

Joseph Lavi, Esq. (SBN 209776)  
[jlavi@lelawfirm.com](mailto:jlavi@lelawfirm.com)  
Vincent C. Granberry, Esq. (SBN 276483)  
[vgranberry@lelawfirm.com](mailto:vgranberry@lelawfirm.com)  
Pooja V. Patel, Esq. (SBN 317891)  
[ppatel@lelawfirm.com](mailto:ppatel@lelawfirm.com)  
**LAVI & EBRAHIMIAN, LLP**  
8889 W. Olympic Blvd., Suite 200  
Beverly Hills, California 90211  
Telephone: (310) 432-0000  
Facsimile: (310) 432-0001

Sahag Majarian II (SBN 146621)  
[sahagii@aol.com](mailto:sahagii@aol.com)  
**LAW OFFICES OF SAHAG MAJARIAN II**  
18250 Ventura Blvd.  
Tarzana, CA 91356  
Telephone: (818) 609-0807  
Facsimile: (818) 609-0892

Attorneys for Plaintiff SAUL HERNANDEZ  
MEJIA, on behalf of himself and others  
similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES**

SAUL HERNANDEZ MEJIA, on behalf of  
himself and others similarly situated; MANUEL  
ENRIQUEZ, on behalf of himself, others  
similarly situated, and other aggrieved  
employees,

Plaintiffs,

vs.

SWISSTEX CALIFORNIA, INC.; and DOES 1  
to 100, inclusive,

Defendants.

Justin F. Marquez (SBN 262417)  
[justin@wilshirelawfirm.com](mailto:justin@wilshirelawfirm.com)  
Benjamin H. Haber (SBN 315664)  
[benjamin@wilshirelawfirm.com](mailto:benjamin@wilshirelawfirm.com)  
**WILSHIRE LAW FIRM**  
3055 Wilshire Blvd., 12th Floor  
Los Angeles, California 90010  
Telephone: (213) 381-9988  
Facsimile: (213) 381-9989

Attorneys for Plaintiff MANUEL ENRIQUEZ,  
on behalf of himself, others similarly situated,  
and other aggrieved employees

CONFIRMED COPY  
ORIGINAL FILED  
Superior Court of California  
County of Los Angeles

AUG 27 2021

Sherri R. Carter, Executive Officer/Clerk of Court

Case No.: 21STCV02796 (*Mejia Class*)

Consolidated with Case No. 21STCV04668  
(*Enriquez*) and Case No. 21STCV12242  
(*Mejia PAGA*)

**CLASS ACTION**

**PLAINTIFFS SAUL HERNANDEZ  
MEJIA AND MANUEL ENRIQUEZ'S  
FIRST AMENDED CONSOLIDATED  
COMPLAINT FOR DAMAGES AND  
RESTITUTION FOR:**

- 1. FAILURE TO PAY MINIMUM  
AND STRAIGHT TIME WAGES  
FOR ALL HOURS WORKED IN  
VIOLATION OF LABOR CODE  
SECTIONS 1194, 1194.2 AND  
1197**
- 2. FAILURE TO PAY OVERTIME  
WAGES FOR DAILY  
OVERTIME WORKED IN  
VIOLATION OF LABOR CODE  
SECTIONS 510, 1194, AND 1198**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

3. **FAILURE TO AUTHORIZE OR PERMIT MEAL PERIODS IN VIOLATION OF LABOR CODE SECTIONS 512 AND 226.7**
  4. **FAILURE TO AUTHORIZE OR PERMIT REST PERIODS IN VIOLATION OF LABOR CODE SECTION 226.7**
  5. **FAILURE TO PRODUCE REQUESTED EMPLOYMENT RECORDS IN VIOLATION OF LABOR COE SECTIONS 226 AND 1198.5**
  6. **FAILURE TO TIMELY PAY EARNED WAGES DURING EMPLOYMENT IN VIOLATION OF LABOR CODE SECTION 204**
  7. **FAILURE TO PROVIDE COMPLETE AND ACCURATE WAGE STATEMENTS IN VIOLATION OF LABOR CODE SECTION 226**
  8. **FAILURE TO TIMELY PAY ALL EARNED WAGES AND FINAL PAYCHECKS DUE AT TIME OF SEPARATION OF EMPLOYMENT IN VIOLATION OF LABOR CODE SECTIONS 201, 202, AND 203**
  9. **UNFAIR BUSINESS PRACTICES, IN VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTIONS 17200, ET SEQ.**
- PLAINTIFFS SAUL HERNANDEZ MEJIA AND MANUEL ENRIQUEZ’S REPRESENTATIVE CLAIM FOR PENALTIES AND ENFORCEMENT:**
10. **CIVIL PENALTIES UNDER PAGA IN VIOLATION OF LABOR CODE SECTION 2699, ET SEQ.**
- DEMAND FOR JURY TRIAL**

1           **COME NOW** Plaintiffs SAUL HERNANDEZ MEJIA and MANUEL ENRIQUEZ  
2 (“Plaintiffs”), who allege and complain against Defendants SWISSTEX CALIFORNIA, INC. and  
3 DOES 1 to 100, inclusive (collectively “Defendants”) as follows:

4           **I. INTRODUCTION**

5           1. This is a class action and representative lawsuit seeking unpaid wages and interest  
6 thereon for failure to pay minimum and straight time wages for all hours worked; failure to pay  
7 overtime wages for all overtime hours worked; failure to pay overtime wages at the proper  
8 overtime rate; failure to authorize or permit meal periods, pay meal period premiums, and/or pay  
9 meal period premiums at the proper regular rate; failure to authorize or permit rest periods, pay  
10 rest period premiums, and/or pay rest period premiums at the proper regular rate; statutory  
11 penalties for failure to timely produce requested employment records; statutory penalties for  
12 failure to timely pay earned wages during employment; statutory penalties for failure to provide  
13 accurate wage statements; statutory waiting time penalties in the form of continuation wages for  
14 failure to timely pay employees all wages due upon separation of employment; injunctive relief  
15 and other equitable relief; reasonable attorneys’ fees pursuant to Labor Code sections 218.5,  
16 226(e) and 1194; costs; and interest brought on behalf of Plaintiffs and others similarly situated.

17           2. Plaintiffs Saul Hernandez Mejia and Manuel Enriquez bring the Tenth Cause of  
18 Action as a representative action under the California Private Attorneys General Act (“PAGA”) to  
19 recover civil penalties that are owed to Plaintiffs Saul Hernandez Mejia, Manuel Enriquez, the  
20 State of California, and past and present hourly-paid and non-exempt employees employed by  
21 Defendants in the State of California during the statute of limitations period for their PAGA claim  
22 (hereinafter referred to as the “aggrieved employees”).

23           **II. JURISDICTION AND VENUE**

24           3. This Court has jurisdiction over Plaintiffs’ and putative class members’ claims for  
25 failure to pay minimum and straight time wages for all hours worked; failure to pay overtime  
26 wages for all overtime hours worked; failure to pay overtime wages at the proper overtime rate;  
27 failure to authorize or permit meal periods, pay meal period premiums, and/or pay meal period  
28 premiums at the proper regular rate; failure to authorize or permit rest periods, pay rest period

1 premiums, and/or pay rest period premiums at the proper regular rate; statutory penalties for  
2 failure to timely produce requested employment records; statutory penalties for failure to timely  
3 pay earned wages during employment; statutory penalties for failure to provide accurate wage  
4 statements; statutory waiting time penalties in the form of continuation wages for failure to timely  
5 pay employees all wages due upon separation of employment; and claims for injunctive relief and  
6 restitution under California Business and Professions Code sections 17200, *et seq.*, for the  
7 following reasons: Defendants operate throughout California; Defendants employed Plaintiffs and  
8 putative class members in locations throughout California, including but not limited to Los  
9 Angeles County at 13660 S. Figueroa Street, Los Angeles, CA 90061; more than two-thirds of  
10 putative class members are California citizens; the principal violations of California law occurred  
11 in California; no other class actions have been filed against Defendants in the last four (4) years  
12 alleging wage and hour violations; the conduct of Defendants forms a significant basis for  
13 Plaintiffs' and putative class members' claims; and Plaintiffs and putative class members seek  
14 significant relief from Defendants.

15 4. This Court has jurisdiction over Plaintiffs Saul Hernandez Mejia's, Manuel  
16 Enriquez's and the aggrieved employees' claims because Defendants operate throughout  
17 California; Defendants employed Plaintiffs Saul Hernandez Mejia and Manuel Enriquez and the  
18 aggrieved employees in locations through California, including but not limited to Los Angeles  
19 County at 13660 S. Figueroa Street, Los Angeles, CA 90061; the conduct of Defendants forms a  
20 significant basis for Plaintiffs Saul Hernandez Mejia's, Manuel Enriquez's, and the aggrieved  
21 employees' claims; and Plaintiffs Saul Hernandez Mejia, Manuel Enriquez, and the aggrieved  
22 employees seek significant penalties from Defendants.

### 23 **III. PARTIES**

24 5. Plaintiffs bring this action on behalf of themselves and other members of the  
25 general public similarly situated. The named Plaintiffs and the class of persons on whose behalf  
26 this action is filed are current, former, and/or future employees of Defendants who work as hourly  
27 non-exempt employees. At all times mentioned herein, the currently named Plaintiffs are and were  
28 residents of California and were employed by Defendants in the State of California within the four

1 (4) years prior to the filing of *Saul Hernandez Mejia v. Swisstex California, Inc.*, Los Angeles  
2 Superior Court Case No. 21STCV02796, dated January 22, 2021.

3 6. Plaintiffs Saul Hernandez Mejia and Manuel Enriquez bring this action on behalf of  
4 themselves, other members of the general public similarly situated, and other aggrieved  
5 employees.

6 7. Defendants employed Plaintiff Saul Hernandez Mejia as an hourly non-exempt  
7 employee from in or around 2017, until on or about April 24, 2020 and from in or around  
8 September 23, 2020, to the present.

9 8. Defendants employed Plaintiff Manuel Enriquez as an hourly non-exempt  
10 employee from in or around April 2020, until in or around October 2020.

11 9. Plaintiffs are informed and believe and thereon allege that Defendants employed  
12 them and other hourly non-exempt employees throughout the State of California and therefore  
13 their conduct forms a significant basis of the claims asserted in this matter.

14 10. Plaintiffs are informed and believe and thereon allege that Defendant SWISSTEX  
15 CALIFORNIA, INC. is authorized to do business within the State of California and is doing  
16 business in the State of California and/or that Defendants DOES 1-50 are, and at all times relevant  
17 hereto were persons acting on behalf of Defendant SWISSTEX CALIFORNIA, INC. in the  
18 establishment of, or ratification of, the aforementioned illegal wage and hour practices or policies.  
19 Defendant SWISSTEX CALIFORNIA, INC. operates in Los Angeles County and employed  
20 Plaintiffs and putative class members in Los Angeles County, including but not limited to, at  
21 13660 South Figueroa Street, Los Angeles, CA 90061.

22 11. Plaintiffs are informed and believe and thereon allege that Defendants DOES 51-  
23 100 are individuals unknown to Plaintiffs. Each of the individual Defendants is sued individually  
24 in his or her capacity as an agent, shareholder, owner, representative, manager, supervisor,  
25 independent contractor and/or employee of each Defendant and participated in the establishment  
26 of, or ratification of, the aforementioned illegal wage and hour practices or policies.

27 12. Plaintiffs are unaware of the true names of Defendants DOES 1-100. Plaintiffs sue  
28 said defendants by said fictitious names and will amend this Complaint when the true names and

1 capacities are ascertained or when such facts pertaining to liability are ascertained, or as permitted  
2 by law or by the Court. Plaintiffs are informed and believe that each of the fictitiously named  
3 Defendants is in some manner responsible for the events and allegations set forth in this  
4 Complaint.

5 13. Plaintiffs are informed and believe and thereon allege that at all relevant times,  
6 each Defendant was an employer, was the principal, agent, partner, joint venturer, officer, director,  
7 controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or  
8 predecessor in interest of some or all of the other Defendants, and was engaged with some or all of  
9 the other defendants in a joint enterprise for profit, and bore such other relationships to some or all  
10 of the other defendants so as to be liable for their conduct with respect to the matters alleged in  
11 this Complaint. Plaintiffs are further informed and believe and thereon allege that each Defendant  
12 acted pursuant to and within the scope of the relationships alleged above, and that at all relevant  
13 times, each Defendant knew or should have known about, authorized, ratified, adopted, approved,  
14 controlled, aided and abetted the conduct of all other defendants. As used in this Complaint,  
15 "Defendant" means "Defendants and each of them," and refers to the Defendants named in the  
16 particular cause of action in which the word appears and includes Defendants SWISSTEX  
17 CALIFORNIA, INC. and DOES 1 to 100, inclusive.

18 14. At all times mentioned herein, each Defendant was the co-conspirator, agent,  
19 servant, employee, and/or joint venturer of each of the other defendants and was acting within the  
20 course and scope of said conspiracy, agency, employment, and/or joint venture and with the  
21 permission and consent of each of the other Defendants.

22 15. Plaintiffs make the allegations in this Complaint without any admission that, as to  
23 any particular allegation, Plaintiffs bear the burden of pleading, proving, or persuading and  
24 Plaintiffs reserve all of Plaintiffs' rights to plead in the alternative.

25 ///

26 ///

27 ///

28 ///

1 **IV. DESCRIPTION OF ILLEGAL PAY PRACTICES**

2 16. Pursuant to the applicable Industrial Welfare Commission (“IWC”) Wage Order  
3 (“Wage Order”), codified at California Code of Regulations, title 8, section 11060, Defendants are  
4 employers of Plaintiffs within the meaning of Wage Order 6 and applicable Labor Code sections.  
5 Therefore, each of these Defendants is jointly and severally liable for the wrongs complained of  
6 herein in violation of the Wage Order and the Labor Code.

7 17. **Failure to pay minimum and straight time wages for all hours worked:**  
8 Defendants employed many of their employees, including Plaintiffs, as hourly non-exempt  
9 employees. In California, an employer is required to pay hourly employees for all “hours worked,”  
10 which includes all time that an employee is under the control of the employer and all time the  
11 employee is suffered and permitted to work. This includes the time an employee spends, either  
12 directly or indirectly, performing services which inure to the benefit of the employer.

13 18. Labor Code sections 1194 and 1197 require an employer to compensate employees  
14 for all “hours worked” at least at the minimum wage rate of pay as established by the IWC and the  
15 Wage Orders.

16 19. Plaintiffs and similarly situated hourly non-exempt employees worked more  
17 minutes per shift than Defendants credited them with having worked. Defendants failed to pay  
18 Plaintiffs and similarly situated employees all minimum and straight time wages at the applicable  
19 wage for all hours worked due to Defendants’ policies, practices, and/or procedures including, but  
20 not limited to, “rounding” down or “shaving” Plaintiffs’ and similarly situated employees’ total  
21 daily hours at the time of their clock-in and clock-out to the nearest quarter of an hour, to the  
22 benefit of Defendants. Plaintiffs and similarly situated employees were not paid for this time  
23 resulting in Defendants’ failure to pay minimum and straight time wages for all the hours  
24 Plaintiffs and similarly situated employees worked.

25 20. Therefore, Defendants suffered, permitted, and required their hourly non-exempt  
26 employees to be subject to Defendants’ control without paying wages for that time. This resulted  
27 in Plaintiffs and similarly situated employees working time for which they were not compensated  
28 any wages, in violation of Labor Code sections 1194, 1194.2, 1197, and Wage Order 6.

1           21.     **Failure to pay wages for overtime hours worked at the overtime rate of pay:**  
2 Defendants employed many of their employees, including Plaintiffs, as hourly non-exempt  
3 employees. In California, an employer is required to pay hourly employees for all “hours worked,”  
4 which includes all time that an employee is under the control of the employer and all time the  
5 employee is suffered or permitted to work. This includes the time an employee spends, either  
6 directly or indirectly, performing services which inure to the benefit of the employer.

7           22.     Labor Code sections 510 and 1194 and Wage Order 6 require an employer to  
8 compensate employees at a higher rate of pay for hours worked in excess of eight (8) hours in a  
9 workday, more than forty (40) hours in a workweek, and on any seventh consecutive day of work  
10 in a workweek:

11           Any work in excess of eight hours in one workday and any work in excess of 40  
12 hours in any one workweek and the first eight hours worked on the seventh day of  
13 work in any one workweek shall be compensated at the rate of no less than one and  
14 one-half times the regular rate of pay for an employee. Any work in excess of 12  
15 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.

16 Labor Code section 510; Wage Order 6, §3.

17           23.     Defendants failed to pay Plaintiffs and similarly situated employees all minimum  
18 and straight time wages for all hours worked due to Defendants’ policies, practices, and/or  
19 procedures including, but not limited to, “rounding” down or “shaving” Plaintiffs’ and similarly  
20 situated employees’ total daily hours at the time of their clock-in and clock-out to the nearest  
21 quarter of an hour, to the benefit of Defendants. Plaintiffs and similarly situated employees were  
22 not paid for this time.

23           24.     To the extent the employees had already worked 8 hours in the day and on  
24 workweeks they had already worked 40 hours in a workweek, the employees should have been  
25 paid overtime for this unpaid time. This resulted in hourly non-exempt employees working time  
26 which should have been paid at the legal overtime rate but was not paid any wages in violation of  
27 Labor Code sections 510, 1194, and Wage Order 6.

28     ///

1           25.     **Failure to pay overtime at the proper overtime rate by failing to include all**  
2 **remuneration in calculating the regular rate of pay for purposes of paying overtime:**  
3 Defendants employ hourly non-exempt employees, including Plaintiffs and others similarly  
4 situated, with a compensation structure that includes additional remuneration, including, but not  
5 limited to, bonus compensation, commissions, and/or incentives.

6           26.     Labor Code sections 510 and 1194 require an employer to compensate employees a  
7 higher rate of pay for hours worked in excess of eight hours in a workday:

8           Any work in excess of eight hours in one workday and any work in excess of 40  
9 hours in any one workweek and the first eight hours worked on the seventh day of  
10 work in any one workweek shall be compensated at the rate of no less than one and  
11 one-half times the regular rate of pay for an employee. Any work in excess of 12  
12 hours in one day shall be compensated at the rate of no less than twice the regular  
13 rate of pay for an employee. In addition, any work in excess of eight hours on any  
14 seventh day of a workweek shall be compensated at the rate of no less than twice  
15 the regular rate of pay of an employee.

16 (Labor Code section 510).

17           27.     Overtime is based upon an employee's regular rate of pay. "The regular rate at  
18 which an employee is employed shall be deemed to include all remuneration for employment paid  
19 to, or on behalf, of the employee." *See* Division of Labor Standards Enforcement – Enforcement  
20 Policies and Interpretations Manual, Section 49.1.2.

21           28.     At times, Plaintiffs and similarly situated employees worked overtime hours under  
22 state law during pay periods that they earned additional remuneration, including but not limited to,  
23 for example, bonus pay.

24           29.     Defendants maintained a policy, practice, and/or procedure of excluding Plaintiffs'  
25 and similarly situated hourly non-exempt employees' additional remuneration, including but not  
26 limited, for example, to bonus pay, in calculating their overtime rate of pay. This practice resulted  
27 in Defendants paying Plaintiffs and similarly situated hourly non-exempt employees less overtime  
28 than they earned when they worked more than eight (8) hours in a workday, more than forty (40)  
hours in a workweek, and/or seven days in a workweek, in violation of California law.

///  
///  
///

1           30.     **Failure to authorize or permit legally required and compliant meal periods to**  
2 **employees and/or failure to pay meal period premium wages or pay meal period premiums**  
3 **at employees' regular rate of pay:** Defendants often employed hourly non-exempt employees,  
4 including the named Plaintiffs and similarly situated employees, for shifts longer than five (5)  
5 hours in length and shifts longer than ten (10) hours in length.

6           31.     California law requires an employer to authorize or permit an uninterrupted meal  
7 period of no less than thirty (30) minutes no later than the end of the employee's fifth hour of  
8 work and a second meal period no later than the employee's tenth hour of work. Labor Code §512;  
9 Wage Order 6, §11. If the employee is not relieved of all duties during a meal period, the meal  
10 period shall be considered an "on duty" meal period and counted as time worked. A paid "on  
11 duty" meal period is only permitted when (1) the nature of the work prevents an employee from  
12 being relieved of all duty and (2) the parties have a written agreement agreeing to on-duty meal  
13 periods. If the employee is not free to leave the work premises or worksite during the meal period,  
14 even if the employee is relieved of all other duty during the meal period, the employee is subject  
15 to the employer's control and the meal period is counted as time worked. If an employer fails to  
16 provide an employee a meal period in accordance with the law, the employer must pay the  
17 employee one (1) hour of pay at the employee's regular rate of pay for each workday that a legally  
18 required and compliant meal period was not provided. Labor Code §226.7; Wage Order 6, §11.

19           32.     Here, Plaintiffs and similarly situated employees worked shifts long enough to  
20 entitle them to meal periods under California law. Nevertheless, Defendants employed policies,  
21 practices, and/or procedures that resulted in their failure to authorize or permit meal periods to  
22 Plaintiffs and similarly situated employees of no less than thirty (30) minutes for each five-hour  
23 period of work as required by law. Such policies, practices, and/or procedures included, but were  
24 not limited to, failing to authorize or permit Plaintiffs and similarly situated employees a timely  
25 uninterrupted duty-free meal period of no less than thirty (30) minutes prior to the employee's  
26 sixth (6<sup>th</sup>) hour of work.

27     ///

28     ///

1           33.     Additionally, Defendants failed to pay Plaintiffs and similarly situated employees  
2 a meal period premium wage of one (1) additional hour of pay at their regular rate of  
3 compensation for each workday the employees did not receive all legally required and compliant  
4 meal periods. Defendants employed policies and procedures which ensured that employees did not  
5 receive any meal period premium wages to compensate them for workdays in which they did not  
6 receive all legally required and compliant meal periods.

7           34.     Finally, when Defendant paid Plaintiffs and similarly situated employees a  
8 “premium” wage for late, missed, short, on-premise, on-duty, and/or interrupted meal periods,  
9 Defendant failed to pay the one (1) additional hour of pay at Plaintiffs’ and similarly situated  
10 employees’ regular rate of compensation. Specifically, Defendant maintained a policy, practice,  
11 and/or procedure of failing to include all remuneration such as shift differential pay, for example,  
12 when calculating Plaintiffs’ and similarly situated employees’ regular rate of pay for the purpose  
13 of paying meal period premiums.

14           35.     The aforementioned policies, practices, and/or procedures of Defendants resulted in  
15 Plaintiffs and similarly situated employees not being provided with all legally required and  
16 compliant meal periods and/or not receiving premium wages to compensate them for such  
17 instances, all in violation of California law.

18           36.     **Failure to pay wages to hourly non-exempt employees to compensate them for**  
19 **workdays that Defendants failed to provide legally required and compliant rest periods or**  
20 **pay rest period premiums at employees’ regular rate of pay:** Defendants often employed non-  
21 exempt employees, including the named Plaintiffs and similarly situated employees, for shifts of  
22 least three-and-a-half (3.5) hours.

23           37.     California law requires every employer to authorize and permit an employee a rest  
24 period of ten (10) net minutes for every four (4) hours worked or major fraction thereof. Labor  
25 Code §226.7; Wage Order 6, §12. If the employer fails to authorize or permit a required rest  
26 period, the employer must pay the employee one (1) hour of pay at the employee’s regular rate of  
27 compensation for each workday the employer did not authorize or permit a legally required rest  
28 period. *Id.* Under California law, “[e]mployees are entitled to 10 minutes’ rest for shifts from three

1 and one-half to six hours in length, 20 minutes for shifts of more than six hours up to 10 hours, 30  
2 minutes for shifts of more than 10 hours up to 14 hours, and so on.” *Brinker Restaurant Corp. v.*  
3 *Sup. Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004, 1029; Labor Code §226.7; Wage Order 6, §12. Rest  
4 periods, insofar as practicable, shall be in the middle of each work period. Wage Order 6, §12.  
5 Additionally, the rest period requirement “obligates employers to permit – and authorizes  
6 employees to take – off-duty rest periods.” *Augustus v. ABM Security Services, Inc.*, (2016) 5  
7 Cal.5th 257, 269. That is, during rest periods employers must relieve employees of all duties and  
8 relinquish control over how employees spend their time. *Id.*

9         38. In this case, Plaintiffs and similarly situated employees regularly worked shifts of  
10 more than three-and-a-half (3.5) hours. Nevertheless, Defendants employed policies, practices,  
11 and/or procedures that resulted in their failure to authorize or permit all legally required and  
12 compliant rest periods to Plaintiffs and similarly situated employees. Such policies, practices,  
13 and/or procedures included, but were not limited to, requiring Plaintiffs and similarly situated  
14 employees to travel to and from a designated area during their rest periods, resulting in rest  
15 periods that were not duty-free and/or were less than a net ten (10) minutes.

16         39. Additionally, Defendants failed to pay Plaintiffs and similarly situated employees a  
17 rest period premium wage of one (1) additional hour of pay at their regular rate of compensation  
18 for each workday the employees did not receive all legally required and compliant rest periods.  
19 Defendants employed policies and procedures which ensured that employees did not receive any  
20 rest period premium wages to compensate them for workdays in which they did not receive all  
21 legally required and compliant rest periods.

22         40. When Defendant did pay Plaintiffs and similarly situated employees a “premium”  
23 wage for late, missed, short, on-premise, on-duty, and/or interrupted rest periods, Defendant failed  
24 to pay the one (1) additional hour of pay at Plaintiffs’ and similarly situated employees’ regular  
25 rate of compensation. Specifically, Defendant maintained a policy, practice, and/or procedure of  
26 failing to include all remuneration such as shift differential pay, for example, when calculating  
27 Plaintiffs’ and similarly situated employees’ regular rate of pay for the purpose of paying rest  
28 period premiums.

1           41.     The aforementioned policies, practices, and/or procedures of Defendants resulted in  
2 Plaintiffs and similarly situated employees not being provided with all legally required and  
3 compliant rest periods and/or not receiving premium wages to compensate them for such  
4 instances, all in violation of California law.

5           42.     **Failure to produce requested employment records:** An employer must afford  
6 current and former employees the right to inspect or receive a copy of records pertaining to their  
7 employment, upon reasonable request to the employer. Labor Code section 226(b). An employer  
8 who receives a request to inspect or receive a copy of records pertaining to a current or former  
9 employee must comply with the request as soon as practicable, but no later than twenty-one (21)  
10 calendar days from the date of the request. Labor Code section 226(c). Additionally, every current  
11 and former employee, or his or her representative, has the right to inspect and receive a copy of the  
12 personnel records that the employer maintains relating to the employee's performance or to any  
13 grievance concerning the employee. Labor Code section 1198.5(a). Upon written request from a  
14 current or former employee or his or her representative, an employer must make the contents of  
15 those personnel records available for inspection or provide a copy of the personnel records to the  
16 current or former employee, or his or her representative, not later than thirty (30) calendar days  
17 from the date the employer receives the written request, subject to some limited exceptions. Labor  
18 Code §1198.5(b)(1). Failure to comply with these requests allows for a civil penalty seven  
19 hundred fifty dollars (\$750), pursuant to Labor Code sections 1198.5(k) and 226(f).

20           43.     On September 14, 2021, Plaintiff Saul Hernandez Mejia sent a written request  
21 through his counsel to Defendants for his payroll records, timecards, and personnel records  
22 pursuant to Labor Code sections 226 and 1198.5. However, Defendants failed to timely produce  
23 the requested employment records, in violation of Labor Code sections 226 and 1198.5.  
24 Defendants have not produced any of the requested employment records as of the date of this  
25 Complaint.

26           44.     On October 16, 2020, December 4, 2020, and January 13, 2021, Plaintiff Manuel  
27 Enriquez sent written requests through his counsel to Defendants for his personnel file, pay  
28 records, wage statements, timekeeping records, and other employment-related documents pursuant

1 to Labor Code section 226 and 1198.5. However, Defendants failed to timely produce the  
2 requested employment records, in violation of Labor Code sections 226 and 1198.5. Defendants  
3 have not produced any of the requested employment records for Mr. Enriquez as of the date of this  
4 Complaint.

5 45. Plaintiffs are informed and believe and thereon allege that other similarly situated  
6 employees also sent written requests for their employment records, but Defendants failed to timely  
7 produce the required and requested records, in violation of Labor Code sections 226 and 1198.5.

8 46. **Failure to timely pay earned wages during employment:** In California, wages  
9 must be paid at least twice during each calendar month on days designated in advance by the  
10 employer as regular paydays, subject to some exceptions. Labor Code §204(a). Wages earned  
11 between the 1st and 15th days, inclusive, of any calendar month must be paid between the 16th  
12 and the 26th day of that month and wages earned between the 16th and the last day, inclusive, of  
13 any calendar month must be paid between the 1st and 10th day of the following month. *Id.* Other  
14 payroll periods such as those that are weekly, biweekly, or semimonthly, must be paid within  
15 seven (7) calendar days following the close of the payroll period in which wages were earned.  
16 Labor Code §204(d).

17 47. As a derivative of Plaintiffs' claims above, Plaintiffs allege that Defendants failed  
18 to timely pay Plaintiffs' and similarly situated employees' earned wages (including minimum and  
19 straight time wages, overtime wages, overtime wages at the proper overtime rate, meal period  
20 premium wages, meal period premium wages at the proper regular rate, rest period premium  
21 wages and/or rest period premium wages at the proper regular rate), in violation of Labor Code  
22 section 204.

23 48. Defendants' aforementioned policies, practices, and/or procedures resulted in their  
24 failure to pay Plaintiffs and similarly situated employees their earned wages within the applicable  
25 time frames outlined in Labor Code section 204.

26 49. **Failure to Provide Accurate Wage Statements:** Labor Code section 226(a)  
27 provides, *inter alia*, that, upon paying an employee his or her wages, the employer must "furnish  
28 each of his or her employees ... an itemized statement in writing showing (1) gross wages earned,

1 (2) total hours worked by the employee, except for any employee whose compensation is solely  
2 based on a salary and who is exempt from payment of overtime under subdivision (a) of Section  
3 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate  
4 units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all  
5 deductions, provided, that all deductions made on written orders of the employee may be  
6 aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the pay period  
7 for which the employee is paid, (7) the name of the employee and his or her social security  
8 number, (8) the name and address of the legal entity that is the employer, and (9) all applicable  
9 hourly rates in effect during the pay period and the corresponding number of hours worked at each  
10 hourly rate by the employee.”

11 50. As a derivative of Plaintiffs’ claims above, Plaintiffs allege that Defendants failed  
12 to provide accurate wage and hour statements to them and other similarly situated employees who  
13 were subject to Defendants’ control for uncompensated time and who did not receive all their  
14 earned wages (including minimum and straight time wages, overtime wages, overtime wages at  
15 the proper overtime rate, meal period premium wages, meal period premium wages at the proper  
16 regular rate, rest period premium wages and/or rest period premium wages at the proper regular  
17 rate), in violation of Labor Code section 226.

18 51. **Failure to Timely Pay Final Wages:** An employer is required to pay all unpaid  
19 wages timely after an employee’s employment ends. The wages are due immediately upon  
20 termination or within seventy-two (72) hours of resignation. Labor Code §§201, 202.

21 52. As a result of the aforementioned violations of the Labor Code, Plaintiffs allege  
22 that they, and on information and belief, other similarly situated employees, were not paid their  
23 final wages in a timely manner as required by Labor Code section 203. Minimum and straight time  
24 wages, overtime wages, overtime wages at the proper overtime rate, meal period premium wages,  
25 meal period premium wages at the proper regular rate, rest period premium wages and/or rest  
26 period premium wages at the proper regular rate (all described above), were not paid at the time of  
27 Plaintiffs’ and other similarly situated employees’ separation of employment, whether voluntarily  
28 or involuntarily, as required by Labor Code sections 201, 202, and 203.

1 **V. CLASS DEFINITIONS AND CLASS ALLEGATIONS**

2 53. Plaintiffs brings this action on behalf of themselves, on behalf of others similarly  
3 situated, and on behalf of the general public, and as members of a Class defined as follows:

4 A. **Minimum and Straight Time Wage Class:** All current and former hourly  
5 non-exempt employees employed by Defendants in California at any time from January 22, 2017  
6 through the date notice is mailed to a certified class who were not paid minimum and straight time  
7 wages for all time they were subject to Defendants' control.

8 B. **Overtime Class:** All current and former hourly non-exempt employees  
9 employed by Defendants in California at any time from January 22, 2017 through the date notice  
10 is mailed to a certified class who worked more than eight (8) hours in a workday, forty (40) hours  
11 in a workweek, and/or seven (7) days in a workweek, to whom Defendants did not pay overtime  
12 wages.

13 C. **Regular Rate Class:** All current and former hourly non-exempt employees  
14 employed by Defendants in California at any time from January 22, 2017 through the date notice  
15 is mailed to a certified class who received bonus compensation during pay periods in which they  
16 worked more than eight (8) hours in a workday, more than forty (40) hours in a workweek, and/or  
17 seven (7) days in a workweek, and whose regular rate of pay did not include such additional  
18 remuneration when Defendants calculated those employees' overtimes wages.

19 D. **Meal Period Class:** All current and former hourly non-exempt employees  
20 employed by Defendants in California at any time from January 22, 2017 through the date notice  
21 is mailed to a certified class who worked shifts more than five (5) hours yet Defendants failed to  
22 authorize or permit all required duty-free meal periods of not less than thirty (30) minutes.

23 E. **Meal Period Premium Wages Class:** All current and former hourly non-  
24 exempt employees employed by Defendants in California at any time from January 22, 2017  
25 through the date notice is mailed to a certified class who received additional remuneration during  
26 pay periods in which they were paid meal period premium wages and whose regular rate of pay  
27 did not include such additional remuneration when Defendants calculated those employees' meal  
28 period premium wages.

1                   F.       **Rest Period Class:** All current and former hourly non-exempt employees  
2 employed by Defendants in California at any time from January 22, 2017 through the date notice  
3 is mailed to a certified class who worked shifts of at least three-and-a-half (3.5) hours who did not  
4 receive all required duty-free rest periods of a net ten (10) minutes for every four (4) hours worked  
5 or major fraction thereof.

6                   G.       **Rest Period Premium Wages Class:** All current and former hourly non-  
7 exempt employees employed by Defendants in California at any time from January 22, 2017  
8 through the date notice is mailed to a certified class who received additional remuneration during  
9 pay periods in which they were paid rest period premium wages and whose regular rate of pay did  
10 not include such additional remuneration when Defendants calculated those employees' rest  
11 period premium wages.

12                   H.       **Record Request Class:** All current and former hourly non-exempt  
13 employees employed by Defendants in California at any time from January 22, 2020 through the  
14 date notice is mailed to a certified class who requested their employment records from Defendants  
15 but were not provided the requested records within the statutory time period.

16                   I.       **Pay Day Class:** All current and former hourly non-exempt employees  
17 employed by Defendants in California at any time from January 22, 2017 through the date notice  
18 is mailed to a certified class who were not timely paid earned wages during their employment.

19                   J.       **Wage Statement Class:** All current and former hourly non-exempt  
20 employees employed by Defendants in California at any time from January 22, 2020 through the  
21 date notice is mailed to a certified class who received inaccurate or incomplete wage and hour  
22 statements.

23                   K.       **Waiting Time Class:** All current and former hourly non-exempt employees  
24 employed by Defendants in California at any time from January 22, 2018 through the date notice  
25 is mailed to a certified class who did not receive payment of all unpaid wages upon separation of  
26 employment within the statutory time period.

27                   L.       **California Class:** All aforementioned classes are herein collectively  
28 referred to as the "California Class."

1           54.     There is a well-defined community of interest in the litigation and the classes are  
2 ascertainable:

3                 A.     **Numerosity:** While the exact number of class members in each class is  
4 unknown to Plaintiffs at this time, the Plaintiffs classes are so numerous that the individual joinder  
5 of all members is impractical under the circumstances of this case.

6                 B.     **Common Questions Predominate:** Common questions of law and fact  
7 exist as to all members of the Plaintiffs classes and predominate over any questions that affect  
8 only individual members of each class. The common questions of law and fact include, but are not  
9 limited to:

10                    i.     Whether Defendants violated Labor Code sections 1194, 1194.2,  
11 and 1197 by not paying minimum and straight time wages for all time that the Minimum and  
12 Straight Time Wage Class Members were subject to Defendants' control;

13                    ii.    Whether Defendants violated Labor Code sections 510 and 1194 by  
14 not paying the Overtime Class Members at the applicable overtime rate for working in excess of  
15 eight (8) hours in a workday, in excess of forty (40) hours in a workweek, and/or seven (7) days in  
16 a workweek;

17                    iii.   Whether Defendants violated Labor Code sections 510 and 1194 by  
18 not including all remuneration when calculating the Regular Rate Class Members' overtime rate of  
19 pay;

20                    iv.   Whether Defendants violated Labor Code sections 512 and 226.7, as  
21 well as the applicable Wage Order, by employing the Meal Period Class Members and Meal  
22 Period Premium Class Members without providing all required and compliant meal periods,  
23 paying meal period premium wages, and/or not including all remuneration when paying meal  
24 period premium wages;

25                    v.     Whether Defendants violated Labor Code section 226.7 by  
26 employing the Rest Period Class Members and Rest Period Premium Wages Class Members  
27 without providing all required and compliant rest periods, paying rest period premium wages,  
28 and/or not including all remuneration when paying rest period premium wages;

vi. Whether Defendants failed to provide Record Request Class Members with their requested employment records within the statutory time period;

vii. Whether Defendants violated Labor Code section 204 by employing Pay Day Class Members without timely paying them all earned wages during their employment;

viii. Whether Defendants failed to provide the Wage Statement Class Members with accurate itemized statements at the time they received their itemized statements;

ix. Whether Defendants failed to provide the Waiting Time Class Members with all of their earned wages upon separation of employment within the statutory time period;

x. Whether Defendants committed unlawful business acts or practice within the meaning of Business and Professions Code sections 17200, *et seq.*;

xi. Whether Class Members are entitled to unpaid wages, penalties, and other relief pursuant to their claims;

xii. Whether, as a consequence of Defendants' unlawful conduct, the Class Members are entitled to restitution, and/or equitable relief; and

xiii. Whether Defendants' affirmative defenses, if any, raise any common issues of law or fact as to Plaintiffs and as to Class Members as a whole.

C. **Typicality:** Plaintiffs' claims are typical of the claims of the class members in each of the classes. Plaintiffs and members of the Minimum and Straight Time Wage Class sustained damages arising out of Defendants' failure to pay minimum and straight time wages for all time the employees were subject to Defendants' control. Plaintiffs and members of the Overtime Class and Regular Rate Class sustained damages arising out of Defendants' failure to pay overtime wages for overtime hours worked and overtime wages and the proper overtime rate of pay due to failure to include all remuneration therein. Plaintiffs and members of the Meal Period Class and Meal Period Premium Wages Class sustained damages arising out of Defendants' failure to authorize or permit all required and compliant meal periods, failure to pay meal period premium wages as compensation, and/or failure to pay meal period premiums wages at the regular rate of pay. Plaintiffs and members of the Rest Period Class and Rest Period

1 Premium Wages Class sustained damages arising out of Defendants' failure to authorize or permit  
2 all required and compliant rest periods, failure to pay meal period premium wages as  
3 compensation, and/or failure to pay meal period premiums wages at the regular rate of pay.  
4 Plaintiffs and members of the Record Request Class sustained damages from Defendants' failure  
5 to provide their requested employment records within the statutory time period. Plaintiffs and  
6 members of the Pay Day Class sustained damages arising out of Defendants' failure to timely pay  
7 them all wages earned during their employment in compliance with Labor Code section 204.  
8 Plaintiffs and members of the Wage Statement Class sustained damages arising out of Defendants'  
9 failure to furnish them with accurate itemized wage statements in compliance with Labor Code  
10 section 226. Plaintiffs and members of the Waiting Time Class sustained damages arising out of  
11 Defendants' failure to provide all unpaid yet earned wages due upon separation of employment  
12 within the statutory time limit.

13           D.       **Adequacy of Representation:** Plaintiffs will fairly and adequately protect  
14 the interests of the members of each class. Plaintiffs have no interest that is adverse to the interests  
15 of the other class members.

16           E.       **Superiority:** A class action is superior to other available means for the fair  
17 and efficient adjudication of this controversy. Because individual joinder of all members of each  
18 class is impractical, class action treatment will permit a large number of similarly situated persons  
19 to prosecute their common claims in a single forum simultaneously, efficiently, and without the  
20 unnecessary duplication of effort and expense that numerous individual actions would engender.  
21 The expenses and burdens of individual litigation would make it difficult or impossible for  
22 individual members of each class to redress the wrongs done to them, while important public  
23 interests will be served by addressing the matter as a class action. The cost to and burden on the  
24 court system of adjudication of individualized litigation would be substantial, and substantially  
25 more than the costs and burdens of a class action. Individualized litigation would also present the  
26 potential for inconsistent or contradictory judgments.

27           F.       **Public Policy Consideration:** Employers throughout the state violate wage  
28 and hour laws. Current employees often are afraid to assert their rights out of fear of direct or

1 indirect retaliation. Former employees fear bringing actions because they perceive their former  
2 employers can blacklist them in their future endeavors with negative references or by other means.  
3 Class actions provide the class members who are not named in the Complaint with a type of  
4 anonymity that allows for vindication of their rights.

5 **FIRST CAUSE OF ACTION**

6 **FAILURE TO PAY MINIMUM AND STRAIGHT TIME WAGES FOR ALL HOURS OF**  
7 **WORK IN VIOLATION OF LABOR CODE SECTIONS 1194, 1194.2 AND 1197**

8 **(Against All Defendants by Plaintiffs and the Minimum and Straight Time Wage Class)**

9 55. Plaintiffs hereby incorporate by reference paragraphs 1-52 above, as if fully set  
10 forth below.

11 56. At all times relevant to this Complaint, Plaintiffs and the Minimum and Straight  
12 Time Wage Class were hourly non-exempt employees of Defendants.

13 57. Pursuant to Labor Code sections 1194, 1197, and the Wage Order, Plaintiffs and  
14 the Minimum and Straight Time Wage Class are entitled to receive wages for all hours worked,  
15 i.e., all time they were subject to Defendants' control, and those wages must be paid at least at the  
16 minimum wage rate in effect during the time the employees earned the wages.

17 58. Pursuant to California Labor Code § 1194.2, Plaintiffs and the Minimum and  
18 Straight Time Wage Class are entitled to recover liquidated damages (double damages) for  
19 Defendants' failure to pay minimum wages.

20 59. Defendants' policies, practices, and/or procedures required Plaintiffs and the  
21 Minimum and Straight Time Wage Class to be engaged, suffered, or permitted to work without  
22 being paid wages for all of the time in which they were subject to Defendants' control.

23 60. Defendants employed policies, practices, and/or procedures including, but not  
24 limited to, rounding" down or "shaving" Plaintiffs' and the Minimum and Straight Time Wage  
25 Class' total daily hours at the time of their clock-in and clock-out to the nearest quarter of an hour,  
26 to the benefit of Defendants. Plaintiffs and the Minimum and Straight Time Wage Class were not  
27 paid for this time resulting in Defendants' failure to pay minimum and straight time wages for all  
28 the hours Plaintiffs and the Minimum and Straight Time Wage Class worked.

61. As a result of Defendants' unlawful conduct, Plaintiffs and the Minimum and Straight Time Wage Class have suffered damages in an amount subject to proof, to the extent that they were not paid minimum and straight time wages for all hours worked.

62. Pursuant to Labor Code sections 1194 and 1194.2, Plaintiffs and the Minimum and Straight Time Wage Class are entitled to recover unpaid minimum wage, interest thereon, liquidated damages in the amount of their unpaid minimum wage, and attorneys' fees and costs.

## **SECOND CAUSE OF ACTION**

### **FAILURE TO PAY OVERTIME WAGES, IN VIOLATION OF LABOR CODE**

#### **SECTIONS 510, 1194, and 1198**

#### **(Against All Defendants by Plaintiffs, the Overtime Class, and the Regular Rate Class)**

63. Plaintiffs hereby incorporate by reference paragraphs 1-62 above, as if fully set forth below.

64. At times relevant to this Complaint, Plaintiffs, the Overtime Class, and the Regular Rate Class were hourly non-exempt employees of Defendants, covered by Labor Code sections 510 and 1194 and the Wage Order 6.

65. Pursuant to Labor Code sections 510 and 1194 and the Wage Order 6, hourly non-exempt employees are entitled to receive a higher rate of pay for all hours worked in excess of eight (8) hours in a workday, forty (40) hours in a workweek, and on the seventh day of work in a workweek.

66. Labor Code section 510, subdivision (a), states in relevant part:

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 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. Nothing in this section requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work.

///

1           67. Further, Labor Code section 1198 provides,

2           The maximum hours of work and the standard conditions of labor fixed by the  
3           commission shall be the maximum hours of work and the standard conditions of  
4           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.

5           68. Overtime is based upon an employee's regular rate of pay. "The regular rate at  
6           which an employee is employed shall be deemed to include all remuneration for employment paid  
7           to, or on behalf, of the employee." *See* Division of Labor Standards Enforcement – Enforcement  
8           Policies and Interpretations Manual, Section 49.1.2.

9           69. Despite California law requiring employers to pay employees a higher rate of pay  
10          for all hours worked more than eight (8) hours in a workday, more than forty (40) hours in a  
11          workweek, and on the seventh day of work in a workweek, Defendants failed to pay all overtime  
12          wages to Plaintiffs and the Overtime Class for their daily overtime hours worked.

13          70. Specifically, Defendants' employed policies, practices, and/or procedures  
14          including, but not limited to, "rounding" down or "shaving" Plaintiffs' and the Overtime Class'  
15          total daily hours at the time of their clock-in and clock-out to the nearest quarter of an hour, to the  
16          benefit of Defendants. Plaintiffs and the Overtime Class were not paid for this time.

17          71. To the extent that the foregoing unpaid time resulted from Plaintiffs and the  
18          Overtime Class being subject to the control of Defendants when they worked more than eight (8)  
19          hours in a workday, more than forty (40) hours in a workweek, and/or seven days in a workweek,  
20          Defendants failed to pay them at their overtime rate of pay for all the overtime hours they worked.

21          72. Further, Defendant maintained a policy, practice, and/or procedure of excluding  
22          Plaintiffs' and the Regular Rate Class additional remuneration, including but not limited to bonus  
23          pay, in calculating their overtime rate of pay. This practice resulted in Defendant paying Plaintiffs  
24          and the Regular Rate Class less overtime than they earned when they worked more than eight (8)  
25          hours in a workday, more than forty (40) hours in a workweek, and/or seven days in a workweek,  
26          in violation of California law.

27          73. As a result of Defendants' unlawful conduct, Plaintiffs, the Overtime Class, and the  
28          Regular Rate Class have suffered damages in an amount subject to proof, to the extent that they

1 were not paid at their overtime rate of pay for all hours worked which constitute overtime.

2 74. Pursuant to Labor Code section 1194, Plaintiffs, the Overtime Class, and the  
3 Regular Rate Class are entitled to recover the full amount of their unpaid overtime wages,  
4 prejudgment interest, and attorneys' fees and costs.

5 **THIRD CAUSE OF ACTION**

6 **FAILURE TO AUTHORIZE OR PERMIT MEAL PERIODS IN VIOLATION OF LABOR**  
7 **CODE SECTIONS 512 AND 226.7**

8 **(Against All Defendants by Plaintiffs, the Meal Period Class, and the Meal Period Premium**  
9 **Wages Class)**

10 75. Plaintiffs hereby incorporate by reference paragraphs 1-74 above, as if fully set  
11 forth below.

12 76. At all times relevant to this Complaint, Plaintiffs, the Meal Period Class, and the  
13 Meal Period Premium Wages Class were hourly non-exempt employees of Defendants, covered  
14 by Labor Code sections 512 and 226.7 and the Wage Order.

15 77. California law requires an employer to authorize or permit an employee an  
16 uninterrupted meal period of no less than thirty (30) minutes in which the employee is relieved of  
17 all duties and the employer relinquishes control over the employee's activities no later than the  
18 end of the employee's fifth hour of work and a second meal period no later than the employee's  
19 tenth hour of work. Labor Code sections 226.7, 512; Wage Order 6, §11; *Brinker Rest. Corp. v.*  
20 *Super Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004. If the employer requires the employee to remain at  
21 the work site or facility during the meal period, the meal period must be paid. This is true even  
22 where the employee is relieved of all work duties during the meal period. *Bono Enterprises, Inc. v.*  
23 *Bradshaw* (1995) 32 Cal.App.4th 968. Labor Code section 226.7 provides that if an employee  
24 does not receive a required meal or rest period that "the employer shall pay the employee one  
25 additional hour of pay at the employee's regular rate of compensation for each work day that the  
26 meal or rest period is not provided."

27 78. If an employer fails to provide an employee a meal period in accordance with the  
28 law, the employer must pay the employee one (1) hour of pay at the employee's regular rate of pay

1 for each workday that a legally required and compliant meal period was not provided. (Labor  
2 Code section 226.7; Wage Order 6 at §11).

3 79. In this case, Plaintiffs and the Meal Period Class worked shifts long enough to  
4 entitle them to meal periods under California law. Nevertheless, Defendants employed policies,  
5 practices, and/or procedures that resulted in their failure to authorize or permit meal periods to  
6 Plaintiffs and the Meal Period Class of no less than thirty (30) minutes for each five-hour period of  
7 work as required by law. Such policies, practices, and/or procedures included, but were not limited  
8 to, failing to authorize or permit Plaintiffs and the Meal Period Class a timely uninterrupted duty-  
9 free meal period of no less than thirty (30) minutes prior to the employee's sixth (6<sup>th</sup>) hour of  
10 work.

11 80. Additionally, Defendants failed to pay Plaintiffs and the Meal Period Class one (1)  
12 hour of pay at their regular rate of pay for each workday they did not receive all legally required  
13 and legally compliant meal periods. Defendants lacked a policy and procedure for compensating  
14 Plaintiffs and the Meal Period Class with premium wages when they did not receive all legally  
15 required and legally compliant meal periods.

16 81. Further, during pay periods that Defendants paid Plaintiffs and the Meal Period  
17 Premium Wages Class earned additional remuneration, such as, for example, bonus compensation,  
18 and meal period premium wages for missed, late, short, or interrupted meal periods, Defendants  
19 failed to pay the meal period premium wages at one (1) hour of pay at the employees' regular rate  
20 of pay due to Defendants' failure to include all remuneration when calculating Plaintiffs' and the  
21 Meal Period Premium Wages Class' regular rate of pay for the purpose of paying premium wages.  
22 This practice resulted in Plaintiffs, the Meal Period Class, and the Meal Period Premium Wages  
23 Class not receiving premium wages they earned at the proper regular rate.

24 82. The aforementioned policies, practices, and/or procedures of Defendants resulted in  
25 Plaintiffs, the Meal Period Class and the Meal Period Premium Wages Class not being provided  
26 with all legally required and compliant meal periods and/or not receiving premium wages at the  
27 proper regular rate to compensate them for such instances, all in violation of California law.

28 ///

83. Defendants' unlawful conduct alleged herein occurred in the course of employment of Plaintiffs and the Meal Period Class and such conduct has continued through the filing of this Complaint.

84. Because Defendants failed to provide employees with meal periods in compliance with the law, Defendants are liable to Plaintiffs, the Meal Period Class, and the Meal Period Premium Wages Class for one (1) hour of additional pay at the regular rate of compensation for each workday that Defendant did not provide all legally required and legally compliant meal periods, pursuant to Labor Code section 226.7 and the Wage Order.

85. Plaintiffs, on behalf of themselves, the Meal Period Class, and the Meal Period Premium Wages Class, seeks damages and all other relief allowable, including a meal period premium wage for each workday Defendants failed to provide all legally required and legally compliant meal periods, plus pre-judgment interest.

#### **FOURTH CAUSE OF ACTION**

#### **FAILURE TO AUTHORIZE OR PERMIT REQUIRED REST PERIODS IN VIOLATION OF LABOR CODE SECTION 226.7 (Against All Defendants by Plaintiffs, the Rest Period Class, and the Rest Period Premium Wages Class)**

86. Plaintiffs hereby incorporate by reference paragraphs 1-85 above, as if fully set forth below.

87. At all times relevant to this Complaint, Plaintiffs, the Rest Period Class, and the Rest Period Premium Wages Class were employees of Defendants, covered by Labor Code section 226.7 and Wage Order 6.

88. California law requires that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof...." Wage Order 6, §12. Employees are entitled to 10 minutes rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more than six hours up to 10 hours, 30 minutes for shifts of more than 10

1 hours up to 14 hours, and so on.” *Brinker Restaurant Corp. v. Sup. Ct. (Hohnbaum)* (2012) 53  
2 Cal.4th 1004, 1029; Labor Code §226.7. Additionally, the rest period requirement “obligates  
3 employers to permit – and authorizes employees to take – off-duty rest periods.” *Augustus v. ABM*  
4 *Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. That is, during rest periods employers must  
5 relieve employees of all duties and relinquish control over how employees spend their time. *Id.* If  
6 an employer fails to provide an employee a rest period in accordance with the applicable  
7 provisions of this Order, the employer shall pay the employee one (1) hour of pay at the  
8 employee’s regular rate of compensation for each work day that the rest period is not provided.”  
9 Wage Order 6, §12; Labor Code §226.7.

10 89. If an employer fails to provide an employee a rest period in accordance with the  
11 law, the employer must pay the employee one (1) hour of pay at the employee’s regular rate of pay  
12 for each workday that a legally required and compliant rest period was not provided. (Labor Code  
13 section 226.7; Wage Order 6 at §12).

14 90. In this case, Plaintiffs and the Rest Period Class regularly worked shifts of more  
15 than three-and-a-half (3.5) hours. Nevertheless, Defendants employed policies, practices, and/or  
16 procedures that resulted in their failure to authorize or permit all legally required and compliant  
17 rest periods to Plaintiffs and the Rest Period Class. Such policies, practices, and/or procedures  
18 included, but were not limited to, Defendants’ policy, practice, and/or procedure of requiring  
19 Plaintiffs, the Rest Period Class, and the Rest Period Premium Wages Class to travel to and from a  
20 designated area during their rest periods, resulting in rest periods that were not duty-free and/or  
21 were less than a net ten (10) minutes.

22 91. Defendants also failed to pay premium wages to Plaintiffs and members of the Rest  
23 Period Class to compensate them for each workday the employees did not receive all legally  
24 required and compliant rest periods. Defendants employed policies and procedures which ensured  
25 that employees did not receive any rest period premium wages to compensate them for workdays  
26 in which they did not receive all legally required and compliant rest periods.

27 92. This practice resulted in Defendants failing to pay Plaintiffs and the Rest Period  
28 Class premium wages to compensate them for workdays in which Defendants did not provide

1 Plaintiffs and the Rest Period Class with all required rest periods of a net ten (10) minutes, in  
2 violation of California law.

3 93. Further, during pay periods that Defendants paid Plaintiffs and the Rest Period  
4 Premium Wages Class earned remuneration, such as bonus compensation, and rest period  
5 premium wages for missed, late, short, or interrupted rest periods, Defendants failed to pay the rest  
6 period premium wages at one (1) hour of pay at the employees' regular rate of pay due to  
7 Defendants' failure to include all remuneration when calculating Plaintiffs' and the Rest Period  
8 Premium Wages Class' regular rate of pay for the purpose of paying premium wages. This  
9 practice resulted in Plaintiffs and the Rest Period Premium Wages Class not receiving premium  
10 wages they earned at the proper regular rate.

11 94. Defendants' unlawful conduct alleged herein occurred in the course of employment  
12 of Plaintiffs and the Rest Period Class and such conduct has continued through the filing of this  
13 Complaint.

14 95. Because Defendants failed to provide employees with rest periods in compliance  
15 with the law, Defendants are liable to Plaintiffs, the Rest Period Class, and the Rest Period  
16 Premium Wages Class for one (1) hour of additional pay at the regular rate of compensation for  
17 each workday that Defendants did not provide all legally required and legally compliant rest  
18 periods, pursuant to Labor Code section 226.7 and the Wage Order.

19 96. Plaintiffs, on behalf of themselves, the Rest Period Class, and the Rest Period  
20 Premium Wages Class seeks damages and all other relief allowable, including a rest period  
21 premium wage for each workday Defendants failed to provide all legally required and legally  
22 compliant rest periods, plus pre-judgment interest.

23 **FIFTH CAUSE OF ACTION**

24 **FAILURE TO PRODUCE REQUESTED EMPLOYMENT RECORDS IN VIOLATION**  
25 **OF LABOR CODE SECTIONS 226 AND 1198.5**

26 **(Against All Defendants by Plaintiffs and the Record Request Class)**

27 97. Plaintiffs hereby incorporate by reference paragraphs 1-96 above, as if fully set  
28 forth below.

1           98.     An employer must afford current and former employees the right to inspect or  
2 receive a copy of records pertaining to their employment, upon reasonable request to the  
3 employer. Labor Code section 226(b). An employer who receives a request to inspect or receive a  
4 copy of records pertaining to a current or former employee must comply with the request as soon  
5 as practicable, but no later than twenty-one (21) calendar days from the date of the request. Labor  
6 Code §226(c). Additionally, every current and former employee, or his or her representative, has  
7 the right to inspect and receive a copy of the personnel records that the employer maintains  
8 relating to the employee's performance or to any grievance concerning the employee. Labor Code  
9 §1198.5(a). Upon written request from a current or former employee or his or her representative,  
10 an employer must make the contents of those personnel records available for inspection or provide  
11 a copy of the personnel records to the current or former employee, or his or her representative, not  
12 later than thirty (30) calendar days from the date the employer receives the written request, subject  
13 to some limited exceptions. Labor Code §1198.5(b)(1). Failure to comply with these requests  
14 allows for a civil penalty seven hundred fifty dollars (\$750), pursuant to Labor Code sections  
15 1198.5(k) and 226(f).

16           99.     Plaintiffs and the Record Request Class are current and former employees of  
17 Defendants.

18           100.    On September 14, 2020, Plaintiff Saul Hernandez Mejia sent a written request  
19 through his counsel to Defendants for his payroll records, timecards, and personnel records  
20 pursuant to Labor Code sections 226 and 1198.5. However, Defendants failed to timely produce  
21 the requested employment records, in violation of Labor Code sections 226 and 1198.5.  
22 Defendants have not produced any of the requested employment records as of the date of this  
23 Complaint.

24           101.    On October 16, 2020, December 4, 2020, and January 13, 2021, Plaintiff Manuel  
25 Enriquez sent written requests through his counsel to Defendants for his personnel file, pay  
26 records, wage statements, timekeeping records, and other employment-related documents pursuant  
27 to Labor Code section 226 and 1198.5. However, Defendants failed to timely produce the  
28 requested employment records, in violation of Labor Code sections 226 and 1198.5. Defendants

1 have not produced any of the requested employment records for Mr. Enriquez as of the date of this  
2 Complaint.

3 102. Plaintiffs are informed and believe and thereon allege that Record Request Class  
4 also sent written requests for their employment records, but Defendants failed to timely produce  
5 the required and requested records, in violation of Labor Code section 226 and 1198.5.

6 103. Pursuant to Labor Code section 1198.5, Plaintiffs and the Record Request Class are  
7 entitled to a penalty of seven hundred fifty dollars (\$750) from Defendants, injunctive relief in the  
8 form of compliance with section 1198.5, and attorneys' fees and costs.

9 Pursuant to Labor Code section 226, Plaintiffs and the Record Request Class are entitled to a  
10 penalty of seven hundred fifty dollars (\$750) from Defendants, injunctive relief in the form of  
11 compliance with section 226, and attorneys' fees and costs.

12 **SIXTH CAUSE OF ACTION**

13 **FAILURE TO TIMELY PAY EARNED WAGES DURING EMPLOYMENT IN**  
14 **VIOLATION OF LABOR CODE SECTION 204**

15 **(Against All Defendants by Plaintiffs and the Pay Day Class)**

16 104. Plaintiffs hereby incorporate by reference paragraphs 1-103 above, as if fully set  
17 forth below.

18 105. Plaintiffs and the Pay Day Class have been employed by Defendants in the State of  
19 California. In California, wages must be paid at least twice during each calendar month on days  
20 designated in advance by the employer as regular paydays, subject to some exceptions. Labor  
21 Code §204(a). Wages earned between the 1st and 15th days, inclusive, of any calendar month  
22 must be paid between the 16th and the 26th day of that month and wages earned between the 16th  
23 and the last day, inclusive, of any calendar month must be paid between the 1st and 10th day of  
24 the following month. *Id.* Other payroll periods such as those that are weekly, biweekly, or  
25 semimonthly, must be paid within seven (7) calendar days following the close of the payroll  
26 period in which wages were earned. Labor Code §204(d).

27 106. As a derivative of Plaintiffs' claims above, Plaintiffs allege that Defendants failed  
28 to timely pay Plaintiffs' and the Pay Day Class' earned wages (including minimum and straight

1 time wages, overtime wages, overtime wages at the proper overtime rate, meal period premium  
2 wages, meal period premium wages at the proper regular rate, rest period premium wages and/or  
3 rest period premium wages at the proper regular rate), in violation of Labor Code section 204.

4 107. Defendants' aforementioned policies, practices, and/or procedures resulted in their  
5 failure to pay Plaintiffs and the Pay Day Class their earned wages within the applicable time  
6 frames outlined in Labor Code section 204.

7 108. Defendants' failure to timely pay Plaintiffs and the Pay Day Class their earned  
8 wages in accordance with Labor Code section 204 was willful. Defendants had the ability to  
9 timely pay all wages earned by hourly workers in accordance with Labor Code section 204, but  
10 intentionally adopted policies or practices incompatible with the requirements of Labor Code  
11 section 204. When Defendants failed to timely pay Plaintiffs and the Pay Day Class all earned  
12 wages, they knew what they were doing and intended to do what they did.

13 109. As a result of Defendants' unlawful conduct, Plaintiffs and the Pay Day Class have  
14 suffered damages in an amount subject to proof, to the extent that they were not timely paid their  
15 earned wages pursuant to Labor Code section 204.

16 110. Pursuant to Labor Code section 210, Plaintiffs and the Pay Day Class are entitled to  
17 recover civil penalties as follows: (1) for any initial violation, one hundred dollars (\$100) for each  
18 failure to pay each employee; and (2) for each subsequent violation, or any willful or intentional  
19 violation, two hundred dollars (\$200) for each failure to pay each employee, plus twenty-five  
20 (25%) percent of the amount unlawfully withheld.

## 21 **SEVENTH CAUSE OF ACTION**

### 22 **FAILURE TO PROVIDE COMPLETE AND ACCURATE WAGE STATEMENTS IN** 23 **VIOLATION OF LABOR CODE SECTION 226**

#### 24 **(Against All Defendants by Plaintiffs and the Wage Statement Class)**

25 111. Plaintiffs hereby incorporate by reference paragraphs 1-110 above, as if fully set  
26 forth below.

27 112. At all times relevant to this Complaint, Plaintiffs and the Wage Statement Class  
28 were hourly, non-exempt employees of Defendants, covered by Labor Code section 226.

113. Pursuant to Labor Code section 226, subdivision (a), Plaintiffs and the Wage Statement Class were entitled to receive, semimonthly or at the time of each payment of wages, an itemized wage statement accurately stating the following:

(1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

114. Defendants committed direct violations of Labor Code section 226, through their policies, practices, and/or procedures, including, but not limited to failing to provide Plaintiffs and the Wage Statement Class accurate itemized wage statements showing (1) the shift differential in Plaintiffs' and the Wage Statement Class' pay; (2) the overtime rate; (3) the beginning date of the pay period; and (4) the total hours worked by Plaintiffs and the Wage Statement Class in a given pay period.

115. Additionally, as a derivative of Defendants' claims above, Plaintiffs allege that Defendants failed to provide accurate wage and hour statements to them and the Wage Statement Class who were subject to Defendants' control for uncompensated time and who did not receive all their earned wages (including minimum and straight time wages, overtime wages, overtime wages at the proper overtime rate, meal period premium wages, meal period premium wages at the proper regular rate, rest period premium wages and/or rest period premium wages at the proper regular rate), in violation of Labor Code section 226.

116. Defendants provided Plaintiffs and the Wage Statement Class with itemized statements which stated inaccurate information including, but not limited to, the number of hours worked, the gross wages earned, and the net wages earned.

///

1           117. Defendants' failure to provide Plaintiffs and the Wage Statement Class with  
2 accurate wage statements was knowing and intentional. Defendants had the ability to provide  
3 Plaintiffs and the Wage Statement Class with accurate wage statements but intentionally provided  
4 wage statements they knew were not accurate. Defendants knowingly and intentionally put in  
5 place practices which deprived employees of wages and resulted in Defendants knowingly and  
6 intentionally providing inaccurate wage statements. These practices included Defendants' failure  
7 to include all hours worked and all wages due.

8           118. As a result of Defendants' unlawful conduct, Plaintiffs and the Wage Statement  
9 Class have suffered injury. The absence of accurate information on their wage statements has  
10 prevented earlier challenges to Defendants' unlawful pay practices, will require discovery and  
11 mathematical computations to determine the amount of wages owed, and will cause difficulty and  
12 expense in attempting to reconstruct time and pay records. Defendants' conduct led to the  
13 submission of inaccurate information about wages and amounts deducted from wages to state and  
14 federal government agencies. As a result, Plaintiffs and the Wage Statement Class are required to  
15 participate in this lawsuit and create more difficulty and expense for Plaintiffs and the Wage  
16 Statement Class from having to reconstruct time and pay records than if Defendants had complied  
17 with their legal obligations.

18           119. Pursuant to Labor Code section 226(e), Plaintiffs and the Wage Statement Class are  
19 entitled to recover fifty (50) dollars per employee for the initial pay period in which a section 226  
20 violation occurred and one hundred dollars per employee per violation for each subsequent pay  
21 period, not to exceed an aggregate penalty of four thousand (4,000) dollars per employee.

22           120. Pursuant to Labor Code section 226(h), Plaintiffs and the Wage Statement Class are  
23 entitled to bring an action for injunctive relief to ensure Defendants' compliance with Labor Code  
24 section 226(a). Injunctive relief is warranted because Defendants continue to provide currently  
25 employed Wage Statement Class members with inaccurate wage statements in violation of Labor  
26 Code section 226(a) and currently employed Wage Statement Class members have no adequate  
27 legal remedy for the continuing injuries that will be suffered as a result of Defendants' ongoing  
28 unlawful conduct. Injunctive relief is the only remedy available for ensuring Defendants'

1 compliance with Labor Code section 226(a).

2 121. Pursuant to Labor Code sections 226(e) and 226(h), Plaintiffs and the Wage  
3 Statement Class are entitled to recover the full amount of penalties due under Section 226(e),  
4 reasonable attorneys' fees, and costs of suit.

5 **EIGHTH CAUSE OF ACTION**

6 **FAILURE TO PAY ALL WAGES TIMELY UPON SEPARATION OF EMPLOYMENT**  
7 **IN VIOLATION OF LABOR CODE SECTIONS 201, 202, AND 203**

8 **(Against All Defendants by Plaintiffs and the Waiting Time Class)**

9 122. Plaintiffs hereby incorporate by reference paragraphs 1-121 above, as if fully set  
10 forth below.

11 123. At all times relevant to this Complaint, Plaintiffs and the Waiting Time Class were  
12 employees of Defendants, covered by Labor Code sections 201 and 202.

13 124. An employer is required to pay all unpaid wages timely after an employee's  
14 employment ends. The wages are due immediately upon termination or within seventy-two (72)  
15 hours of resignation. Labor Code §§201, 202. If an employee gave seventy-two (72) hours  
16 previous notice, they were entitled to payment of all wages earned and unpaid at the time of  
17 resignation. *Id.*

18 125. Defendants failed to pay Plaintiffs and on information and belief, the Waiting Time  
19 Class, with all wages earned and unpaid prior to separation of employment, in accordance with  
20 either Labor Code section 201 or 202. Plaintiffs are informed and believe and thereon allege that  
21 at all relevant times within the limitations period applicable to this cause of action, Defendants  
22 maintained a policy or practice of not paying hourly employees all earned wages timely upon  
23 separation of employment.

24 126. Defendants' failure to pay Plaintiffs and the Waiting Time Class with all wages  
25 earned prior to separation of employment timely in accordance with Labor Code sections 201 and  
26 202 was willful. Defendants had the ability to pay all wages earned by hourly workers prior to  
27 separation of employment in accordance with Labor Code sections 201 and 202, but intentionally  
28 adopted policies or practices incompatible with the requirements of Labor Code sections 201 and

202. Defendants' practices include failing to pay minimum and straight time wages for all time worked, overtime wages for all overtime hours worked, overtime wages at the proper overtime rate, meal period premium wages, meal period premium wages at the proper regular rate, rest period premium wages and/or rest period premium wages at the proper regular rate. When Defendants failed to pay Plaintiffs and the Waiting Time Class all earned wages timely upon separation of employment, they knew what they were doing and intended to do what they did.

127. Pursuant to either Labor Code section 201 or 202, Plaintiffs and the Waiting Time Class are entitled to all wages earned prior to separation of employment that Defendants have yet to pay them.

128. Pursuant to Labor Code section 203, Plaintiffs and the Waiting Time Class are entitled to continuation of their wages, from the day their earned and unpaid wages were due until paid, up to a maximum of thirty (30) days.

129. As a result of Defendants' conduct, Plaintiffs and the Waiting Time Class have suffered damages in an amount, subject to proof, to the extent they were not paid for all wages earned prior to separation.

130. As a result of Defendants' conduct, Plaintiffs and the Waiting Time Class have suffered damages in an amount, subject to proof, to the extent they were not paid all continuation wages owed under Labor Code section 203.

131. Plaintiffs and the Waiting Time Class are entitled to recover the full amount of their unpaid wages, continuation wages under Labor Code section 203, and interest thereon.

132. Pursuant to Labor Code sections 218.5, 218.6 and 1194, the Class is also entitled to an award of reasonable attorneys' fees, interest, expenses, and costs incurred in this action.

### **NINTH CAUSE OF ACTION**

### **UNFAIR BUSINESS PRACTICES, IN VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200, et seq.**

#### **(Against All Defendants by Plaintiffs and the California Class)**

133. Plaintiffs hereby incorporate by reference paragraphs 1-132 above, as if fully set forth below.

1           134. The unlawful conduct of Defendants alleged herein constitutes unfair competition  
2 within the meaning of Business and Professions Code section 17200. This unfair conduct includes  
3 Defendants' use of policies, practices, and/or procedures which resulted in: failure to pay  
4 employees minimum and straight time wages for all hours which they worked; failure to pay  
5 overtime wages for all overtime hours worked; failure to pay reporting time pay; failure to  
6 authorize or permit all legally required and compliant meal periods or pay meal period premium  
7 wages; failure to authorize or permit all legally required and compliant rest periods or pay rest  
8 period premium wages; failure to timely produce requested employment records; failure to timely  
9 pay wages; failure to provide accurate wage and hour statements; and failure to timely pay all  
10 wages due upon separation of employment. Due to their unfair and unlawful business practices in  
11 violation of the Labor Code, Defendants have gained a competitive advantage over other  
12 comparable companies doing business in the State of California that comply with their obligations  
13 to pay minimum and straight time wages for all hours worked; pay overtime wages for all  
14 overtime hours worked; pay reporting time pay; authorize or permit all legally required and  
15 compliant meal periods or pay meal period premium wages; authorize or permit all legally  
16 required and compliant rest periods or pay rest period premium wages; timely produce requested  
17 employment records; timely pay wages; provide accurate wage and hour statements; and timely  
18 pay all wages due upon separation of employment.

19           135. As a result of Defendants' unfair competition as alleged herein, Plaintiffs and the  
20 California Class have suffered injury in fact and lost money or property, as described in more  
21 detail above.

22           136. Pursuant to Business and Professions Code section 17203, Plaintiffs and the  
23 California Class are entitled to restitution of all wages and other monies rightfully belonging to  
24 them that Defendants failed to pay and wrongfully retained by means of their unlawful and unfair  
25 business practices. Plaintiffs also seek an injunction against Defendants on behalf of the California  
26 Class enjoining Defendants, and any and all persons acting in concert with them, from engaging in  
27 each of the unlawful policies, practices, and/or procedures set forth herein.

28   ///

**TENTH CAUSE OF ACTION**

**CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT OF 2004 IN  
VIOLATION OF LABOR CODE 2698, ET SEQ.**

**(Against All Defendants by Plaintiffs)**

137. Plaintiffs Saul Hernandez Mejia and Manuel Enriquez hereby incorporate by reference paragraphs 1-136 above, as if fully set forth below.

138. At all times herein mentioned, Defendants were subject to the Labor Code of the State of California and the applicable Industrial Welfare Commission Orders.

139. California Labor Code § 2699(a) specifically provides for a private right of action to recover penalties for violations of the Labor Code: “Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.”

140. Plaintiffs Saul Hernandez Mejia and Manuel Enriquez have exhausted their administrative remedies pursuant to California Labor Code § 2699.3. On January 21, 2021, Plaintiff Saul Hernandez Mejia gave written notice by online filing to the Labor and Workforce Development Agency and by certified mail to Defendants of the specific provisions of the Labor Code that Defendants have violated against Plaintiff Manuel Enriquez and current and former aggrieved employees, including the facts and theories to support the violations. Plaintiff Saul Hernandez Mejia also paid the filing fee. On February 5, 2021, Plaintiff Manuel Enriquez gave written notice by online filing to the Labor and Workforce Development Agency and by certified mail to Defendants of the specific provisions of the Labor Code that Defendants have violated against Plaintiff Manuel Enriquez and current and former aggrieved employees, including the facts and theories to support the violations. Plaintiff Manuel Enriquez also paid the filing fee.

141. The Labor and Workforce Development Agency has not indicated that it intends to investigate Defendants’ Labor Code violations discussed in either notice. Accordingly, Plaintiffs

1 Saul Hernandez Mejia and Manuel Enriguez may commence a civil action to recover penalties  
2 under Labor Code § 2699 pursuant to § 2699.3 for the violations of the Labor Code described in  
3 this Complaint. These penalties include, but are not limited to, penalties under California Labor  
4 Code §§ 210, 226.3, 558, 1174.5, 1197.1, and 2699.

5 142. Based on the conduct described in this Complaint, Plaintiffs Saul Hernandez Mejia  
6 and Manuel Enriguez are entitled to an award of civil penalties on behalf of himself, the State of  
7 California, and similarly situated aggrieved employees of Defendants. The exact amount of the  
8 applicable penalties, in all, is in an amount to be shown according to proof at trial. These penalties  
9 are in addition to all other remedies permitted by law.

10 143. In addition, Plaintiffs seek an award of reasonable attorney's fees and costs  
11 pursuant to California Labor Code § 2699(g)(1), which states, "Any employee who prevails in any  
12 action shall be entitled to an award of reasonable attorney's fees and costs."

13 **PRAYER FOR RELIEF**

14 **WHEREFORE, PLAINTIFFS ON THEIR OWN BEHALF AND ON BEHALF OF**  
15 **THOSE SIMILARLY SITUATED, PRAY AS FOLLOWS:**

16 **ON THE FIRST, SECOND, THIRD, FOURTH, FIFTH, SIXTH, SEVENTH,**  
17 **EIGHTH, AND NINTH CAUSES OF ACTION:**

18 1. That the Court determine that this action may be maintained as a class action (for  
19 the entire California Class and/or any and all of the specified sub-classes) pursuant to Code of  
20 Civil Procedure section 382 and any other applicable law;

21 2. That the named Plaintiffs be designated as a class representatives for the California  
22 Class (and all sub-classes thereof);

23 3. For a declaratory judgment that the policies, practices, and/or procedures  
24 complained herein are unlawful; and

25 4. For an injunction against Defendants enjoining them, and any and all persons  
26 acting in concert with them, from engaging in each of the unlawful policies, practices, and/or  
27 procedures set forth herein.

28 ///

**ON THE FIRST CAUSE OF ACTION:**

1. That Defendants be found to have violated the minimum wage provisions of the Labor Code and the IWC Wage Order as to Plaintiffs and the Minimum and Straight Time Wage Class;
2. For damages, according to proof, including but not limited to unpaid wages;
3. For any and all legally applicable penalties;
4. For liquidated damages pursuant to Labor Code section 1194.2;
5. For pre-judgment interest, including but not limited to that recoverable under Labor Code section 1194, and post-judgment interest;
6. For attorneys' fees and costs of suit, including but not limited to that recoverable under Labor Code section 1194;
7. For pre-judgment interest, including but not limited to that recoverable under Labor Code section 218.6, and post-judgment interest; and
8. For such other further relief, in law and/or equity, as the Court deems just or appropriate.

**ON THE SECOND CAUSE OF ACTION:**

1. That Defendants be found to have violated the overtime provisions of the Labor Code and the IWC Wage Order as to Plaintiffs, the Overtime Class, and the Regular Rate Class;
2. For damages, according to proof, including but not limited to unpaid wages;
3. For any and all legally applicable penalties;
4. For pre-judgment interest, including but not limited to that recoverable under Labor Code section 1194, and post-judgment interest;
5. For attorneys' fees and costs of suit, including but not limited to that recoverable under Labor Code section 1194; and
6. For such other further relief, in law and/or equity, as the Court deems just or appropriate.

///

///

**ON THE THIRD CAUSE OF ACTION:**

1. That Defendants be found to have violated the meal period provisions of the Labor Code and the IWC Wage Order as to Plaintiffs, the Meal Period Class, and the Meal Period Premium Wages Class;

2. For damages, according to proof, including unpaid premium wages;

3. For any and all legally applicable penalties;

4. For pre-judgment interest, including but not limited to that recoverable under Labor Code section 218.6, and post-judgment interest; and

5. For such other further relief, in law and/or equity, as the Court deems just or appropriate.

**ON THE FOURTH CAUSE OF ACTION:**

1. That Defendants be found to have violated the rest period provisions of the Labor Code and the IWC Wage Order as to Plaintiffs, the Rest Period Class, and the Rest Period Premium Wages Class;

2. For damages, according to proof, including unpaid premium wages;

3. For any and all legally applicable penalties;

4. For pre-judgment interest, including but not limited to that recoverable under Labor Code section 218.6, and post-judgment interest; and

5. For such other further relief, in law and/or equity, as the Court deems just or appropriate.

**ON THE FIFTH CAUSE OF ACTION:**

1. That Defendants be found to have violated the provisions of the Labor Code regarding failure to produce requested employment records as to Plaintiffs and the Record Request Class;

2. For damages and/or penalties, according to proof, including damages and/or statutory penalties under Labor Code sections 1198.5 and 226 and any other legally applicable damages or penalties;

3. An injunction against Defendants to obtain their compliance with Labor Code

sections 1198.5 and 226;

4. For attorneys' fees and costs of suit, including but not limited to those recoverable under Labor Code sections 1198.5 and 226; and

5. For such other further relief, in law and/or equity, as the Court deems just or appropriate.

**ON THE SIXTH CAUSE OF ACTION:**

1. That Defendants be found to have violated Labor Code 204 as to Plaintiffs and the Pay Day Class;

2. For damages, according to proof;

3. For any and all legally applicable penalties, including but not limited to those recoverable pursuant to Labor Code section 210(a);

4. For pre-judgment interest, including but not limited to that recoverable under Labor Code section 218.6, and post-judgment interest; and

5. For such other further relief, in law and/or equity, as the Court deems just or appropriate.

**ON THE SEVENTH CAUSE OF ACTION:**

1. That Defendants be found to have violated the provisions of the Labor Code regarding accurate itemized paystubs as to Plaintiffs and the Wage Statement Class;

2. For damages and/or penalties, according to proof, including damages and/or statutory penalties under Labor Code section 226, subdivision (e), and any other legally applicable damages or penalties;

3. For pre-judgment interest and post-judgment interest;

4. For an injunction against Defendants enjoining them, and any and all persons acting in concert with them, from engaging in violations of Labor Code section 226(a);

5. For attorneys' fees and costs of suit, including but not limited to that recoverable under Labor Code section 226, subdivision (e); and,

6. For such other further relief, in law and/or equity, as the Court deems just or appropriate.

1                                   **ON THE EIGHTH CAUSE OF ACTION:**

2           1.       That Defendants be found to have violated the provisions of the Labor Code  
3 regarding payment of all unpaid wages due upon resignation or termination as to Plaintiffs and the  
4 Waiting Time Class;

5           2.       For damages and/or penalties, according to proof, including damages and/or  
6 statutory penalties under Labor Code section 203 and any other legally applicable damages or  
7 penalties;

8           3.       For pre-judgment interest, including under Labor Code section 218.6, and post-  
9 judgment interest;

10          4.       For reasonable attorneys' fees and for costs of suit incurred herein; and

11          5.       For such other further relief, in law and/or equity, as the Court deems just or  
12 appropriate.

13                                   **ON THE NINTH CAUSE OF ACTION:**

14          1.       That Defendants be found to have violated Business and Professions Code sections  
15 17200, *et seq.*, for the conduct alleged herein as to the California Class;

16          2.       A declaratory judgment that the practices complained herein are unlawful;

17          3.       An injunction against Defendants enjoining them, and any and all persons acting in  
18 concert with them, from engaging in each of the unlawful practices, policies and patterns set forth  
19 herein;

20          4.       For restitution to the full extent permitted by law; and

21          5.       For such other further relief, in law and/or equity, as the Court deems just or  
22 appropriate.

23                   **WHEREFORE, PLAINTIFFS SAUL HERNANDEZ MEJIA AND MANUEL**  
24 **ENRIQUEZ, ON THEIR OWN BEHALF AND ON BEHALF OF OTHER AGGRIEVED**  
25 **EMPLOYEES, PRAYS AS FOLLOWS:**

26                   **ON THE TENTH CAUSE OF ACTION**

27          1.       That the Court declare, adjudge and decree that Defendants violated the  
28 California Labor Code by failing to pay for all hours worked (including minimum, straight, and

overtime wages), failing to provide meal periods and pay the correct amount of meal period premium wages, failing to authorize and permit rest periods and pay the correct amount of rest period premium wages, failing to pay all earned wages twice per month, failing to maintain accurate records of hours worked and meal periods, failing to timely pay all wages to terminated employees, and failing to furnish accurate wage statements;

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

3. For all civil penalties pursuant to California Labor Code § 2699, et seq., and all other applicable Labor Code provisions;

4. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Labor Code § 2699; and

5. For such other and further relief as the Court may deem equitable and appropriate.

Dated: August 26, 2021

Respectfully submitted,  
**LAVI & EBRAHIMIAN, LLP**

By:



Joseph Lavi, Esq.  
Vincent C. Granberry, Esq.  
Pooja V. Patel, Esq.  
Sahag Majarian II, Esq.

Attorneys for Plaintiff  
SAUL HERNANDEZ MEJIA  
on behalf of himself and others similarly  
situated

Respectfully submitted,  
**WILSHIRE LAW FIRM**

By:



Justin F. Marquez, Esq.  
Benjamin H. Haber, Esq.

Attorneys for Plaintiff  
MANUEL ENRIQUEZ  
on behalf of himself, others similarly situated,  
and other aggrieved employees

1  
2 **DEMAND FOR JURY TRIAL**

3 Plaintiffs SAUL HERNANDEZ MEJIA and MANUEL ENRIQUEZ demand a trial by  
4 jury for themselves and the California Class on all claims so triable.

5 Dated: August 26, 2021

6 Respectfully submitted,  
7 **LAVI & EBRAHIMIAN, LLP**

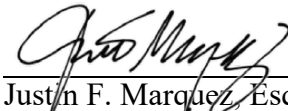
8 

9 By: \_\_\_\_\_

10 Joseph Lavi, Esq.  
11 Vincent C. Granberry, Esq.  
12 Pooja V. Patel, Esq.  
13 Sahag Majarian II, Esq.

14 Attorneys for Plaintiff  
15 SAUL HERNANDEZ MEJIA on behalf of  
16 himself and others similarly situated

17 Respectfully submitted,  
18 **WILSHIRE LAW FIRM**

19 

20 By: \_\_\_\_\_

21 Justin F. Marquez, Esq.  
22 Benjamin H. Haber, Esq.

23 Attorneys for Plaintiff  
24 MANUEL ENRIQUEZ  
25 on behalf of himself, others similarly situated,  
26 and other aggrieved employees  
27  
28

*Saul Hernandez Mijia, Manuel Enriquez, et al. v. Swisstex California, Inc.*  
21STCV02796

I, K. Elizabeth Maddison, state that I am employed in the aforesaid County, State of California; I am over the age of eighteen years and not a party to the within action; my business address is 3055 Wilshire Blvd., 12<sup>th</sup> Floor, Los Angeles, California 90010. My electronic service address is kmaddison@wilshirelawfirm.com.

Joel P. Kelly (SBN 100716)  
Joel.Kelly@jacksonlewis.com  
 Eve Tilley-Coulson (SBN 320886)  
Eve.Tilley-Coulson@jacksonlewis.com  
**JACKSON LEWIS P.C.**  
 725 S. Figueroa Street, Suite 2500  
 Los Angeles, California 90017  
 Telephone: (213) 689-0404  
 Facsimile: (2131) 689-0430

Mark R. Attwood (SBN 122992)  
[mra@attwoodgregg.com](mailto:mra@attwoodgregg.com)  
 Jessica C. Gregg (SBN 276543)  
[jcg@attwoodgregg.com](mailto:jcg@attwoodgregg.com)  
**ATTWOOD GREGG LLP**  
 527 West 7th Street, Suite 912  
 Los Angeles, California 90014  
 Telephone: (213) 985-2233  
 Facsimile: (213) 985-7181

(X) **BY ELECTRONIC SERVICE:** Based on a court order or an agreement of the parties to accept electronic service, I caused the document(s) identified above to be sent to the person(s) at the electronic service addresses listed in the above Service List via third-party cloud service **CASE ANYWHERE**.

Executed on **August 27, 2021** at Los Angeles, California.

*/s/K. Elizabeth Maddison*  
K. Elizabeth Maddison