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on behalf of himself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

JOSEPH MERHI, on behalf of himself
and all others similarly situated,

Plaintiff,

v.

LOWE'S HOME CENTERS, LLC, a
North Carolina limited liability company
and DOES 1-50, inclusive,

Defendants.

Case No.

COMPLAINT

Assigned for All Purposes To:

Hon.

Dept.:

COMPLAINT FOR DAMAGES FOR:

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

DEMAND FOR JURY TRIAL

1
2 Plaintiff JOSEPH MERHI (“Plaintiff”), an individual, assert claims against defendant
3 LOWE’S HOME CENTERS, LLC, a North Carolina limited liability company, and DOES 1-50,
4 inclusive (collectively “LOWE’S” or “Defendants”) as follows:

5 **INTRODUCTION**

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

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

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

23 4. Such actions and policies, as described above and further herein, were and continue
24 to be in violation of the California Labor Code. Plaintiff, on behalf of himself and all Class
25 members, bring this action pursuant to the California Labor Code, including sections 201, 202, 203,
26 204, 210, 218.5, 218.6, 221-224, 226, 226.3, 226.7, 246, 510, 512, 516, 558, 1174, 1194, 1194.2,
27 1195, 1197, 1198, applicable IWC California Wage Orders and California Code of Regulations,
28 Title 8, section 11000 *et seq.*, seeking unpaid wages, unpaid meal and rest period compensation,

proper sick pay, penalties, liquidated damages, and reasonable attorneys' fees and costs.

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

JURISDICTION AND VENUE

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

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

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

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

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

11. The California Superior Court also has jurisdiction in this matter because the individual claims of the Class Members described herein are presently believed to be under the

seventy-five thousand dollar (\$75,000.00) jurisdictional threshold for Federal Court and the aggregate potential damages and recovery by all of the claims of the Plaintiff's Class, including attorneys' fees, placed in controversy by Plaintiff's class-wide claims, is presently believed to be under the five million dollar (\$5,000,000.00) threshold of the Class Action Fairness Act of 2005. Further, there is no federal question at issue, as the issues herein are based solely on California statutes and law, including the Labor Code, IWC Wage Orders, the California Code of Civil Procedure, the California Civil Code, and the California Business and Professions Code.

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

PARTIES

13. Lowe's Home Centers, LLC is a Nevada limited liability company in good standing that is authorized to do business throughout the state. Lowe's headquarters are located at 1000 Lowe's Blvd., Mooresville, NC 28117.

14. Lowe's operates numerous retail stores in California from numerous locations.

15. Plaintiff Joseph Merhi is and during the liability period has been, a resident of San Marcos, California.

16. Plaintiff was employed by Defendant as a non-exempt retail employee.

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

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

19. The true names and capacities of Defendants, whether individual, corporate, associate, or otherwise, sued herein as DOES 1 through 50, inclusive, are currently unknown to

1 Plaintiff, who therefore sue Defendants by such fictitious names under Code of Civil Procedure §
2 474. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and
3 capacities of the Defendants designated hereinafter as DOES when such identities become known.

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

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

19 **FACTUAL ALLEGATIONS**

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

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

26 24. Plaintiff was employed as an hourly non-exempt retail employee from March 2020
27 through June 2020.

28 25. The members of the putative class worked as non-exempt employees for Defendants

1 at their retail locations throughout the state of California during the liability period.

2 26. Plaintiff typically worked three days a week, averaging 21 hours a week.

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

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

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

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

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

19 32. Moreover, Defendants failed to provide reporting time pay to Plaintiff and Class
20 Members when they were required to report to work and were furnished with less than half said
21 employee's usual or scheduled day's work.

22 33. Plaintiff and the Class Members were regularly required to work shifts in excess of
23 five hours without being provided a lawful, timely meal period and over ten hours in a day
24 without being provided a second lawful, timely meal period as required by law. Meal periods
25 were frequently interrupted, missed, or short.

26 34. In addition, by way of example only, employees during certain shifts were
27 prohibited from leaving the premises. Defendants' exercise of control over employees during
28 purported meal and rest breaks is inconsistent with the obligation that Defendants relieve

1 employees of all duty and relinquish control over employees during meal and rest periods.

2 35. Moreover, during the relevant time, as a consequence of Defendants' staffing and
3 scheduling practices, lack of coverage, work demands, and Defendants' policies and practices,
4 Defendants frequently failed to provide Plaintiff and the Class Members timely, legally complaint
5 uninterrupted 30-minute meal periods on shifts over five hours and second meal periods on shifts
6 over ten hours as required by law.

7 36. On information and belief, Plaintiff and Class Members did not waive their rights
8 to meal periods under the law.

9 37. Plaintiff and the Class Members were not provided with valid lawful on-duty meal
10 periods.

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

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

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

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

27 42. In addition, pursuant to Defendants' written policy, rest periods were "not always
28 guaranteed' and were "subject to the needs of the business."

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

6 44. Defendants also failed to provide accurate, lawful itemized wage statements to
7 Plaintiff and the Class Members in part because of the above specified violations. In addition,
8 upon information and belief, Defendants omitted an accurate itemization of total hours worked,
9 all applicable rates of pay, gross pay and net pay figures from Plaintiff and the Class Members'
10 wage statements.

11 45. In addition, upon information and belief, Plaintiff alleges that Defendants failed to
12 pay sick leave pay to Plaintiff and the Class Members at the proper rate, as Defendants failed to
13 factor all forms of compensation into the regular rate.

14 46. Defendants have also made it difficult to determine applicable rates of pay and
15 account with precision for the unlawfully withheld wages and deductions due to be paid to Non-
16 exempt Employees, including Plaintiff, during the liability period because they did not implement
17 and preserve a lawful record-keeping method to record all hours worked, meal periods, and non-
18 provided rest and meal periods owed to employees as required for non-exempt employees by 29
19 U.S.C. section 211(c), California Labor Code section 226, and applicable California Wage
20 Orders.

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

28 48. Plaintiff and the Class Members are covered by applicable California IWC Wage

1 Orders and corresponding applicable provisions of the California Code of Regulations, Title 8,
2 section 11000 *et seq.*

3 **CLASS ACTION ALLEGATIONS**

4 49. Plaintiff brings this action on his own behalf, as well as on behalf of each and every
5 other person similarly situated, and thus, seeks class certification under California Code of Civil
6 Procedure §382.

7 50. All claims alleged herein arise under California law for which Plaintiff seeks relief
8 as authorized by California law.

9 51. The **proposed class** is comprised of and defined as: All persons currently or
10 formerly employed by Defendants as non-exempt employees, however titled, at Defendants' retail
11 locations throughout the state of California within four (4) years prior to the filing of the Complaint
12 in this action until the resolution of this lawsuit (hereinafter collectively referred to as the "Class"
13 or "Class Members").

14 52. Plaintiff also seeks to represent Subclasses included in the Plaintiff's Class, which
15 are composed of Class Members satisfying the following definitions:

16 a. All Class Members who were not paid at least minimum wage for all hours
17 worked (**collectively "Minimum Wage Subclass"**);

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

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

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

28 e. All Class Members who worked more than three and a half hours in a

workday and were not authorized and permitted to take a lawful net 10-minute rest period and were not paid compensation of one hour premium wages at the employee's regular rate in lieu thereof (hereinafter collectively referred to as the "**Rest Period Subclass**");

f. All Class Members who were required to report for work and were furnished with less than half said employee's usual or scheduled day's work. (hereinafter collectively referred to as the "**Reporting Time Subclass**");

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

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

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

j. All Class Members who worked night shifts (collectively "**Night Shift Subclass**").

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

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

a. Numerosity: The members of the Class and Subclasses are so numerous that joinder of all members of the Class and Subclasses would be unfeasible and impractical. The

1 membership of the entire Class and Subclasses is unknown to Plaintiff at this time, however, the
2 Class is estimated to be hundreds of individuals. Accounting for employee turnover during the
3 relevant periods necessarily increases this number substantially. Plaintiff alleges Defendants'
4 employment records would provide information as to the number and location of all Class
5 Members. Joinder of all members of the proposed Class is not practicable.

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

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

12 1) Whether Defendants paid Class Members at least minimum wage for all
13 hours worked;

14 2) Whether Defendants knew or should have known that Class Members were
15 required to perform work off the clock;

16 3) Whether Defendants paid overtime using the proper regular rate;

17 4) Whether Defendants paid sick time pay using the proper regular rate;

18 5) Whether Defendants accurately calculated and paid all Class Members
19 overtime premiums for the hours which Plaintiff and Class Members worked in excess of eight (8)
20 hours per day and/or forty (40) hours per week;

21 6) Whether Defendants had a policy and practice of providing lawful, timely
22 meal periods in accordance with Labor Code § 512, as well as the applicable Industrial Welfare
23 Commission ("IWC") wage order;

24 7) Whether Defendants had a policy and practice of complying with Labor
25 Code section 226.7 and IWC Wage Order 7-2001 on each instance that a lawful meal period was
26 not lawfully provided;

27 8) Whether Defendants authorized and permitted lawful, net 10-minute rest
28 period to the Class Members for every four (4) hours or major fraction thereof worked;

1 9) Whether Defendants required employees to remain on the premises during
2 rest periods;

3 10) Whether Defendants had a policy and practice of complying with Labor
4 Code section 226.7 and the IWC Wage Order 7-2001 on each instance that a lawful rest period was
5 not provided;

6 11) Whether Defendants timely paid wages earned during employment as
7 required by the IWC Wage Order 7-2001, Labor Code 204, and 210;

8 12) Whether Defendants paid reporting time pay to Class Members who were
9 furnished with less than half the employee's usual or scheduled day's work;

10 13) Whether Defendants paid at least 2 hours of reporting time pay to Class
11 Members who were required to report to work regardless of the length of the scheduled shift;

12 14) Whether Defendants failed to timely pay all wages upon separation in
13 accordance with Labor Code sections 201-202;

14 15) Whether Defendants omitted required information from itemized wage
15 statements;

16 16) Whether Defendants maintained accurate records of Class Members' earned
17 wages, applicable hourly rates, hours worked, work periods, meal periods and deductions;

18 17) Whether Defendants engaged in unfair competition in violation of section
19 17200 et seq. of the Business and Professions Code;

20 18) Whether Defendants' conduct was willful and/or reckless;

21 19) Whether Defendants provided accurate itemized wage statements in
22 violation of Labor Code § 226; and

23 20) The appropriate amount of damages, restitution, and/or monetary penalties
24 resulting from Defendants' violations of California law.

25 d. Typicality: Plaintiff is qualified to, and will fairly and adequately protect the
26 interests of each member of the Class and Subclasses with whom he has a well-defined community
27 of interest. Plaintiff's claims herein alleged are typical of those claims which could be alleged by
28 any member of the Class and/or Subclasses, and the relief sought is typical of the relief which

1 would be sought by each member of the Class and/or Subclasses in separate actions. All members
2 of the Class and/or Subclasses have been similarly harmed by Defendants' failure to provide lawful
3 meal and rest periods, failure to provide accurate wage statements, failure to timely pay wages at
4 termination, failure to pay minimum wages, failure to properly pay overtime, failing to pay
5 reporting time pay, failure to properly pay sick leave, failure to timely pay wages during
6 employment, and failure to accurately pay all wages earned including all owed premium and
7 overtime wages, all due to Defendants' policies and practices that affected each member of the
8 Class and/or Subclasses similarly. Further, Defendants benefited from the same type of unfair
9 and/or wrongful acts as to each member of the Class and/or Subclasses.

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

19 f. Superiority: The nature of this action makes the use of class action
20 adjudication superior to other methods. A class action will achieve economies of time, effort,
21 judicial resources, and expense, which would not be achieved with separate lawsuits. The
22 prosecution of separate actions by individual members of the Class and/or Subclasses would create
23 a risk of inconsistent and/or varying adjudications with respect to the individual members of the
24 Class and/or Subclasses, establishing incompatible standards of conduct for the Defendants, and
25 resulting in the impairment of the rights of the members of the Class and/or Subclasses and the
26 disposition of their interests through actions to which they were not parties. Thus, a class action is
27 superior to other available means for the fair and efficient adjudication of this controversy because
28 individual joinder of all Class Members is not practicable, and questions of law and fact common

1 to the Class predominate over any questions affecting only individual Class Members. Each
2 member of the Class has been damaged and is entitled to recovery by reason of Defendants'
3 unlawful policies and practices, including Defendants' failure to provide lawful meal and rest
4 periods, failure to provide accurate wage statements, failure to timely pay wages at termination,
5 failure to pay minimum wages, failure to properly pay overtime, failure to pay reporting time pay,
6 failure to properly pay sick leave, failure to timely pay wages during employment, and failure to
7 accurately pay all wages earned including all owed premium and overtime wages, all due to
8 Defendants' policies and practices that affected each member of the Class and/or Subclasses
9 similarly. Class action treatment will allow those similarly situated persons to litigate their claims
10 in the manner that is most efficient and economical for both parties and the judicial system. Plaintiff
11 is unaware of any difficulties that are likely to be encountered in the management of this action that
12 would preclude its maintenance as a class action.

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

22 CLASS ACTION CLAIMS

23 FIRST CAUSE OF ACTION

24 FAILURE TO PAY MINIMUM WAGES

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

26 55. Plaintiff incorporates each and every allegation set forth in all of the foregoing
27 paragraphs as if fully set forth herein.

28 56. Labor Code section 204 establishes the fundamental right of all employees in the

1 State of California to be paid wages, including minimum wage, straight time and overtime, in a
2 timely fashion for their work.

3 57. Labor Code section 1194 (a) provides that notwithstanding any agreement to work
4 for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime
5 compensation applicable to the employee is entitled to recover in a civil action the unpaid balance
6 of the full amount of this minimum wage or overtime compensation, including interest thereon,
7 reasonable attorney's fees, and costs of suit.

8 58. Labor Code section 1197 provides: The minimum wage for employees fixed by
9 the commission or by any applicable state or local law, is the minimum wage to be paid to
10 employees, and the payment of a lower wage than the minimum so fixed is unlawful.

11 59. Pursuant to Labor Code section 1198, it is unlawful to employ persons for longer
12 than the hours set by the Industrial Welfare Commission or under conditions prohibited by the
13 IWC Wage Order(s).

14 60. The applicable wage orders and California Labor Code §§ 1197 and 1182.12
15 establish the right of employees to be paid minimum wages for all hours worked, in amounts set
16 by state law.

17 61. Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been
18 paid the legal minimum wage as required by Labor Code § 1197 may recover the unpaid balance
19 together with attorneys' fees and costs of suit, as well as liquidated damages in an amount equal
20 to the unpaid wages and interest accrued thereon.

21 62. During all relevant periods, the California Labor Code and wage orders required
22 that Defendants fully and timely pay its non-exempt, hourly employees all wages earned and due
23 for all hours worked.

24 63. The IWC Wage Orders define "hours worked" as "the time during which an
25 employee is subject to the control of an employer, and includes all the time the employee is
26 suffered or permitted to work, whether or not required to do so."

64. At all times relevant, Plaintiff and Class Members consistently worked hours for which they were not paid because Defendants frequently required Plaintiff and the Class Members to work off the clock.

65. In addition, Defendants failed to issue payment to Plaintiff and, upon information and belief, to the Class Members for work performed despite such hours having been reported to Defendants.

66. Plaintiff is informed and believes that Defendants were aware that Plaintiff and the Class Members were working off the clock and/or had worked other hours for which they should have been paid.

67. Defendant's policy and practice of not paying all minimum wages violates California Labor Code §§ 204, 210, 216, 558, 1182.12, 1194, 1197, 1197.1, 1198, and the applicable wage order 7-2001.

68. Due to Defendants' violations of the California Labor Code and wage orders, Plaintiff and the Minimum Wage Subclass members are entitled to recover from Defendant their unpaid wages, statutory penalties, reasonable attorneys' fees and costs in this action, and pre-judgment and post-judgment interest, as well as liquidated damages.

SECOND CAUSE OF ACTION

FAILURE TO PAY OVERTIME OWED

(By Plaintiff and the Class Against All Defendants)

69. Plaintiff incorporates each and every allegation set forth in all of the foregoing paragraphs as if fully set forth herein.

70. During all relevant periods, Defendant required Plaintiff and the Class members to work shifts in excess of eight (8) hours per workday and/or to work in excess of forty (40) hours per workweek.

71. During all relevant periods, both the California Labor Code section 1194, 1197, 510, 1198, and the pertinent wage order 7-2001 required that all work performed by an employee in excess of eight (8) hours in any workday, on the seventh day of work in any workweek, or in excess of forty (40) hours in any workweek be compensated at one and one-half times the

1 employee's regular rate of pay. Any work in excess of twelve (12) hours in one day is required to
2 be compensated at the rate of no less than twice the regular rate of pay for an employee. In
3 addition, any work in excess of eight hours on any seventh day of a workweek is required to be
4 compensated at the rate of no less than twice the regular rate of pay of an employee.

5 72. During all relevant periods, Defendants had a uniform policy of requiring Plaintiff
6 and the Class members to work in excess of eight (8) hours in a workday and/or in excess of forty
7 (40) hours in a workweek without compensating them at a rate of one and one-half times their
8 regular rate of pay. Upon information and belief, Defendants also failed to properly compensate
9 Plaintiff and the Class Members for hours worked in excess of twelve (12) hours in one day, or
10 eight hours on the seventh day of a workweek.

11 73. The IWC Wage Orders define "hours worked" as "the time during which an
12 employee is subject to the control of an employer, and includes all the time the employee is
13 suffered or permitted to work, whether or not required to do so."

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

18 75. Plaintiff is informed and believes that Defendants were aware that Plaintiff and the
19 Class Members were working off the clock and that they should have been paid for this time.

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

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

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

27 79. Due to Defendant's violations of the California Labor Code, Plaintiff and the Class
28 members are entitled to recover from Defendants their unpaid overtime wages, reasonable

1 attorneys' fees and costs in this action, and pre-judgment and post-judgment interest, statutory
2 penalties, and liquidated damages.

3 **THIRD CAUSE OF ACTION**

4 **FAILURE TO PROVIDE LAWFUL MEAL PERIODS**

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

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

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

13 82. Similarly, pursuant to Labor Code § 512, no employer shall employ an employee
14 for a work period of more than ten (10) hours without providing a second meal break of not less
15 than thirty (30) minutes in which the employee is relieved of all of his or her duties. A second meal
16 break may only be waived by mutual consent, and if the employee did not waive his or her first
17 meal period, and the employee's work day will not exceed twelve hours.

18 83. For the four (4) years preceding the filing of this lawsuit, Defendants failed to
19 provide Plaintiff and Class Members timely and uninterrupted first meal periods of not less than
20 thirty (30) minutes within the first five hours of a shift.

21 84. For the four (4) years preceding the filing of this lawsuit, Defendants also failed to
22 provide Plaintiff and Class Members timely and uninterrupted second meal periods of not less than
23 thirty (30) minutes on shifts longer than ten hours.

24 85. Indeed, during the relevant time, as a consequence of Defendants' staffing and
25 scheduling practices, labor budgets, lack of coverage, work demands, and Defendants' policies
26 and practices, Plaintiff and the Class Members were frequently not provided with legally required
27 timely meal periods. Meal periods were frequently missed, late, or short.

28 86. In addition, during certain shifts, employees were prohibited from leaving the

premises during purported meal periods as a matter of policy and practice. Defendants exercise of control over Plaintiff and the Class Members is inconsistent with their obligation to relieve employees of all duty and relinquish control over employees during said meal periods.

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

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

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

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

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

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

FOURTH CAUSE OF ACTION

FAILURE TO AUTHORIZE AND PERMIT LAWFUL REST PERIODS

(By Plaintiff and the Class Against All Defendants)

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

94. Pursuant to the IWC wage orders applicable to Plaintiff's and Class Members' employment by Defendants, "Every employer shall authorize and permit all 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

1 rest time per four (4) hours worked or major fraction thereof.... Authorized rest period time shall
2 be counted as hours worked, for which there shall be no deduction from wages.”

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

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

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

13 98. In addition, during certain shifts, employees were prohibited from leaving the
14 premises during purported rest periods as a matter of policy and practice. Defendants exercise of
15 control over Plaintiff and the Class Members is inconsistent with their obligation to relieve
16 employees of all duty and relinquish control over employees during said rest periods.

17 99. Defendants did not pay Plaintiff one additional hour of pay at his regular rate of pay
18 for each day that a rest period violation occurred. On information and belief, the other members of
19 the Class endured similar violations as a result of Defendants’ rest period policies and practices and
20 Defendant did not pay said Class Members premium pay as required by law.

21 100. By their failure to authorize and permit Plaintiff and the Class Members to take a
22 lawful, net ten (10) minute rest period free from work duties every four (4) hours or major fraction
23 thereof worked, including failure to provide two (2) total rest periods on six to ten hour shifts and
24 three (3) total ten (10) minute rest periods on days on which Plaintiff and the other Class Members
25 work(ed) work a third rest period for shifts in excess of ten (10) hours, and by their failure to provide
26 compensation for such unprovided rest periods as alleged herein, Defendants willfully violated the
27 provisions of Labor Code sections 226.7 and the applicable IWC Wage Order(s).

28

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

FIFTH CAUSE OF ACTION

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

(By Plaintiff and the Class Against All Defendants)

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

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

104. The wages required by Labor Code §§ 226.7, 246, 510, 1194, 7-2001, and other sections became due and payable to each employee in each month that he or she was not provided with a meal period or rest period or paid minimum wage, was not paid sick pay properly (if taken), straight or overtime wages to which he or she was entitled.

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

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

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

(2) 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.

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

SIXTH CAUSE OF ACTION

FAILURE TO PROVIDE REPORTING TIME PAY

(By Plaintiff and the Reporting Time Subclass Against All Defendants)

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

105. Section 5 of Wage Order 7-2001 (Reporting Time Pay) provides:

(A) Each workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage.

(B) If an employee is required to report for work a second time in any one workday and is furnished less than two hours of work on the second reporting, said employee shall be paid for two hours at the employee's regular rate of pay, which shall not be less than the minimum wage.

106. Labor Code Section 1198 states: “The 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.”

107. The "primary purpose of the reporting time regulation" is "to guarantee at least partial compensation for employees who report to work expecting to work a specified number of hours, and who are [] deprived of that amount because of inadequate scheduling or lack of proper notice by the employer." *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012).

108. Reporting time pay constitutes wages. *Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal. 4th 1094. The IWC’s purpose in adopting reporting time pay requirements was two-fold: “to compensate employees” and “encourag[e] proper notice and scheduling”. *Id.* at pp. 1111-1112.

109. Plaintiff and the Class were required by Defendants to report to work and were furnished less than half said employee's usual or scheduled day's work, but were not paid for half the usual or scheduled day's work, and in no event for less than two (2) hours as required by law.

110. In violation of state law, Defendants knowingly and willfully refused to perform their obligations to provide Plaintiff and the Class reporting time pay as required under law, on days that Plaintiffs and Class Members reported to work their scheduled shifts, but without prior warning sent home or were not provided work, and ordered to leave the premises without pay.

111. As a proximate result of the these knowing and deliberate violations, Plaintiffs and the Class have been damaged in an amount according to proof at time of trial. Plaintiff and the Class are entitled to recover unpaid wages, liquidated damages, penalties, attorneys fees and costs. In addition, pursuant to Labor Code § 218.5 and 218.6, Plaintiffs and Class Members are entitled to an award of reasonable attorneys' fees and costs and to interest on all due and unpaid wages.

SEVENTH CAUSE OF ACTION

FAILURE TO TIMELY PAY WAGES OWED AT SEPARATION

(By Plaintiff and the Class Against All Defendants)

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

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

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

1 115. Plaintiff and Class Members are entitled to compensation for all forms of wages
2 earned, including but not limited to minimum wages, overtime, sick leave (if taken), and premium
3 meal and rest period compensation, but to date have not received such compensation, therefore
4 entitling them to Labor Code § 203 penalties.

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

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

10 **EIGHTH CAUSE OF ACTION**

11 **KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED**
12 **EMPLOYEE WAGE STATEMENT PROVISIONS**

13 **By Plaintiff and Class Against Defendants**

14 118. Plaintiff repeats and incorporates herein by reference each and every allegation set
15 forth above, as though fully set forth herein.

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

27 120. Further, the IWC Wage Orders require in pertinent part: Every employer shall
28 keep accurate information with respect to each employee including the following: (3) Time

1 records showing when the employee begins and ends each work period. Meal periods, split shift
2 intervals, and total daily hours worked shall also be recorded...(5) Total hours worked in the
3 payroll period and applicable rates of pay....”

4 121. Labor Code section 1174 of the California also requires Defendants to maintain
5 and preserve, in a centralized location, among other items, records showing the names and
6 addresses of all employees employed and payroll records showing the hours worked daily by, and
7 the wages paid to, its employees. On information and belief and based thereon, Defendants have
8 knowingly and intentionally failed to comply with Labor Code section 1174, including by
9 implementing the policies and procedures and committing the violations alleged in the preceding
10 causes of action and herein. Defendants’ failure to comply with Labor Code section 1174 is
11 unlawful pursuant to Labor Code section 1175.

12 122. Defendants have failed to record many of the items delineated in applicable
13 Industrial Wage Orders and Labor Code section 226, and required under Labor Code section
14 1174, including by virtue of the fact that each wage statement which failed to accurately
15 compensate Plaintiff and Class Members for all hours worked and for missed and non-provided
16 meal and rest periods, or which failed to include compensation for all minimum wages earned or
17 overtime hours worked, was an inaccurate wage statement.

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

26 124. As a pattern and practice, in violation of Labor Code section 226(a) and the IWC
27 Wage Orders, Defendants did not and still do not furnish each of the members of the Wage
28 Statement Class with an accurate itemized statement in writing accurately reflecting all of the

1 required information. Specifically, Defendants have also omitted accurate itemizations of total
2 hours worked, applicable hourly rates, net pay, and gross pay from Plaintiff and the Class
3 Members' wage statements. Defendants have also failed to state earned sick pay on the wage
4 statements in violation of Labor Code 246(i). In addition, Defendants have failed to provide
5 accurate itemized wage statements as a consequence of the above-specified violations.

6 125. Moreover, upon information and belief, as a pattern and practice, in violation of
7 Labor Code section 226(a) and the IWC Wage Orders, Defendants did not and do not maintain
8 accurate records pertaining to the total hours worked for Defendants by the members of the Wage
9 Statement Class, including but not limited to, beginning and ending of each work period, meal
10 period and split shift interval, the total daily hours worked, and the total hours worked per pay
11 period and applicable rates of pay.

12 126. Plaintiffs and the members of the Wage Statement Class have suffered injury as a
13 result of Defendants' failure to provide and maintain accurate records for the members of the
14 Wage Statement Class in that the members of the Wage Statement Class were not timely provided
15 written accurate itemized statements showing all requisite information, such that the members of
16 the Wage Statement Class were misled by Defendants as to the correct information regarding
17 various items, including but not limited to the total hours worked by the employee, gross pay, net
18 wages earned, sick pay available, and all applicable hourly rates in effect during the pay period
19 and the corresponding number of hours worked at each hourly rate. The lack of information
20 hindered Plaintiff and the Class from determining the amount of wages owed to them and led
21 them to believe they were not entitled to be paid wages for all hours worked, for overtime, missed
22 meal and rest breaks, or for each hour of labor performed and the proper hourly rate, although
23 they were so entitled.

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

NINTH CAUSE OF ACTION
VIOLATION OF THE UNFAIR COMPETITION LAW

By Plaintiff and Class Against All Defendants

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

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

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

131. A violation of California Business and Professions Code §§ 17200, *et seq.*, may be predicated on the violation of any state or federal law.

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

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

134. As a result of the unlawful acts specified herein, Defendants have reaped and

1 continue to reap unfair benefits and unlawful profits at the expense of the Plaintiff and the Class
2 Members he seeks to represent. Defendants have been unjustly enriched through Defendants'
3 unlawful, unfair, and fraudulent business practices alleged herein.

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

9 **PRAYER FOR RELIEF**

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

11 **Class Certification**

- 12 1. That this action be certified as a class action;
13 2. That Plaintiff be appointed as the representatives of the Class;
14 3. That Plaintiff be appointed as the representative of the Subclasses; and
15 4. That counsel for Plaintiff be appointed as counsel for the Class and Subclasses.

16 **On the First Cause of Action**

17 **(Failure to pay Minimum Wages)**

- 18 1. For the unpaid balance of the full amount of any minimum wages and regular wages
19 owed, as well as interest thereon,
20 2. Penalties according to statute,
21 3. Liquidated damages,
22 4. Reasonable attorneys' fees, and costs of suit;
23 5. For interest and
24 6. For such other and further relief as the Court deems proper.

25 **On the Second Cause of Action**

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

- 27 1. For the unpaid balance of the full amount of overtime earned,
28 2. Penalties according to statute,

3. Liquidated damages,
4. Reasonable attorneys' fees, and costs of suit;
5. For interest; and
6. For such other and further relief as the Court deems proper.

On the Third Cause of Action

(Failure to Provide Lawful Meal Periods)

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

On the Fourth Cause of Action

(Failure to Authorize and Permit Lawful Rest Periods)

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

On the Fifth Cause of Action

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

1. For unpaid wages;
2. For penalties pursuant to Labor Code § 210 and 25% of the amount of wages unlawfully withheld;
3. For interest;
4. For reasonable attorneys' fees and costs pursuant to statute; and
5. For such other and further relief as the Court deems proper.

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1 premium wages for meal and rest periods that were not provided to Plaintiff and Class Members
2 over the last four (4) years in an amount according to proof;

3 3. For reasonable attorneys' fees that Plaintiff and Class Members are entitled to
4 recover under California Code of Civil Procedure § 1021.5 and Labor Code section 1194;

5 4. For pre-judgment interest on any unpaid minimum wages, straight time wages,
6 overtime wages and premium wages due from the day that such amounts were due;

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

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

10
11 **DEMAND FOR JURY TRIAL**

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

14
15 Respectfully submitted,

16 **JAMES HAWKINS APLC**

17 Dated: December 15, 2020

18 _____
19 James R. Hawkins, Esq.
20 Christina M. Lucio, Esq.

21 Attorneys for Plaintiff JOSEPH MERHI, on behalf of
22 himself and all others similarly situated
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