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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

FRANK NICHOLS, JR., Individually and on
behalf of all similarly-situated, aggrieved
employees of Defendants in the State of
California,

Plaintiffs,

v.

VUORI, INC., a California Corporation, and
DOES 1 through 50, inclusive,

Defendants.

Case No.: 37-2021-00010367-CU-OE-CTL

IMAGED FILE

Unlimited Civil - Amount Demanded
Exceeds \$25,000.00

FIRST AMENDED COMPLAINT

CLASS ACTION [CCP § 382]

1. Failure to Pay Minimum and Regular Wages
2. Failure to Pay Overtime Wages
3. Failure to Authorize and Permit Rest Periods
4. Failure to Provide Meal Periods
5. Failure to Indemnify/Reimburse Expenses
6. Failure to Provide and Maintain Accurate Itemized Wage Statements
7. Failure to Timely Pay Wages Due Upon Separation of Employment
8. Unfair Business Practices (Violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*)
9. PAGA Claim for Civil Penalties

Date Complaint Filed: March 9, 2021
Judge: Eddie C. Sturgeon
Dept: C-67

Plaintiff FRANK NICHOLS, JR. on behalf of himself and all other similarly-situated, aggrieved, current and former employees alleges as follows:

I.

NATURE OF ACTION AND INTRODUCTORY STATEMENT

1. Plaintiff FRANK NICHOLS, JR. (hereinafter “NICHOLS, JR.”), brings this individual and class and representative action suit against Defendant VUORI, INC. (“VUORI, INC.” or “Defendant”) and DOES 1 through 50, inclusive (collectively referred to herein as “Defendants”), on behalf of himself and all other current and former similarly-situated employees for engaging in a systemic pattern of wage and hour violations under California Labor Code and Industrial Welfare Commission (“IWC”) Wage Orders.

2. VUORI, INC. is a company that designs, makes, and sells premium performance apparel for men and women. VUORI, INC.’s products are available online and in six (6) retail stores located in San Francisco, Malibu, Encinitas, Manhattan Beach, Newport Beach, and Del Mar.

3. FRANK NICHOLS, JR., at times relevant, was employed by Defendants as non-exempt Sales Associate and then Retail Assistant Store Manager at VUORI, INC.’s store in Del Mar, San Diego County, California.

4. Plaintiff is informed and believes, and thereon alleges, that Defendants decreased their employment-related costs in order to increase their level of productivity and profits by systematically violating both state wage and hour laws and the applicable IWC Wage Order, including, but not limited to:

- a. Failing to pay for minimum, regular and overtime wages for all hours worked;
 - b. Failing to provide compliant meal breaks;
 - c. Failing to permit and authorize complaint rest breaks;
 - d. Failing to indemnify Plaintiff and other similarly-situated employees for their necessary expenses and losses in discharging their duties;
 - e. Failing to provide and maintain accurate records and itemized wage statements;
- and

f. Failing to timely pay wages due during and upon termination of employment.

5. Plaintiff brings this lawsuit seeking injunctive, restitution and monetary relief against Defendants, and each of them, on behalf of Plaintiff individually and on behalf of all similarly-situated employees to recover, among other things, unpaid wages and benefits, interest, penalties, liquidated damages, attorney's fees and costs pursuant to California Labor Code §§ 201, 202, 203, 204, 210, 218, 218.5, 218.6, 226, 226.7, 510, 512, 558, 558.1, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2802, 2810.5, Labor Code § 2699, and California Code of Civil Procedure 1021.5, and provisions of IWC Wage Order 4-2001. Plaintiff reserves the right to name additional representatives throughout the State of California.

II.

PARTIES, JURISDICTION AND VENUE

6. Plaintiff NICHOLS, JR. is and at all relevant times was a resident of the State of California, and at all relevant times was employed by Defendants in San Diego County, California.

7. Defendant VUORI, INC. ("VUORI, INC."), is a California corporation with its principal place of business in Carlsbad, San Diego County, California.

8. Plaintiff is informed and believes, and thereon alleges, that at times relevant VUORI, INC., and Does 1 through 50 are the alter egos of each other and directly or indirectly, or through agents or other persons, employed Plaintiff and other similarly-situated employees, and exercised control over their wages, hours, and/or working conditions. Plaintiff is informed and believes, and thereon alleges, that each Defendant directly or indirectly, or through agents or other persons, acted and/or ratified 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 is legally attributable to the other Defendants.

9. Plaintiff was, at times relevant, employed by Defendants in Del Mar, San Diego County initially as a sales associate and then as Retail Assistant Store Manager and was subject to the employment policies, procedures and practices implemented by Defendants which applied to all of their employees throughout the State of California, including in Del Mar.

10. Defendants, at all relevant times, conducted business in the State of California and were employers who violated, or caused to be violated, a section of Part 2, Chapter 1, of the California Labor Code or any provision regulating hours and days of work in any order of the Industrial Welfare Commission and, as such, are subject to penalties for each underpaid employee as set forth in Labor Code § 558 and or 558.1.

11. The true names and capacities of the Defendants named as DOES 1 through 50, inclusive, are presently unknown to Plaintiff. Plaintiff will amend this Complaint setting forth the true names and capacities of these fictitious defendants when they are ascertained. Plaintiff is informed and believes, and on that basis, alleges that each of the fictitious Defendants have participated in the acts alleged in this Complaint.

12. Jurisdiction and venue are proper for the San Diego Superior Court because Defendants maintain offices, transact business, and/or have an agent in San Diego County and some of the acts and events complained of herein occurred in the judicial district of San Diego County Superior Court and the State of California.

III.

GENERAL ALLEGATIONS

13. Plaintiff NICHOLS, JR. was employed with Defendants from June 2020 until February 2, 2021 when he was terminated

14. Defendant VUORI, INC. is an employer doing business in the State of California and, according to its website, it designs and sells premium performance apparel inspired by the active Coastal California. VOURI, INC.'s products are available online and in six (6) retail stores located in San Francisco, Malibu, Encinitas, Manhattan Beach, Newport Beach, and Del Mar where Plaintiff was employed.

15. Plaintiff and other similarly-situated, aggrieved, current and former employees worked under Defendants' policies, practices, and procedures related to meal and rest periods, wage statements, reimbursement policies, recordkeeping, and payment of wages applicable to Plaintiff and other similarly-situated, aggrieved, current and former employees of Defendants in the State of California. Defendants

1 failed to pay all wages to Plaintiff and other similarly-situated, aggrieved, current and former employee
2 as a result of Defendants' unlawful policies and practices.

3 16. At all times relevant, Plaintiff and other similarly-situated, aggrieved, current and former
4 employee were entitled to a non-discretionary commission which was calculated based on objective sales
5 goals set by VUORI, INC.'s management for its stores.

6 17. At all relevant times, Plaintiff and other similarly-situated, aggrieved, current and former
7 employee worked more than eight (8) hours in a workday and/or more than forty (40) hours in a workweek.
8 Plaintiff and other similarly-situated, aggrieved, current and former employees also routinely earned non-
9 discretionary team commission during the same pay periods in which they worked overtime.

10 18. Plaintiff, on behalf of himself and other similarly-situated, aggrieved, current and former
11 employees, alleges that Defendants failed to incorporate the non-discretionary team commission into
12 employees' regular hourly rate of pay for the purpose of calculating employees' overtime rate, as required
13 by California law. As a result, the overtime rate that Defendants paid employees was miscalculated and
14 incorrect. On information and belief, Defendants had a common practice and policy of failing to properly
15 calculate the correct regular hourly rate of pay for purposes of calculating overtime rates of pay and
16 payment of wage premiums for all other similarly-situated, aggrieved, current and former employees
17 throughout the State of California.

18 19. At all relevant times, Plaintiff and, on information and belief, other similarly-situated,
19 aggrieved, current and former employees who were paid fixed hourly rate plus team commission, were
20 never advised by Defendants or provided the requisite writing clarifying how the commissions paid to
21 individual employees were calculated making it impossible for Plaintiff and other similarly-situated
22 employees to know and understand their wage statements or whether they were properly paid. These
23 protections, afforded by the California Labor Code, are intended to prevent such confusing policies and
24 practices so that employees have the capacity to cross-check their pay to ensure that they are properly
25 paid.

26 20. Throughout the relevant time period, Defendants did not maintain compliant meal period
27 policies for Plaintiff and other similarly-situated, aggrieved, current and former employees as required by
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1 the California Labor Code, nor did they permit and authorize off-duty meal periods compliant under
2 California law, to Plaintiff and other employees. Defendants failed to adequately inform Plaintiff and other
3 similarly-situated, aggrieved, current and former employees of their rights to take complaint 30-minute
4 off-duty meal periods within the first five work hours in a workday or a second 30-minute duty free meal
5 break after ten hours worked during a single shift. In addition, due to a constant understaffing of
6 Defendants' stores, Plaintiff and other similarly-situated, aggrieved, current and former employees were
7 regularly required to forgo their compliant off-duty lunches and/or remain on the job site in order to take
8 their meal periods while being available to assist any customers in the store.

9 21. At all relevant times, Defendants failed to pay Plaintiff and other similarly-situated,
10 aggrieved, current and former employees meal period premium wages for each day in which they did not
11 provide Plaintiff and other similarly-situated, aggrieved, current and former employees an opportunity to
12 take a compliant meal period.

13 22. At all times relevant, Defendants did not maintain compliant rest period policies for
14 Plaintiff as required by the California Labor Code, nor did they provide rest periods compliant under
15 California law, to Plaintiff and other similarly-situated, aggrieved, current and former employees. During
16 Plaintiff's employment, Defendants had a common pattern and practice of failing to properly authorize
17 and permit compliant off-duty rest periods to Plaintiff and other similarly-situated, aggrieved, current and
18 former employees when they worked greater than 3.5 hours in a workday. Because of the lack of any
19 replacement employees who could cover while employees were on break, Plaintiff and other similarly-
20 situated, aggrieved, current and former employees were unable to take a compliant rest break as they were
21 required to remain on the premises to assist customers.

22 23. Defendants failed to pay Plaintiff and other similarly-situated, aggrieved, current and
23 former employees rest period premium wages for each day in which they did not authorize or permit them
24 to take compliant rest periods.

25 24. At all times relevant, and pursuant to Defendants' policy and/or practice and/or direction,
26 Defendants required Plaintiff and, on information and belief, other similarly-situated, aggrieved, current
27 and former employees to use their personal cell phones to communicate with their supervisors and co-
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1 workers regarding their work-schedules, to view their work-schedules, clock in and out for their shifts;
2 and participate in VOURI'S work-related group chats. In addition, Plaintiff was required to use his
3 personal computer and internet while working remotely during the store closure caused by the ongoing
4 pandemic. Plaintiff's supervisors were well-aware he used his personal cell phone, computer, and internet
5 for work related issues and to benefit Defendants, however they failed to reimburse Plaintiff for these
6 required work-related expenses. On information and belief, other similarly-situated, aggrieved, current
7 and former employees were not compensated for their requisite employment related expenses they
8 incurred to benefit Defendants.

9 25. Defendants failed to provide Plaintiff and other similarly-situated, aggrieved, current and
10 former employees with wage statements accurately itemizing information required by Labor Code §
11 226(a) and Section 7 of the applicable Wage Order including. The wages statements that were provided
12 did not include all the items required by law and some of information they did contain was inaccurate. For
13 example, the wage statements did not include accurate all applicable hourly rates in effect during the pay
14 period and the corresponding number of hours worked at each hourly rate and the address of the legal
15 entity that is the employer. On information and belief, other similarly-situated, aggrieved, current and
16 former employees were subject to the same policy and practice concerning wage statements and receive
17 similarly deficient wage statements.

18 26. As a result of these deficiencies and inaccuracies, Plaintiff and other similarly-situated,
19 aggrieved, current and former employees were not able to promptly and easily determine from this wage
20 statements their applicable hourly rates and their accurate wages earned. This deprived employees of an
21 opportunity to verify whether the wages paid accurately accounted for all wages earned during the pay
22 period.

23 27. Defendants failed to maintain accurate records reflecting the beginning and ending time of
24 each shift, including meal periods, and all hours worked and all wages earned as required by law.

25 28. During the relevant time period, Defendants failed to provide Plaintiff and, on information
26 and belief, other similarly-situated, aggrieved, current and former employees with written notice that lists
27 all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C), including, among other
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1 things, the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece,
2 commission, or otherwise, including any rates for overtime, the regular payday designated by the
3 employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances.
4 As result, Plaintiff, and on information and belief, other similarly-situated, aggrieved, current and former
5 employees were unable to verify and cross-check their pay to ensure that they are properly paid.

6 29. Defendants failed to pay Plaintiff and other similarly-situated, aggrieved, current and
7 former employees for all wages due and owing and by the times required by law in the time periods set
8 forth by Labor Code § 204 and Section 4 of the applicable Wage Order in that Defendants failed to
9 properly compensate said employees for all hours worked.

10 30. Defendants failed to pay Plaintiff NICHOLS, JR. and other similarly-situated employees
11 all wages due and owing at the time of termination of employment as required by Labor Code §§ 201(a)
12 and 202(a), as applicable, because Plaintiff NICHOLS, JR. and other similarly-situated, aggrieved, current
13 and former employees were not properly compensated for all hours worked. On information and belief,
14 Defendants willingly withheld wages including, but not limited to, minimum wages, regular wages, and
15 overtime wages.

16 31. Defendants have engaged in unfair business practices in California and willingly and
17 knowingly have practiced, employed, and utilized the employment patterns and practices alleged in this
18 complaint in violation of Business & Professions Code §§ 17200, *et seq.*

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20 **IV.**

21 **CLASS ACTION DESIGNATION**

22 32. Plaintiff brings this class action pursuant to Code of Civil Procedure § 382 on behalf of all
23 current and former similarly-situated employees. The Class that Plaintiff seeks to represent is defined as
24 follows:

25 All current and former non-exempt employees who were employed by
26 Defendants in the State of California at any time commencing four (4) years
27 prior to the filing of this Action.

28 (hereinafter the “Class” or “Class Members”).

33. Plaintiff reserves the right under the California Rules of Court, to amend or modify the class description with greater specificity or further division into subclasses or limitation to particular issues.

34. As to Causes of Action One through Eight, Plaintiff seeks to recover on behalf of the Class all remedies available to the extent permitted by law including, but not limited to, wages, damages, penalties, liquidated damages, interest, attorney's fees, costs, other monies due and owing and injunctive relief.

35. Causes of Action One through Eight are appropriately suited for a class action under Code of Civil Procedure § 382 because:

a. Numerosity: While the precise number of Class Members has not been determined at the time, Plaintiff is informed and believes and thereon alleges that at all relevant times, Defendants employed over 50 similarly-situated current and former employees who were affected by the unlawful employment practices and policies alleged herein. Based on the potential class size, joinder of all employees individually would be impractical.

b. Commonality: This action involves common questions of law and fact particular to the putative Class because the action focuses on Defendants' systematic course of illegal conduct with respect to violating the Labor Codes and IWC Wage Orders and implementing company-wide policies uniformly applied to all members of the putative Class.

i. Common questions of law and fact include, without limitation and subject to possible further amendment, the following:

1. Whether Defendants failed to incorporate all remuneration, including non-discretionary commissions paid to Plaintiff and other putative Class Members into their regular rate of pay for the purpose of calculating their overtime rate of pay as required under the California law;

2. Whether Defendants violated the Labor Code by not fully compensating Plaintiff and the Class by failing to pay state minimum/regular/overtime wages as required by law;

3. Whether Defendants' policy or practice of not paying hourly employees all of their wages due in their final paychecks immediately upon termination or when 72 hours notice was provided before voluntary resignation, is unlawful under Labor Code §§ 201, 202 and/or 203;

4. Whether Defendants' policy or practice unlawfully precluded Plaintiff and putative Class Members from enjoying their right to take all of their compliant meal and rest breaks;

5. Whether Defendants violated Labor Code §§ 226 by not providing accurate paystubs;

6. Whether Defendants violated Labor Code § 2802 by failing to reimburse Plaintiffs for business expenses;

7. Whether Defendants violated Labor Code §§ 1174 by not maintaining required personnel records; and

8. Whether Plaintiff and the members of the Class are entitled to remedies pursuant to Business & Professions Code §§ 17200, et seq.

c. Typicality: Plaintiff's claims as alleged herein are typical of the claims of each of the putative Class because Plaintiff was subjected to the same violations of his rights under California law and seeks the same types of damages, restitution, and other relief on the same theories and legal grounds as those of the members of the putative Class he seeks to represent.

d. Adequacy of Representation: Plaintiff is able to fairly and adequately protect the interests of all members of the putative Class because Plaintiff suffered violations sufficiently-similar to the Class as alleged herein and it is in his best interest to prosecute the claims alleged herein to obtain full compensation due to the Class Members for all pay, benefits and other relief afforded under the Labor Code and IWC Wage Orders. Plaintiff's interest is not in conflict with those of the putative class members. Plaintiff's counsel are competent and experienced in litigating large employment class actions including wage and hour cases such as this case.

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e. Superiority of Class Action: Class certification is appropriate because a class action is superior to other available means for the fair and efficient adjudication of these claims. Each putative class member has been damaged and is entitled to recovery by reason of Defendants' illegal policies, and/or practices as alleged herein. Class action treatment will allow those similarly-situated persons to litigate his/her claims in the manner that is most efficient and economical for the parties and the judicial system.

V.

PRIVATE ATTORNEYS GENERAL ACT OF 2004 DESIGNATION

36. The Causes of Action alleged herein are appropriately suited for a Labor Code Private Attorneys General Act of 2004 (hereinafter referred to as "PAGA") representative action because:

- a) This action involves allegations of violations of provisions of the California Labor Code that either do not provide for a civil penalty or provide for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency (hereinafter referred to as "LWDA") or any departments, divisions, commissions, boards, agencies or employees;
- b) Plaintiff NICHOLS, JR. is an "aggrieved employee" because he is employed by the alleged violators and had one or more of the alleged violations committed against him and, therefore, is properly suited to represent the interests of all other current and former employees of Defendants;
- c) Plaintiff NICHOLS, JR. seeks to recover all applicable penalties under PAGA on behalf of himself and all other aggrieved employees including, but not limited to, an amount sufficient to recover underpaid wages including all unpaid and/or underpaid wages pursuant to Labor Code § 558.
- d) Pursuant to Labor Code § 2698, et seq., Plaintiff NICHOLS, JR. has complied with his notice requirements by serving via certified mail, return receipt requested, the LWDA and VUORI, INC., a notice with his claims for wage and hour violations and penalties. The PAGA claims have been tolled during the pendency of the notice period to the LWDA. The statutory period expired, and the LWDA did not serve Plaintiff NICHOLS, JR. with a notice of intent to

1 assume jurisdiction over the applicable penalty claims. Therefore, Plaintiff NICHOLS, JR.
2 has satisfied and exhausted the procedural notice requirement to pursue penalties against
3 Defendants pursuant to Labor Code § 2698, et seq.

4 **V.**
5 **CAUSES OF ACTION**

6 **FIRST CAUSE OF ACTION**
7 **FAILURE TO PAY MINIMUM AND REGULAR WAGES**
8 (Violation of Labor Code §§ 1194, 1197, 1198 and the Applicable Wage Order)
9 (Alleged by Plaintiff Individually and On Behalf of the Class Against Defendants)

10 37. Plaintiff NICHOLS, JR. realleges and incorporates by reference the foregoing allegations,
11 as though set forth herein.

12 38. Plaintiff and members of the Putative Class are/were “non-exempt” employees of
13 Defendants in the State of California within the meaning of the Labor Code and the applicable Wage
14 Order.

15 39. Labor Code § 1197 states “The minimum wage for employees fixed by the commission or
16 by any state or local law, is the minimum wage to be paid to employees, and the payment of a less wage
17 than minimum wage so fixed is unlawful.”

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

22 41. IWC Wage Order 4-2001 § 4 provides that an employer may not pay employees less than
23 the applicable minimum wage for all hours worked.

24 42. Labor Code § 1194 states “Notwithstanding any agreement to work for a lesser wage, any
25 employee receiving less than the legal minimum wage or the legal overtime compensation applicable to
26 the employee is entitled to recover in a civil action the unpaid balance of the full amount of his minimum
27 wage or overtime compensation, including interest thereon, reasonable attorney’s fees and costs of suit.”

28 43. At all times relevant, Defendants agreed to pay Plaintiff his respective hourly rate for all
hours worked. Pursuant to Wage Order No. 4-2001, “hours worked” include the time during which an

1 employee is “suffered or permitted to work, whether or not required to do so. As set forth above, members
2 of the Putative Class were not paid all minimum and regular wages for all hours worked as required by
3 the California Labor Code. For example, Defendants did not compensate Plaintiff and other similarly-
4 situated employees at least minimum wage for the work they performed during their on-duty lunch breaks.

5 44. At all material times, Defendants were and/or are Plaintiff’s and/or other similarly-situated,
6 aggrieved, current and former employees’ employers and/or persons acting on behalf of Defendants within
7 the meaning of Labor Code § 558/558.1, who violated or caused to be violated, a section of Part 2, Chapter
8 1, of the California Labor Code or any provision regulating hours and days of work in any Order of the
9 Industrial Welfare Commission and, as such, are subject to penalties for each underpaid employee as set
10 forth in Labor Code § 558/558.1 including the payment of the underpaid wages to affected employees.

11 45. Pursuant to California Labor Code §558.1, Defendants are sued collectively and
12 individually as employers of Plaintiff, and/or a person acting on behalf of Plaintiff’s employer, who
13 violated, or caused to be violated, any provision regulating minimum wages or hours and days of work
14 in the applicable order of the Industrial Welfare Commission, as well as the California Labor Code
15 Sections 203, 226, 226.7, 1193.6, 1194 and 2802, and as such, are liable as an employer of Plaintiff for
16 such violations pursuant to California Labor Code § 558.1.

17 46. As a direct result of Defendants’ violations alleged herein, Plaintiff and the Putative Class
18 Members have suffered and continue to suffer, substantial losses related to the use and enjoyment of such
19 wages and monies, including lost interest on such monies and expenses and attorney’s fees in seeking to
20 compel Defendants to fully perform their obligation under state law, all to their respective damages in
21 amounts according to proof at trial and within the jurisdictional limitations of this Court.

22 47. Plaintiff seeks to recover in a civil action the unpaid balance of the full amount of the
23 unpaid wages and monies resulting from Defendants’ minimum wage violations including interest
24 thereon, reasonable attorney’s fees and costs of suit, penalties, and liquidated damages to the fullest extent
25 permissible including those permitted pursuant to Labor Code §§ 558, 1194 and 1194.2 and Code of Civil
26 Procedure § 1021.5.

27 WHEREFORE, Plaintiff NICHOLS, JR. prays for relief as hereinafter requested.
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SECOND CAUSE OF ACTION
FAILURE TO PAY OVERTIME WAGES

(Violation of Labor Code §§ 510, 1198 and the Applicable Wage Order)
(Alleged by Plaintiff Individually and On Behalf of the Class Against Defendants)

48. Plaintiff NICHOLS, JR. realleges and incorporates by reference the foregoing allegations, as though set forth herein.

49. Plaintiff and members of the Putative Class are/were “non-exempt” employees of Defendants in the State of California within the meaning of the Labor Code and the applicable Wage Order.

50. Labor Code § 510 provides in pertinent part: “Eight hours of labor constitutes a day’s work. Any work in excess of 8 hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.”

51. Labor Code § 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.”

52. IWC Wage Order 4-2001 § 3(A) provides that an employer may not pay non-exempt employees less than the applicable overtime rate for all overtime hours worked.

53. Through Defendants' conduct during the applicable statutory period including, but not limited to, the conduct alleged herein, including that alleged on information and belief, Defendants failed to pay all Plaintiff and the Putative Class Members all overtime wages for all overtime worked, all in violation of Labor Code §§ 510, 1198 and the applicable Wage Order. For example, Plaintiff and, on information and belief, other similarly-situated, aggrieved, current and former employees were not

1 compensated for the work they performed during their on-duty lunch breaks while working shifts longer
2 than eight (8) hours long.

3 54. At all material times, Defendants failed to incorporate all remuneration, including non-
4 discretionary commissions made to Plaintiff and other s similarly-situated, aggrieved, current and former
5 employees into their regular rate of pay for the purpose of calculating their overtime rate of pay. Thus,
6 the overtime rate paid by Defendants to Plaintiff and the Putative Class Members was miscalculated and
7 incorrect.

8 55. At all material times, Defendants were and/or are Plaintiff's and/or similarly-situated,
9 aggrieved, current and former employees' employers and/or persons acting on behalf of Defendants within
10 the meaning of Labor Code § 558/558.1, who violated or caused to be violated, a section of Part 2, Chapter
11 1, of the California Labor Code or any provision regulating hours and days of work in any Order of the
12 Industrial Welfare Commission and, as such, are subject to penalties for each underpaid employee as set
13 forth in Labor Code § 558/558.1 including the payment of the underpaid wages to affected employees.

14 56. Pursuant to California Labor Code § 558.1, Defendants are sued collectively and
15 individually as employers of Plaintiff, and/or a person acting on behalf of Plaintiff's employer, who
16 violated, or caused to be violated, any provision regulating minimum wages or hours and days of work in
17 the applicable order of the Industrial Welfare Commission, as well as the California Labor Code Sections
18 203, 226, 226.7, 1193.6, and 1194, and as such, are liable as an employer of Plaintiff for such violations
19 pursuant to California Labor Code § 558.1.

20 57. As a direct result of Defendants' violations alleged herein, Plaintiff and the Putative Class
21 Members have suffered and continue to suffer substantial losses related to the use and enjoyment of such
22 wages, including lost interest on such monies and expenses and attorney's fees in seeking to compel
23 Defendants to fully perform their obligation under state law, all to their respective damages in amounts
24 according to proof at trial and within the jurisdictional limitations of this Court.

25 58. Plaintiff seeks to recover in a civil action the unpaid balance of the full amount of the
26 unpaid wages resulting from Defendants' overtime wage violations including interest thereon, reasonable
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1 attorney's fees and costs of suit, and penalties, to the fullest extent permissible including those permitted
2 pursuant to Labor Code §§ 510, 558, 1194 and 1194.2 and Code of Civil Procedure §1021.5.

3 WHEREFORE, Plaintiff NICHOLS, JR. prays for relief as hereinafter requested.

4
5 **THIRD CAUSE OF ACTION**
6 **FAILURE TO PROVIDE MEAL PERIODS**

7 (Violation of Labor Code §§ 226.7(b), 512(a), 1198
8 and the "Meal Period" Section of the Applicable Wage Order)
9 (Alleged by Plaintiff Individually and On Behalf of the Class Against Defendants)

10 59. Plaintiff NICHOLS, JR. realleges and incorporates by reference the foregoing allegations,
11 as though set forth herein.

12 60. At all times relevant, Plaintiff and the members of the Putative Class were "non-exempt"
13 employees of Defendants in the State of California within the meaning of the Labor Code and the
14 applicable Wage Order.

15 61. Labor Code § 226.7(b) provides: "No employer shall require any employee to work during
16 any meal or rest or recovery period mandated by an applicable order of the Industrial Welfare
17 Commission."

18 62. Labor Code § 512(a) provides: "An employer may not employ an employee for a work
19 period of more than five hours per day without providing the employee with a meal period of not less than
20 30 minutes, except that if the total work period per day of the employee is no more than six hours, the
21 meal period may be waived by mutual consent of both the employer and employee. An employer may not
22 employ an employee for a work period of more than 10 hours per day without providing the employee
23 with a second meal period of not less than 30 minutes."

24 63. Labor Code § 1198 states "The maximum hours of work and the standard conditions of
25 labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor
26 for employees. The employment of any employee for longer hours than those fixed by the order or under
27 conditions of labor prohibited by the order is unlawful."

28 64. Section 11 of the application IWC Wage Order provides, in part, that no employer shall
employ any person for a work period of more than five (5) hours without a meal period of not less than

1 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work
2 the meal period may be waived by mutual consent of the employer and the employee. An employer may
3 not employ an employee for a work period of more than ten (10) hours per day without providing the
4 employee with a second meal period of not less than 30 minutes, except that if the total hours worked is
5 no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the
6 employee only if the first meal period was not waived. Subsection D of the applicable IWC Wage Order
7 § 11 provides that if an employer fails to provide an employee a meal period in accordance with the
8 applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the
9 employee's regular rate of compensation for each workday that the meal period is not provided.

10 65. Through Defendants' conduct during the applicable statutory period including, but not
11 limited to, the conduct alleged herein, including that alleged on information and belief, Defendants
12 violated Labor Code §§ 226.7(b), 512(a), 1198, and the applicable Wage Order when they failed to provide
13 a 30-minute uninterrupted, duty-free meal period no later than the start of the sixth hour of work during
14 work periods in excess of five consecutive hours and, when applicable, when it failed to provide a second
15 30-minute uninterrupted, duty-free meal period no later than the start of the eleventh hour of work.

16 66. Labor Code § 226.7(c) and IWC Wage Order § 11(D), provides that the employer shall pay
17 an employee one hour of pay at the employee's regular rate of compensation for each workday that the
18 meal period is not provided. Defendants have not paid the appropriate meal premium wages to Plaintiff
19 and similarly-situated, aggrieved, current and former employees. At all material times, Defendants were
20 and/or are Plaintiff's and/or other employees' employers and/or persons acting on behalf of Defendants
21 within the meaning of Labor Code § 558/558.1, who violated or caused to be violated, a section of Part 2,
22 Chapter 1, of the California Labor Code or any provision regulating hours and days of work in any Order
23 of the Industrial Welfare Commission and, as such, are subject to penalties for each underpaid employee
24 as set forth in Labor Code § 558/558.1 including the payment of the underpaid wages to affected
25 employees.

26 67. Pursuant to California Labor Code § 558.1, Defendants a person acting on behalf of
27 Plaintiff's employer, who violated, or caused to be violated, any provision regulating minimum wages or
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1 hours and days of work in the applicable order of the Industrial Welfare Commission, as well as the
2 California Labor Code Sections 203, 226, 226.7, 1193.6, 1194 and 2802, and as such, are liable as an
3 employer of Plaintiff for such violations pursuant to California Labor Code § 558.1.

4 68. As a direct result of Defendants' violations alleged herein, Plaintiff has suffered and
5 continues to suffer substantial losses related to the use and enjoyment of such wages, including lost interest
6 on such monies and expenses and attorney's fees in seeking to compel Defendants to fully perform their
7 obligation under state law, all to the respective damage in amounts according to proof at trial and within
8 the jurisdictional limitations of this Court.

9 69. Plaintiff seeks to recover in a civil action the unpaid balance of the full amount of the
10 unpaid wages resulting from Defendants' meal period violations including interest thereon, reasonable
11 attorney's fees and costs of suit, and penalties to the fullest extent permissible including those permitted
12 pursuant to Labor Code §§ 281.6, 226.7, 512, 558, 558.1, and Code of Civil Procedure § 1021.5.

13 WHEREFORE, Plaintiff NICHOLS, JR. prays for relief as hereinafter requested.

14
15 **FOURTH CAUSE OF ACTION**
FAILURE TO PROVIDE REST PERIODS

16 (Violation of Labor Code §§ 226.7(b), 1198,
17 and the "Rest Period" Section of the Applicable Wage Order)
(Alleged by Plaintiff Individually and On Behalf of the Class Against Defendants)

18 70. Plaintiff NICHOLS, JR. realleges and incorporates by reference the foregoing allegations,
19 as though set forth herein.

20 71. At all times relevant, Plaintiff and the members of the Putative Class are and/or were "non-
21 exempt" employee of Defendants in California within the meaning of the Labor Code and the applicable
22 Wage Order.

23 72. Labor Code § 1198 makes the employment of any employee under conditions of labor
24 prohibited by a Wage Order unlawful.

25 73. By Order of the Industrial Welfare Commission, every employer shall authorize and permit
26 all employees to take rest periods, which insofar as practicable shall be in the middle of each work period.
27 The authorized rest period shall be based on the total hours worked daily at the rate of ten (10) minutes
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1 rest time per four (4) hours or major fraction thereof. Authorized rest period time shall be counted, as
2 hours worked, for which there shall be no deduction from wages as provided in the applicable IWC Wage
3 Order.

4 74. Pursuant to Labor Code § 226.7(c) and the applicable IWC Wage Order, Defendants shall
5 pay Plaintiff one additional hour of pay at the employees' regular rate of compensation for each day that
6 the rest period is not authorized and permitted.

7 75. Through Defendants' conduct during the applicable statutory period including the conduct
8 alleged herein, Defendants violated Labor Code §§ 226.7 and 1198 and the IWC Wage Order when they
9 failed to authorize and permit full 10-minute, uninterrupted, duty-free rest periods for every four hours
10 worked (or major fraction thereof) to Plaintiff during the time period each employee worked for
11 Defendants.

12 76. Defendants further have failed to pay to Plaintiff and o similarly-situated, aggrieved,
13 current and former employees the rest period wage premiums pursuant to Section 226.7. Defendants'
14 omissions in failing to pay the applicable wages set forth in Section 226.7 are not in good faith, and further,
15 Defendants had no reasonable grounds for believing the omissions are not in violation of the Labor Code
16 relating to an order of the commission.

17 77. At all material times, Defendants were and/or are Plaintiff's employers or persons acting
18 on behalf of their employer, within the meaning of California Labor Code § 558, who violated or caused
19 to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating
20 hours and days of work in any Order of the Industrial Welfare Commission and, as such, are subject to
21 penalties for each underpaid employee as set for in Labor Code § 558 including the payment of the
22 underpaid wages to affected employees.

23 78. Pursuant to California Labor Code § 558.1, Defendants are sued collectively and
24 individually as employers of Plaintiff, and/or a person acting on behalf of Plaintiff's employer, who
25 violated, or caused to be violated, any provision regulating minimum wages or hours and days of work
26 in the applicable order of the Industrial Welfare Commission, as well as the California Labor Code
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Sections 203, 226, 226.7, 1193.6, and 1194, and as such, are liable as an employer of Plaintiff for such violations pursuant to California Labor Code § 558.1.

79. As a direct result, Plaintiff has suffered and continues to suffer, substantial losses related to the use and enjoyment of such wages, including lost interest on such monies and expenses and attorney's fees in seeking to compel Defendants to fully perform their obligation under state law, all to the respective damage in amounts according to proof at trial and within the jurisdictional limitations of this Court.

80. Pursuant to the Labor Code, Plaintiff seeks to recover in a civil action the unpaid balance of the full amount of the unpaid wages including interest thereon, reasonable attorney's fees and costs of suit to the fullest extent permissible including those permitted pursuant to Labor Code §§ 218.6, 226.7, 558, 558.1, and Code of Civil Procedure § 1021.5.

WHEREFORE, Plaintiff NICHOLS, JR. prays for relief as hereinafter requested.

FIFTH CAUSE OF ACTION
FAILURE TO INDEMNIFY PLAINTIFF FOR EXPENSES
AND LOSSES IN DISCHARGING HIS DUTIES

(Violation of Labor Code § 2802)
(Alleged by Plaintiff against All Defendants)

81. Plaintiff NICHOLS, JR. realleges and incorporates by reference the foregoing allegations, as though set forth herein.

82. At all times relevant herein, as a condition of his employment, Plaintiff, and on information and belief similarly-situated, aggrieved, current and former employees were required to utilize their own supplies, including personal cell phone, computer, and internet to perform their job duties.

83. Labor Code § 2802(a) states "An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful."

84. At all relevant times herein, Defendants failed to reimburse Plaintiff a sufficient amount for necessary expenditures and losses incurred in direct consequence to the discharge of his duties in violation of Labor Code § 2802. For instance, Plaintiff was not reimbursed for costs associated with the usage of his personal cell-phone although he was required to use his cell-phones to communicate with his

1 supervisors and co-workers regarding work-schedules, to view his work-schedules, clock in and out for
2 shifts; and participate in VOURI'S work-related group chats. Consequently, Plaintiff is entitled to
3 reimbursement for all expenses incurred as a result of being required to purchase, maintain and utilize his
4 personal cell phone, internet, and computer which were necessary to perform his job duties. Defendants,
5 and each of them, derived and continue to derive an unjust and inequitable economic benefit by failing to
6 comply with the sections alleged herein.

7 85. Pursuant to California Labor Code § 558.1, Defendants are sued collectively and
8 individually as employers of Plaintiff, and/or a person acting on behalf of Plaintiff's employer, who
9 violated, or caused to be violated, any provision regulating minimum wages or hours and days of work
10 in the applicable order of the Industrial Welfare Commission, as well as the California Labor Code
11 Sections 203, 226, 226.7, 1193.6, 1194 and 2802, and as such, are liable as an employer of Plaintiff for
12 such violations pursuant to California Labor Code § 558.1.

13 86. As a direct result of violating Labor Code § 2802(a), Plaintiff has suffered and continues
14 to suffer, substantial losses related to such earned but unpaid wages, incurred expenses, unlawful
15 deductions, and the use and enjoyment of earned wages, lost interest on such wages and expenses and
16 attorney's fees in seeking to compel Defendants to fully perform his obligations under the law, all in an
17 amount to be proved at time of trial.

18 87. Labor Code § 2802(b) states "All awards made by a Court or by the Division of Labor
19 Standards Enforcement for reimbursement of necessary expenditures under this section shall carry interest
20 at the same rate as judgments in civil actions. Interest shall accrue from the date on which the employee
21 incurred the necessary expenditure or loss." The exact amount of interest is in an amount to be proven at
22 time of trial.

23 88. Furthermore, Labor Code §2802(c) states "For the purposes of this section, the term
24 'necessary expenditures or losses' shall include all reasonable costs, including, but not limited to, attorney's
25 fees incurred by the employee in enforcing the rights granted by this section." Therefore, Plaintiff will
26 seek to recover the amounts unreimbursed, interest, and the costs and attorney's fees he will necessarily
27 incur in pursuing same. The exact amount of reimbursements, interest, costs and attorney's fees will be
28

1 in an amount to be proved at time of trial.

2 WHEREFORE, Plaintiff NICHOLS, JR. prays for relief as hereinafter requested.

3 **SIXTH CAUSE OF ACTION**
4 **FAILURE TO PROVIDE AND MAINTAIN ACCURATE**
5 **ITEMIZED WAGE STATEMENTS**

6 (Violation of Labor Code §§ 226(a), 1174 and the Applicable Wage Order)
7 (Alleged by Plaintiff Individually and On Behalf of the Class Against Defendants)

8 89. Plaintiff NICHOLS, JR. realleges and incorporates by reference the foregoing allegations,
9 as though set forth herein.

10 90. At all times relevant, Plaintiff and the members of the Putative Class were employee of
11 Defendants within the meaning of the Labor Code and the applicable Wage Order.

12 91. Labor Code §1174(c)-(d) requires employers to keep records showing the names and
13 addresses of all employees employed, and to keep, at a central location in the State of California or at the
14 establishments at which employees are employed, payroll records showing the hours worked daily by and
15 the wages paid to all employees employed at the establishment.

16 92. Labor Code § 226(a) states in pertinent part “Every employer shall, semimonthly or at the
17 time of each payment of wages, furnish each of his or her employees, either as a detachable part of the
18 check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal
19 check or cash, an accurate itemized statement in writing showing:

20 (1) Gross wages earned;

21 (2) Total hours worked by the employee, except for any employee whose compensation is
22 solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section
23 515 or any applicable order of the Industrial Welfare Commission;

24 (3) The number of piece-rate units earned and any applicable piece rate if the employee is
25 paid on a piece rate basis;

26 (4) All deductions, provided that all deductions made on written orders of the employee
27 may be aggregated and shown as one item;

28 (5) Net wages earned;

(6) The inclusive dates of the period for which the employee is paid;

1 (7) The name of the employee and only the last four digits of his or her social security
2 number or an employee identification number other than the social security number;

3 (8) The name and address of the legal entity that is the employer...;

4 (9) All applicable hourly rates in effect during the pay period and the corresponding
5 number of hours worked at each hourly rate by the employee.... The deductions made from payment of
6 wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and
7 year, and a copy of the statement and the record of the deductions shall be kept on file by the employer
8 for at least three years at the place of employment or at a central location within the State of California.”

9 93. IWC Wage Order 4-2001 § 7(A) states in relevant part that the employer shall keep accurate
10 information regarding “(3) Time Records showing when the employee begins and ends each work
11 period... (4) Total wages paid each payroll period, including value of board, lodging, or other
12 compensation actually furnished to the employee. (5) Total hours worked in the payroll period and
13 applicable rates of pay.”

14 94. Through Defendants’ conduct during the applicable statutory period including, but not
15 limited to, the conduct alleged herein, including that alleged on information and belief, Defendants failed
16 to provide accurate wage statements. For example, in addition to the derivative violations suffered as a
17 result of the other violations detailed above, Defendants also failed to provide a wage statement that
18 properly identified the applicable hourly rates for regular and overtime hours worked and the address of
19 Defendant.

20 95. Plaintiff suffered injuries as a result of Defendants’ intentional and knowing failure to
21 provide to Plaintiff and maintain the writings required by Labor Code § 226(a) and the IWC Wage Orders.
22 Defendants’ failure to provide and maintain accurate statements left Plaintiff without the ability to know,
23 understand and question the hours worked and wage earned and due. As a direct result, Plaintiff has
24 suffered and continues to suffer substantial injuries, losses and actual damages related to Defendants’
25 violations, including lost wages, lost interest on such wages, and expense and attorney’s fees in seeking
26 to compel Defendants to fully perform their obligations.

27 96. Labor Code § 226(e)(1) states “An employee suffering injury as a result of a knowing and
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1 intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all
2 actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred
3 dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate
4 penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's
5 fees." Labor Code §226(e)(2)(B) states "An employee is deemed to suffer injury for purposes of this
6 subdivision if the employer fails to provide accurate and complete information as required by any one or
7 more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and easily
8 determine from the wage statement alone one or more of the following: (i) The amount of gross wages or
9 net wages paid to the employee during the pay period or any other information required to be provided on
10 the itemized wage statement pursuant to items (2) to (4), inclusive, (6) and (9) of subdivision (a)..."
11 Because Plaintiff at times did not receive any wage statements, or the wage statements did not include,
12 among other things, an accurate accounting of gross wages earned or total and overtime hours worked, he
13 is deemed to have suffered injury.

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

16 98. At all material times, Defendants were and/or are Plaintiff's and/or similarly-situated,
17 aggrieved, current and former employees' employers and/or persons acting on behalf of Defendants within
18 the meaning of Labor Code § 558, who violated or caused to be violated, a section of Part 2, Chapter 1,
19 of the California Labor Code or any provision regulating hours and days of work in any Order of the
20 Industrial Welfare Commission and, as such, are subject to penalties for each underpaid employee as set
21 forth in Labor Code § 558 including the payment of the underpaid wages to affected employees.

22 99. As a direct result of Defendants' violations alleged herein, Plaintiff has suffered and
23 continues to suffer injury including substantial losses related to the use and enjoyment of such wages, lost
24 interest on such monies and expenses and attorney's fees in seeking to compel Defendants to fully perform
25 their obligation under state law, all to the respective damage in amounts according to proof at trial and
26 within the jurisdictional limitations of this Court.

27 100. Plaintiff seeks to recover in a civil action all remedies including damages, unpaid wages,
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1 penalties, attorney's fees and costs, and injunctive relief to the fullest extent permissible including those
2 permitted pursuant to Labor Code §§ 226(e) and (h), 558, 558.1, and Code of Civil Procedure § 1021.5.

3 WHEREFORE, Plaintiff NICHOLS, JR. prays for relief as hereinafter requested.

4 **SEVENTH CAUSE OF ACTION**
5 **FAILURE TO TIMELY PAY WAGES DUE**
6 **UPON SEPARATION OF EMPLOYMENT**

(Violation of Labor Code §§ 201(a), 202(a), 203(a))
(Alleged by Plaintiff Individually and On Behalf of the Class Against Defendants)

7
8 101. Plaintiff NICHOLS, JR. realleges and incorporates by reference the foregoing allegations,
9 as though set forth herein.

10 102. Plaintiff and members of the Putative Class are/were "non-exempt" employees of
11 Defendants within the meaning of the Labor Code and the applicable Wage Order.

12 103. Labor Code § 201(a) states "If an employer discharges an employee, the wages earned and
13 unpaid at the time of discharge are due and payable immediately."

14 104. Labor Code § 202(a) states "If an employee not having a written contract for a definite
15 period quits his or her employment, his or her wages shall become due and payable not later than 72 hours
16 thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which
17 case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other
18 provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive
19 payment by mail if he or she so requests and designates a mailing address. The date of the mailing shall
20 constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the
21 notice of quitting."

22 105. Through Defendants' conduct during the applicable statutory period including, but not
23 limited to, the conduct alleged herein, including that alleged on information and belief, Defendants
24 willfully failed to provide Plaintiff and other Class Members with all wages due and owing, including
25 minimum wages, overtime wages, regular wages, meal premiums, and vested vacation wages by the time
26 specified by Labor Code §§ 201(a) and 202(a), as applicable.

27 106. Labor Code § 203(a) states, in relevant part, "If an employer willfully fails to pay, without
28 abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 202, and 205.5, any wages of an

1 employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the
2 due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall
3 not continue for more than 30 days.”

4 107. At all material times, Defendants were and/or are Plaintiff’s and/or similarly-situated,
5 aggrieved, current and former employees’ employers and/or persons acting on behalf of Defendants within
6 the meaning of Labor Code § 558/558.1, who violated or caused to be violated, a section of Part 2, Chapter
7 1, of the California Labor Code or any provision regulating hours and days of work in any Order of the
8 Industrial Welfare Commission and, as such, are subject to penalties for each underpaid employee as set
9 forth in Labor Code § 558/558.1 including the payment of the underpaid wages to affected employees.

10 108. Pursuant to California Labor Code § 558.1, Defendants are sued collectively and
11 individually as employers of Plaintiff, and/or a person acting on behalf of Plaintiff’s employer, who
12 violated, or caused to be violated, any provision regulating minimum wages or hours and days of work
13 in the applicable order of the Industrial Welfare Commission, as well as the California Labor Code
14 Sections 203, 233, 234, 226, 226.7, 1193.6, 1194 and 2802, and as such, are liable as an employer of
15 Plaintiff for such violations pursuant to California Labor Code § 558.1.

16 109. As a direct result of Defendants’ violations alleged herein, Plaintiff and members of the
17 Class have suffered and continue to suffer substantial losses related to the use and enjoyment of such
18 wages, including lost interest on such monies and expenses and attorney’s fees in seeking to compel
19 Defendants to fully perform their obligation under state law, all to their respective damage in amounts
20 according to proof at trial and within the jurisdictional limitations of this Court.

21 110. Plaintiff seeks to recover in a civil action all remedies to the fullest extent permissible
22 including those permitted pursuant to Labor Code § 203.

23 WHEREFORE, NICHOLS, JR. Plaintiff prays for relief as hereinafter requested.

24 **EIGHTH CAUSE OF ACTION**

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

26 (Alleged by Plaintiff Individually and On Behalf of the Class Against Defendants)

27 111. Plaintiff NICHOLS, JR. realleges and incorporates by reference the foregoing allegations,
28 as though set forth herein.

112. VUORI, INC. is a “person” as that term is defined under the Cal. Bus. Prof. Code § 17201.

113. Business & Professions Code § 17200 states “As used in this chapter, unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code.”

114. Through Defendants’ conduct during the applicable statutory period including, but not limited to, the conduct alleged herein, including that alleged on information and belief, Defendants have engaged in business practices in California by practicing, employing, and utilizing, the employment practices outlined in the preceding paragraphs all in violation of California law and the Industrial Welfare Commission Wage Orders. Defendants’ use of such practices constitutes an unfair business practice, unfair competition, and provides an unfair advantage over Defendants’ competitors doing business in the State of California that comply with their obligations to properly provide employment conditions in compliance with the law and pay employees for all earned wages and compensation as required by law.

115. Defendants’ violations of the Labor Code and the Industrial Welfare Commission Wage Orders and their scheme to lower payroll costs as alleged herein constitute unlawful business practices because these actions were done in a systematic manner over a period of time to the detriment of Plaintiff and the Class. The acts complained of herein occurred within the last four (4) years preceding the filing of this complaint and include, but are not limited to, failure to (i) pay proper minimum, overtime, and regular wages; (ii) pay timely wages during and upon separation of employment; (iii) maintain accurate records and provide and maintain accurate itemized wage statements; (iv) provide compliant meal and rest breaks; (v) indemnify employees for work related expenses; and (vi) provide proper hiring and commission documents to employees during their employment.

116. Plaintiff is informed and believes and on that basis alleges that, at all times herein mentioned, Defendants have engaged in the above-mentioned acts of unlawful, deceptive, and unfair business practices prohibited by California Business and Professions Code §§ 17200, *et seq.*, including those set forth in the preceding paragraph, thereby depriving Plaintiff and the Class the minimum working

1 condition standards and conditions due, including those under California Labor Code and Wage Order of
2 the Industrial Welfare Commission.

3 117. As a result of Defendants' unfair competition as alleged herein, Plaintiff has suffered injury
4 in fact and lost money or property. Plaintiff has been deprived of the rights to wages and benefits due as
5 alleged herein.

6 118. Pursuant to California Business & Professions Code § 17203, Plaintiff is entitled to seek
7 restitution of all wages and other monies owed on behalf of himself and the represented employees
8 belonging to them, including interest thereon, which Defendants wrongfully withheld from them and
9 retained for themselves by means of its unlawful and unfair business practices.

10 119. Plaintiff is entitled to an injunction and other declaratory and equitable relief against such
11 practices to prevent future damage for which there is no adequate remedy at law, and to avoid a multiplicity
12 of lawsuits.

13 120. Plaintiff is informed and believes, and on that basis, alleges, that the illegal conduct alleged
14 herein is continuing and there is no indication that Defendants will not continue such activity into the
15 future. Plaintiff alleges that if Defendants are not enjoined from the conduct set forth in this Complaint,
16 they will continue to fail to pay the wage and compensation required to be paid and will fail to comply
17 with other requirements of the California Labor Code and Wage Order of the Industrial Welfare
18 Commission.

19 121. As a direct and proximate result of Defendants' conduct, Defendants have received and
20 will continue to receive monies that rightfully belong to members of the general public who have been
21 adversely affected by Defendants' conduct, as well as to Plaintiff by virtue of unpaid wages and other
22 monies.

23 122. Plaintiff is entitled and seeks any and all available remedies including restitution and
24 recovery of reasonable attorney's fees pursuant to California Code of Civil Procedure §1021.5, Business
25 and Professions Code § 17200, *et seq.*, the substantial benefit doctrine, and/or the common fund doctrine.

26 WHEREFORE, Plaintiff prays for relief as hereinafter requested.

27 ///

NINTH CAUSE OF ACTION
PRIVATE ATTORNEY GENERAL ACT (PAGA)

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

(Alleged by Plaintiff Individually and On Behalf of all current and former Aggrieved Employees
Against All Defendants)

123. Plaintiff NICHOLS, JR. realleges and incorporates by reference the foregoing allegations, as though set forth herein.

124. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or employees for violation of the code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or himself and other current or former employees pursuant to the procedures specified in Labor Code § 2699.3.

125. Plaintiff NICHOLS, JR. is an “aggrieved employee” because he was employed by the alleged violator and had one or more of the alleged violations committed against him and therefore is properly suited to represent the interests of other current and former aggrieved employees of Defendants.

126. On or about February 25, 2021 pursuant to Labor Code § 2698, *et seq.*, Plaintiff NICHOLS, JR. served via certified mail, return receipt requested DEFENDANT, VUORI, INC. On February 25, 2021, Plaintiff submitted a notice of his claims for wage and hour violations and penalties via on-line services to the LWDA. The statutory period expired, and the LWDA did not serve Plaintiff with a notice of intent to assume jurisdiction over the applicable penalty claims. Therefore, Plaintiff has satisfied and exhausted the procedural notice requirement to pursue penalties against Defendants pursuant to Labor Code §2698, *et seq.*

127. Labor Code § 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.”

128. Defendants violated Labor Code §§ 226.7, 512, and 1198 by failing to provide Plaintiff and current and former aggrieved employees lawfully complaint meal periods and by failing to pay them wages for each day a meal period was not provided. Under Labor Code § 2699 (f)(2) Defendants are

1 subject to a civil penalty of \$100 for each aggrieved employee per pay period for an initial violation and
2 \$200 for each aggrieved employee per pay period for each subsequent violation.

3 129. Defendants violated Labor Code §§ 226.7 and 1198 by failing to provide Plaintiff and
4 current and former aggrieved employees duty-free rest periods and by failing to pay them premium wages
5 for each day a rest period was not provided. Under Labor Code § 2699(f)(2) Defendants are subject to a
6 civil penalty of \$100 for each aggrieved employee per pay period for an initial violation and \$200 for each
7 aggrieved employee per pay period for each subsequent violation.

8 130. Defendants violated Labor Code §§ 1194, 1197, and 1198 by failing to pay Plaintiff and
9 current and former aggrieved employees at least minimum and regular wages for the time permitted to
10 work, engaged in work, and/or under Defendants' control as alleged herein. Under Labor Code § 2699
11 (f)(2) Defendants are subject to a civil penalty of \$100 for each aggrieved employee per pay period for an
12 initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation.

13 131. Defendants violated Labor Code §§ 510 and 1198 by failing to pay Plaintiff and current and
14 former aggrieved employees overtime wages for the time permitted to work, engaged in work, and/or
15 under Defendants' control as alleged herein. On information and belief, at all relevant times, Plaintiff and
16 other current and former aggrieved employees were not paid overtime wages when they worked in excess
17 of eight (8) hours a day or forty (40) hours within a workweek. Therefore, under Labor Code § 2699 (f)(2)
18 Defendants are subject to a civil penalty of \$100 for each aggrieved employee per pay period for an initial
19 violation and \$200 for each aggrieved employee per pay period for each subsequent violation.

20 132. Labor Code §§ 226(a), 1174(d), and 1198 and Section 6 of the applicable IWC Wage Order
21 by failing to maintain records detailing the start and end times of work shifts and meal periods, and
22 knowingly and intentionally failing to maintain and provide Plaintiff and other current and former
23 aggrieved employees of Defendants with accurate wage statements itemizing all information required by
24 Labor Code § 226(a), as alleged herein, including the correct total hours worked, all regular hours worked,
25 overtime hours worked, the correct applicable hourly rate per hour worked, the and the correct total wages
26 earned. Thus, under Labor Code § 2699(f)(2), Defendants are subject to a civil penalty of \$100 for each
27 aggrieved employee per pay period for the initial violation of Labor Code §§ 226(a) and 1198, and \$200
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1 for each aggrieved employee per pay period for each subsequent violation.

2 133. Alternatively, Labor Code § 226.3 provides for a civil penalty in the amount of \$250 per
3 violation in an initial citation and \$1,000 for each violation in a subsequent citation for failure to provide
4 accurate itemized wage statements.

5 134. Under Labor Code § 1174.5 an employer who willfully fails to maintain the records by
6 Labor Code § 1174 is a subject to a civil penalty of \$500.

7 135. Defendants violated Labor Code §§ 201, 202, 203, and 1198 by failing to pay Plaintiff and
8 other current and former aggrieved employees all minimum, regular, and overtime wages owed, and all
9 meal and rest premiums wages owed by the time set forth by law upon their separation of employment as
10 alleged herein. Thus, under Labor Code § 2699(f)(2), Defendants are subject to a civil penalty of \$100 for
11 each aggrieved employee per pay period for the initial violation of Labor Code §§ 201, 202, 203, and
12 1198, and \$200 for each aggrieved employee per pay period for each subsequent violation.

13 136. Defendants violated Labor Code §§ 204 and 1198 by failing to pay Plaintiff and other
14 current and former aggrieved employees all minimum, regular, and overtime wages owed, and all meal
15 and rest premiums wages owed by the time set forth by law upon during their employment as alleged
16 herein. Thus, under Labor Code § 2699(f)(2), Defendants are subject to a civil penalty of \$100 for each
17 aggrieved employee per pay period for the initial violation of Labor Code §§ 204 and 1198, and \$200 for
18 each aggrieved employee per pay period for each subsequent violation.

19 137. As set forth herein, Defendant violated Labor Code sections 201, 202, 203, 204, 223, 226,
20 226.7, 510, 512, 1174, 1197, 1198, 2810.5 and Labor Code § 2699, *et seq.*, imposes upon Defendants, and
21 each of them, penalties for violating the Labor Code, including those penalties set forth in 210, 226.3, 256,
22 558, 1174.5, 1197.1, 1194.2 and 2698, *et seq.*

23 138. Pursuant to Labor Code § 2699, Plaintiff NICHOLS, JR. seeks to recover civil penalties on
24 behalf of himself and other current and former aggrieved employees of Defendants who suffered one or
25 more the labor code violations described herein. The exact amount of the applicable penalty is all in an
26 amount to be shown according to proof at trial.

27 139. For bringing this action, Plaintiff NICHOLS, JR. is entitled to attorney's fees and costs
28

incurred herein.

WHEREFORE, Plaintiff NICHOLS, JR. prays for relief as hereinafter requested.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for damages for judgment against Defendants, jointly and severally, as applicable, as follows:

- a. For injunctive relief as provided by the Labor Code and to the extent permitted by law including, but not limited to, pursuant to § 226(h) and Business and Professions Code §17200, *et seq.* and including injunctive relief to compel Defendants to produce all records as required by § 226(h) and the “Records” section of the applicable IWC wage order;
- b. For restitution as provided by Business and Professions Code §§ 17200, *et seq.*;
- c. For an order requiring Defendants to restore and disgorge all funds to each affected person acquired by means of any act or practice declared by this Court to be unlawful, unfair or fraudulent and, therefore, constituting unfair competition under Business and Professions Code §§ 17200, *et seq.*;
- d. For penalties to the extent permitted pursuant to the Labor Code, Orders of the Industrial Welfare Commission including, but not limited to, waiting time penalties under Labor Code § 203, penalties under Labor Code §§ 226(e), 226.3, 210, 226.8, 558, and 1174.5, and PAGA penalties pursuant to Labor Code §2698 *et seq.*;
- e. For an award of unpaid wages, including regular wages, minimum and overtime wages, to the extent permissible by law to each affected person;
- f. For penalties to the extent permitted pursuant to the Labor Code, Orders of the Industrial Welfare Commission including, but not limited to, waiting time penalties under Labor Code § 203, penalties under Labor Code §§ 226(e), and 558.1 penalties;
- g. For an award of actual damages to the extent permissible by the Labor Code including Labor Code § 226(e);
- h. For an award of liquidated damages to the extent permissible by Labor Code §1194.2;

- 1 i. For pre- and post-judgment interest to the extent permitted by law including, but not
2 limited to, Labor Code §§ 218.6 and 1194.
- 3 j. For reasonable attorney's fees and cost of suit and, to the extent permitted by law,
4 including pursuant to Labor Code §§ 218.5, 226, 1194, and Code of Civil Procedure §
5 1021.5; and
- 6 k. An award of such other and further relief as this Court deems proper and just.

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8 Dated: May 3, 2021

ShortLegal, APC

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10 By: _____

BRIAN R. SHORT

DOROTA A. JAMES

Attorneys for Plaintiff FRANK NICHOLS, JR.

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15 **DEMAND FOR JURY TRIAL**

16 Plaintiff hereby demands trial by jury to the extent authorized by law.

17
18 Dated: May 3, 2021

ShortLegal, APC

19 

20 By: _____

BRIAN R. SHORT

DOROTA A. JAMES

Attorneys for Plaintiff FRANK NICHOLS, JR.