

ENDORSED
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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **FOR THE COUNTY OF ALAMEDA**

12 JOSE A. MELGAR FUENTES; an individual,
13 and LUIS CARTAGENA; on behalf of
14 themselves and all others similarly situated;

15 Plaintiffs,

16 vs.

17 MAAS BROTHERS, INC., and DOES 1
18 through 20, inclusive;

19 Defendants.

CASE NO.: Rg21086730

**CLASS AND PAGA ACTION COMPLAINT
FOR:**

- (1) FAILURE TO PAY ALL MINIMUM WAGES;
- (2) FAILURE TO PAY ALL OVERTIME WAGES;
- (3) FAILURE TO PROVIDE COMPLIANT MEAL PERIODS;
- (4) FAILURE TO PROVIDE COMPLIANT REST;
- (5) WAITING TIME PENALTIES;
- (6) FAILURE TO PROVIDE ACCURATE AND ITEMIZED WAGE STATEMENTS;
- (7) FAILURE TO PAY VESTED VACATION;
- (8) UNFAIR COMPETITION (BUS. & PROF. CODE § 17200, *et seq.*); and
- (9) PENALTIES PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF 2004

DEMAND FOR JURY TRIAL

1 Plaintiffs JOSE A MELGAR FUENTES, an individual, and LUIS CARTAGENA, an
2 individual, (collectively “Plaintiffs”), on behalf of themselves and all others similarly situated
3 (hereinafter “Class Members”), complain and allege as follows:

4 **I. INTRODUCTION**

5 1. This is a Class Action pursuant to California Code of Civil Procedure section 382,
6 on behalf of Plaintiffs and all other current and former similarly situated employees employed by
7 defendant MAAS BROTHERS, INC. (“Defendant Mass”) and DOES 1 to 20, inclusive,
8 (collectively “Defendants”), within the State of California during the relevant statutory period.

9 2. This is also a Representative Action under the California Private Attorneys General
10 Act of 2004 (“PAGA”) and California Labor Code § 2698, *et seq.*, on behalf of all individuals
11 who are or were employed by Defendants as non-exempt hourly workers within the State of
12 California from January 14, 2020 and continuing into the present.

13 3. From at least four (4) years prior to the filing of this action and continuing to the
14 present, Defendants have consistently failed to pay minimum and overtime wages for all hours
15 worked, failed to provide compliant meal and rest periods, failed to pay missed meal and rest
16 period premiums, failed to issue accurate/complete wage statements, failed to pay all wages due
17 upon separation from employment, and failed to pay all vested vacation wages.

18 4. Plaintiffs on behalf of themselves and all other similarly situated employees,
19 pursuant to California Business and Professions Code sections 17200 through 17208, also seek all
20 monies owed but withheld and retained by Defendants to which Plaintiffs and the Class Members
21 are entitled.

22 5. Plaintiffs on behalf of themselves, the State of California, and all aggrieved
23 employees, pursuant to Labor Code §2699, also seeks penalties for each and every pay period from
24 January 14, 2020 through the date of the trial, in which Defendants violated the provisions of the
25 California Labor Code referenced herein as well as IWC Wage Order 1-2001.

26 **II. JURISDICTION AND VENUE**

27 6. This Court has subject matter jurisdiction over all causes of action asserted herein
28 pursuant to Article VI, section 10 of the California Constitution and California Code of Civil

1 Procedure section 410.10 by virtue of the fact that this is a civil action in which the matter in
2 controversy, exclusive of interest, exceeds \$25,000, and because each cause of action asserted
3 arises under the laws of the State of California or is subject to adjudication in the courts of the
4 State of California.

5 7. This Court has personal jurisdiction over Defendants because they have caused
6 injuries in Los Angeles County and the State of California through their acts, and by their violation
7 of the California Labor Code, California state common law, and California Business & Professions
8 Code sections 17200, *et seq.* Defendants also transact business throughout California and have
9 obtained the benefits of the laws of the State of California and are therefore subject to the personal
10 jurisdiction of this Court.

11 8. Venue as to each defendant is proper in this Court pursuant to Code of Civil
12 Procedure § 395(a). Defendant Maas Brothers, Inc. operates within California and does business
13 within Alameda County. The unlawful acts alleged herein have a direct effect on Plaintiffs and the
14 Class Members within the State of California and Alameda County.

15 9. This case should be classified as complex according to California Rules of Court,
16 Rule 3.400 and assigned to a complex litigation judge and department as it is a class action, will
17 involve substantial documentary evidence, a large number of witnesses, and is likely to involve
18 extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
19 and would require substantial post judgment judicial supervision.

20 10. This matter is not appropriate for removal under the Class Action Fairness Act, 28
21 U.S.C. 1332, as the amount in controversy for Plaintiffs and the Class Members' claims, in
22 aggregate, is less than \$5,000,000. Plaintiffs are also informed and believe that more than two-
23 thirds of the Class Members are citizens of the State of California, and that within the past three
24 years, there has not been a class action filed against the Defendants for the same, or similar
25 allegations. Additionally, all of the allegations herein occurred in the State of California. As such,
26 if the amount in controversy does exceed \$5,000,000, this matter would still not be appropriate for
27 removal under the Local Controversy exception to the Class Action Fairness Act, 28 U.S.C. §
28 1332(d)(4)(A).

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III. PARTIES

11. Plaintiffs are residents of California and were employed by Defendant Maas Brothers, Inc. beginning in 2008 and 2017, respectively, at Defendant's Livermore, California location.

12. Plaintiffs seek to represent a class composed and defined as "*all hourly non-exempt individuals who are or were employed by Defendants at any of their facilities in California from four years prior to the filing of this Complaint through the date of trial* (the "Class Period").

13. Plaintiffs also represent the State of California as well as the following group of aggrieved employees: *all individuals who are or were employed by Defendants in any of their facilities in California from January 14, 2020 and continuing to the present* ("Aggrieved Employees").

14. Plaintiffs are informed and believe and thereon alleges that Defendant Maas Brothers, Inc. is a California corporation authorized to do business and doing business in Alameda County and throughout California and is and/or was the legal employer of Plaintiffs and the Class Members during the applicable statutory periods.

15. Plaintiffs are ignorant of the true names, capacities, relationships, and extent of participation in the conduct herein alleged, of defendants sued herein as DOES 1 through 20, inclusive, but on information and belief allege that those defendants are legally responsible for the payment of wages and penalties and damages to Plaintiffs and all Class Members by virtue of defendants' unlawful actions and practices and therefore sues these defendants by such fictitious names. Plaintiffs will amend this complaint to allege the true names and capacities of the DOE defendants when ascertained.

16. Plaintiffs also allege that they and the Class Members worked under the joint direction and control of Defendants and that Defendants, and each of them, acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the other defendants. On information and belief, a unity of interest and ownership between each defendant exists such that all Defendants acted as a single employer of Plaintiffs and other

1 similarly situated employees.

2 17. Furthermore, on information and belief, Defendants are an integrated enterprise and
3 should be treated as a single employer because Defendants share an interrelation of operations,
4 with common human resources and personnel policies and shared common offices and facilities.
5 Upon information and belief, Defendants share common management, a centralized control of
6 labor operations, and common ownership or financial control.

7 18. Also, Plaintiffs are informed and believe and thereon allege that the defendants sued
8 herein as DOES 1-20 are now and at all material times herein mentioned were the owner/owners of
9 certain other defendants and the actual employer of Plaintiffs and the Class Members or, in the
10 alternative, were individuals employed by Defendant Maas Brothers as a managerial and/or
11 supervisory employees and/or agents. In addition, Plaintiffs alleges that at all relevant times herein
12 the defendants sued herein as DOES 1-20 had the authority, in the interest of certain other
13 defendants, to exercise independent judgment to hire, transfer, promote, discharge, assign,
14 discipline, or take other similar actions against Plaintiffs, and were in Plaintiffs' chain of command
15 at the time of and direct participants in the wrongful conduct which constitutes the basis of
16 Plaintiffs' complaint herein. Plaintiffs also allege that the defendants sued herein as DOES 1-20
17 and certain other defendants are the agents, servants, employees, partners, affiliates, and/or
18 representatives of each other, and were, at all times herein mentioned, acting within the course,
19 scope, and purpose of such relationship(s) and with the knowledge, consent and/or ratification of
20 each other. Furthermore, in conducting themselves in the manner described herein, the defendants
21 sued herein as DOES 1-20 and certain other defendants were acting in active concert with one
22 another such that the acts of each were fully attributable to the others in all material respects.
23 Plaintiffs also allege that certain other defendants were merely the alter ego of the defendants sued
24 herein as DOES 1-20 in that there existed a unity of interest and ownership such that any
25 separateness between them ceased to exist and the defendants sued herein as DOES 1-20 exercised
26 undue dominance, control, influence, and management over certain other defendants. Plaintiffs
27 further allege that, at all relevant times, certain other defendants have been inadequately
28 capitalized to conduct business, have failed to follow appropriate corporate formalities, and have

1 simply been a shell and instrumentality through which the defendants sued herein as DOES 1-20
2 have conducted their personal affairs. Accordingly, the corporate veil should be pierced, and any
3 liability attached to certain other defendants should be imposed jointly and severally against the
4 defendants sued herein as DOES 1-20. Adherence to the fiction of the separate existence of these
5 corporate entities would permit abuse of the corporate privilege, thereby sanctioning fraud and
6 promoting injustice.

7 **IV. SUMMARY OF FACTS**

8 19. Throughout the Class Period, Plaintiffs and the Class Members were not paid at
9 least minimum wages for all of their hours worked.

10 20. Labor Code § 1197 states the California requirement that employees must be paid at
11 least the minimum wage fixed by the Commission, and any payment of less than the minimum
12 wage is unlawful. Similarly, Labor Code § 1194 entitles “any employee receiving less than the
13 legal minimum wage...to recover in a civil action the unpaid balance of the full amount of this
14 minimum wage.” IWC Wage Order No. 1-2001, § 4 also obligates employers to pay each
15 employee minimum wages for all hours worked.

16 21. These minimum wage standards apply to each hour employees worked for which
17 they were not paid. Therefore, an employer’s failure to pay for any particular hour of time worked
18 by an employee is unlawful, even if averaging an employee’s total pay over all hours worked, paid
19 or not, results in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005)
20 135 Cal.App.4th 314, 324.

21 22. Plaintiffs and the Class Members were not paid at least minimum wages for all of
22 their hours worked due to Defendants’ illegal rounding policies. Because all of Defendants’
23 employees are required to start working at the same time, Defendants directed their employees to
24 clock in prior to their scheduled start time to avoid creating a bottleneck at the punch machine(s).
25 Despite being subject to Defendants’ control, the employees were not compensated for the time
26 during which they were clocked-in prior to the official start of their shifts. This policy and practice
27 routinely under-compensated Plaintiffs and Class Members and resulted in a net benefit to
28 Defendants. In other words, Defendants’ rounding policies are not neutral and result in systematic

1 under compensation. As a result, Plaintiffs and the Class Members were not fully compensated for
2 all hours worked for Defendants.

3 23. Accordingly, Defendants have and continue to violate Labor Code sections 1194,
4 1194.2, 1197, and 1197.1.

5 24. Labor Code § 1194.2 authorizes employees to recover wages to recover liquidated
6 damages for violations of Labor Code § 1194. Where an employee, such as Plaintiffs and the Class
7 Members, are not paid for all hours worked under Labor Code § 1194, the employee may recover
8 minimum wages for the time associated with the time for which they received no compensation.
9 See *Sillah v. Command Int'l Sec. Servs.* (N.D. Cal. 2015) 154 F. Supp. 3d 891 [holding that
10 employees suing for failure to pay overtime could recover liquidated damages under § 1194.2 if
11 they also showed they were paid less than minimum wage]; accord *Andrade v. Arby's Rest. Grp.,*
12 *Inc.* (N.D. Cal. Dec. 12, 2016) 2016 U.S. Dist. LEXIS 172319, at *20-21. Since Defendants failed
13 to provide Plaintiffs and the Class Members with compensation for all hours worked, each are
14 entitled to recover liquidated damages under Labor Code § 1194.2.

15 25. Labor Code § 1197.1 authorizes employees who are paid a wage less than the
16 minimum fixed by an applicable state or local law, or by an order of the commission a civil
17 penalty, restitution of wages, and liquidate damages as follows: (1) for any initial violation that is
18 intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay
19 period for which the employee is underpaid....[and] (2) [f]or each subsequent violation for the
20 same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay
21 period for which the employee is underpaid regardless of whether the initial violation is
22 intentionally committed. As set forth above, Defendants failed to compensate Plaintiffs and the
23 Class Members for all wages for all hours worked. Accordingly, and to the extent permitted by
24 law, Plaintiffs and the Class Members are entitled to recover liquidated damages for violations of
25 Labor Code § 1197.1.

26 26. Labor Code section 510 requires an employer to compensate an employee who
27 works more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first
28 eight (8) hours worked on the seventh consecutive day no less than one and one-half times the

1 regular rate of pay for an employee. Further, Labor Code section 510 obligates employers to
2 compensate employees at no less than twice the regular rate of pay when an employee works more
3 than twelve (12) hours in a day or more than eight (8) hours on the seventh consecutive day of
4 work. In accordance with Labor Code section 1194, Plaintiffs and the Class Members could not
5 agree to work for a lesser wage. Pursuant to Section 3 of IWC Wage Order No. 1-2001,
6 employees shall not be employed more than eight (8) hours in any workday or more than 40 hours
7 in any workweek unless the employee receives one and one-half (1 ½) times such employee's
8 regular rate of pay for all hours worked over 40 hours in the workweek.

9 27. During the relevant period, Defendants have had a consistent policy of failing to
10 pay overtime wages at the proper amounts and/or failing to pay for all overtime hours worked to
11 Plaintiffs and the Class Members. When Plaintiffs and the Class Members worked overtime,
12 Defendants often failed to include all compensation when calculating the regular rate of pay used
13 in overtime calculations. However, Defendants calculated the regular rate of pay for Plaintiffs and
14 the Class Members based on the hourly rate they received only and omitted the other non-hourly
15 pay earnings received during those pay periods.

16 28. By their common practice of requiring Plaintiffs and the Class Members to work in
17 excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without
18 compensating them at the rate of one-half (1½) their regular rate of pay, Defendants willfully
19 violated the provisions of Labor Code section 510, 1194, and 1199, as well as IWC Wage Order
20 No. 1-2001, § 3.

21 29. Based on the same factual allegations, Plaintiffs and the Class Members are also
22 entitled to penalties under Labor Code § 1199.

23 30. Labor Code § 226.7(b) states that “[a]n employer shall not require an employee to
24 work during a meal or rest or recovery period mandated pursuant to an applicable statute, or
25 applicable regulation, standard, or order of the Industrial Welfare Commission ...” Labor Code §
26 512(a) states in pertinent part: “[A]n employer may not employ an employee for a work period of
27 more than 5 hours per day without providing the employee with an uninterrupted meal period of
28 not less than 30 minutes [...] [a]n employer may not employ an employee for a work period of

1 more than 10 hours per day without providing the employee with a second meal period of not less
2 than 30 minutes.” Furthermore, Labor Code 512(b) requires employers to provide uninterrupted
3 meal periods to employees prior to the commencement of the employees’ sixth hour of work.
4 *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1041.

5 31. Notably, Defendants did not timely relieve Plaintiffs and the Class Members of all
6 of their duties for full, uninterrupted 30-minute meal periods prior to the commencement of the
7 sixth hour of their work.

8 32. Additionally, Plaintiffs and the Class Members often worked shifts in excess of 10
9 hours, yet Defendants did not provide Plaintiffs and the Class Members with a second meal period
10 during such times.

11 33. Further, pursuant to Labor Code 226.7(c), if an employer failed to provide an
12 employee with a meal or rest period, “the employer shall pay the employee one additional hour of
13 pay at the employee’s regular rate of compensation for each workday that the meal or rest or
14 recovery period is not provided.”

15 34. Plaintiffs and the Class Members were not provided meal period premiums when
16 they were not provided timely compliant duty-free 30-minute meal periods. Accordingly,
17 Plaintiffs and the Class Members were regularly denied their meal periods in violation of Labor
18 Code 226.7, 512, and the applicable IWC Wage Order.

19 35. Section 12 of IWC Wage Order No. 1-2001 states in pertinent part: “Every
20 employer shall authorize and permit all employees to take rest periods, which insofar as practicable
21 shall be in the middle of each work period. The authorized rest period time shall be based on the
22 total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major
23 fraction thereof.”

24 36. Here, Defendants failed to provide Plaintiffs and the Class Members with duty-free
25 rest periods of not less than ten (10) minutes for every major fraction of four (4) hours worked.
26 Since Defendants did not offer Plaintiffs and the Class Members the opportunity to receive a
27 compliant off-duty rest period, “the court may not conclude employees voluntarily chose to
28 skip...breaks.” *Alberts v. Aurora Behavioral Health Care*, 241 Cal. App. 4th 388, 410 (2015) (“[i]f

1 an employer fails to provide legally compliant meal or rest breaks, the court may not conclude
2 employees voluntarily chose to skip those breaks.”); *accord Brinker* 53 Cal. 4th at 1033 (“No issue
3 of waiver ever arises for a rest break that was required by law but never authorized; if a break is not
4 authorized, an employee has no opportunity to decline to take it.”).

5 37. Additionally, Defendants failed to provide their employees with a compliant third
6 rest periods during shifts in which those employees worked in excess of ten (10) hours. This is not
7 in accord with California law, as it does not provide or authorize a rest period for every four (4)
8 hours worked or major fraction thereof, as required by California law.

9 38. In addition to failing to authorize and permit compliant rest periods, Plaintiffs and
10 the Class Members were not compensated with one (1) hours worth of pay at their regular rate of
11 compensation when they were not provided with a compliant rest period in accordance with Labor
12 Code § 226.7(b).

13 39. Plaintiffs and the Class Members were not provided rest break premiums for their
14 missed rest breaks. Accordingly, Plaintiffs and the Class Members were also regularly denied their
15 rest breaks in violation of Labor Code 226.7, 512, and IWC Wage Order No. 1-2001.

16 40. Labor Code § 201(a) provides in pertinent part: “If an employer discharges an
17 employee, the wages earned and unpaid at the time of discharge are due and payable
18 immediately.” Labor Code § 202(a) states in pertinent part: “If an employee not having a written
19 contract for a definite period quits his or her employment, his or her wages shall become due and
20 payable not later than 72 hours thereafter, unless the employee has given 72 hours’ previous notice
21 of his or her intention to quit, in which case the employee is entitled to his or her wages at the time
22 of quitting.” Labor Code § 203(a) states, “If an employer willfully fails to pay, without abatement
23 or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of
24 an employee who is discharged or who quits, the wages of the employee shall continue as a
25 penalty from the due date thereof at the same rate until paid or until an action therefor is
26 commenced; but the wages shall not continue for more than 30 days.”

27 41. Here, Defendants failed to pay Plaintiffs and the Class Members all wages that were
28 due and owing (including all minimum and overtime wages owed, meal and rest period premiums,

1 etc.) within the required time following the end of their employment in accordance with Labor
2 Code §§ 201-202. As a result, Plaintiffs and all such Class Members are entitled to 30 days of
3 wages as a “waiting time penalty.”

4 42. Labor Code § 226(a) requires an employer to provide its employees with itemized
5 wage statements accurately stating (1) gross wages earned, (2) total hours worked by the
6 employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee
7 is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders
8 of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive
9 dates of the period for which the employee is paid, (7) the name of the employee and only the last
10 four digits of his or her social security number or an employee identification number other than a
11 social security number, (8) the name and address of the legal entity that is the employer, and (9) all
12 applicable hourly rates in effect during the pay period and the corresponding number of hours
13 worked at each hourly rate by the employee.

14 43. Here, based on Defendants’ failure to pay Plaintiffs and the Class Members for all
15 hours worked, and pay meal and rest period premiums for noncompliant meal and rest periods,
16 Defendants issued wage statements which failed to accurately identify the gross wages earned, the
17 total hours worked, the net wages earned, and the correct corresponding number of hours worked
18 at each hourly rate by their employees, in violation of Labor Code Section 226(a)(1), (2), (5) and
19 (9). Thus, Defendants have violated Labor Code section 226(a)(1), (2), (5) and (9) with respect to
20 Plaintiffs and the Class Members.

21 44. Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of
22 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
23 employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for
24 each violation in a subsequent citation, for which the employer fails to provide the employee a
25 wage deduction statement or fails to keep the required in subdivision (a) of Section 226.” Thus, for
26 the violations of Labor Code section 226 described above, Plaintiffs and the Class Members may
27 also recover Labor Code § 226.3 penalties for Defendants’ violations of Labor Code § 226(a).
28

45. In addition to violating Labor Code § 226(a), Defendants also knowingly and intentionally failed to provide Plaintiffs and the Class Members with accurate itemized wage statements in violation of Labor Code § 226(e). Defendants undeniably knew that they were not providing Plaintiffs and the other Class Members with wage statements required by California law. *See Garnett v. ADT LLC* 139 F. Supp. 3d 1121, 1131 (E.D. Cal. Oct. 6, 2015) (finding that the defendant knowingly and intentionally violated Labor Code § 226 because the “[d]efendant knew that it was not providing total hours worked to Plaintiffs or other employees paid on commission” even though it believed that employees paid solely on commission or commission and salary “are exempt and therefore we do not record hours on a wage statement.”).

46. Plaintiffs fully and completely exhausted their administrative remedies under PAGA prior to proceeding with this action. On January 19, 2020, Plaintiffs filed their PAGA Notice online with the Labor Workforce Development Agency (“LWDA”) and sent a letter by certified mail to Defendant Maas Brothers, Inc. setting forth the facts and theories of the violations alleged against Defendant, as prescribed by Labor Code § 2698 *et seq.* As required by PAGA, Plaintiffs electronically submitted the \$75.00 filing fee with the LWDA. Therefore, once more than sixty-five (65) days have passed since that date, Plaintiffs will have fully satisfied the administrative prerequisites to suit under the PAGA and this Complaint will be deemed amended to include the PAGA allegations enumerated below. Once this occurs, Plaintiffs seek to recover all applicable and available PAGA remedies pursuant to Labor Code § 2699, as well as attorneys’ fees, costs, and/or other damages as permitted by PAGA through a representative action pursuant to the PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal. 4th 969. Plaintiffs are not required to, nor do they, seek class certification of the PAGA claims under Code of Civil Procedure § 382.

V. CLASS ACTION ALLEGATIONS

47. Plaintiffs brings this action on behalf of themselves and all others similarly situated as a class action pursuant to Code of Civil Procedure § 382.

1 48. Plaintiffs seeks to represent the following class and subclasses:

2 **The Class:** *all hourly non-exempt individuals who are or were employed by Defendants in*
3 *any of their facilities in California from four years prior to the filing of this complaint*
4 *through the date of trial.*

5 **The Overtime Subclass:** *all hourly non-exempt individuals who are or were employed by*
6 *Defendants in any of their facilities in California who worked in excess of eight hours in a*
7 *day, or in excess of forty hours in a workweek, from four years prior to the filing of this*
8 *complaint through the date of trial.*

9 **The Meal Period Subclass:** *all hourly non-exempt individuals who are or were employed*
10 *by Defendants in any of their facilities in California who worked at least one shift greater*
11 *than five hours, from four years prior to the filing of this complaint through the date of*
12 *trial.*

13 **The Rest Break Subclass:** *all hourly non-exempt individuals who are or were employed*
14 *by Defendants in any of their facilities in California who worked at least one shift greater*
15 *than 3.5 hours, from four years prior to the filing of this complaint through the date of*
16 *trial.*

17 **The Waiting Time Penalty Subclass:** *all hourly non-exempt individuals who were*
18 *employed by Defendants in any of their facilities in California whose employment with*
19 *Defendants ended from three years prior to the filing of this complaint through the date of*
20 *trial.*

21 **The Wage Statement Subclass:** *all hourly non-exempt individuals who are or were*
22 *employed by Defendants in any of their facilities in California who received at least one*
23 *wage statement from Defendants from one year prior to the filing of this complaint through*
24 *the date of trial.*

25 **The Vested Vacation Subclass:** *all hourly non-exempt individuals who were employed by*
26 *Defendants in any of their facilities in California and who upon separation of employment*
27 *with Defendants, received payment for vested vacation wages at a rate lower than their*
28 *final rate of pay during the three years prior to the filing of this complaint through the date*
of trial.

49. Plaintiffs reserve the right to amend or modify the class and subclass descriptions
with greater specificity or further division into subclasses or limitation to particular issues as
appropriate.

50. Plaintiffs, as class representatives, are a member of the class and subclasses that
they seek to represent.

51. This action has been brought and may properly be maintained as a class action
under Code of Civil Procedure § 382 because there is a well-defined community of interest in the

litigation and the proposed class is easily ascertainable from Defendants' personnel and payroll records.

52. **Numerosity:** The potential members of the class as defined are so numerous that a joinder of all Class Members is impracticable. Although the exact number is currently unknown to Plaintiffs, this information is easily ascertainable from Defendants' personnel and payroll records.

53. **Commonality:** There are questions of law and fact common to the class which predominate over any questions affecting only individual members of the class, including without limitation:

i. Whether Defendants violated the California Labor Code and the applicable IWC Wage Order by failing to pay minimum wages to Plaintiffs and the Class Members for all hours worked;

ii. Whether Defendants violated Labor Code section 510 by not compensating Plaintiffs and the Overtime Subclass Members with proper overtime wages for all overtime worked;

iii. Whether Defendants violated IWC Wage Order Nos. 1-2001 by not compensating Plaintiffs and the Overtime Subclass Members with proper overtime wages for all overtime worked;

iv. Whether Defendants violated the California Labor Code and applicable IWC Wage Order by failing to provide compliant meal periods to Plaintiffs and the Meal Period Subclass Members, and whether Defendants failed to compensate Plaintiffs and the Meal Period Subclass Members with one additional hour of premium pay for each instance when a compliant meal period was not provided;

v. Whether Defendants violated the California Labor Code and applicable IWC Wage Order by failing to provide compliant rest breaks to Plaintiffs and the Rest Break Subclass Members, and whether Defendants failed to compensate Plaintiffs and the Rest Break Subclass Members with one additional hour of premium pay for each instance when a compliant rest break was not provided;

1 vi. Whether Defendants violated the California Labor Code by failing to pay all wages
2 due upon separation of employment between Defendants and Plaintiffs and the Waiting Time
3 Penalties Subclass Members, whether such separation was voluntary or involuntary;

4 vii. Whether Defendants violated Labor Code section 226(a) by not furnishing Plaintiffs
5 and the Wage Statement Subclass Members with accurate and/or complete wage statements;

6 viii. Whether Defendants violated the California Labor Code by paying vested vacation
7 wages to the Vested Vacation Subclass at a rate lower than the final rate of pay upon separation of
8 employment;

9 ix. Whether Defendants violated California Business & Professions Code §§ 17200 *et*
10 *seq.* by their unlawful practices as alleged herein; and

11 x. Whether Defendants violated § 17200 *et seq.* of the California Business and
12 Professions Code and, without limitation, California Labor Code §§ 201, 202, 203, 226, 226.7,
13 510, 512, 1194, 1194.2, and 1197 among possibly other sections inadvertently omitted, and any
14 applicable IWC Wage Orders, which violations constitute false, fraudulent, unlawful, unfair and
15 deceptive business practices;

16 54. **Typicality:** Plaintiffs' claims, as class representatives, are typical of the claims of
17 the class and the subclasses. Plaintiffs, like other Class Members, were subjected to Defendants'
18 ongoing Labor Code and Wage Order violations including their failure to pay minimum wages,
19 failure to pay overtime wages, failure to provide compliant meal periods, failure to provide
20 compliant rest periods, failure to timely pay final wages, failure to provide accurate itemized wage
21 statements, and failure to pay all vested vacation pay.

22 55. **Adequacy of Representation:** Plaintiffs, as the class representatives, will fairly
23 and adequately represent and protect the interests of the class. Plaintiffs' interests are not in
24 conflict with those of the class. Plaintiffs' counsel are competent and experienced in litigating
25 large employment class actions and other complex litigation matters, including cases like this case.

26 56. **Superiority of Class Action:** Class certification is appropriate because a class
27 action is superior to other available means for the fair and efficient adjudication of this
28 controversy. Individual joinder of all Class Members is not practicable, and questions of law and

1 fact common to the class predominate over any questions affecting only individual members of the
2 class. Each Class Member has been damaged and is entitled to recovery by reason of Defendants'
3 illegal policies and practices set forth above. Class action treatment will allow those similarly
4 situated persons to litigate their claims in the manner that is most efficient and economical for the
5 parties and the judicial system.

6 **FIRST CAUSE OF ACTION**

7 **FAILURE TO PAY MINIMUM WAGES**

8 (Labor Code § 1194, 1194.2, 1197; IWC Wage Order No. 1-2001)

9 *Plaintiffs and Class Members Against All Defendants*

10 57. Plaintiffs re-allege and incorporate by reference each and every allegation set forth
11 in the preceding paragraphs.

12 58. Plaintiffs and Class Members are and/or were not exempt from the requirement to
13 be paid at least the applicable California minimum wage throughout the statutory period for each
14 hour worked.

15 59. At all relevant times, Plaintiffs and the Class Members were not paid at least
16 minimum wages for all of their hours worked due to, among other practices, Defendants' practice
17 of requiring Plaintiffs and the Class Members to perform work-related tasks, including but not
18 limited to changing into their mandated work apparel prior to clocking in and after clocking out.
19 Despite being subject to Defendants' control while performing said tasks, Defendants did not
20 provide any compensation for the time it took to complete these processes. As a result, Plaintiffs
21 and the Class Members were not fully compensated for all minimum wages owed for all hours
22 worked.

23 60. As a result of Defendants' practices described above, Plaintiffs and the Class
24 Members were required to perform off-the-clock work that Defendants either knew or should have
25 known they were performing.

26 61. Additionally, at all times mentioned, Defendants unevenly rounded the time worked
27 by Plaintiffs and the Class Members, resulting in Plaintiffs and the Class Members not being fully
28 compensated for all minimum wages owed for all hours worked.

62. Consequently, Defendants violated California Labor Code laws and minimum wage laws, *inter alia*, Labor Code §§ 1194, 1194.2, 1197 and IWC Wage Order No. 1-2001, § 4.

63. Plaintiffs are informed and believe and thereon allege that Defendants intentionally, willfully, and improperly failed to pay wages to Plaintiffs and the Class Members.

64. Defendants' conduct was willful, as Defendants knew that Plaintiffs and Class Members were entitled to be paid wages throughout the statutory period for each hour worked, including proper minimum wages, yet Defendants chose not to pay them in accordance thereto.

65. At all material times, defendants DOES 1 through 20 were and/or are the employers of Plaintiffs, the Class Members, or were persons acting on behalf of said employer(s), within the meaning of California Labor Code § 558.

66. As a result of Defendants' wrongful conduct, Plaintiffs and the Class Members have been damaged in amounts to be proven at trial.

67. Plaintiffs, on behalf of themselves and the Class Members seek recovery of all unpaid minimum wages, liquidated damages, penalties, interest, attorneys' fees and costs of suit, pursuant to Labor Code §§ 1194, 1194.2 and 1197, against Defendants in an amount to be proven at trial.

SECOND CAUSE OF ACTION

FAILURE TO PAY OVERTIME WAGES

(Labor Code § 510, 1194; IWC Wage Order No. 1-2001)

Plaintiffs and the Overtime Subclass Members Against All Defendants

68. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

69. At all times relevant to this Complaint, Labor Code section 510(a) was in effect and provided: "Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of forty hours 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."

1 70. Pursuant to Section 3 of IWC Wage Order No. 1-2001, employees shall not be
2 employed more than eight (8) hours in any workday or more than 40 hours in any workweek
3 unless the employee receives one and one-half (1 ½) times such employee's regular rate of pay for
4 all hours worked over 40 hours in the workweek.

5 71. At all times mentioned, Plaintiffs and the Overtime Subclass Members worked for
6 Defendants during shifts that consisted of more than eight (8) hours in a workday and/or more than
7 forty (40) hours in a workweek and were not paid proper overtime wages for all overtime hours
8 worked. During the relevant period, Defendants have had a consistent policy of failing to pay
9 overtime wages at the proper amounts and/or failing to pay for all overtime hours worked to
10 Plaintiffs and the Class Members. When Plaintiffs and the Class Members worked overtime,
11 Defendants often failed to include all compensation when calculating the regular rate of pay used
12 in overtime calculations. For instance, Plaintiffs and the Class Members would receive, along with
13 their hourly base rates of pay for their working hours, additional remuneration of 'shift premium'
14 entitled payments. However, Defendants calculated the regular rate of pay for Plaintiffs and the
15 Class Members based on the hourly rate they received only and omitted the other non-hourly pay
16 earnings received during those pay periods.

17 72. Additionally, at all times mentioned, Defendants unevenly rounded the time worked
18 by Plaintiffs and the Overtime Subclass Members, resulting in Plaintiffs and the Overtime Subclass
19 Members being paid less than one and one-half times their regular rate of pay for their overtime
20 hours worked.

21 73. Accordingly, by requiring Plaintiffs and the Overtime Subclass Members to work in
22 excess of eight (8) hours per day and/or forty (40) hours per week and without properly
23 compensating overtime wages for all overtime hours worked, as described above, Defendants
24 willfully violated the provisions of Labor Code section 1194.

25 74. As a result of the unlawful acts of Defendants, Plaintiffs and the Overtime Subclass
26 Members have been deprived of overtime wages in amounts to be determined at trial, and are
27 entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees and costs,
28 pursuant to Labor Code sections 1194 and 1199; Code of Civil Procedure section 1021.5; and Civil

1 Code section 3287.

2 **THIRD CAUSE OF ACTION**

3 **FAILURE TO PROVIDE MEAL PERIODS**

4 (Labor Code § 226.7 and 512; IWC Wage Order No. 1-2001)

5 *Plaintiffs and the Meal Period Subclass Against All Defendants*

6 75. Plaintiffs re-allege and incorporate by reference each and every allegation set forth
7 in the preceding paragraphs.

8 76. Plaintiffs and the Meal Period Subclass Members are and/or were “non-exempt”
9 employees of Defendants who did not receive proper protections and benefits of the laws
10 governing mandatory meal periods.

11 77. Labor Code § 512(a), in part, provides that employers, including Defendants, may
12 not employ an employee for a work period of more than five hours per day without providing an
13 employee the opportunity to take an uninterrupted meal period of not less than 30 minutes, except
14 that if the total work period per day of the employee is no more than six hours, the meal period
15 may be waived by mutual consent of both the employer and the employee. Employers may not
16 employ an employee for a work period more than 10 hours per day without providing the
17 employee with a second meal period of not less than 30 minutes. Furthermore, Labor Code 512(b)
18 requires employers to provide uninterrupted meal periods to employees prior to the
19 commencement of the employees’ sixth hour of work.

20 78. Pursuant to Labor Code § 226.7(b) and the applicable IWC Wage Order,
21 Defendants shall pay an employee one additional hour of pay at the employee’s regular rate of
22 compensation for each meal period that is missed.

23 79. At all relevant times herein, Plaintiffs and the Meal Period Subclass Members were
24 denied the timely 30-minute off-duty meal periods to which they were entitled. Specifically,
25 Defendants did not timely relieve Plaintiffs and the Meal Period Subclass Members of all of their
26 duties for full, uninterrupted 30-minute meal periods prior to the commencement of the sixth hour
27 of their work.

1 80. Additionally, at all relevant times, Plaintiffs and the Meal Period Subclass Members
2 often worked shifts in excess of ten (10) hours, yet Defendants did not provide Plaintiffs and the
3 Class Members with a second meal period during such times.

4 81. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage
5 Order every pay period with respect to Plaintiffs and the Meal Period Subclass Members because
6 Plaintiffs and the Meal Period Subclass Members were not provided with all mandatory meal
7 periods and Defendants failed to pay Plaintiffs and the Meal Period Subclass Members one
8 additional hour of compensation in lieu thereof.

9 82. On information and belief, Plaintiffs and the Meal Period Subclass Members did not
10 voluntarily or willfully waive the mandated meal periods. Any expressed or implied waivers
11 obtained from Plaintiffs and the Meal Period Subclass Members were not willfully obtained, were
12 not voluntarily agreed to, were a condition of employment, or were a part of a contract of unlawful
13 adhesion. Defendants did not permit or authorize Plaintiffs and the Meal Period Subclass Members
14 to take meal periods in accordance with California law.

15 83. By their failure to provide Plaintiffs and the Meal Period Subclass Members with
16 meal periods as required by California law, and failing to pay one hour of additional wages in lieu
17 of each meal period not provided, Defendants willfully violated Labor Code §§ 226.7 and 512, and
18 the applicable IWC Wage Order. Accordingly, Defendants are liable for one hour of additional
19 wages at the employee's regular rate of compensation for each workday that a meal period and/or
20 paid rest break was not lawfully provided in an amount to be proven at time of trial.

21 84. Also, as a direct result of Defendants' violations of Labor Code §§ 226.7 and 512,
22 and the applicable IWC Wage Order, Defendants, and each DOE, are liable to Plaintiffs and the
23 Meal Period Subclass Members for unpaid wage premiums, penalties, costs, and interest.

24 **FOURTH CAUSE OF ACTION**

25 **FAILURE TO PROVIDE REST BREAKS**

26 (Labor Code § 226.7; IWC Wage Order No. 1-2001)

27 *Plaintiffs and the Rest Break Subclass Against All Defendants*

1 85. Plaintiffs re-allege and incorporate by reference each and every allegation set forth
2 in the preceding paragraphs.

3 86. Plaintiffs and the Rest Break Subclass Members are and/or were “non-exempt”
4 employees of Defendants who did not receive proper protections and benefits of the laws
5 governing mandatory rest breaks.

6 87. Labor Code § 226.7 requires employers, including Defendants, to provide rest
7 breaks to their non-exempt employees as mandated by Order of the Industrial Welfare
8 Commission.

9 88. Section 12 of IWC Wage Order No. 1-2001 states, in part, that every employer shall
10 authorize and permit all employees to take rest periods, which insofar as practicable shall be in the
11 middle of each work period. Employees shall receive a 10-minute rest period every four hours or
12 major fraction thereof that they are required to work. Authorized rest period time shall be counted,
13 as hours worked, for which there shall be no deduction from wages.

14 89. Furthermore, in an eight-hour (8) shift, rest breaks should fall on either side of the
15 meal break, absent factors rendering such scheduling impossible.

16 90. Pursuant to Labor Code § 226.7(b) and the above-referenced sections of the
17 applicable Wage Order, Defendants shall pay Plaintiffs and the Rest Break Subclass Members one
18 (1) additional hour of pay at their regular rate of compensation for each day that a compliant rest
19 period is not provided.

20 91. At all relevant times, Plaintiffs and the Rest Break Subclass Members were not
21 provided with ten (10) minutes of net rest break time for every four (4) hours worked, or major
22 fraction thereof, as mandated by California law. Moreover, Plaintiffs and the Rest Break Subclass
23 Members were not provided rest break premiums for their missed rest breaks.

24 92. Additionally, at all relevant times mentioned herein, Plaintiffs and the Rest Break
25 Subclass Members often worked in excess of ten (10) hours in a shift, yet Defendants failed to
26 authorize and/or permit a third mandated rest break. Accordingly, Plaintiffs and the Rest Break
27 Subclass Members were regularly denied their rest breaks in violation of Labor Code 226.7, 512,
28 as well as IWC Wage Order No. 1-2001. As a result, Plaintiffs and the Rest Break Subclass

1 Members were not provided net rest periods of at least then (10) minutes for each four (4)-hour
2 work period, or major fraction thereof.

3 93. Defendants violated Labor Code §§ 226.7 and the applicable IWC Wage Order
4 every pay period with respect to Plaintiffs and the Rest Break Subclass Members because Plaintiffs
5 and the Rest Break Subclass Members were not provided with all mandatory rest periods and
6 Defendants failed to pay Plaintiffs and the Rest Break Subclass Members one (1) additional hour
7 of compensation in lieu thereof.

8 94. By their failure to provide Plaintiffs and the Rest Break Subclass Members with rest
9 breaks as required by California law, and failing to pay one (1) hour of additional wages in lieu of
10 each rest break not provided, Defendants willfully violated Labor Code §§ 226.7 and 512, and the
11 above-referenced IWC Wage Order. Accordingly, Defendants are liable for one (1) hour of
12 additional wages at the employee's regular rate of compensation for each workday that a meal
13 period and/or paid rest break was not lawfully provided in an amount to be proven at time of trial.

14 95. Also, as a direct result of Defendants' violations of Labor Code §§ 226.7 and the
15 applicable IWC Wage Order, Defendants are liable to Plaintiffs and the Rest Break Subclass
16 Members for unpaid wage premiums, penalties, costs, and interest.

17 **FIFTH CAUSE OF ACTION**

18 **FAILURE TO TIMELY PAY FINAL WAGES**

19 (Labor Code § 201 – 203)

20 *Plaintiffs and the Waiting Time Penalty Subclass Against All Defendants*

21 96. Plaintiffs re-allege and incorporate by reference each and every allegation set forth
22 in the preceding paragraphs.

23 97. The actionable period for this cause of action is three (3) years prior to the filing of
24 this complaint through the present, and on-going until the violations are corrected, or the class is
25 certified.

26 98. Sections 201 and 202 of the California Labor Code requires Defendants to pay all
27 compensation due and owing to Plaintiffs and the Waiting Time Penalty Subclass Members during
28 the actionable period for this cause of action at or around the time that their employment is or was

1 terminated or ended.

2 99. Section 203 of the California Labor Code provides that if an employer willfully
3 fails to pay compensation promptly upon discharge or resignation, as required by Sections 201 and
4 202, then the employer is liable for penalties in the form of continued compensation up to thirty
5 (30) workdays.

6 100. Defendants willfully failed to pay Plaintiffs and the Waiting Timeline Penalty
7 Subclass Members for all minimum and overtime wages owed, as well as meal period premiums
8 and rest period premiums prior to or upon termination or separation from employment with
9 Defendants as required by California Labor Code §§ 201 and 202.

10 101. As a result, Defendants are liable to Plaintiffs and the Waiting Timeline Penalty
11 Subclass Members for waiting time penalties amounting to thirty (30) days wages for Plaintiffs
12 and the Waiting Timeline Penalty Subclass pursuant to California Labor Code § 203. *See, e.g.,*
13 *DLSE Manual, 4.3.4 (Failure to pay any sort of wages due upon termination entitles an employee*
14 *to recover waiting time penalties.)*

15 **SIXTH CAUSE OF ACTION**

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

17 (Labor Code § 226(a))

18 *Plaintiffs and the Wage Statement Subclass Against All Defendants*

19 102. Plaintiffs re-allege and incorporate by reference each and every allegation set forth
20 in the preceding paragraphs.

21 103. Labor Code sections 226(a)(1), (2), (5) and (9) require employers semimonthly or at
22 the time of each payment of wages, to furnish each of his or her employees, an accurate itemized
23 statement in writing showing the gross wages earned, the total hours worked, the net wages earned,
24 as well as the applicable hourly rates in effect during the pay period and the corresponding number
25 of hours worked at each hourly rate by the employee.

26 104. From at least one (1) year prior to the filing of this Complaint through the present,
27 Defendants knowingly and intentionally failed to issue accurate and complete itemized wage
28 statements in writing to Plaintiffs and the Wage Statement Subclass Members that accurately

1 indicated the gross wages earned, the total hours worked, the net wages earned, as well as the
2 applicable hourly rates in effect during the pay period and the corresponding number of hours
3 worked at each hourly rate by Plaintiffs and the Wage Statement Subclass Members.

4 105. Due to Defendants' failure to pay Plaintiffs and the Wage Statement Subclass
5 Members all minimum and overtime wages owed as well as meal and rest period premiums for
6 noncompliant meal and rest periods, the wage statements issued by Defendants did not indicate the
7 correct amount of gross wages earned, total hours worked, net wages earned, or the correct
8 corresponding number of hours worked at each hourly rate in violation of Labor Code section
9 226(a)(1), (2), (5) and (9).

10 106. Defendants have therefore knowingly and intentionally failed to comply with Labor
11 Code section 226(a). IWC Wage Order No. 1-2001 requires Defendants to maintain accurate
12 records showing the total wages paid each payroll period, the total hours worked in the payroll
13 period and applicable rates of pay. Defendants failed to keep accurate records of the total wages
14 paid, the total hours worked, or the applicable rates of pay.

15 107. An employee suffering injury as a result of a knowing and intentional failure by an
16 employer to comply with Labor Code section 226(a) is entitled to recover the greater of all actual
17 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one
18 hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding
19 an aggregate penalty of four thousand dollars (\$4,000) and is entitled to an award of costs and
20 reasonable attorneys' fees.

21 108. The absence of accurate information on their wage statements has delayed timely
22 challenge to Defendants' unlawful pay practices, requires discovery and mathematical
23 computations to determine the amount of wages owed, causes difficulty and expense in attempting
24 to reconstruct time and pay records, and led to submission of inaccurate information about wages
25 and amounts deducted from wages to state and federal governmental agencies.

26 109. Accordingly, Plaintiffs and the Wage Statement Subclass Members are entitled to
27 damages according to proof.

28

1 **SEVENTH CAUSE OF ACTION**

2 **FAILURE TO PAY VESTED VACATION**

3 (Labor Code § 227.3)

4 *Plaintiffs and the Vested Vacation Subclass Against All Defendants*

5 110. Plaintiffs re-allege and incorporate by reference each and every allegation set forth
6 in the preceding paragraphs.

7 111. Plaintiffs and the Vested Vacation Subclass are and/or were employees of
8 Defendants who did not receive proper protections and benefits of the laws governing the payment
9 of vested vacation time and/or paid time off upon separation of employment.

10 112. Pursuant to Labor Code § 227.3, an employer that has implemented a paid vacation,
11 paid time off, or compensated time off policy, must upon an employee's separation from
12 employment, pay to the employee all vested but unused vacation and/or time off at his final rate of
13 pay.

14 113. At all relevant times herein, Defendants had a policy whereby Plaintiffs and the
15 Vested Vacation Subclass accrued vacation time and/or paid time off.

16 114. Also, at all relevant times herein, Defendants had a policy and practice of failing to
17 pay all accrued, vested, and unused vacation time and/or paid time off upon separation from
18 employment at the "final rate of pay" as required by Labor Code § 227.3.

19 115. At all relevant times herein, Defendants failed to pay the Vested Vacation Subclass,
20 including Plaintiffs, all vested but unused vacation time and/or paid time off upon separation from
21 employment at the final rate of pay, thereby receiving an economic benefit.

22 116. As a result of Defendants' violations of Labor Code § 227.3, Plaintiff and the
23 Vested Vacation Subclass seek to recover the unpaid vacation/paid time off, as well as penalties,
24 interest, attorneys fees, and costs as permitted under California law.

25 **EIGHTH CAUSE OF ACTION**

26 **UNFAIR AND UNLAWFUL COMPETITION**

27 (Business and Professions Code § 17200 *et seq.*)

28 *Plaintiffs and All Classes Against All Defendants*

1 117. Plaintiffs re-allege and incorporate by reference each and every allegation set forth
2 in the preceding paragraphs.

3 118. California Business & Professions Code § 17200, *et seq.*, prohibits acts of unfair
4 competition, which includes any “unlawful, unfair or fraudulent business act or practice.” The
5 Class Members, including Plaintiffs, have suffered and continue to suffer injuries in fact, due to
6 the unfair and unlawful business practices of Defendants as alleged herein.

7 119. Defendants are “persons” as defined under Business & Professions Code § 17021.

8 120. As alleged herein, Defendants engaged in conduct that violated California’s wage
9 and hour laws, including failure to pay minimum wages, failure to pay overtime wages, failure to
10 provide mandated meal periods and rest breaks, failure to timely pay final wages, and failure to
11 pay all vested vacation pay all in order to decrease their costs and increase their profits.

12 121. At all times relevant herein, Defendants did not pay Plaintiffs and the Class
13 Members wages and monies and other financial obligations to which they were entitled.

14 122. As a result of Defendants’ failure to comply with the Labor Code and IWC Orders,
15 Class Members, including Plaintiffs, suffered a loss of wages and monies, all in an amount to be
16 shown according to proof at trial. Defendants’ ongoing violations of the foregoing statutes and
17 laws constitute a violation of Bus. & Prof. Code § 17200, *et seq.*

18 123. Defendants’ violations of the California Labor Code and IWC Wage Orders and
19 their scheme to lower their payroll costs as alleged herein, constitute unlawful and unfair business
20 practices because it was done in a systematic manner over a period of time to the detriment of the
21 Plaintiffs and all others similarly situated.

22 124. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair,
23 unlawful, and harmful to Plaintiffs, Class Members, and to the public. Plaintiffs seek to enforce
24 important rights affecting the public interest within the meaning of Code of Civil Procedure §
25 1021.5.

26 125. A violation of California Business & Professions Code § 17200, *et seq.* may be
27 predicated on the violation of any state or federal law. All the acts described herein as violations
28 of, among other things, the California Labor Code and IWC Wage Orders, are unlawful and in

1 violation of public policy, and in addition are immoral, unethical, oppressive, fraudulent and
2 unscrupulous, and thereby constitute unfair, unlawful and/or fraudulent business practices in
3 violation of California Business and Professions Code §§ 17200, *et seq.*

4 126. Plaintiffs, individually, and on behalf of the Class Members, have no plain, speedy,
5 and/or adequate remedy at law to redress the injuries which they have suffered as a consequence of
6 Defendants' unfair, unlawful and/or fraudulent business practices. As a result of the unfair,
7 unlawful and/or fraudulent business practices described above, Plaintiffs, individually, and on
8 behalf of the Class Members, have suffered and will continue to suffer irreparable harm unless
9 Defendants are restrained from continuing to engage in said unfair, unlawful and/or fraudulent
10 business practices.

11 127. Plaintiffs, individually, and on behalf of the Class Members, are entitled to, and do
12 seek such relief as may be necessary to disgorge the profits which Defendants have acquired, or of
13 which Plaintiffs and the Class Members have been deprived, by means of the above-described
14 unfair, unlawful and/or fraudulent business practices. Plaintiffs and the Class Members are not
15 obligated to establish individual knowledge of the unfair practices of Defendants to recover
16 restitution.

17 128. Plaintiffs, individually, and on behalf of the Class Members, are further entitled to
18 and do seek a declaration that the above-described business practices are unfair, unlawful and/or
19 fraudulent, and injunctive relief restraining Defendants from engaging in any of the above-
20 described unfair, unlawful and/or fraudulent business practices in the future.

21 129. Pursuant to Business & Professions Code §§ 17200, *et seq.*, Plaintiffs and Class
22 Members are entitled to restitution of the wages withheld and retained by Defendants during a
23 period that commences four years prior to the filing of this Complaint; a permanent injunction
24 requiring Defendants to pay all outstanding wages due to Plaintiffs and Class Members; an award
25 of attorneys' fees pursuant to California Code of Civil Procedure § 1021.5 and other applicable
26 laws; and an award of costs.

NINTH CAUSE OF ACTION
FOR PENALTIES PURSUANT TO LABOR CODE § 2699, ET SEQ. FOR VIOLATIONS
OF LABOR CODE as well as IWC Wage Order 1-2001

Plaintiffs and All Aggrieved Employees Against All Defendants

130. Plaintiffs, on behalf of themselves and all Aggrieved Employees, re-alleges and incorporate by reference each and every allegation set forth in the preceding paragraphs.

131. Based on the above allegations incorporated by reference, Defendants violated Labor Code §§ 201, 202, 203, 204, 210, 226, 226.7, 512, 1194, 1194.2, 1197, 1198, 2802, as well as IWC Wage Order 1-2001.

132. Under Labor Code §§ 2699(f)(2) and 2699.5, for each such violation, Plaintiffs and all other Aggrieved Employees are entitled to penalties in an amount to be shown at the time of trial subject to the following formula:

- \$100 for the initial violation per employee per pay period; and
- \$200 for each subsequent violation per employee per pay period.

These penalties will be allocated 75% to the LWDA and 25% to the affected employees.

133. In addition, and as set forth above, Defendants failed to provide Plaintiffs and the Aggrieved Employees with accurate itemized wage statements in compliance with Labor Code § 226(a). Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226.”

134. Further, Plaintiffs, as the Aggrieved Employees, need not demonstrate or prove that Defendants’ conduct in refusing to provide accurate and itemized wage statements was knowing, intentional, or willful.

135. As a result of the acts alleged above, Plaintiffs and the Aggrieved Employees seek penalties under Labor Code § 2699, *et seq.* because of Defendants’ violations of Labor Code §§ 226 and 226.3.

136. Pursuant to Labor Code § 2699.3(a), on January 19, 2021, Plaintiffs gave written notice by certified mail to Defendant Maas Brothers, Inc., and to the LWDA of their claims, including the facts and theories supporting all claims outlined in this Class and PAGA Action Complaint. Therefore, once more than sixty-five (65) days have passed since that date, Plaintiffs will have fully satisfied the administrative prerequisites to suit under PAGA and this complaint will be deemed amended to include the PAGA allegations enumerated below. Once this occurs, Plaintiffs seek to recover all applicable and available PAGA remedies pursuant to Labor Code § 2699, as well as attorneys' fees, costs, and/or other damages as permitted by PAGA through a representative action pursuant to the PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal. 4th 969. Plaintiffs are not required to, nor do they seek class certification of the PAGA claims under Code of Civil Procedure § 382.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and the Class Members, prays for judgment against Defendant Mass Brothers, Inc. and each DOE defendant sued herein as DOES 1 through 20, inclusive, as follows:

1. An Order that this action may proceed and be maintained as a class action;
2. On the First Cause of Action:
 - a. A declaratory judgment that Defendants have violated sections 1194, 1194.2, and 1197 of the California Labor Code by failing to pay Plaintiffs and other Class Members for all of their hours worked during the class period;
 - b. An award to Plaintiffs and the Class Members in the amount of their unpaid wages owed to them;
 - c. An award to Plaintiffs and the Class Members for liquidated damages thereto; and
 - d. An award to Plaintiffs and the Class Members of their attorneys' fees and costs of suit to the extent permitted by law, including, but not limited to, section 1194 of the California Labor Code and section 1021.5 of the California Code of Civil Procedure.

1 3. On the Second Cause of Action:

2 a. A declaratory judgment that Defendants have violated Labor Code sections
3 510, 1194, 1194.2, 1198, 1199 and Section 3 of IWC Wage Order No. 1-2001;

4 b. Pursuant to Labor Code section 510, an award to Plaintiffs and the Overtime
5 Subclass Members, for the difference of the proper amount of overtime compensation paid to them
6 in the period from four years prior to the filing of this Complaint; and

7 c. An award of prejudgment interest, attorneys' fees and costs allowed by law;

8 4. On the Third Cause of Action:

9 a. A declaratory judgment that Defendants have violated California Labor
10 Code §§ 512, 226.7 and Section 11 of IWC Wage Order No. 1-2001; and

11 b. Pursuant to Cal. Labor Code § 226.7, an award to Plaintiffs and the Meal
12 Period Subclass Members for an hour of pay for each day that a Labor Code compliant meal period
13 was not provided in California during the Class Period.

14 5. On the Fourth Cause of Action:

15 a. A declaratory judgment that Defendants have violated California Labor
16 Code § 226.7 and Section 12 of IWC Wage Order No. 1-2001; and

17 b. Pursuant to Cal. Labor Code § 226.7, an award to Plaintiffs and the Rest
18 Break Subclass Members for an hour of pay for each day that a Labor Code compliant rest period
19 was not provided in California during the Class Period.

20 6. On the Fifth Cause of Action:

21 a. A declaratory judgment that Defendants have violated California Labor
22 Code §§ 201 through 203; and

23 b. Pursuant to Cal. Labor Code §§ 201 through 203, an award to Plaintiffs and
24 the Waiting Time Penalty Subclass Members for waiting time penalties in the amount of 30 days
25 wages per Class Member who is no longer employed by Defendants.

26 7. On the Sixth Cause of Action:

27 a. A declaratory judgment that Defendants have violated Labor Code section
28 226, by issuing inaccurate and/or incomplete wage statements that failed to include the gross

1 wages earned, the total hours worked, the net wages earned and all applicable hourly rates in effect
2 during the pay period and the corresponding number of hours worked at each applicable hourly
3 rate to Plaintiffs and the Wage Statement Subclass Members; and

4 b. An award to Plaintiffs and Wage Statement Subclass Members of \$50 for
5 each initial pay period in which a violation of Labor Code section 226 occurred and \$100 for each
6 subsequent pay period in which a violation of Labor Code section 226 occurred, not to exceed
7 \$4,000 for each Class Member, as well as an award of costs and reasonable attorney's fees,
8 pursuant to Labor Code section 226(e).

9 8. On the Seventh Cause of Action:

10 a. A declaratory judgment that Defendants have violated section 227.3 of the
11 California Labor Code by failing to pay Plaintiffs and other Class Members for all vested but
12 unused vacation time and/or paid time off.

13 b. An award to Plaintiffs and the Class Members in the amount of their unpaid
14 vacation/paid time off.

15 c. An award to Plaintiffs and the Class Members of penalties.

16 d. An award to Plaintiffs and the Class Members of their attorneys' fees and
17 costs of suit to the extent permitted by law.

18 9. On the Eighth Cause of Action:

19 a. That the Court finds and declares that Defendants have violated the UCL
20 and committed unfair and unlawful business practices by failing to pay Plaintiffs and other Class
21 Members for all of their hours worked at the applicable rates, by failing to pay missed meal and
22 rest period premiums; by failing to reimburse Plaintiffs and other Class Members for business
23 expenses incurred on behalf of Defendants; and

24 b. Restitution, including, but not limited to, the relief permitted by the
25 California Labor Code (*i.e.*, meal period premiums and rest period premiums) to the Class
26 Members during the Class Period.

27 10. On the Ninth Cause of Action:

28 a. A civil penalty against Defendants in the amount of \$100 for the initial

1 violation and \$200 for each subsequent violation as specified in section 2699(f)(2) of the California
2 Labor Code for Plaintiffs and for each of the Aggrieved Employees during all of the pay periods in
3 the PAGA Period;

4 b. All penalties available under Section 226.3 of the California Labor Code and
5 the Labor Code Private Attorneys General Act of 2004;

6 c. An award of reasonable attorneys' fees against Defendants as specified in
7 Labor Code § 2699(g)(1), for all the work performed by the undersigned counsel in connection with
8 the PAGA claims;

9 d. An award of all costs incurred by the undersigned counsel for Plaintiffs in
10 connection with Plaintiffs' and Aggrieved Employees' PAGA claim against Defendants as provided
11 for in Labor Code § 2699(g)(1); and

12 11. All other relief as this Court deems proper.

13 **DEMAND FOR JURY TRIAL**

14 Plaintiffs hereby demand a jury trial of the Class Members' claims against Defendants.

15 Dated: January 19, 2021

16 BOKHOUR LAW GROUP, P.C.
17 ESHAGHIAN LAW, PC

18 BY: 

19 MEHRDAD BOKHOUR
20 MICHELLE ESHAGHIAN

21 Attorneys for Plaintiffs and the Putative Class
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