalties imposed pursuant to California Labor Code section 203; and
- i. Plaintiff seeks to recover only those civil penalties that are required to be shared with the LWDA and no individual relief or underpaid wages.

VI. **CLASS ACTION DESIGNATION**

59. Plaintiffs re-allege and incorporate by reference the allegations contained in the paragraphs above, as though fully set forth herein.

60. Plaintiffs bring Causes of Action One through Nine as a Class Action pursuant to California Code of Civil Procedure § 382 on behalf of themselves and all current and former employees of Defendants in California and who worked as a non-exempt employee and who were affected by Defendants' Labor Code, Business and Professions Code, and IWC Wage Order violations, as alleged herein.

61. Plaintiffs seek to represent the following Classes, which are defined as:

The Non-Exempt Class:

"All current and former non-exempt employees of Defendant PROFESSIONAL MAINTENANCE SYSTEMS, INC. who were employed at any time from 4 years from the date of filing of the Complaint through the present"

62. Plaintiffs also seek to represent the following Subclass, which is defined as:

The Waiting Time Penalties Subclass:

"All members of the Non-Exempt Class, whose employment with Defendant PROFESSIONAL MAINTENANCE SYSTEMS, INC. ended at any time from 3 years from the date of filing of the Complaint through the present."

63. **Reservation of Rights:** Pursuant to California Rule of Court 3.765(b), Plaintiffs reserve the right to amend or modify the class definitions with greater specificity, by further division into subclasses, and/or limitation to particular issues.

64. Causes of Action One through Nine are appropriately suited for a class action pursuant to § 382 of the Code of Civil Procedure because the following requirements are met:

A. **Numerosity**

65. The members of the Classes are sufficiently numerous to render the joinder of all their members impracticable. While Plaintiffs have not yet determined the precise number of members of the

Classes, Plaintiffs are informed and believes that the Classes likely consist of over 100 individuals. Although the exact number is currently unknown to Plaintiffs, this information is easily ascertainable from Defendants' time and payroll records and other personnel records.

B. Commonality and Predominance

66. Common questions of law and fact exist as to all class members and predominate over any questions affecting only individual members of the Class or Subclass. The common questions of law and fact that predominate include, but are not limited to:

- a. Whether Defendants failed to permit Non-Exempt Class members to uninterrupted and duty-free, thirty-minute meal periods before the commencement of the sixth hour of work;
- b. Whether Defendants failed to permit Non-Exempt Class members to take off-duty rest periods of at least 10 minutes for every four hours worked, or major fraction thereof;
- c. Whether Defendants failed to pay one additional hour of pay at the employees' regular rate of compensation to Non-Exempt Class members when they were not provided with compliant and timely meal and rest periods;
- d. Whether Defendants failed to pay Non-Exempt Class members at least minimum wages and/or all regular wages owed for all hours or fractions of an hour worked and under the control of Defendants;
- e. Whether Defendants failed to pay Non-Exempt Class members all overtime wages for all hours, or fraction of hours, worked and under the control of Defendants;
- f. Whether Defendants failed to pay Non-Exempt Class members reporting time pay for working on-call shifts;
- g. Whether Defendants failed to indemnify Non-Exempt Class members for necessary business expenses incurred in direct consequence of the discharge of their duties;
- h. Whether Defendants failed to properly and accurately record and maintain records of all hours worked and wages earned by Non-Exempt Class members;
- i. Whether Defendants failed to provide Non-Exempt Class members with accurate

itemized wage statements showing, among other things, the number of hours worked and the correct amount of gross and net wages earned; and

j. Whether Defendants failed to pay Waiting Time Penalties Subclass members all of their wages owed within the required time frames upon separation of employment.

C. Typicality

67. Plaintiffs' claims are typical of the claims of all class members because Plaintiffs' and all class members' claims arise from the same event, practice and/or course of conduct of Defendants. Plaintiffs and all class members sustained injuries and damages as a result of Defendants' illegal policies, practices and/or common course of conduct in violation of California wage and hour laws and/or illegal, unfair, or fraudulent business practices.

68. Furthermore, Plaintiffs' claims under the Labor Code and the applicable IWC Wage Order are typical of the Class and Subclass because Defendants' failure to comply with the provisions of California's wage and hour laws entitles Plaintiffs and each class member to similar pay, benefits, and other relief. Accordingly, the legal theories underlying each cause of action are the same and the remedies sought by Plaintiffs and all class members are the same.

D. Adequacy of Representation

69. Plaintiffs have no fundamental conflict of interest with the Class or Subclass they seek to represent. Plaintiffs will adequately protect the interests of all class members because it is in Plaintiffs' best interest to prosecute the claims alleged herein to obtain full compensation and penalties due to them and putative class members.

70. Plaintiffs retained attorneys who are experienced employment law litigators with significant wage and hour and class action experience.

E. Superiority of Class Action

71. Plaintiffs believe a class action is a superior method of litigation for the fair and efficient adjudication of this controversy. Individual joinder of all class members is not practicable. Class action treatment will allow similarly situated employees to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system.

72. Plaintiffs know of no difficulty that might be encountered in the management of this suit,

1 which would preclude maintenance as a class action.

2 **VII. CAUSES OF ACTION**

3 **FIRST CAUSE OF ACTION**

4 **FAILURE TO PROVIDE MEAL PERIODS**

5 (Violation of Labor Code §§ 226.7, 512, and 1198 and the “Meal Periods” section of the
6 Applicable IWC Wage Order)

7 (Alleged By Plaintiffs Individually and On Behalf of the Non-Exempt Class Against Defendants)

8 73. Plaintiffs re-allege and incorporate by reference the allegations contained in the paragraphs
9 above, as though fully set forth herein.

10 74. Labor Code § 512(a) provides, in part, that employers, including Defendants, “may not
11 employ an employee for a work period of more than five hours per day without providing an employee
12 with a meal period of not less than 30 minutes” and “may not employ an employee for a work period of
13 more than 10 hours per day without providing the employee with a second meal period of not less than 30
14 minutes.”

15 75. Labor Code § 226.7 requires that employers, including Defendants, provide their
16 employees with meal periods as mandated by the applicable Wage Order of the Industrial Welfare
17 Commission, and prohibits employers from requiring any employee “to work during any meal ... period
18 mandated by an applicable order of the Industrial Welfare Commission.” Labor Code § 226.7(c) states,
19 “[i]f an employer fails to provide an employee a meal ... period in accordance with a state law... the
20 employer shall pay the employee one additional hour of pay at the employee’s regular rate of
21 compensation for each workday that the meal ... period is not provided.”

22 76. Labor Code § 1198 states that the “maximum hours of work and standard conditions of
23 labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor
24 for employees. The employment of any employee for longer hours than those fixed by the order or under
25 conditions of labor prohibited by the order is unlawful.”

26 77. The “Meal Periods” section of the applicable IWC Wage Order states, “[n]o employer shall
27 employ any person for a work period of more than five (5) hours without a meal period of not less than
28 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work

1 the meal period may be waived by mutual consent of the employer and the employee.” It further states,
2 “[a]n employer may not employ an employee for a work period of more than ten (10) hours per day without
3 providing the employee with a second meal period of not less than 30 minutes, except that if the total
4 hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of
5 employer and employee only if the first meal period was not waived.”

6 78. The “Meal Periods” section of the applicable IWC Wage Order further states, “[u]nless the
7 employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an
8 ‘on duty’ meal period and counted as time worked. An ‘on duty’ meal period shall be permitted only
9 when the nature of the work prevents an employee from being relieved of all duty and when by written
10 agreement between the parties an on-the-job meal period is agreed to. The written agreement shall state
11 that the employee may, in writing, revoke the agreement at any time.”

12 79. The “Meal Periods” section of the applicable IWC Wage Order also states, “[i]f an
13 employer fails to provide an employee a meal period in accordance with the applicable provisions of this
14 order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of
15 compensation for each workday that the meal period is not provided.”

16 80. On information and belief, Plaintiffs and the Non-Exempt Class were subject to the same
17 policies, practices, and procedures governing the provision and scheduling of meal periods.

18 81. On information and belief, Defendants had a pattern and practice of not providing Plaintiffs
19 and the Non-Exempt Class with legally compliant 30-minute off-duty meal periods during their shifts,
20 even though they worked more than six (6) hours during their workday.

21 82. Plaintiffs and, on information and belief, the Non-Exempt Class were unable to take
22 compliant meal periods as a result of Defendants’ policies alleged herein. For example, Defendants’
23 illegal policies required Plaintiffs and, on information and belief, the Non-Exempt Class to remain on duty
24 at all times during their meal periods, or not take them at all.

25 83. Thus, as a result of Defendants’ policies, Plaintiffs’ and Non-Exempt Class members’ meal
26 periods were regularly on-duty or not taken.

27 84. Plaintiffs and, on information and belief, the Non-Exempt Class members did not sign a
28 valid on-duty meal period agreement at any point during their employment with Defendant.

85. Therefore, as a result of Defendants' conduct, including the conduct alleged herein, Defendants violated Labor Code §§ 226.7, 512, and 1198, as well as the applicable IWC Wage Order when Defendants failed to provide Plaintiffs and the Non-Exempt Class members a 30-minute, duty-free meal period before the commencement of their sixth hour of work.

86. Consequently, pursuant to Labor Code § 226.7(b) and the "Meal Periods" section of the Wage Order, Defendants were required to pay Plaintiffs and the Non-Exempt Class one additional hour of pay at their regular rate of compensation for each day that Defendants did not provide Plaintiffs and the Non-Exempt Class with a 30-minute, duty-free meal period before the commencement of their sixth hour of work.

87. Despite this obligation, Defendants did not pay Plaintiffs and, on information and belief, the Non-Exempt Class one additional hour of pay at each employee's regular rate of compensation for each day that Defendants did not provide Plaintiffs and the Non-Exempt Class with a 30-minute, duty-free meal period before the commencement of their sixth hour of work.

88. Instead, on information and belief, Defendants had a common policy and practice of failing to compensate Plaintiffs and the Non-Exempt Class with an hour of pay at their regular rate of pay for the times that Defendants did not provide Plaintiff and the Non-Exempt Class with a 30-minute, duty-free meal period before the commencement of their sixth hour of work, as required by Labor Code § 226.7(b) and the IWC Wage Order.

89. Thus, on information and belief, Defendants intentionally refused to perform their obligations to provide meal periods and further failed to compensate Plaintiffs and the Non-Exempt Class with all owed meal premium wages as set forth by Labor Code § 226.7(b) and the IWC Wage Order.

90. Plaintiffs and the Non-Exempt Class suffered and continue to suffer losses related to Defendants' failure to pay an additional hour of pay for each day a legally compliant meal period was not provided and the associated use and enjoyment of compensation due and owing to them as a direct result of Defendants' Labor Code and IWC Wage Order violations.

91. Plaintiffs seek all available remedies for Defendants' violations, including, but not limited to, all wages due, monies, and interest to the extent permitted by law.

WHEREFORE, Plaintiffs pray for relief as hereinafter requested.

SECOND CAUSE OF ACTION

FAILURE TO PROVIDE REST PERIODS

(Violation of Labor Code §§ 226.7 and 1198 and the “Rest Periods” section
of the Applicable IWC Wage Order)

(Alleged By Plaintiffs Individually and On Behalf of the Non-Exempt Class Against Defendants)

92. Plaintiffs re-allege and incorporate by reference the allegations contained in the paragraphs above, as though fully set forth herein.

93. Labor Code § 226.7 requires employers, including Defendants, to provide to their employees, including Plaintiffs, paid rest periods as mandated by the IWC Wage Orders.

94. Labor Code § 1198 states that the “maximum hours of work and standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

95. The “Rest Periods” section of the applicable IWC Wage Order states, “[e]very employer shall authorize and permit employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.” Furthermore, “[i]f an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the rest period is not provided.”

96. On information and belief, Plaintiffs and the Non-Exempt Class are subject to the same policies, practices, and procedures governing the provision and scheduling of rest periods.

97. For the same reasons Defendants did not authorize and permit Plaintiffs and, on information and belief, the Non-Exempt Class members from taking legally compliant meal periods, Plaintiffs and, on information and belief, the Non-Exempt Class members were also not authorized and permitted to take compliant rest periods.

98. Labor Code § 226.7(c) states, “[i]f an employer fails to provide an employee a ... rest ... period in accordance with a state law... the employer shall pay the employee one additional hour of pay

1 at the employee's regular rate of compensation for each workday that the rest ... period is not
2 provided."

3 99. Even though Plaintiffs and, on information and belief, Non-Exempt Class members were
4 not authorized and permitted to take off-duty rest periods, Defendants did not pay Plaintiffs and the Non-
5 Exempt Class appropriate rest period premium wages for each day in which Defendants did not authorize
6 and permit Plaintiffs and the Non-Exempt Class to take compliant rest periods, in violation of Labor Code
7 § 226.7 and the applicable IWC Wage Order.

8 100. On information and belief, Defendants had a common policy, pattern, and practice of
9 failing to compensate Plaintiffs and the Non-Exempt Class with an hour of pay at their regular rate of pay
10 for the times that Plaintiffs and the Non-Exempt Class were not authorized to take rest periods of at least
11 10 minutes for each four-hour work period, or major fraction thereof.

12 101. Plaintiffs and the Non-Exempt Class suffered and continue to suffer losses related to
13 Defendants' failure to pay an additional hour of pay for each day a rest period was not provided and the
14 associated use and enjoyment of compensation due and owing to them as a direct result of Defendants'
15 Labor Code and IWC Wage Order violations.

16 102. Plaintiffs seek all available remedies for Defendants' violations including, but not limited
17 to, any and all wages due, monies, and interest, to the extent permitted by law.

18 WHEREFORE, Plaintiffs pray for relief as hereinafter requested.

19 **THIRD CAUSE OF ACTION**

20 **FAILURE TO PAY MINIMUM AND REGULAR WAGES**

21 (Violation of Labor Code §§ 1194, 1197, and 1198 and the "Minimum Wages" section of the
22 Applicable IWC Wage Order)

23 (Alleged By Plaintiffs Individually and On Behalf of the Non-Exempt Class Against Defendants)

24 103. Plaintiffs re-allege and incorporate by reference the allegations contained in the paragraphs
25 above, as though fully set forth herein.

26 104. Labor Code § 1197 provides, "[t]he minimum wage for employees fixed by the
27 commission is the minimum wage to be paid to employees, and the payment of a less wage than the
28 minimum wage so fixed is unlawful."

105. The “Minimum Wages” section of the applicable IWC Wage Order provides that an employer may not pay employees less than the applicable minimum for all hours worked.

106. The applicable IWC Wage Order defines the term “hours worked” as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.”

107. Furthermore, pursuant to Labor Code § 1198, “[t]he maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

108. Defendants failed to pay Plaintiffs and, on information and belief, Non-Exempt Class members at least minimum wages for all the time spent working and under the control of Defendants. Even though Plaintiffs and, on information and belief, Non-Exempt Class members were required to work through their meal and rest periods, Defendants did not count this time as hours worked. In addition, Plaintiffs and, on information and belief, Non-Exempt Class members were not paid all minimum and regular wages because Defendants failed to pay them for various tasks that they performed while they were off-duty. As a result, Plaintiffs and, on information and belief, Non-Exempt Class members did not receive the statutory minimum wage for all time suffered or permitted to work because they were not properly compensated at their regular rate of pay for the time they spent working through their meal and rest periods and while they were off-duty.

109. Labor Code § 1194 provides, in part, that any employee receiving less than the legal minimum wage is entitled to recover in a civil action the unpaid balance of the minimum wage, including interest thereon, reasonable attorney’s fees, and costs of suit.

110. Labor Code § 1194.2 allows an employee to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon for any action under Labor Code § 1194.

111. Plaintiffs and the Non-Exempt Class suffered and continue to suffer losses related to the use and enjoyment of compensation due and owing to them as a direct result of Defendants’ unlawful acts and Labor Code violations in an amount to be shown according to proof at trial and within the jurisdictional limitations of this Court.

112. Plaintiffs seek all available remedies for Defendants' violations including, but not limited to, any and all wages due, monies, interest, liquidated damages, attorney's fees, and costs to the extent permitted by law.

WHEREFORE, Plaintiffs pray for relief as hereinafter requested.

FOURTH CAUSE OF ACTION

FAILURE TO PAY ALL OVERTIME WAGES

(Violation of Labor Code §§ 510, 1194, and 1198, and the "Hours and Days of Work" section of the Applicable IWC Wage Order)

(Alleged By Plaintiffs Individually and On Behalf of the Non-Exempt Class Against All Defendants)

113. Plaintiffs re-allege and incorporate by reference the allegations contained in the paragraphs above, as though fully set forth herein.

114. Labor Code § 510 provides, "[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee." The "Hours and Days of Work" section of the applicable IWC Wage Order mandate the same requirements.

115. Labor Code § 1194 provides that any employee receiving less than the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

116. Furthermore, pursuant to Labor Code § 1198, "[t]he maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

117. The applicable IWC Wage Order defines the term "hours worked" as "the time during

1 which an employee is subject to the control of an employer, and includes all the time the employee is
2 suffered or permitted to work, whether or not required to do so.”

3 118. For the same reasons Defendants failed to pay Plaintiffs and, on information and belief,
4 Non-Exempt Class members for all minimum and regular wages, Defendants also failed to pay Plaintiffs
5 and, on information and belief, Non-Exempt Class members overtime wages for all hours they worked
6 over eight in a day and/or forty in a week, and/or for every hour worked during the seventh day of work,
7 at the applicable overtime rate during their employment with Defendants.

8 119. Plaintiffs and the Non-Exempt Class suffered and continue to suffer losses related to the
9 use and enjoyment of compensation due and owing to them as a direct result of Defendants’ unlawful acts
10 and Labor Code violations in an amount to be shown according to proof at trial and within the
11 jurisdictional limitations of this Court.

12 120. Plaintiffs seek all available remedies for Defendants’ violations including, but not limited
13 to any and all wages due, monies, interest, attorney’s fees, and costs to the extent permitted by law.

14 WHEREFORE, Plaintiffs pray for relief as hereinafter requested.

15 **FIFTH CAUSE OF ACTION**

16 **FAILURE TO PAY REPORTING TIME PAY**

17 (Violation of Labor Code § 1199, and the “Reporting Time Pay” section of the Applicable IWC Wage
18 Order)

19 (Alleged By Plaintiffs Individually and on Behalf of the Non-Exempt Class Against Defendants)

20 121. Plaintiffs re-allege and incorporate by reference the allegations contained in the paragraphs
21 above, as though fully set forth herein.

22 122. The “Reporting Time Pay” section of the applicable IWC Wage Order states, “[e]ach
23 workday an employee is required to report for work and does report, but is not put to work or is furnished
24 less than half said employee’s usual or scheduled day’s work, the employee shall be paid for half the usual
25 or scheduled day’s work, but in no event for less than two (2) hours nor more than four (4) hours, at the
26 employee’s regular rate of pay, which shall not be less than the minimum wage.”

27 123. Labor Code § 1199 makes it unlawful for any employer “or other person acting either
28 individually or as an officer, agent, or employee of another person” to require or cause “any employee to

1 work for longer hours than those fixed, or under conditions of labor prohibited by an order of the
2 commission,” pay or cause “to be paid to any employee a wage less than the minimum fixed by an order
3 of the commission” or violate or refuse or neglect “to comply with any provision of this chapter or any
4 order or ruling of the commission.”

5 124. In *Ward v. Tilly’s, Inc.*, No. B280151, 2019 WL 421743 (Cal. Ct. App., Feb. 4, 2019), the
6 California Court of Appeal held that similar on-call shifts trigger the Wage Order’s reporting time pay
7 requirements. The court noted, “on-call shifts burden employees, who cannot take other jobs, go to school,
8 or make social plans during on-call shifts—but who nonetheless receive no compensation from [their
9 employer] unless they ultimately are called in to work. This is precisely the kind of abuse that reporting
10 time pay was designed to discourage.”

11 125. Defendants established and maintained a policy and practice of scheduling Plaintiffs and,
12 on information and belief, Non-Exempt Class members for on-call shifts. Defendants scheduled Plaintiffs
13 and, on information and belief, Non-Exempt Class members for on-call shifts several days per week and
14 expected them to be available and respond to any calls or emergencies.

15 126. Therefore, Plaintiffs and, on information and belief, Non-Exempt Class members were
16 required to wait for Defendants to contact them and were unable to make other plans or arrangements for
17 the day. Over the course of their employment, Plaintiffs and, on information and belief, Non-Exempt Class
18 members were not paid any amount for this on-call time.

19 127. As a direct and proximate result of Defendants’ actions set forth herein, Plaintiffs and, on
20 information and belief, Non-Exempt Class members have been damaged in that they have not been paid
21 all required reporting time pay.

22 128. Plaintiffs and Non-Exempt Class are entitled to recover the premium wages prescribed by
23 the “Reporting Time Pay” section of the applicable IWC Wage Order in an amount of no less than two
24 hours, nor greater than four, whichever is greater, for each such occurrence, for every non-exempt
25 employee.

26 129. Plaintiffs seek all available remedies for Defendants’ violations including, but not limited
27 to any and all wages due, monies, interest, attorney’s fees, and costs to the extent permitted by law.

28 WHEREFORE, Plaintiffs pray for relief as hereinafter requested.

FIFTH CAUSE OF ACTION

FAILURE TO INDEMNIFY NECESSARY BUSINESS EXPENSES

(Violation of Labor Code § 2802)

(Alleged By Plaintiffs Individually and on Behalf of the Non-Exempt Class Against Defendants)

130. Plaintiffs re-allege and incorporate by reference the allegations contained in the paragraphs above, as though fully set forth herein.

131. Labor Code § 2802 requires an employer to indemnify its employees for all necessary expenditures or losses incurred by an employee in direct consequence of the discharge of his or her duties of employment.

132. Labor Code § 2802(b) states, “[a]ll awards made by a court ... for reimbursement of necessary expenditures” shall carry interest, at the same rate as judgments in civil actions, and said interest will accrue from the date on which the employee incurred the necessary expenditure including, but not limited to, reasonable costs and attorney’s fees incurred by the employee in enforcing their rights granted pursuant to Labor Code § 2802. The exact amount of the necessary expenditures or losses is in an amount to be proven at time of trial.

133. Furthermore, Labor Code § 2802(c) states, “[f]or the purposes of this section, the term ‘necessary expenditures or losses’ shall include all reasonable costs, including, but not limited to, attorney’s fees incurred by the employee enforcing the rights granted by this section.”

134. Plaintiffs and, on information and belief, members of the Non-Exempt Class incurred business expenses in direct consequence of their job duties through the use of their personal vehicles and cell phones.

135. On information and belief, Plaintiffs and the Non-Exempt Class were required to use their personal vehicles to drive from location to location and their personal cell phones to communicate with Defendants about their duties and to provide updates. Despite Defendants’ knowledge that Plaintiffs and, on information and belief, Non-Exempt Class members were using their personal vehicles and cell phones for work related purposes, Defendants failed to reimburse them for these expenses in violation of Labor Code § 2802.

136. As a direct result of Defendants’ violations alleged herein, Plaintiffs and members of the

1 Non-Exempt Class suffered and continue to suffer, substantial losses related to Defendants' failure to
2 indemnify them for the expenses and losses, including the use and enjoyment of such monies, lost interest
3 on such monies and expenses, and attorney's fees and costs in seeking to compel Defendants to fully
4 perform its obligations under state law, all to their respective damage in amounts according to proof at
5 trial and within the jurisdictional limitations of this Court.

6 137. Plaintiffs seek to recover in a civil action to the fullest extent permissible all available
7 remedies including, but not limited to, the unpaid balance of the indemnification from Defendants'
8 violations, interest thereon permitted by Labor Code § 2802(b), reasonable attorney's fees and costs of
9 suit, declaratory relief, and any other permitted remedies including those permitted pursuant to Labor
10 Code § 2802 and Code of Civil Procedure § 1021.5. The exact amount of reimbursements, interest, costs
11 and attorney's fees will be in an amount to be proved at time of trial.

12 WHEREFORE, Plaintiffs pray for relief as hereinafter requested.

13 **SIXTH CAUSE OF ACTION**

14 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

15 (Violation of Labor Code §§ 226, 246, and 1198 and the "Records" section of the
16 Applicable IWC Wage Order)

17 (Alleged By Plaintiffs Individually and On Behalf of the Non-Exempt Class Against All Defendants)

18 138. Plaintiffs re-allege and incorporate by reference the allegations contained in the paragraphs
19 above, as though fully set forth herein.

20 139. Labor Code § 226(a) requires that employers, including Defendants, furnish their
21 employees with each wage payment an accurate and itemized writing that shows gross wages earned, total
22 hours worked, all deductions, net wages earned, the inclusive dates of the period for which the employee
23 is paid, the name of the employee and the portion of his or her social security number, the name and
24 address of the legal entity that is the employer, and all applicable hourly rates in effect during the pay
25 period and the corresponding number of hours worked at each hourly rate by the employee.

26 140. Labor Code § 226(e), in part, permits employees suffering injury to collect the greater of
27 all actual damages or the amount specified in Labor Code § 226 per violation.

28 141. Labor Code § 226(e)(2)(B) states, in pertinent part, "an employee is deemed to suffer injury

1 for purposes of this subdivision if the employer fails to provide accurate and complete information as
2 required by any one or more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot
3 promptly and easily determine from the wage statement alone one or more of the following: (i) The amount
4 of the gross wages or net wages paid to the employee during the pay period or any of the other information
5 required to be provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9)
6 of subdivision (a).”

7 142. Labor Code § 226(h) states, “An employee may also bring an action for injunctive relief to
8 ensure compliance with this section, and is entitled to an award of costs and reasonable attorney's fees.”

9 143. As a direct result of Defendants’ illegal policies and procedures, Defendants failed to
10 maintain accurate records reflecting all of Plaintiffs’ and, on information and belief, other similarly
11 situated employees’ time worked and wages paid, in violation of California law. In addition, the wage
12 statements issued by Defendants did not include the correct total regular and overtime hours worked, the
13 correct amount of gross and net wages earned, and all applicable hourly rates and the corresponding
14 number of hours worked at each hourly rate, as required under Labor Code § 226(a).

15 144. Defendants’ failure to provide accurate wage statements deprived Plaintiffs and members
16 of the Non-Exempt Class of the ability to promptly and easily understand and question the calculation and
17 rate of pay and hours used to calculate the wages paid by Defendants. Plaintiffs and members of the Non-
18 Exempt Class, therefore, had no way to dispute any error in the payment or calculation of their wages, all
19 of which resulted in an unjustified economic enrichment to Defendants, and Plaintiff and members of the
20 Non-Exempt Class suffered actual damages as a result.

21 145. Defendants’ failure to provide accurate itemized wage statements constitutes an injury as
22 defined under Labor Code § 226(e)(2)(B). Therefore, Plaintiffs and members of the Non-Exempt Class
23 have suffered an injury for purposes of Labor Code § 226 and are entitled to recover the greater of all
24 actual damages or the amount specified in § 226 per violation.

25 146. Plaintiffs and Non-Exempt Class members suffered and continue to suffer injuries, losses
26 and actual damages as a direct result of Defendants’ Labor Code violations, including lost interest on such
27 wages, and expenses and attorney's fees in seeking to compel Defendants to fully perform their
28 obligations, in an amount to be shown according to proof at trial.

147. Plaintiffs seek to recover all available remedies including, but not limited to, damages, penalties, attorney's fees, costs, and injunctive relief to the fullest extent permitted by law.

WHEREFORE, Plaintiffs pray for relief as hereinafter requested.

EIGHTH CAUSE OF ACTION

FAILURE TO TIMELY PAY ALL WAGES DUE UPON SEPARATION OF EMPLOYMENT

(Violations of Labor Code §§ 201, 202, 203)

(Alleged By Plaintiffs Headley and Banda Individually and On Behalf of the Waiting Time Penalties

Subclass Against Defendants)

148. Plaintiffs Headley and Banda re-allege and incorporate by reference the allegations contained in the paragraphs above, as though fully set forth herein.

149. Labor Code § 201 requires Defendants to immediately pay any wages, without abatement or reduction, to any employee who is discharged. Labor Code § 202 requires Defendants to pay any and all wages due and owing to an employee not having a written contract for a definite period, who quits his or her employment, within 72 hours of the employee quitting his or her employment, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

150. For violation of Labor Code §§ 201 and 202, Labor Code § 203 causes the unpaid wages of an employee to continue as a penalty from the due date thereof, at the same rate until paid or until an action is commenced, but the wages shall not continue for more than 30 days.

151. As a result of Defendants' conduct during the applicable statutory period, Defendants willfully failed to pay Plaintiffs Headley and Banda and, on information and belief, the Waiting Time Penalties Subclass all wages due and owing to them, including minimum wages, overtime wages, and regular wages for all the time they were suffered or permitted to work or were engaged in work under Defendants' control, as well as all meal period premiums and rest period premiums owed within the time required by Labor Code §§ 201 and 202, as applicable.

152. To date, Plaintiffs Headley and Banda have not yet received all wages due and payable, including, but not limited to, minimum wages, overtime wages, regular wages, and meal and rest period premium wages owing to them. On information and belief, members of the Waiting Time Penalties

Subclass have not yet received all minimum wages, overtime wages, regular wages, and meal and rest premium wages due and owing to them.

153. As a direct result of Defendants' violations alleged herein, Plaintiffs Headley and Banda and the Waiting Time Penalties Subclass members suffered and continue to suffer losses related to the use and enjoyment of wages due and owing to them, all to their respective damage in an amount to be shown according to proof at trial and within the jurisdictional limitations of this Court.

154. Plaintiffs Headley and Banda seek all available remedies for Defendants' violations to the fullest extent permissible.

WHEREFORE, Plaintiffs pray for relief as hereinafter requested.

NINTH CAUSE OF ACTION

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

(Alleged By Plaintiffs Individually and on Behalf of the Non-Exempt Class Against Defendants)

155. Plaintiffs re-allege and incorporate by reference the allegations contained in the paragraphs above, as though fully set forth herein.

156. California Business & Professions Code § 17200, *et seq.*, prohibits acts of unfair competition, which includes any "unlawful, unfair or fraudulent business act or practice..."

157. Defendants' Labor Code and IWC Wage Order violations alleged herein constitute "unlawful, unfair or fraudulent business act or practices," which are prohibited by Business and Professions Code §§ 17200-17208 and include, but are not limited to: (i) failure to provide proper meal periods and pay Plaintiffs and the Non-Exempt Class premium wages for failure to provide compliant meal periods; (ii) failure to provide proper rest periods and pay Plaintiffs and the Non-Exempt Class premium wages for failure to provide compliant rest periods; (iii) failure to pay Plaintiffs and the Non-Exempt Class all regular, minimum, and overtime wages for all hours suffered or permitted to work and under the control of Defendant; (iv) failure to pay Plaintiffs and the Non-Exempt Class reporting time pay; (v) failure to indemnify Plaintiffs and the Non-Exempt Class for necessary business expenses; (v) failure to maintain accurate records of the hours that Plaintiffs and the Non-Exempt Class worked while employed by Defendant; (vi) failure to provide Plaintiffs and the Non-Exempt Class with accurate itemized wage statements; and (vii) failure to timely pay Plaintiffs and members of the Waiting Time

1 Penalties Subclass all wages owed upon separation of their employment with Defendants.

2 158. Defendants intentionally avoided paying Plaintiffs and the Non-Exempt Class all wages
3 and/or monies, and other financial obligations attached thereto, to create for Defendants an artificially
4 lower cost of doing business, and thus, undercut its competitors.

5 159. Defendants lowered their costs of doing business by paying Plaintiffs and the Non-Exempt
6 Class an amount less than what is required by the California Labor Code and the applicable Wage Order
7 of the Industrial Welfare Commission, thereby unfairly forcing Plaintiffs and Non-Exempt Class members
8 to perform work without fair compensation and benefits.

9 160. Defendants held themselves out to Plaintiffs and the Non-Exempt Class as being
10 knowledgeable about, and adhering to, the employment laws of California at all times relevant herein.
11 Plaintiffs and the Non-Exempt Class relied on and believed in Defendants' representation concerning
12 Defendants' adherence to the California laws, all to their detriment.

13 161. Defendants' scheme to lower its payroll and operation costs and thus profit, by withholding
14 money owed to the class and withholding wages, compensation and benefits, which are all the property
15 of Plaintiffs and the Non-Exempt Class, in violation of the California Labor Code and the IWC Wage
16 Orders, as alleged herein, constitutes an "unlawful, unfair or fraudulent business act or practice," under
17 California Business and Professions Code § 17200, *et seq.* As a result of Defendants' unfair competition,
18 Plaintiffs and the Non-Exempt Class suffered injury in fact by losing money and/or property.

19 162. Business and Professions Code § 17204, states, in relevant part, "[a]ctions for relief
20 pursuant to this chapter shall be prosecuted...by...a person who has suffered injury in fact and has lost
21 money or property as a result of the unfair competition."

22 163. Defendants acquired money and property owed to Plaintiffs and the Non-Exempt Class by
23 means of an unlawful practice that constitutes unfair competition as defined by Business and Professions
24 Code § 17200, *et seq.*

25 164. Plaintiffs and the Non-Exempt Class are persons in interest under Business and Professions
26 Code § 17203 to whom money and property should be restored. Business and Professions Code § 17203
27 states, in relevant part, that "any person may pursue representative claims or relief on behalf of others only
28 if the claimant meets the standing requirements of Section 17204."

1 165. Plaintiffs are persons who suffered injury in fact and lost money, wages, compensation,
2 and benefits, as a result of Defendants' unfair competition. Thus, pursuant to Business and Professions
3 Code §§ 17203 and 17204, Plaintiff may pursue representative claims and relief on behalf of themselves
4 and the putative classes.

5 166. Pursuant to Business and Professions Code § 17203, "[t]he court may make such orders or
6 judgments, as may be necessary to restore to any person in interest any money or property, real or personal,
7 which may have been acquired by means of such unfair competition."

8 167. Defendants reaped unfair benefits and illegal profits at the expense of Plaintiffs and the
9 Non-Exempt Class by committing the unlawful acts alleged herein. Thus, Defendants must make
10 restitution and/or be subject to other equitable relief pursuant to Business & Professions Code § 17203,
11 and restore all unpaid wages to Plaintiff and the Non-Exempt Class.

12 168. Plaintiffs and the Non-Exempt Class suffered and continue to suffer loss of wages and
13 monies, all in an amount to be shown according to proof at trial and within the jurisdiction of this Court.

14 169. Plaintiffs seek all available remedies on behalf of themselves and on behalf of the Non-
15 Exempt Class, including, but not limited to, restitution of all wages and all monies owed, all in an amount
16 to be shown according to proof at trial. All such remedies are cumulative of relief available under other
17 laws, pursuant to Business & Professions Code § 17205.

18 WHEREFORE, Plaintiffs pray for relief as hereinafter requested.

19 **TENTH CAUSE OF ACTION**

20 **REPRESENTATIVE CLAIMS UNDER THE CALIFORNIA LABOR CODE PRIVATE**
21 **ATTORNEYS GENERAL ACT (PAGA)**

(California Labor Code section 2698, *et seq.*)

22 (Alleged by Plaintiff Espinoza on Behalf of All Aggrieved Employees of Defendants Against All
23 Defendants)

24 170. Plaintiff Espinoza hereby incorporates by reference all preceding paragraphs set forth
25 above as though fully set forth herein.

26 171. Pursuant to California Labor Code section 2699(a), any provision of the California Labor
27 Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its departments,
28 divisions, commissions, boards, agencies or employees for violation of the code may, as an alternative, be

1 recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and
2 other current or former employees pursuant to the procedures specified in California Labor Code section
3 2699.3.

4 172. This cause of action involves allegations of violations of California Labor Code sections
5 201, 202, 203, 204, 210, 218.5, 218.6, 223, 225.5, 226, 226.3, 226.7, 246, 510, 512, 558, 1174, 1174.5,
6 1194, 1194.2, 1197, 1197.1, 1198, and 2802, which, pursuant to California Labor Code section 2699.5,
7 provide for a civil penalty to be assessed and collected by the LWDA or recovered through a civil action
8 brought by an aggrieved employee on behalf of himself or herself and other current or former employees
9 pursuant to the procedures specified in California Labor Code section 2699.3.

10 173. Plaintiff Espinoza exhausted her obligation to provide administrative notice and now seeks
11 penalties on behalf of herself and other current and former California employees of Defendants.

12 174. Pursuant to California Labor Code section 2699(a), Plaintiff Espinoza seeks civil penalties,
13 on behalf of herself and all other current and former employees of Defendants who worked as Non-Exempt
14 employees at one of Defendants' locations in California (collectively referred to as the "aggrieved
15 employees").

16 175. Defendants employed Plaintiff Espinoza, and Plaintiff Espinoza had one or more of the
17 alleged violations committed against her. Therefore, Plaintiff Espinoza is an "aggrieved employee" under
18 PAGA because the alleged violator employed her and she had one or more of the alleged violations
19 committed against her. As such, Plaintiff Espinoza is properly suited to represent the interests of other
20 aggrieved employees in a PAGA Representative action.

21 176. Plaintiff Espinoza seeks to recover civil penalties, but only those civil penalties that are
22 required to be shared with the LWDA and no individual relief or underpaid wages, on behalf of herself
23 and other aggrieved employees for Defendants' violations of the California Labor Code including, but not
24 limited to, Defendants' violations of California Labor Code sections 201, 202, 203, 204, 210, 218.6, 223,
25 225.5, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, and 1198.

26 177. For all provisions of the California Labor Code for which a civil penalty is not specifically
27 provided, California Labor Code section 2699(f) imposes upon Defendants a penalty of one hundred
28 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two hundred

1 dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation.

2 178. Defendants violated California Labor Code sections 226.7, 512, and 1198 by failing to
3 provide Plaintiff Espinoza and aggrieved employees lawfully compliant meal periods and by failing to
4 pay them meal period premium wages for each day a compliant meal period was not provided. Under
5 California Labor Code section 2699(f)(2), Defendants are subject to a civil penalty of \$100 for each
6 aggrieved employee per pay period for the initial violation of California Labor Code sections 226.7 and
7 1198, and \$200 for each aggrieved employee per pay period for each subsequent violation.

8 179. Defendants violated California Labor Code sections 226.7 and 1198 by failing to authorize
9 and permit Plaintiff Espinoza and aggrieved employees to take duty-free rest periods and by failing to pay
10 them rest period premium wages for each day a compliant rest period was not provided. Under California
11 Labor Code section 2699(f)(2), Defendants are subject to a civil penalty of \$100 for each aggrieved
12 employee per pay period for the initial violation of California Labor Code sections 226.7 and 1198, and
13 \$200 for each aggrieved employee per pay period for each subsequent violation.

14 180. Defendants violated California Labor Code sections 223, 1194, 1197, and 1198 by not
15 paying Plaintiff Espinoza and other aggrieved employees at least minimum and regular wages for all the
16 time they were suffered or permitted to work, engaged in work and/or under Defendants' control, as
17 alleged herein. Thus, under California Labor Code section 2699(f)(2), Defendants are subject to a civil
18 penalty of \$100 for each aggrieved employee per pay period for the initial violation of California Labor
19 Code sections 223, 1194, and 1198, and \$200 for each aggrieved employee per pay period for each
20 subsequent violation,

21 181. Defendants violated California Labor Code sections 223, 510, 1194, and 1198 by not
22 paying Plaintiff Espinoza and other aggrieved employees all overtime wages earned for all the time they
23 were suffered or permitted to work, engaged in work and/or under Defendants' control, as alleged herein.
24 At all relevant times, Plaintiff Espinoza and, on information and belief, other aggrieved employees were
25 not paid all overtime when they worked in excess of eight hours a workday or forty hours in a workweek.
26 Thus, under California Labor Code section 2699(f)(2), Defendants are subject to a civil penalty of \$100
27 for each aggrieved employee per pay period for the initial violation of California Labor Code sections
28 223, 1194, and 1198, and \$200 for each aggrieved employee per pay period for each subsequent violation.

182. Under California Labor Code section 225.5, Defendants, in addition to, and entirely independent and apart from, any other penalty, are subject to a civil penalty for unlawfully withholding wages due to Plaintiff Espinoza and other aggrieved employees in violation of California Labor Code section 221 and 223 as follows: (1) For an initial violation, one hundred dollars (\$100.00) for each failure to pay each employee. (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200.00) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld. This amount shall be recovered on behalf of the California Labor Commissioner.

183. Defendants violated California Labor Code sections 201, 202, and 1198 by not paying Plaintiff Espinoza and aggrieved employees all minimum, regular, overtime, and all meal and rest premium wages owed by the time set forth by law upon their separation of employment, as alleged herein. Thus, under California Labor Code section 2699(f)(2), Defendants are subject to a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation of California Labor Code sections 201, 202, and 1198, and \$200 for each aggrieved employee per pay period for each subsequent violation.

184. Defendants violated California Labor Code sections 204 and 1198 by not paying Plaintiff Espinoza and aggrieved employees all minimum, regular, overtime, and all meal and rest premium wages owed by the time set forth by law during their employment, as alleged herein. Thus, under California Labor Code section 2699(f)(2), Defendants are subject to a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation of California Labor Code sections 204 and 1198, and \$200 for each aggrieved employee per pay period for each subsequent violation.

185. Under California Labor Code section 210(a), Defendants, in addition to, and entirely independent and apart from any other penalty, are subject to a civil penalty for failing to pay the wages of each aggrieved employee as provided in California Labor Code section 204, as follows: (1) for any initial violation, one hundred dollars (\$100) for each failure to pay each aggrieved employee; and (2) for each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each aggrieved employee, plus 25 percent of the amount unlawfully withheld. This amount shall be recovered on behalf of the California Labor Commissioner.

186. Defendant violated California Labor Code sections 226(a), 1174(d), and 1198 by failing to maintain records detailing the start and end times of work shifts and meal periods, and knowingly and

1 intentionally failing to maintain and provide Plaintiff Espinoza and other aggrieved employees of
2 Defendants with wage statements itemizing accurately all information required by California Labor Code
3 section 226(a), as alleged herein, including the total hours worked, all regular hours worked, all overtime
4 hours worked, the applicable hourly rate per hour worked, and the total wages earned. Thus, under
5 California Labor Code section 2699(f)(2), Defendants are subject to a civil penalty of \$100 for each
6 aggrieved employee per pay period for the initial violation of California Labor Code sections 226(a) and
7 1198, and \$200 for each aggrieved employee per pay period for each subsequent violation.

8 187. Alternatively, California Labor Code section 226.3 provides for a civil penalty in the
9 amount of \$250 per violation in an initial citation and \$1,000 for each violation in a subsequent citation,
10 for which the employer fails to provide the employee a wage deduction statement or fails to keep the
11 records required in subdivision (a) of section 226.

12 188. California Labor Code section 1174.5 provides for a civil penalty of \$500 for any person
13 employing labor who willfully fails to maintain accurate and complete records required by subdivision (d)
14 of section 1174.

15 189. Defendants are and were Plaintiff Espinoza's and aggrieved employees' employer or other
16 person(s) acting either individually or as an officer, agent, or employee of another person(s), who pays or
17 causes to be paid to any employee a wage less than the minimum fixed by an order of the Commission,
18 and, as such, is subject to civil penalties for each underpaid employee pursuant to California Labor Code
19 section 1197.1.

20 190. California Labor Code section 1197.1 imposes upon Defendants for each initial violation
21 of California Labor Code section 1197 by paying or causing an employee to be paid less than the minimum
22 wage, a civil penalty of \$100.00 for each underpaid employee for each pay period for which the employee
23 is underpaid. Furthermore, California Labor Code section 1197.1 imposes upon Defendants for each
24 subsequent violation a civil penalty of \$250.00 for each underpaid employee for each pay period for which
25 the employee was underpaid. Plaintiff seeks to recover civil penalties, but only those civil penalties that
26 are required to be shared with the LWDA and no individual relief or underpaid wages, on behalf of herself
27 and other aggrieved employees for Defendants' violations of the California Labor Code.

28 191. Defendants are and were Plaintiff Espinoza's and other aggrieved employees' employer,

1 or person acting on their behalf, within the meaning of California Labor Code section 558, who violated
2 or caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision
3 regulating hours and days of work in any IWC Wage Order and, as such, are subject to civil penalties for
4 each underpaid employee as set forth in California Labor Code section 558.

5 192. Pursuant to California Labor Code section 558, Defendants are subject to a civil penalty of
6 \$50.00 for an initial violation of California Labor Code sections 510 and 512, for each aggrieved
7 employee, for each pay period for which the aggrieved employee was not provided with a timely
8 uninterrupted 30-minute meal period and all overtime wages for all hours worked, as alleged herein.
9 Furthermore, California Labor Code section 558 imposes upon Defendants for each subsequent violation
10 of California Labor Code sections 510 and 512 a civil penalty of \$100.00 for each aggrieved employee
11 for each pay period for which the aggrieved employee was not provided with a timely uninterrupted 30-
12 minute meal period and all overtime wages for all hours worked, as alleged herein.

13 193. California Labor Code section 558 also imposes upon Defendants for each initial violation
14 of the Hours and Days of Work section of the applicable IWC Wage Order a civil penalty of \$50.00 for
15 each aggrieved employee for each pay period for which the aggrieved employee was not provided with a
16 paid uninterrupted 10-minute rest period, as alleged herein. Furthermore, California Labor Code section
17 558 imposes upon Defendants for each subsequent violation of the Hours and Days of Work section of
18 the applicable IWC Wage Order a civil penalty of \$100.00 for each aggrieved employee for each pay
19 period for which the aggrieved employee was not provided with a paid uninterrupted 10-minute rest
20 period, as alleged herein. The Hours and Days of Work section of the Wage Order also covers failure to
21 provide rest periods and Plaintiff Espinoza may therefore recover civil penalties, but only those civil
22 penalties that are required to be shared with the LWDA and no individual relief or underpaid wages.

23 194. For bringing this action, Plaintiff Espinoza is additionally entitled to attorney's fees and
24 costs incurred herein.

25 195. Plaintiff Espinoza seeks to recover civil penalties on behalf of herself and other aggrieved
26 employees for Defendants' violations of the California Labor Code, including, but not limited to,
27 Defendants' violations of California Labor Code sections 201, 202, 203, 204, 210, 218.5, 218.6, 223,
28 225.5, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, and 2802

pursuant to California Labor Code section 2698, et seq. The exact amount of the applicable penalties is in an amount to be shown according to proof at trial and within the jurisdictional limitations of this Court.

WHEREFORE, Plaintiff Espinoza prays for relief as hereinafter requested.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

- a. For general damages;
- b. For special damages;
- c. For compensatory damages;
- d. For an award of liquidated damages to the extent permissible by Labor Code § 1194.2;
- e. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted by law, including pursuant to Code of Civil Procedure § 1021.5, Labor Code §§ 218.5, 218.6, 226, 248.5, 1194, and 2802;
- f. For civil and statutory penalties to the extent permitted by law, including those pursuant to the Labor Code and the Orders of the Industrial Welfare Commission;
- g. For restitution as provided by Business and Professions Code § 17200, *et seq.*;
- h. For an order requiring Defendants to restore and disgorge all funds to each affected person acquired by means of any act or practice declared by this Court to be unlawful, unfair, or fraudulent and, therefore, constituting unfair competition under Business and Professions Code § 17200, *et seq.*;
- i. For an award of damages in the amount of unpaid compensation and monies including, but not limited to, actual damages, unpaid wages, minimum wages, regular wages, overtime wages, waiting time penalties and other penalties according to proof, including interest thereon, to the extent permissible by law;
- j. For an award of an additional hour of pay at the regular rate of compensation for each noncompliant meal and rest period, pursuant to Labor Code § 226.7 and the applicable Order of the Industrial Welfare Commission;
- k. For an award of the greater of actual damages or the liquidated damage amounts

provided by Labor Code § 226(e) for Defendants’ failure to provide accurate itemized wage statements, pursuant to Labor Code § 226(a);

- l. For civil penalties for each initial and subsequent violation for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover the underpaid wages pursuant to Labor Code §§ 558 and 1197.1;
- m. For injunctive relief as provided by the Labor Code including, but not limited to, Labor Code §§ 226(h) and 248.5, and Business and Professions Code § 17200, *et seq.*
- n. For indemnification of all losses incurred as a result of employment with Defendants, with interest;
- o. For civil penalties to the extent permitted by law pursuant to the California Labor Code under the Private Attorneys General Act;
- p. For pre- and post-judgment interest to the extent permitted by law including, but not limited to, Labor Code §§ 218.6 and 1194;
- q. For an order imposing a constructive trust upon Defendants to compel it to transfer wages that have been wrongfully obtained and held by Defendants to unpaid employees;
- r. For an accounting to determine all money wrongfully obtained and held by Defendants;
- s. Such civil penalties that are required to be shared with the LWDA;
- t. For a declaratory judgment that Defendants violated Labor Code §§ 201, 202, 203, 204, 221, 223, 224, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802, as well as the “Hours and Days of Work,” “Minimum Wages,” “Records,” “Reporting Time Pay,” “Meal Periods,” and “Rest Periods” sections of the Wage Order of the Industrial Welfare Commission; and
- u. An award of such other and further relief as this Court deems proper and just.

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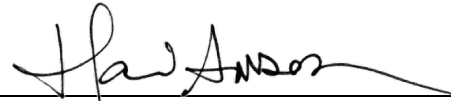
JURY TRIAL DEMAND

Plaintiffs hereby demand a trial by jury on all Causes of Action to the extent authorized by law.

Dated: May 25, 2021

GRAHAMHOLLIS APC

By: _____



GRAHAM S.P. HOLLIS

HALI M. ANDERSON

RIDGEWAY WOULFE

Attorneys for Plaintiffs CHRISTIAN HEADLEY,
AMERICA BANDA, and ERICKA ESPINOZA

EXHIBIT A

March 3, 2021

Attorneys at Law

3555 Fifth Avenue Suite 200
San Diego, California 92103
619.692.0800 voice
619.692.0822 fax

www.grahamhollis.com

Ridgeway Woulfe
rwoulfe@grahamhollis.com
619.488.6680 direct

VIA ELECTRONIC FILING

California Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

CERTIFIED MAIL (RETURN RECEIPT)

Professional Maintenance Systems, Inc.
4912 Naples Street
San Diego, CA 92110

Professional Maintenance Systems, Inc.
c/o Karen L. Berry, Agent for Service of Process
4912 Naples Street
San Diego, CA 92110

VIA EMAIL

Amy Wintersheimer, Esq.
Allen Matkins Leck Gamble Mallory & Natsis LLP
600 West Broadway, 27th Floor
San Diego, CA 92101
awintersheimer@allenmatkins.com

**Re: Wage and Hour Claims of America Banda and Ericka Alvarez Espinoza
against Professional Maintenance Systems, Inc.**

Dear Labor and Workforce Development Agency and Professional Maintenance Systems,
Inc.:

This letter shall serve as an amendment regarding the wage and hour and penalties
claims of America Banda, in accordance with the Labor Code Private Attorneys General
Act ("PAGA"), Labor Code sections 2698, *et seq.*

Ms. Banda electronically filed the initial notice with the Labor and Workforce
Development Agency ("LWDA") and sent the initial notification via Certified Mail to the
Company on or about December 14, 2020, which is enclosed for reference as **Exhibit A**.
Since the date of the initial notification, Ms. Banda has become aware of new information
and amends the original letter to add the following:

Graham S.P. Hollis

Vilmarie Cordero

Nathan Reese

Hali Anderson

David Lin

Erik Dos Santos

Alex Kuner

Monique Rodriguez

Ridgeway Woulfe

ADDITIONAL CLAIMANT

Please be advised Ericka Alvarez Espinoza has retained our firm to represent her for claims against Professional Maintenance Systems, Inc. (the “Company”), her employer. Ms. Banda amends her original claim letter to include Ericka Alvarez Espinoza as an additional Claimant, for the same Labor Code violations Ms. Banda set forth in the initial notification dated December 14, 2020, based upon the same facts and theories, as well as these additional facts. Ms. Banda and Ms. Espinoza incorporate, as if they were reproduced herein, the facts and claims set forth in the December 14, 2020 original written notice, and in each amended notice which followed. In addition to the previously alleged facts, Ms. Espinoza asserts the following.

The Company denied Ms. Espinoza and, on information and belief, other aggrieved employees in California specific rights afforded to them under the California Labor Code and the applicable Industrial Welfare Commission Wage Order. For example, the Company denied Ms. Espinoza all wages owed and rest period premiums, failed to indemnify Ms. Espinoza for business expenses incurred, and failed to issue accurate wage statements.

Ms. Espinoza has been employed as a janitor with the Company from approximately January 2016 through the present. At all times during her employment, Ms. Espinoza has been classified as a non-exempt employee and has been compensated on an hourly basis. Throughout the relevant time period, Ms. Espinoza typically worked 8.5 hours per day, seven days per week. Ms. Espinoza’s hourly rate of pay during the relevant time period has been at or near the minimum wage, most recently \$13.00 per hour.

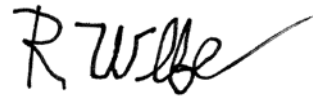
The Company denied Ms. Espinoza and, on information and belief, other aggrieved employees legally compliant rest periods because the Company understaffed its facilities such that they could not complete all assigned work within their shift if they took rest periods. Even though Ms. Espinoza and, on information and belief, other aggrieved employees were not able to take rest breaks, the Company failed to pay its employees one hour of pay for rest period premiums. In addition, the Company required Ms. Espinoza and, on information and belief, other aggrieved employees to incur personal cell phone and mileage expenses without reimbursement. Furthermore, Ms. Espinoza was not paid for time spent driving for the Company, so she was not paid all minimum, regular, and overtime wages. During her shifts, Ms. Espinoza drives to different locations without being compensated for this time and is also required to occasionally drop off materials and keys after her shift ends. Ms. Espinoza is not paid for this time and she believes that other aggrieved employees have suffered this same violation. As a result of the Company not paying for all hours worked, the wage statements the Company provided Ms. Espinoza and, on information and belief, other aggrieved employees were consistently inaccurate.

This letter shall serve as Ms. Espinoza’s written notice to the LWDA and the Company of the alleged Labor Code violations that Ms. Espinoza alleges the Company committed against her and all other aggrieved employees in California. Ms. Espinoza provides this notice in accordance with the Labor Code Private Attorneys General Act of 2004 (“PAGA”), Labor Code section 2698, *et seq.* Ms. Espinoza desires to file a civil action to enforce her rights under the Labor Code and seeks compensation accordingly. Pursuant to Labor Code § 2699(a), and by way of this letter, Ms. Espinoza intends to represent the same group of aggrieved employees as set forth in Ms. Banda’s initial notification dated December 14, 2020.

CONCLUSION

The facts and claims contained herein are based on the information presently available at the time of this writing. Therefore, if through discovery, investigation, and/or expert review, Ms. Banda and/or Ms. Espinoza become aware of additional Labor Code violations and/or compensation owed to them or other losses incurred by them or by any other aggrieved employee of the Company, they reserve the right to revise these facts and/or assert any new claims by amending this claim letter or by adding applicable causes of action in their complaint.

Sincerely,

A handwritten signature in black ink, appearing to read "R Woulfe", with a long, sweeping horizontal stroke extending to the right.

Ridgeway Woulfe

EXHIBIT A

December 14, 2020

Attorneys at Law

3555 Fifth Avenue Suite 200
San Diego, California 92103
619.692.0800 voice
619.692.0822 fax

www.grahamhollis.com

Ridgeway Woulfe
rwoulfe@grahamhollis.com
619.488.6680 direct

VIA ELECTRONIC FILING

California Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

CERTIFIED MAIL (RETURN RECEIPT)

Professional Maintenance Systems, Inc.
4912 Naples Street
San Diego, CA 92110

Professional Maintenance Systems, Inc.
c/o Karen L. Berry, Agent for Service of Process
4912 Naples Street
San Diego, CA 92110

VIA EMAIL

Ms. Amy Wintersheimer, Esq.
Allen Matkins Leck Gamble Mallory & Natsis LLP
600 West Broadway, 27th Floor
San Diego, CA 92101
awintersheimer@allenmatkins.com

Re: Wage and Hour Claims of America Banda against Professional Maintenance Service, Inc.

Dear Labor and Workforce Development Agency and Professional Maintenance Service, Inc.:

Please be advised that America Banda (“Claimant”) has retained our law firm to represent her for various wage and hour claims against her former employer, Professional Maintenance Service, Inc. (the “Company”).

This letter shall serve as Claimant’s written notice to the California Labor and Workforce Development Agency (“LWDA”) and the Company of the California Labor Code violations that Claimant alleges the Company committed against her and all other current and former non-exempt Professional Maintenance Systems, Inc. employees who performed work in California during the applicable statutory period (collectively, the “aggrieved employees”). Claimant provides this notice in accordance with the California

Graham S.P. Hollis

Vilmarie Cordero

Nathan Reese

Hali Anderson

David Lin

Erik Dos Santos

Alex Kuner

Monique Rodriguez

Ridgeway Woulfe

Labor Code Private Attorneys General Act of 2004 (“PAGA”), Labor Code section 2698, *et seq.* Claimant desires to file a civil action to enforce her rights under the Labor Code and intends to represent all other aggrieved employees of the Company who performed work in California and who suffered at least one of the Labor Code violations described herein.

FACTUAL BACKGROUND

The following factual background is based upon the limited investigation Claimant has been able to conduct to date. Claimant reserves the right to amend this notice letter should additional information come to light at a later date.

Professional Maintenance Systems, Inc. is a California corporation with its principal place of business located in San Diego, California. Professional Maintenance Systems, Inc. is an organization that provides janitorial and maintenance services to its clients.

Claimant was employed as a janitor with the Company from approximately July 2019 through August 2020. At all times during her employment, Claimant was classified as a non-exempt employee and was compensated on an hourly basis. Throughout the relevant time period, Claimant typically worked 6.5 to 8.5 hours per day, six days per week. Claimant’s hourly rate of pay during the relevant time period was \$12.00 per hour.

As employees performing work in California, Claimant and other aggrieved employees were afforded various protections by the California Labor Code and the applicable IWC Wage Order. The Company disregarded these protections and denied Claimant and other aggrieved employees specific rights that they should have been provided. For example, on information and belief, the Company failed, *inter alia*, to pay Claimant and other aggrieved employees all minimum, regular, and overtime wages that they were owed for all hours that they worked, failed to provide them with legally compliant meal and rest periods – or premium pay for missed or deficient meal or rest periods, failed to pay them for off-the-clock work, failed to indemnify them for all business expenses incurred, failed to issue them accurate itemized wage statements, failed to maintain accurate records, and failed to timely pay them all wages they were owed within the time set forth by law.

The Company failed to pay Claimant and other aggrieved employees all wages owed in multiple ways. The most glaring is that the Company occasionally simply failed to pay them for all hours worked in addition to her regular schedule. For example, if the Company and Claimant agreed for her to work three hours beyond her ordinary schedule, the Company often would only pay her for two additional hours. In some instances, the Company similarly failed to pay her full wages even when she was within her regular schedule. Furthermore, the Company often required Claimant and other aggrieved employees to wait to return keys to a supervisor while off-the-clock, failing to pay her for hours Claimant spent under the Company’s control. Since these unpaid hours were in excess of 8 hours per day and/or 40 hours per week, the Company owed them overtime rates for that work. Since Claimant and other aggrieved employees’ agreed upon rate was the minimum wage, their actual rate of pay was lower than minimum wage when accounting for the off-the-clock hours worked. Claimant’s \$12 rate of pay was also lower than the minimum wage. Claimant believes this was true for other aggrieved employees as well.

Additionally, the Company required Claimant and other aggrieved employees to work through their meal periods despite requiring them to clock out as though they received an uninterrupted and off-duty meal period. The Company so drastically understaffed its facilities that Claimant and other aggrieved employees did not have enough time to complete all their assigned tasks for the day unless they continued working throughout their meal and rest periods. Claimant and aggrieved employees risked discipline if they failed to complete their daily tasks. Despite knowing Claimant and other aggrieved employees could not take off-duty meal periods, the Company required Claimant and other aggrieved employees to record their times as though they were able to receive an off-duty meal period. As a result, the Company failed to pay Claimant and other aggrieved employees 30 minutes of wages each day. As with the unpaid wages listed above, the Company owed Claimant and other aggrieved employees overtime rates for their on-duty meal period time, and the Company's failure to pay them for all hours worked means that the Company paid them less than the applicable minimum wage.

When an employer fails to provide an employee with an uninterrupted and off-duty meal period to which the employee is entitled, the employer owes the employee a meal period premium worth 1 hour of the employee's ordinary rate of pay. The same is true when an employer prevents an employee from taking legally required 10-minute rest periods. As described above, the Company understaffed its facilities to such an extent that it denied Claimant and other aggrieved employees off-duty meal and rest periods, yet the Company did not pay any meal or rest period premiums.

The Company also failed to indemnify Claimant and other aggrieved employees for all expenses incurred on behalf of the Company. For example, the Company required Claimant and other aggrieved employees to communicate with their supervisor via cell phone to discuss key returns, missing supplies, and any incidents. The Company did not provide Claimant or other aggrieved employees with a cell phone or reimburse her for the associated costs. The Company also required Claimant and other aggrieved employees to drive in their personal vehicles between locations to collect supplies, but it did not reimburse any mileage expenses or pay the drive time as time worked.

As described above, the Company knowingly maintained time records which inaccurately reflected Claimant and other aggrieved employees receiving uninterrupted and off-duty meal periods. As a result of these practices, the Company's wage statements did not accurately reflect their regular hours worked, overtime hours worked, gross and net pay, meal and/or rest break premiums owed, and indemnification payments. The Company also failed to make these payments within a timely manner after their terminations and resignations.

Due to the foregoing alleged Labor Code violations, the Company denied Claimant and other aggrieved employees certain rights afforded them under the California Labor Code and IWC Wage Orders. Claimant desires to file a civil action to enforce her rights under the Labor Code and intends to represent all other aggrieved employees of Professional Maintenance Systems, Inc. who performed work in California and who suffered at least one of the Labor Code violations described below.

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FAILURE TO PAY MINIMUM, REGULAR, AND OVERTIME WAGES

(Labor Code sections 223, 225.5, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198, and the “Minimum Wages” and “Hours and Days of Work” Sections of the applicable IWC Wage Order)

Labor Code section 1197 states, “[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

Labor Code section 1197.1 states, “[a]ny employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203.”

Labor Code section 1198 states, “[t]he maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

Labor Code section 223 states, “[w]here any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract.” In addition, Labor Code section 225.5 provides that every person who unlawfully withholds wages due any employee in violation of Section 223 shall be subject to a civil penalty as follows: (a) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (b) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

Labor Code section 510 states, “[e]ight hours of labor constitutes a day’s work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.” The “Hours and Days of Work” and “Minimum Wages” sections of the applicable IWC Wage Order mandate the same requirements.

Labor Code section 558 states, “[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages; (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages; and (3) Wages recovered pursuant to this section shall be paid to the affected employee.”

Labor Code section 1194(a) states, "...any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit." Liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon are provided for under Labor Code section 1194.2.

As set forth above, the Company failed to pay Claimant and other aggrieved employees all minimum, regular, and overtime wages, in violation of California law. Claimant will pursue all available remedies for the Company's violations on behalf of herself and other aggrieved employees to the extent allowed by law.

**FAILURE TO PROVIDE COMPLIANT MEAL PERIODS
AND AUTHORIZE AND PERMIT REST PERIODS**

(Labor Code sections 226.7, 512, 558, 1198 and the "Meal Periods" section of the Applicable IWC Wage Order)

Labor Code section 226.7(b) states, "[a]n employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission..." Labor Code section 226.7(c) states, "[i]f an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law... the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided."

Labor Code section 512(a) states, "[a]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes" and "[a]n employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes."

The "Meal Periods" section of the applicable IWC Wage Order states, "[n]o employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, 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 the employee." Furthermore, "[i]f an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided."

The "Rest Periods" section of the applicable IWC Wage Order states, "[e]very employer shall authorize and permit employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof." Furthermore, "[i]f an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided."

Labor Code section 1198 states, “[t]he maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

Labor Code section 558 states, “[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages; (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages; and (3) Wages recovered pursuant to this section shall be paid to the affected employee.”

As set forth above, the Company failed to provide Claimant and other aggrieved employees with the opportunity to take compliant meal and rest periods, as required by California law. Consequently, Claimant and other aggrieved employees are entitled to receive one-hour of premium wages for each day the Company failed to provide compliant meal and rest periods. Claimant will pursue all available remedies for the Company’s violations on behalf of herself and other aggrieved employees to the extent allowed by law.

FAILURE TO REIMBURSE FOR BUSINESS EXPENSES

(Labor Code section 2802)

Labor Code section 2802 provides in pertinent part, “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.”

Labor Code section 2802(b) states, “[a]ll awards made by a court or by the Division of Labor Standards Enforcement for reimbursement of necessary expenditures under this section shall carry interest at the same rate as judgments in civil actions. Interest shall accrue from the date on which the employee incurred the necessary expenditure or loss.” Accordingly, Claimant will request that she receive interest on the applicable amount.

Furthermore, Labor Code section 2802(c) states, “[f]or purposes of this section, the term ‘necessary expenditures or losses’ shall include all reasonable costs, including, but not limited to, attorney’s fees incurred by the employee enforcing the rights granted by this section.” Consequently, Claimant will also request reimbursement of the attorney’s fees incurred in pursuing this matter.

As set forth above, the Company required that Claimant and other aggrieved employees utilize their personal cell phones and personal vehicles for work purposes. Nevertheless, the Company did not indemnify Claimant and other aggrieved employees for these expenses. Claimant will pursue all available remedies for the Company’s violations on behalf of herself and other aggrieved current and former employees to the extent allowed by law.

FAILURE TO MAINTAIN ACCURATE RECORDS

(Labor Code sections 1174, 1174.5, 1198, and the “Records” section of the Applicable IWC Wage Order)

Labor Code section 1174 states, “[e]very person employing labor in this state shall... [k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments.”

The “Records” section of the applicable IWC Wage Order states that every employer shall keep accurate information with respect to each one of its employees, including time records showing when the employee begins and ends each work period, meal period, total hours worked in the payroll period, and applicable rates of pay.

Labor Code section 1174.5 imposes a civil penalty of \$500 for an employer’s failure to maintain accurate and complete records. This civil penalty is in addition to the civil penalty of \$100 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code section 2699 for a violation of Labor Code section 1174(d).

As set forth above, the Company failed to accurately record Claimant’s and other aggrieved employees’ total hours worked during the pay period, the correct amount of gross and net wages earned, the correct pay rates, meal and rest period premiums, and expense indemnification payments. Claimant will pursue all available remedies for the Company’s violations on behalf of herself and other aggrieved employees to the extent allowed by law.

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Labor Code sections 226, 226.3, 1198, and the “Records” section of the Applicable IWC Wage Order)

Labor Code section 226(a) states in pertinent part that every employer shall provide an accurate, itemized wage statement in writing with respect to each of its employees showing: “(1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, ... (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, ... (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer..., and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.”

Labor Code section 226(e) imposes a penalty of the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of \$4,000, and Claimant is entitled to an award of costs and reasonable attorney’s fees. Labor Code section 226.3 imposes an additional civil penalty on the employer of \$250.00 per employee per violation of Labor Code section 226(a) in an initial citation and \$1,000 per employee for each violation in a subsequent citation.

The “Records” section of the applicable IWC Wage Order states that, “[e]very employer shall semimonthly or at the time of each payment of wages furnish each employee, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately, an itemized statement in writing showing: (1) all deductions; (2) the inclusive dates of the period for which the employee is paid; (3) the name of the employee or the employee’s social security number; and (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregated and shown as one item.”

As set forth above, the Company failed to provide Claimant and other aggrieved employees with accurate itemized wage statements. Claimant will pursue all available remedies for the Company’s violations on behalf of herself and other aggrieved employees to the extent allowed by law.

FAILURE TO TIMELY PAY ALL WAGES DUE

(Labor Code sections 201, 202, 203, 204, 210, 1198, and the “Minimum Wages” section of the Applicable IWC Wage Order)

Labor Code section 204(a) states in pertinent part, “[a]ll wages...earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.” Furthermore, Labor Code section 204(b)(1) states, “all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.” Labor Code section 210 provides that, “every person who fails to pay the wages of an employee as provided in Section...204...shall be subject to a civil penalty” of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation. The “Minimum Wages” section of the applicable IWC Wage Order also states that “[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.”

Labor Code section 201 states, in pertinent part, “[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Labor Code section 202 states, in pertinent part, “If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.”

Labor Code section 203(a) states, in pertinent part, “[i]f an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced; but the wages shall not continue for more than 30 days.”

As set forth above, the Company failed to pay Claimant and other aggrieved employees all minimum, regular, and overtime wages, expense indemnification, or all meal and rest period premium wages that they were owed within the time required by law. Claimant will pursue all available remedies for the Company’s violations on behalf of herself and other aggrieved employees to the extent allowed by law.

ATTORNEY'S FEES, COSTS, INTEREST, LIQUIDATED DAMAGES AND PENALTIES

(Labor Code sections 210, 218.5, 218.6, 225.5, 226(e), 1194, 1194.2, 1197.1, and 2699, *et seq.*)

Labor Code sections 210, 218.5, 218.6, 225.5, 226(e), 558, 1194, 1194.2, 1197.1, and 2699, *et seq.*, among others, give employees the right to recover in a civil action the unpaid balance of the full amount of minimum, regular, and overtime wages and meal period premium wages, damages, liquidated damages and penalties, including interest thereon, as well as reasonable attorney's fees and costs.

Pursuant to Labor Code section 2699, *et seq.*, an aggrieved employee is entitled to collect 25% of the penalty assessment and 100% of the underpaid wages. Accordingly, the Company is liable for these items in addition to the unpaid wages. Claimant has already incurred actual damages, costs and attorney's fees and will continue to incur costs as a result of the Company's unlawful actions. Claimant will pursue all available remedies, including those provided by PAGA, for these violations on behalf of herself and all other aggrieved employees.

CIVIL PENALTIES FOR VIOLATION OF THE LABOR CODE AND IWC WAGE ORDERS

(Labor Code sections 558, 558.1, and 1197.1)

Labor Code section 558 subjects any employer who violates Part 2, Chapter 1, of the Labor Code (Labor Code §§ 500-558) or any provision regulating the hours and days of work in any IWC Wage Order to a civil penalty as follows: "[f]or any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. For each subsequent violation, one hundred (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages."

Labor Code section 558.1(a) states that "[a]ny employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wage or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation." This includes the owners, officers, directors, or managing agents of the employer. Labor Code section 558.1(b).

Similarly, Labor Code section 1197.1 subjects any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203 as follows: "(1) [f]or any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203. (2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. This amount shall be in addition to

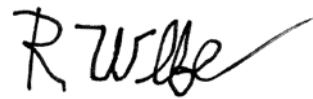
an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203. (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to Section 203, recovered pursuant to this section shall be paid to the affected employee.”

As set forth above, the Company underpaid Claimant and other aggrieved employees by failing to pay them all regular, minimum, and overtime wages owed, as well as all meal and rest period premium wages owed, as required under Labor Code sections 226.7, 510, 512, 1194, 1197, 1198, and the applicable sections of the applicable IWC Wage Order. As a result, the Company is liable for civil penalties under Labor Code sections 558 and 1197.1. Claimant will pursue all available remedies for the Company’s violations on behalf of herself and other aggrieved employees to the extent allowed by law.

CONCLUSION

The facts and claims contained herein are based on the limited information available at the time of this writing. Therefore, if through discovery and/or expert review, Claimant becomes aware of additional compensation owed to her or other aggrieved employees of the Company, Claimant reserves the right to revise these facts and/or add any new claims by either amending this notice letter or adding applicable causes of action in the complaint for damages.

Sincerely,

A handwritten signature in black ink, appearing to read "R Woulfe", with a long, sweeping horizontal stroke extending to the right.

Ridgeway Woulfe



March 5, 2021

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The following is in response to your request for proof of delivery on your item with the tracking number:
9414 8118 9876 5897 3030 09.

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Status Date / Time:	March 5, 2021, 12:48 pm
Location:	SAN DIEGO, CA 92110
Postal Product:	First-Class Mail®
Extra Services:	Certified Mail™ Return Receipt Electronic
Recipient Name:	al Maintenance Systems INC

Shipment Details

Weight:	3.0oz
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Recipient Signature

Signature of Recipient:

Mr. G. H. Jones
M. G. H. Jones

Address of Recipient:

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USPS Mail Class	Certified with Return Receipt (Signature)
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USPS History	Departed USPS Regional Facility, March 4, 2021, 11:59 pm, SAN DIEGO CA DISTRIBUTION CENTER In Transit to Next Facility, 03/04/2021 Arrived at USPS Regional Facility, March 3, 2021, 9:54 pm, SAN DIEGO CA DISTRIBUTION CENTER Accepted at USPS Origin Facility, March 3, 2021, 8:39 pm, SAN DIEGO, CA 92103

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March 5, 2021

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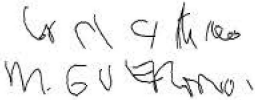
Item Details

Status:	Delivered, Left with Individual
Status Date / Time:	March 5, 2021, 12:48 pm
Location:	SAN DIEGO, CA 92110
Postal Product:	First-Class Mail®
Extra Services:	Certified Mail™ Return Receipt Electronic
Recipient Name:	rofessional Maintenance Systems INC

Shipment Details

Weight:	3.0oz
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