

Zorik Mooradian, Esq., CSB No. 136636
zorik@mooradianlaw.com
Andrina G. Hanson, Esq., CSB No. 125067
andrina@mooradianlaw.com
Nanor C. Kamberian, Esq., CSB No. 316612
nanor@mooradianlaw.com
MOORADIAN LAW, APC
24007 Ventura Blvd., Suite 210
Calabasas, CA 91302
Telephone: (818) 487-1998 ▪ Facsimile: (888) 783-1030

FILED
Superior Court of California
County of Los Angeles
05/17/2021

Sherri R. Carter, Executive Officer / Clerk of Court
By: J. Arceo Deputy

Attorneys for Plaintiff Rudy Orellana individually and on behalf PAGA class

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

RUDY ORELLANA, individually and on
behalf of other aggrieved current and former
employees,

Plaintiff(s),
v.

ORANGE BANG, INC., DAVID FOX,
RICHARD STAIN and DOES 1 to 50,

Defendants.

Case No.: 21STCV10092
Hon. Robert B. Broadbelt, Dept 53

**FIRST AMENDED COMPLAINT FOR
DAMAGES, PENALTIES AND OTHER
RELIEF:**

FEHA Claims

1. Unlawful Discrimination in the Workplace (Gov. Code § 12940 (a) & (k))
2. Unlawful Harassment in the Workplace – Hostile Work Environment (Gov. Code § 12940 (j) & (k))

Individual Employment Law Claims

3. Failure to Pay Overtime
4. Failure to Pay Minimum Wages
5. Meal Period Violations
6. Rest Break Violations
7. Failure to Pay Wages for All Time Worked
8. Failure to Indemnify for Expenditures
9. Failure to Provide Accurate Wage Statements
10. Failure to Provide Employment Records

PAGA Claims

11. Violation of Labor Laws Giving Rise to an Action Under the PAGA

UCL Claim

12. Unfair Business Practices

Jury Trial Demanded

INTRODUCTORY ALLEGATIONS

1. Plaintiff herein is Rudy Orellana (also referred to as “Plaintiff” or “Mr. Orellana”). At all times herein, Mr. Orellana was a resident of the County of Los Angeles, State of California.
2. In or about 2003, Plaintiff Rudy Orellana was hired to work at Orange Bang, Inc., located at 13115 Telfair Ave., Sylmar, California 91342 as a nonexempt employee.
3. The gravamen of this action is multiple illegal employment practices giving rise to the following:
 - a. Cause of action for violation of Mr. Orellana’s rights under the Fair Employment and Housing Act (the FEHA) due to Defendants’ discrimination and harassment of Mr. Orellana based on his race/ancestry (Hispanic) and age (58 years old.)
 - b. Causes of action for multiple violations of various wage/hour and related laws which deprived Mr. Orellana of employment benefits and rights mandated under California law,
 - c. An action brought by Plaintiff on behalf of himself and other aggrieved employees under the Private Attorneys General Act (Labor Code § 2699 aka PAGA) for violations of various California employment wage/hour laws, and
 - d. Unfair and unlawful business practice claims related to Defendants’ unlawful employment practices which illegally deprived Plaintiff of financial benefits he was entitled to under the law,

General Allegations re Defendants

4. Rudy Orellana brings this action against the following Defendants and said Defendants’ successors in interest, alter egos, and other persons/entities engaged with Defendants in a joint enterprise of manufacturing, packaging, and/or distribution of Orange Bang drink products and dispensers:

- 1 a. Defendants ORANGE BANG, INC., DAVID FOX and DOES 1
2 through 10 (herein collectively referred to as ORANGE BANG) were
3 the employers/joint employers of Rudy Orellana and the other
4 aggrieved employees referenced herein. ORANGE BANG, INC. is an
5 active California corporation registered with the Secretary of State
6 with an entity address located at 13115 Telfair Ave., Sylmar,
7 California 91342, which is also its principal place of business.
- 8 b. Defendants DAVID FOX and DOES 11 – 20 were officers, directors
9 and/or managing agents of Defendants ORANGE BANG, INC. and
10 DOES 1 through 10. Said Defendants were also supervisors at
11 ORANGE BANG, INC. who 1) either directly participated in and/or
12 encouraged the illegal conduct described herein and/or 2) ratified the
13 illegal conduct of employees/co-employees under their supervision.
- 14 c. Defendants RICHARD STAIN and DOES 21 – 30 were Plaintiff's
15 supervisors who directly participated in and/or encouraged the illegal
16 conduct described herein and/or ratified the illegal conduct
17 complained of herein. Said Defendants were also managing agents of
18 ORANGE BANG.
- 19 d. Defendants DOES 31 through 50 are unidentified persons or entities
20 who are legally responsible in some actionable manner for the illegal
21 acts and omissions complained of herein. To the extent said
22 Defendants are a business entity, the form of said Defendants is
23 unknown at the present time.
- 24 5. Each of the above Defendants had authority to set ORANGE BANG's
25 policies, procedures, and practices as well as the authority to hire, transfer,
26 promote, assign, reward, discipline the workers working at ORANGE BANG or to
27 effectively recommend said actions. Additionally, said Defendants also had
28 responsibility to act on employee grievances and/or to effectively recommend

1 action on employee grievances. Said Defendants also had the responsibility to
2 direct Plaintiff's daily work activities at ORANGE BANG. The exercise of said
3 authority and responsibility by said Defendant required the use of independent
4 judgment of all individual Defendants.

5 6. At all times herein and for many prior years, Defendants ORANGE BANG,
6 INC., DAVID FOX, RICHARD STAIN and DOES 1 through 50 either employed
7 individuals in California and/or were involved in managing businesses and/or
8 employees in California. During those years, said Defendants were repeatedly
9 provided with notifications from various governmental agencies as well as
10 employment law publications advising them of the requirements of the
11 employment laws referenced herein. Accordingly, said Defendants knew the
12 obligations ORANGE BANG owed to workers under California law. As such,
13 Defendants' failures to comply with the FEHA, the applicable Labor Code sections,
14 Industrial Wage Orders, regulations, and local laws as described herein were done
15 willfully, intentionally and with full knowledge of their illegality. Despite said
16 knowledge, said Defendants deliberately approved, established and/or
17 implemented company-wide policies, procedures and/or practices they knew
18 violated California law as set forth herein and did so for the purpose of
19 maximizing the profits of ORANGE BANG as well as their own personal gain
20 (monetary or otherwise) to the illegal detriment of employees working at ORANGE
21 BANG, including Rudy Orellana.

22 7. Additionally, based on requirements set forth in the Labor Code and wage
23 orders applicable to Defendants' business, at all times herein, Defendants knew it
24 was necessary to possess, and Defendants did possess, a certain level of knowledge
25 and skill in order to comply with the labor and employment laws applicable to
26 their area of business. Said knowledge was vastly superior to that of Defendants'
27 employees. Moreover, as set forth herein, Defendants' employees depended on
28 Defendant to know, record and/or track certain information to ensure California

labor laws and/or employment laws were followed. Such things include the dates and times worked by employees, when wages were owed to employees, the minimum and overtime wages owed to employees, the number of rest breaks and meal breaks the employees were entitled to, when rest breaks and meal breaks were required to be provided, the information required to be included on wage statements, when employees should be paid their final wage, what expenditures employees were required to be reimbursed, etc.

8. ORANGE BANG. and each DOE Defendant that was a business entity or organization at the relevant times herein, was a privately-owned business authorized to do business in the State of California. Additionally, said Defendants employed more than five (5) employees and were engaged in interstate commerce within the meaning of California Gov. Code § 12926. As such, Orange Bang and said DOE Defendants are subject to the California Fair Employment and Housing Act (FEHA) (Govt. Code, § 12900 et. seq.).

Alter-Ego / Joint Enterprise Allegations

9. All business entity Defendants herein are and at all times herein mentioned were the alter-egos of each and every other Defendant and there exists, and at all times herein mentioned has existed, a unity of interest and ownership between said Defendants such that any separateness between them has ceased to exist in that the defendants have completely controlled, dominated, managed, and operated the business entity defendants and have intermingled the assets of each to suit their convenience. Further, the business entity defendants are, and at all times mentioned herein were, mere shells, instrumentalities and conduits through which Defendants carried out their business by its name while exercising complete control and dominance of the business such that individuality or separateness did not exist. Additional facts supporting the existence of an alter ego relationship between Defendants include the following: Defendants commingled funds and other assets, Defendants held themselves out as a single entity, Defendants share

equitable ownership, they use the same offices, Defendants have disregarded corporate formalities, Defendants share the same directors and officers, etc.

10. Defendants ORANGE BANG, INC., DAVID FOX and DOES 1 – 30 were also engaged in a joint/single enterprise of manufacturing, packaging, and distributing ORANGE BANG drinks and dispensers and during said enterprise, each said Defendant contributed skill, effort, knowledge, and/or money to achieve a common purpose, namely, maximizing their individual and collective profits.

General Allegations re Fictitious DOE Defendants

11. The facts linking the fictitiously designated Defendants with the causes of action alleged herein and/or the true names and capacities, whether individual, corporate, partnership, or otherwise of Defendants, DOES 1 through 50, are unknown to Plaintiff(s) at this time, who therefore sue said Defendants by such fictitious names and will seek to amend this Complaint to show their true names and/or capacities when ascertained. Said Defendants are sued as employers, principals and/or agents, servants, and employees of said employers or principals who were performing acts within the course and scope of their authority and/or employment. Each and every Defendant designated herein as a "DOE" is responsible in some actionable manner for the events and happenings referred to herein which proximately caused the injuries, damages, losses and/or penalties as alleged herein.

Exhaustion of Administrative Remedies

(DFEH "Right to Sue" Notification Obtained and Served)

12. Rudy Orellana timely filed a complaint against Defendants with the California Department of Fair Employment and Housing ("DFEH"), alleging violations of Gov. Code § 12940.

13. Thereafter, Mr. Orellana received notification from the DFEH of his "Right to Sue" in the courts of the State of California. Subsequently, Plaintiff served each known Defendant with the Right to Sue Notice via United States Certified Mail,

1 return receipt requested as required by Gov. Code § 12962. This complaint is filed
2 within one year as required by law.

3 **(Notice of PAGA Claim Filed with the LWDA)**

4 14. Plaintiff has exhausted all statutory prerequisites to filing a Private
5 Attorneys General Action in this matter by providing written notice to the Labor
6 and Workforce Development Agency that Defendants had violated and were
7 continuing to violate provisions of the California Labor Code. Pursuant to the
8 PAGA, said filing resulted in a tolling of the applicable statute of limitation(s).

9 15. At least sixty-five days has passed since Plaintiff provided written notice (by
10 online submission to the Labor and Workforce Development Agency and by
11 certified mail to Defendants) that Defendants had violated and continued to
12 violate provisions of the California Labor Code. Plaintiff has not received notice
13 from the LWDA that it intends to prosecute an action against Defendants.
14 Therefore, as statutorily permitted by Labor Code § 2699.3, Plaintiff has the right
15 to commence a Private Attorneys General Action (PAGA) pursuant to Labor Code
16 § 2699.

17 **Defendants' Failure to Comply with Labor Code § 226 Requests**

18 16. Plaintiff does not have copies of all of his employment records with
19 Defendants and Defendants have failed to provide Plaintiff with copies of his
20 employment records (including work schedules, time sheets, rest break/meal break
21 records, reimbursement records, and wage statements) even though such records
22 pertain to Plaintiff's employment with Defendants and were requested from
23 Defendants by Plaintiff pursuant to Labor Code § 226. Said records were also not
24 produced by Defendants after a complaint was filed with the LWDA (and
25 concurrently served on Defendants) in which it was alleged that said records had
26 not been provided in accordance with Labor Code § 226. Plaintiff also does not
27 have access to the employment records of other similarly aggrieved employees.
28 After Defendants have produced, additional facts in support of each cause of action

pled in this complaint can be reasonably determined.

FIRST CAUSE OF ACTION FOR UNLAWFUL DISCRIMINATION IN THE
WORKPLACE IN VIOLATION OF GOV. CODE § 12940 (a) AND (k) BY
PLAINTIFF, RUDY ORELLANA, AGAINST DEFENDANTS ORANGE BANG,
INC. AND DOES 1 THROUGH 10 AND DOES 40 THROUGH 50

17. Plaintiff re-alleges and fully incorporates herein paragraphs 1 through 16 above as though fully set forth in this Cause of Action.

18. Plaintiff brings this cause of action against Defendants ORANGE BANG, INC. and DOES 1 through 10 for employment discrimination based on Plaintiff's protected statuses as an Hispanic employee over the age of 40 years old (Plaintiff was 58 years old.) Said discrimination was in the form of disparate treatment of ORANGE BANG's Hispanic workers and workers over the age of 40 years (including Mr. Orellana) and disparate impact on ORANGE BANG's Hispanic workers and workers over the age of 40 years (including Mr. Orellana)

Violation of the FEHA's Prohibition Against

Illegal Discrimination in the Workplace (Gov. Code § 12940 (a))

19. Pursuant to Gov. Code § 12940 (a), as Rudy Orellana's employers, Defendants Orange Bang, DOES 1 through 10 and 40 through 50 were prohibited from discriminating against Mr. Orellana in compensation or in terms, conditions, or privileges of employment based on his race/ancestry or his age.

20. In violation of Gov. Code § 12940 (a), ORANGE BANG and DOES 1 through 10 and DOES 40 through 50 unlawfully discriminated against Rudy Orellana based on his race/ancestry and/or age as follows:

- a. Said Defendants (via their officers, directors, managing agents and/or supervisors) repeatedly referred to Mr. Orellana and other Hispanic workers that Mr. Orellana worked with as "monkeys", referring to the race and/or ancestry of the Hispanic workers working in the production department who were of Hispanic origin, race, ancestry, and color of

1 skin, including, Plaintiff Rudy Orellana. For example, on several
2 occasions, Defendant DAVID FOX would say: “tell the monkeys to do
3 this...or that” which was always said in the context of referring to the
4 Hispanic employees working in the production department. Shamefully,
5 referring to a dark-skinned person or group people as “monkeys” (i.e.,
6 primates lower in the evolutionary chain) is a description that sends a
7 dehumanizing message to that a person or group of persons (in this case
8 Hispanic workers at ORANGE BANG) that they are less human and/or
9 otherwise inferior due to their race. By repeatedly making such racially
10 degrading and insulting comments, Hispanic workers at ORANGE
11 BANG were sent a message that it would be futile to attempt to compete
12 in the workplace for promotions or other employment benefits provided
13 to workers who were of the white race. Indeed, without good cause, Mr.
14 Orellana was eventually terminated and replaced by a white man who
15 was not as qualified or trained to do the job that Mr. Orellana had been
16 adequately performing for a substantial period of time.

- 17 b. Said Defendants terminated Rudy Orellana and replaced him with a
18 white man in his twenties who was far less experienced, far less
19 qualified, far less effective at the job, and far less able to do the job in a
20 competent manner. At the same time that Plaintiff was terminated,
21 Defendants also terminated about 5 other employees which
22 disproportionately included Hispanic workers over the age of 40 years.
- 23 c. Non-Hispanics and/or younger individuals were given preferential
24 treatment, even though Rudy Orellana was more qualified, effective,
25 and experienced to do the job. Instead, non-Hispanic and/or younger
26 individuals were promoted or hired, even though they were not as
27 experienced, effective, and/or qualified as Mr. Orellana.

**Defendants' Failure to Prevent Discrimination
in the Workplace in Violation of the FEHA (Gov. Code § 12940 (k))**

21. Pursuant to Gov. Code § 12940 (k), Defendants ORANGE BANG and DOES 1 through 10 and 40 through 50 owed a duty to take all reasonable steps necessary to prevent discrimination in violation of the FEHA from occurring in the ORANGE BANG workplace.

22. In violation of Gov. Code § 12940 (k), Defendants ORANGE BANG and DOES 1 through 10 and DOES 40 through 50 (individually and/or through Defendants' officers, directors, managing agents and/or supervisors) failed to take all reasonable steps necessary to prevent illegal discrimination based on age from occurring in the workplace, including the following steps that are regularly taken by businesses in California to reasonably ensure conformance with the FEHA:

- a. They failed to establish and/or implement anti-discrimination policies, procedures, and practices in the workplace to reasonably ensure that employees were not discriminated against based on their race/ancestry or their age,
- b. They failed to establish and/or implement policies and procedures for investigating complaints of discrimination based on race/ancestry and/or age occurring (or suspected to be occurring) in the workplace,
- c. They failed to make it known to ORANGE BANG employees that discrimination based on race/ancestry and/or age would not be tolerated in the workplace and, instead, they affirmatively or tacitly encouraged such discrimination in the workplace by engaging in such conduct themselves and/or condoning such conduct by others,
- d. They failed to reasonably publicize and remind workers that any worker who engaged in discrimination based on race/ancestry and/or age would be subject to appropriate discipline, including possible

1 termination,

- 2 e. They failed to take other reasonable action to prevent Rudy Orellana
3 and other workers from being subjected to discrimination based on
4 race/ancestry and/or age in violation of the FEHA.

5 23. The above-described discriminatory conduct was carried out by said
6 Defendants (by and through their managing agents, supervisors and/or other
7 employees, including Defendants DAVID FOX, RICHARD STAIN and DOES 1-30)
8 in accordance with the policies and practices of ORANGE BANG to
9 discriminatorily favor non-Hispanic employees and workers under the age of 40
10 years which had the disparate effect of said employees at ORANGE BANG being
11 treated less favorably.

12 **Direct Involvement/Authorization and Ratification**
13 **by Officers, Directors and/or Managing Agents of ORANGE BANG**

14 24. At all times herein mentioned, Defendants ORANGE BANG and DOES 1
15 through 10, DOES 40 through 50 and/or said Defendants' officers, directors,
16 managing agents and/or supervisors (including Defendants DAVID FOX,
17 RICHARD STAIN and DOES 1-30) either directly participated in the illegal
18 discriminatory conduct alleged herein and/or authorized, ratified, assisted, and
19 encouraged the unlawful discriminatory acts of others in the workplace in at least
20 the following ways:

- 21 a. They disregarded and failed to conduct good faith investigations of
22 illegal racial and/or age discrimination which they knew (or reasonably
23 should have suspected) had occurred or was occurring in the workplace.
24 b. They affirmatively and tacitly condoned discrimination based on
25 race/ancestry and/or age which they knew (or reasonably should have
26 suspected) had been perpetrated against Mr. Orellana and/or other
27 employees who were Hispanic and/or over the age of 40 years, even
28 though they also knew such conduct was in blatant violation of the

FEHA and would likely continue and be encouraged due to their affirmative or tacit condoning of such conduct.

- c. They failed to implement and/or enforce anti-discrimination policies and procedures to reasonably ensure against discrimination from occurring in the workplace in violation of the FEHA (including race/ancestry and/or age discrimination).
- d. They failed to reprimand, dismiss, train, and/or retrain employee(s) involved in discriminatory conduct, knowing said employee(s) had engaged in known or suspected discriminatory practices involving Mr. Orellana as well as other Hispanic employees and/or employees over the age of 40 years. Defendants did so knowing that without such interventions, such discriminatory practices would likely continue.
- e. They failed to take other reasonable action to ensure that Plaintiff Rudy Orellana and employees who were Hispanic and/or over the age of 40 years were not further subjected to illegal discrimination in the workplace based on their race/ancestry and/or age, in violation of the FEHA.

Additional Allegations of Malice, Oppression and/or Fraud

25. All of the above-described acts and omissions of Defendants (individually and/or by their officers, directors, managing agents and supervisors) were part of an ongoing and continuing pattern and practice of shielding their own unlawful behavior and/or the unlawful acts of ORANGE BANG officers, directors, managing agents, supervisors and/or other employees to the detriment of the rights of Rudy Orellana and other employees who were Hispanic and/or over the age of 40 years who were working at ORANGE BANG.

26. The above-described acts and/or omissions were done maliciously in that Defendants knew said conduct was specifically prohibited by the FEHA, knew said conduct was contrary to public policy as expressed in the FEHA, and knew said

conduct would cause employees who were Hispanic and/or over the age of 40 years (including Rudy Orellana) to unnecessarily suffer severe emotional distress as well as significant economic loss. Nevertheless, Defendants knowingly chose to disregard the probability that such injuries and losses would be suffered and either personally engaged in the illegal discriminatory conduct and/or permitted others under their supervision and control to continually engage in such conduct. Said Defendants thereby disregarded the duties imposed on employers under the FEHA to both prevent such conduct from occurring in the workplace and to take immediate corrective action once aware such conduct was occurring in the workplace.

27. The above-described acts and/or omissions were done oppressively in that Defendants disregarded Rudy Orellana's rights as an employee guaranteed under the FEHA and either directly subjected Mr. Orellana to ongoing illegal discrimination in the workplace or consciously disregarded the duties imposed on them under the FEHA to prevent such conduct from occurring in the workplace. Moreover, Defendants' disregard of Mr. Orellana's rights as recognized under the FEHA was done deliberately and continually knowing there was a high probability that the rights of ORANGE BANG's employees who were Hispanic and/or over the age of 40 years (including the rights of Mr. Orellana) would continue to be violated, resulting in ongoing non-economic damages as well as economic losses.

Continuing Violations Doctrine

28. Defendants' violations of the FEHA as set forth herein occurred on a continuous basis during Defendants' employment of Plaintiff. Therefore, under the Continuing Violations Doctrine, the statute of limitation for this cause of action did not begin to accrue until Plaintiff was terminated by Defendants.

Causation, Damages and Other Remedies

29. Mr. Orellana's Hispanic race/ancestry and/or his age over 40 years of age (Plaintiff was 58 years old) was a substantial motivating factor for Defendants'

unlawful discriminatory conduct toward Mr. Orellana in violation of the FEHA as described herein.

30. Defendants' unlawful employment practices in violation of the FEHA as set forth herein were also a substantial factor in causing a disproportionate adverse effect on other workers at ORANGE BANG who Hispanic and/or over the age of 40 years.

31. As a direct and proximate result of the above-described unlawful discrimination and discriminatory employment practices in violation of Gov. Code § 12940 (a) and (k), Rudy Orellana sustained past, present, and future non-economic damages, including physical and/or mental pain and suffering, loss of enjoyment of life, inconvenience, anxiety, freight, humiliation and/or emotional distress.

32. As a further direct and proximate result of the above-described unlawful discrimination and discriminatory employment practices in violation of Gov. Code § 12940 (a) and (k), Rudy Orellana sustained past, present, and future economic damages, including past, present, and future loss of earnings and/or earning capacity as well as medical expenses.

33. As a further direct and proximate result of the above-described unlawful discrimination and discriminatory employment practices in violation of Gov. Code § 12940 (a) and (k), Rudy Orellana has been compelled to retain legal counsel to prosecute the within action and is, therefore, entitled to recover attorney's fees as permitted under California law, including Gov. Code § 12965(b).

34. As a further direct and proximate result of the above-described unlawful discrimination and discriminatory employment practices in violation of Gov. Code § 12940 (a) and (k), Rudy Orellana is entitled to recover costs (including expert witness fees) as permitted under California law, including Gov't Code § 12965(b), CCP § 998 and/or CCP § 1032.

35. As a further direct and proximate result of the above-described unlawful

discrimination and discriminatory employment practices in violation of Gov. Code § 12940 (a) and (k) as set forth herein, Plaintiff is entitled to an award of punitive damages against Defendants as permitted by Civil Code § 3294.

36. As a further direct and proximate result of the above-described unlawful discrimination and discriminatory employment practices in violation of Gov. Code § 12940 (a) and (k) as set forth herein, Plaintiff is entitled to be awarded prejudgment interest as permitted under California law, including Civil Code § 3287, Civil Code § 3288, Civil Code § 3289 and/or CCP § 3291.

37. As a further direct and proximate result of the above-described unlawful conduct in violation of the FEHA as set forth herein, Plaintiff is entitled to recover the damages, awards and remedies set forth below in the Prayer for Damages, Awards and Other Relief.

**SECOND CAUSE OF ACTION FOR UNLAWFUL HARASSMENT IN THE
WORKPLACE -- HOSTILE WORK ENVIRONMENT IN VIOLATION OF GOV.
CODE § 12940 (j) AND (k) BY PLAINTIFF, RUDY ORELANA, AGAINST
DEFENDANTS ORANGE BANG, INC., DAVID FOX, RICHARD STAIN AND
DOES 1 THROUGH 50**

38. Plaintiff re-alleges and fully incorporates herein paragraphs 1 through 37 above as though fully set forth in this Cause of Action.

39. Plaintiff brings this cause of action against Defendants ORANGE BANG, INC., DAVID FOX, RICHARD STAIN, and DOES 1 through 50. Said Defendants were officers, directors, managing agents and/or supervisors who 1) directly harassed Plaintiff based on his race/ancestry as a Hispanic and/or age over 40 years of age and/or 2) knew (or should have known) that Plaintiff was being harassed based on his race/ancestry and/or age, but failed to take reasonable action to prevent the harassment. Because said harassment was severe and/or pervasive and occurred on a continuous basis during Mr. Orellana's employment,

1 said harassment created a hostile work environment for Mr. Orellana as well as
2 other Hispanic workers and/or workers over the age of 40 years.

3 **Violation of FEHA's Prohibition Against**
4 **Harassment in the Workplace Based on Race/Ancestry and/or Age**
5 **(Government Code § 12940 (j))**

6 40. Pursuant to Gov. Code § 12940 (j), it is unlawful for an employer or any
7 other person to harass an employee or co-employee because of their race/ancestry
8 and/or their age (over 40 years of age). When such harassing conduct is severe or
9 pervasive, it creates a hostile work environment that results in further violation of
10 the FEHA.

11 41. Accordingly, Defendants were not only prohibited from harassing workers at
12 ORANGE BANG (including Rudy Orellana) based on their Hispanic race/ancestry
13 and/or age over 40 years, but Defendants were also prohibited from allowing such
14 employees to be exposed to a hostile work environment because of their
15 race/ancestry and/or age.

16 42. In violation of Gov. Code 12940 (j), Defendants ORANGE BANG, DAVID
17 FOX, RICHARD STAIN and DOES 1 through 50 (individually and/or through
18 their officers, directors, managing agents and/or supervisors) illegally harassed
19 Rudy Orellana based on his Hispanic race/ancestry and/or age in a variety of ways,
20 including the following:

- 21 a. Said Defendants repeatedly referred to Mr. Orellana and other Hispanic
22 workers that Plaintiff worked with as “monkeys”, referring to
23 race/ancestry of the Hispanic workers working in the of the production
24 department who were all of Hispanic origin, race, ancestry, and color of
25 skin, including, Plaintiff Rudy Orellana. For example, on several
26 occasions, Defendant DAVID FOX would say: “tell the monkeys to do
27 this...or that” which was always said in the context of referring to the
28 Hispanic employees working in the production department. Shamefully,

1 referring to a dark-skinned person or group people as “monkeys” (i.e.,
2 primates lower in the evolutionary chain) is a description that sends a
3 dehumanizing message to that a person or group of persons (in this case
4 Hispanic workers at ORANGE BANG) that they are less human and/or
5 otherwise inferior due to their race. By repeatedly making such racially
6 degrading and insulting comments, Hispanic workers at ORANGE
7 BANG were sent a message that it would be futile to attempt to compete
8 in the workplace for promotions or other employment benefits provided
9 to workers who were of the white race. Indeed, without good cause, Mr.
10 Orellana was eventually terminated and replaced by a white man who
11 was not as qualified or trained to do the job that Mr. Orellana had been
12 adequately performing for a substantial period of time.

- 13 b. Said Defendants terminated Rudy Orellana and replaced him with a
14 white man in his twenties who was far less experienced, far less
15 qualified, far less effective at the job, and far less able to do the job in a
16 competent manner. At the same time that Plaintiff was terminated,
17 Defendants also terminated about 5 other employees which
18 disproportionately included Hispanic workers over the age of 40 years.
- 19 c. Non-Hispanics and/or younger individuals were given preferential
20 treatment, even though Rudy Orellana was more qualified, effective,
21 and experienced to do the job. Instead, non-Hispanic and/or younger
22 individuals were promoted or hired, even though they were not as
23 experienced, effective, and/or qualified as Mr. Orellana.

24 43. The above-described harassment (which occurred on a continuing and
25 frequent basis during Rudy Orellana’s employment with Defendants) created a
26 hostile work environment for Rudy Orellana and other Hispanic and/or workers
27 over the age of 40 years in violation of the FEHA because the harassment based on
28 their age and/or race/ancestry occurred on a continual basis, was severe or

1 pervasive in nature, and unjustly impaired their ability to do their jobs.

2 44. Not only would a reasonable employee in Rudy Orellana's circumstances
3 consider the work environment at ORANGE BANG to be hostile based on his
4 race/ancestry and/or age, but Mr. Orellana considered the work environment at
5 ORANGE BANG to be hostile and abusive toward him based on his race/ancestry
6 and/or age (he was 58 years of age).

7 **Defendants' Failure to Prevent Harassment**
8 **in Violation of the FEHA (Gov. Code § 12940(k))**

9 45. Pursuant to Gov. Code § 12940 (k), Defendants were required to take all
10 reasonable steps necessary to prevent harassment from occurring in the
11 workplace.

12 46. In violation of Gov. Code § 12940 (k), Defendants (individually and/or
13 through Defendants' officers, directors, managing agents and/or supervisors) failed
14 to take all reasonable steps necessary to prevent discrimination based on
15 race/ancestry and/or age from occurring in the workplace, including the following
16 steps that are regularly taken by businesses in California to conform with the
17 FEHA:

- 18 a. They failed to establish and/or implement anti-harassment policies,
19 procedures, and practices in the workplace to reasonably ensure that
20 workers at ORANGE BANG were not illegally harassed based on
21 their race/ancestry and/or age.
- 22 b. They failed to establish policies and/or implement policies for
23 investigating complaints of harassment based on race/ancestry and/or
24 age and further failed to conduct good faith investigations of
25 complaints (or reasonable suspicions) of illegal harassment based on
26 race/ancestry and/or age occurring in the workplace.
- 27 c. They failed to make it known to ORANGE BANG employees that
28 illegal harassment based on race/ancestry and/or age would not be

1 tolerated in the workplace and, instead, affirmatively or tacitly
2 encouraged such harassment in the workplace by engaging in such
3 conduct themselves, condoning such conduct of others and/or turning
4 a blind eye to such harassment occurring in the workplace.

5 d. They failed to publicize and remind employees that any employee who
6 engaged in illegal harassment based on race/ancestry and/or age in
7 the workplace would be subject to appropriate discipline, including
8 possible termination.

9 e. They failed to take any other reasonable action to prevent Rudy
10 Orellana and other Hispanic workers and/or workers over the age of
11 40 years in the workplace from being subjected to illegal harassment
12 based on their race/ancestry and/or age in violation of the FEHA.

13 47. As a result of Defendants' failure to take the steps reasonably necessary to
14 prevent illegal harassment based on race/ancestry and/or age from occurring in the
15 workplace as mandated under the FEHA, it became a common business practice
16 for severe, illegal harassment based on race/ancestry and/or age to continually and
17 pervasively occur in the workplace, resulting in a persistent hostile work
18 environment for employees working at ORANGE BANG, including Rudy Orellana.

19 **Defendants' Failure to Take Immediate Corrective Action**
20 **in Violation of the FEHA (Gov. Code § 12940 (j))**

21 48. Gov. Code § 12940 (j) requires that immediate corrective action be taken as
22 soon as an employer knows or should know that an employee is being harassed in
23 violation of the FEHA.

24 49. In violation of Gov. Code § 12940(j), even after Defendants (individually
25 and/or through Defendants' officers, directors, managing agents and/or
26 supervisors) knew or should have known that Rudy Orellana (and/or other
27 Hispanic workers and/or workers over the age of 40 years) were being harassed in
28 the workplace in violation of the FEHA, said Defendants (individually and/or

1 through and their officers, directors, managing agents and/or supervisors) failed to
2 take immediate and appropriate corrective action as follows:

- 3 a. They continually disregarded the illegal harassing conduct and took no
4 substantive action to reasonably ensure that the harassing conduct
5 would not continue and did so knowing that their failure to take
6 immediate corrective action would allow the illegal harassing conduct
7 to continue.
- 8 b. They failed to reasonably and sufficiently train/retrain ORANGE
9 BANG employees who were involved (or suspected of being involved) in
10 illegal harassment of Mr. Orellana in violation of the FEHA, even
11 though they knew (or should have known) that without such
12 training/retraining said employees would continue to illegally harass
13 Mr. Orellana in violation of the FEHA.
- 14 c. They failed to appropriately reprimand and/or dismiss ORANGE
15 BANG employees who were involved in illegally harassing Mr.
16 Orellana (including DAVID FOX and RICHARD STAIN), even though
17 they knew, or should have known, that such harassment was occurring
18 and would continue to occur if the employees involved in such illegal
19 conduct were not appropriately reprimanded and/or dismissed.
- 20 d. They failed to notify or renotify the employees they knew were being
21 illegally harassed (including Rudy Orellana) of the availability of
22 reporting such conduct to a designated person or office at ORANGE
23 BANG so that appropriate personnel could intervene as necessary.
- 24 e. They failed to take any other reasonable corrective action to ensure
25 that Hispanic workers and/or workers over the age of 40 years
26 ORANGE BANG (including Rudy Orellana who Hispanic and 58 years
27 old) were not subjected to further harassment in violation of the FEHA.

28 50. As a result of Defendants' failure to take immediate corrective action as

mandated under the FEHA, the unlawful harassing behavior based on race/ancestry and/or age that was occurring at ORANGE BANG not only unnecessarily continued but became more frequent and more severe.

**Direct Involvement / Authorization and Ratification by Officers,
Directors and/or Managing Agents of \$\$**

51. At all times herein mentioned, Defendants ORANGE BANG, DAVID FOX, RICHARD STAIN, and DOES 1 through 50 (individually or by and through their officers, directors and/or managing agents) either directly participated in the illegal harassing conduct set forth herein and/or authorized, ratified, assisted, and encouraged the unlawful harassing acts of others in the workplace in at least the following ways:

- a. Even after they learned that severe harassing conduct in violation of the FEHA was occurring on a pervasive basis at ORANGE BANG, they continually failed to implement and/or enforce anti-harassment policies and practices in the workplace.
- b. Even after they learned that severe harassing conduct in violation of the FEHA was occurring on a pervasive basis at ORANGE BANG, they failed to reprimand, dismiss, train and/or retrain employee(s) involved in the illegal harassing conduct knowing said employee(s) would continue to engage in such illegal harassing conduct without necessary intervention.
- c. Instead of taking action to correct the illegal harassing conduct occurring at ORANGE BANG, they affirmatively and tacitly condoned the illegal harassing conduct perpetrated against Rudy Orellana and other Hispanic workers and/or workers over the age of 40 years, as described herein.

Additional Allegations of Malice, Oppression and/or Fraud

52. All of the above-described acts and omissions of Defendants ORANGE

1 BANG, DAVID FOX, RICHARD STAIN and DOES 1 through 50 (individually
2 and/or by their officers, directors, managing agents and supervisors) were part of
3 an ongoing and continuing pattern and practice of shielding their own unlawful
4 behavior and/or the unlawful acts of ORANGE BANG's officers, directors,
5 managing agents, supervisors and/or other employees to the detriment of the
6 rights of Rudy Orellana and other Hispanic workers and/or workers over the age of
7 40 years at ORANGE BANG.

8 53. The above-described acts and/or omissions were done maliciously in that
9 Defendants knew said conduct was specifically prohibited by the FEHA, knew said
10 conduct was contrary to public policy as expressed in the FEHA and knew said
11 conduct had caused, and would continue to cause Hispanic workers and/or workers
12 over the age of 40 years (including Rudy Orellana) to unnecessarily suffer severe
13 emotional distress as well as significant economic loss. Nevertheless, Defendants
14 knowingly chose to disregard the probability that such injuries and losses would
15 be suffered and either personally engaged in the illegal harassing conduct or
16 permitted others under their supervision and control to continually engage in such
17 conduct thereby disregarding their statutorily imposed duties under the FEHA to
18 prevent such illegal conduct from occurring in the workplace.

19 54. The above-described acts and/or omissions were done oppressively in that
20 Defendants continually disregarded Rudy Orellana's rights as an employee
21 guaranteed under the FEHA and either directly subjected Mr. Orellana to ongoing
22 illegal harassment and unjust hardship in the workplace or Defendants
23 consciously disregarded the duties imposed on them under the FEHA to prevent
24 illegal conduct from occurring in the workplace. Moreover, their disregard of Mr.
25 Orellana's rights as recognized under the FEHA was done deliberately and
26 continually knowing there was a high probability that the rights of ORANGE
27 BANG workers who were Hispanic and/or over the age of 40 years (including the
28 rights of Mr. Orellana) would continue to be violated resulting in ongoing non-

1 economic and economic damages.

2 **Continuing Violations Doctrine**

3 55. Defendants' violations of the FEHA as set forth herein occurred on a
4 continuous basis during Defendants' employment of Plaintiff. Therefore, under
5 the Continuing Violations Doctrine, the statute of limitation for this cause of
6 action did not begin to accrue until Plaintiff was terminated by Defendants.

7 **Causation, Damages and Other Remedies**

8 56. Mr. Orellana's Hispanic race/ancestry and/or his age were substantial
9 motivating factors for Defendants' unlawful conduct toward him in violation of the
10 FEHA as described herein.

11 57. Defendants' unlawful employment practices in violation of the FEHA as set
12 forth herein were also a substantial factor in causing a disproportionate adverse
13 effect on employees of ORANGE BANG who were Hispanic and/or over the age of
14 40 years (including Mr. Orellana).

15 58. As a direct and proximate result of the above-described unlawful harassing
16 conduct based on race/ancestry and/or age as well as other employment practices
17 in violation of Gov. Code § 12940 (j) and (k), Rudy Orellana sustained past, present
18 and future non-economic damages, including physical and/or mental pain and
19 suffering, loss of enjoyment of life, inconvenience, anxiety, freight, humiliation
20 and/or emotional distress.

21 59. As a further direct and proximate result of the above-described unlawful
22 harassing conduct and other employment practices in violation of Gov. Code §
23 12940 (j) and (k), Rudy Orellana sustained past, present, and future economic
24 damages, including past, present, and future loss of earnings and/or earning
25 capacity as well as medical expenses.

26 60. As a further direct and proximate result of the above-described unlawful
27 harassing conduct and other employment practices in violation of Gov. Code §
28 12940 (j) and (k), Rudy Orellana has been compelled to retain legal counsel to

1 prosecute the within action and is, therefore, entitled to recover attorney's fees as
2 permitted under California law, including Gov. Code § 12965(b).

3 61. As a further direct and proximate result of the above-described unlawful
4 harassing conduct and other employment practices in violation of Gov. Code §
5 12940 (j) and (k), Rudy Orellana is entitled to recover costs (including expert
6 witness fees) as permitted under California law, including Gov't Code § 12965(b),
7 CCP § 998 and/or CCP § 1032.

8 62. As a further direct and proximate result of the above-described unlawful
9 harassing conduct and other employment practices in violation of Gov. Code §
10 12940 (j) and (k) as set forth herein, Rudy Orellana is entitled to an award of
11 punitive damages against Defendants as permitted by Civil Code § 3294.

12 63. As a further direct and proximate result of the above-described unlawful
13 harassing conduct and other employment practices in violation of Gov. Code §
14 12940 (j) and (k) as set forth herein, Plaintiff is entitled to be awarded
15 prejudgment interest as permitted Under California law, including Civil Code §
16 3287, Civil Code § 3288, Civil Code § 3289 and/or CCP § 3291.

17 64. As a further direct and proximate result of the above-described unlawful
18 conduct in violation of the FEHA as set forth herein, Rudy Orellana is entitled to
19 recover the damages, awards and remedies set forth below in the Prayer for
20 Damages, Awards and Other Relief.

21 **THIRD CAUSE OF ACTION -- FAILURE TO PAY OVERTIME WAGES BY**
22 **PLAINTIFF RUDY ORELLANA AGAINST ALL DEFENDANTS**

23 65. Plaintiff incorporates paragraphs 1 through 16 of this Complaint as though
24 fully set forth.

25 **Mandated Overtime Pay**

26 66. At all times herein, pursuant to Labor Code § 510 and the Industrial Wage
27 Order applicable to Orange Bang, employers of non-exempt employees like Mr.
28 Orellana were required to pay its non-exempt employees overtime pay as follows:

- 1 a. If an employee works in excess of 8 hours in one workday, the employer
2 must pay the employee no less than one and one-half times the
3 employee's regular rate of pay for all hours worked in excess of 8 hours
4 up to and including 12 hours in one workday.
- 5 b. If an employee works in excess of 12 hours in one workday, the
6 employer must pay the employee no less than twice the employee's
7 regular rate of pay.
- 8 c. If an employee works in excess of 40 hours in any one workweek, the
9 employer must pay the employee no less than one and one-half times
10 the employee's regular rate of pay for all hours worked in excess of 40
11 hours.

12 **Defendants' Failure to Pay Legally Mandated Overtime Pay**

13 67. At all times during the statute of limitations period applicable to this cause
14 of action, Defendants, and each of them, willfully, knowingly, and intentionally
15 failed to calculate and compensate Mr. Orellana the overtime wages owed to him
16 as required by Labor Code § 510 and/or applicable Industrial Wage Order.
17 Specifically, Defendants unfairly rounded Mr. Orellana's work hours to its benefit
18 and/or otherwise failed to include all the time he worked for ORANGE BANG in
19 calculating the wages he was entitled to be paid each pay period. This included
20 failing to pay overtime for on-duty meal periods and by combining one of the
21 mandated paid rest breaks that Mr. Orellana was entitled to with his unpaid meal
22 period such that the 10-minute rest break was not included in the employee's
23 worktime. Thereby, Plaintiff was denied overtime wages as required under Labor
24 Code § 510 as set forth above.

25 68. Defendants' failure to pay mandated overtime wages as set forth in this
26 cause of action occurred on a continuous basis during Mr. Orellana's employment
27 with Defendants. Therefore, under the Continuous Violation Doctrine, the statute
28 of limitation for this cause of action did not begin to accrue until the date of his

1 termination. Additionally, in violation of various sections of the Labor Code and/or
2 the applicable Industrial Wage Order, Defendants failed to post the notices
3 required under California law which the Legislature, the Industrial Wage
4 Commission and/or other authorized public officials had determined were
5 necessary to reasonably place California employees on notice of their right to be
6 paid overtime wages as set forth in Labor Code § 510. Defendants' failure to post
7 the required notices was done for the purpose of keeping its non-exempt employees
8 (including Mr. Orellana) uninformed of their rights to overtime pay in accordance
9 with California law. Consequently, under the Delayed Discovery Rule, Mr.
10 Orellana did not discover (and could not have reasonably discovered) that he had
11 been wrongfully deprived of overtime wages until sometime after the date of his
12 termination on October 20, 2020.

13 **No Exemptions or Legal Excuse**

14 69. There are no statutorily recognized exemptions or other legally recognized
15 exception which excused Defendants from paying overtime wages to Plaintiff;
16 therefore, Defendants were without legal justification or excuse from paying
17 Plaintiff overtime wages as mandated under California law.

18 **Joint Liability of Individual Defendants**

19 70. While acting on behalf of ORANGE BANG, Defendants DAVID FOX,
20 RICHARD STAIN, and DOES 11-30 (who were owners, directors, officers and/or
21 managing agents of ORANGE BANG) caused Labor Code § 510 and/or the
22 applicable Industrial Wage Order regarding overtime pay to be violated by
23 establishing and/or implementing overtime hours and overtime pay policies that
24 violated Labor Code § 510 and/or the applicable Industrial Wage Order.
25 Therefore, pursuant to Labor Code § 558.1, said Defendants individually liable for
26 such violation(s).

27 **Legal Remedies**

28 71. As permitted under California law, including but not limited to Labor Code

§ 218, Labor Code § 558, and/or § 1194, Plaintiff is entitled to maintain this cause of action to recover the unpaid balance of all overtime wages owed to him under the Labor Code, the applicable Industrial Wage Order(s), and applicable California regulations, local laws and/or ordinances.

72. As a further direct and proximate result of Defendants' failure to pay Plaintiff the wages owed to Plaintiff as set forth herein, Plaintiff is seeking any and/or all statutory penalties and other damages that he is entitled to under the Labor Code and/or applicable Industrial Wage Order for Defendant's failure to pay overtime wages.

73. As applicable under California law to the allegations made in this cause of action, Plaintiff is entitled to recover the other damages, penalties, awards, and remedies set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled "Individual Causes of Action for Labor Law Violations."

FOURTH CAUSE OF ACTION – FAILURE TO PAY MINIMUM WAGES BY PLAINTIFF RUDY ORELLANA AGAINST ALL DEFENDANTS

74. Plaintiff incorporates paragraphs 1 through 16 and 65 through 73 of this Complaint as though fully set forth.

Legally Mandated Minimum Wages

75. At all times herein, pursuant to Labor Code § 1182.12, employers were required to pay their employees at least the minimum hourly wage set forth in the Labor Code, the applicable Industrial Wage Order or other applicable local law, ordinance and/or regulation for all time worked by the employees.

Defendants' Failure to Pay Legally Mandated Minimum Wages

76. At all times during the applicable statutes of limitations period, Defendants and each of them willfully, knowingly, and intentionally failed to calculate and compensate Rudy Orellana the minimum wages he was entitled to under Labor Code § 1182.12, the applicable wage order and/or local regulation for all the hours Mr. Orellana worked for ORANGE BANG, including but not limited to the time he

1 worked off the clock, the time he was required to clock out for rest breaks which
2 are required to be paid by the employer, clock-in/out times that were unfairly
3 rounded to the benefit of Defendants, etc.

4 77. Defendants' failure to pay Rudy Orellana the mandatory minimum wages as
5 set forth in this cause of action occurred on a continuous basis during Defendants'
6 employment of Mr. Orellana. Therefore, under the Continuous Violation Doctrine
7 the statute of limitation for this cause of action did not begin to accrue until the
8 date that Plaintiff's employment was terminated. Additionally, in violation of
9 various sections of the Labor Code and/or the applicable Industrial Wage Order,
10 Defendants failed to post the notices required under California law which the
11 Legislature, the Industrial Wage Commission and/or other authorized public
12 officials had determined were necessary to reasonably place California employees
13 on notice of their right to be paid minimum wages for all work performed as set
14 forth above. Defendants' failure to post the required notices was done for the
15 purpose of keeping its employees uninformed of their rights under California law,
16 including their right to be paid at least the minimum wage for all hours worked.
17 Consequently, under the Delayed Discovery Rule, Mr. Orellana did not discover
18 (and could not have reasonably discovered) that he had been wrongfully deprived
19 of minimum wages as referenced above until sometime after the date of his
20 termination.

21 **No Exemptions or Legal Excuse**

22 78. Because there are no statutorily recognized exemptions or other legally
23 recognized exception which excused Defendants from paying at least the minimum
24 wage to Plaintiff for all the hours of work that he performed, Defendants were
25 without legal justification or excuse from paying Plaintiff at least the minimum
26 wage for all hours he worked for ORANGE BANG as mandated under California
27 law.

Joint Liability of Individual Defendants

79. While acting on behalf of ORANGE BANG, Defendants DAVID FOX, RICHARD STAIN and DOES 11-30 (who were owners, directors, officers and/or managing agents of Orange Bang) caused Labor Code § 1182.12, the applicable Industrial Wage Order and/or local law/ordinance regarding mandatory minimum wages to be violated by establishing and/or implementing minimum wage policies that violated said laws. Therefore, pursuant to Labor Code § 558.1, said Defendants are individually liable for such violation(s).

Legal Remedies

80. As permitted under California law, including but not limited to Labor Code § 218, Labor Code § 558, and/or § 1194, Plaintiff maintains this cause of action to recover the unpaid balance of the amount of the minimum wages owed to Plaintiff under California law (including Labor Code § 1182.12, the applicable Industrial Wage Order/regulation, and/or local law/ordinance).

81. Plaintiff is also entitled to recover liquidated damages and penalties to the fullest extent permitted under California law, including Labor Code § 1194.2 and Labor Code § 1197.1(a).

82. As a further direct and proximate result of Defendants' failure to pay Plaintiff the minimum wages owed to Plaintiff as set forth herein, Plaintiff is seeking any and/or all statutory penalties and other damages that he is entitled to under the Labor Code and/or applicable Industrial Wage Order for Defendant's failure to pay minimum wages.

83. As applicable under California law to the allegations made in this cause of action, Plaintiff is entitled to recover the damages, penalties, awards, and remedies set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled "Individual Causes of Action for Labor Law Violations."

**FIFTH CAUSE OF ACTION -- FAILURE TO PROVIDE MEAL PERIODS
OR PREMIUM PAY BY PLAINTIFF RUDY ORELLANA AGAINST ALL
DEFENDANTS**

84. Plaintiff incorporates paragraphs 1 through 16 and 65 through 83 of this Complaint as though fully set forth herein.

Legally Mandated Meal Periods

85. At all times herein, pursuant to Labor Code § 512 and the applicable wage order, an employer may not employ a non-exempt employee to work more than a five hours per day without providing the employee with a thirty-minute meal break within the first five hours of their workday.

86. Labor Code § 512 and the applicable wage order further provide that an employer may not employ an employee for a work period of more than ten hours per day without providing the employee with a second meal period of not less than 30 minutes.

87. California law further requires that for a meal period to qualify as a valid meal period under the law, the meal period must be timely, unrestricted and uninterrupted.

Defendants' Failure to Provide Legally Mandated Meal Periods

88. At all times during the statute of limitations period applicable to this cause of action, Rudy Orellana was a non-exempt employee and Defendants either deprived him of taking the meal period required under California law, required him to take his meal periods after his fifth hour of work, restricted his meal periods and/or interrupted his meal periods. As a result, Defendants were required by Labor Code § 226.7 and/or the applicable IWC Wage Order to pay Mr. Orellana "premium pay", i.e., one (1) hour of pay at his regular rate of compensation for each workday that a mandated meal period was not provided at all, was provided in an untimely manner, was restricted and/or was interrupted with work in violation of California law.

1 89. Nevertheless, during the time Rudy Orellana was employed by ORANGE
2 BANG, Defendants failed to provide Rudy Orellana with meal periods in
3 compliance with Labor Code § 512 and also failed to pay Mr. Orellana the
4 premium pay required for the failure to provide such meal periods under
5 California law.

6 90. Defendants' failure to provide the meal periods or the premium pay
7 mandated by law as set forth in this cause of action occurred on a continuous
8 basis during Plaintiff's employment with Defendants. Therefore, under the
9 Continuous Violation Doctrine, the statute of limitation for this cause of action did
10 not begin to accrue until the date that Plaintiff was terminated. Additionally, in
11 violation of various sections of the Labor Code and/or the applicable Industrial
12 Wage Order, Defendants failed to post the notices required under California law
13 which the Legislature, the Industrial Wage Commission and/or other authorized
14 officials had determined were necessary to reasonably place California employees
15 on notice of their rights to legally compliant meal periods or an hour of premium
16 pay wages as set forth above. Defendants' failure to post the required notices was
17 done for the purpose of keeping its employees uninformed of their rights under
18 California law, including the right to legally compliant meal periods as non-
19 exempt employees under California law. Consequently, Mr. Orellana did not
20 discover (and could not have reasonably discovered) that he had been denied the
21 meal periods mandated by law or had been denied the premium wages owed for
22 missed, untimely, restricted and/or interrupted meal periods as set forth above
23 until sometime after he was terminated.

24 **No Applicable Legal Exemptions or Excuses**

25 91. There were no statutorily recognized exemptions, waivers or other legally
26 recognized exceptions which excused Defendants from providing Rudy Orellana
27 with the legally mandated meal periods or premium pay wages. Therefore,
28 Defendants were without legal justification or excuse from providing Mr. Orellana

1 with legally compliant meal periods or providing him with one hour of premium
2 pay when legally compliant meal periods were not provided.

3 **Joint Liability of Individual Defendants**

4 92. While acting on behalf of ORANGE BANG, Defendants DAVID FOX,
5 RICHARD STAIN and DOES 11-30 (who were owners, directors, officers and/or
6 managing agents of Orange Bang) caused Labor Code § 512 and Labor Code 226.7
7 and/or the applicable Industrial Wage Order regarding mandatory meal periods to
8 be violated by establishing and/or implementing meal period policies that violated
9 Labor Code § 512, and Labor Code § 226.7 and/or the applicable Industrial Wage
10 Order. Therefore, pursuant to Labor Code § 558.1, said Defendants are
11 individually liable for such violation(s).

12 **Legal Remedies**

13 93. As a direct and proximate result of Defendants' failure to provide Plaintiff
14 the legally compliant meal periods or the premium pay required under California
15 law as set forth above, Plaintiff is entitled to recover the premium pay owed to
16 Plaintiff under Labor Code § 226.7 and/or the applicable Industrial Wage Order.

17 94. As a further direct and proximate result of Defendants' failure to provide
18 the meal periods mandated by law and/or the premium pay Plaintiff was entitled
19 to as set forth herein, Plaintiff is seeking any and/or all statutory penalties and
20 other damages that he is entitled to under the Labor Code and/or applicable
21 Industrial Wage Order for Defendant's failure to provide the required meal periods
22 and/or premium pay.

23 95. As applicable under California law to the allegations made in this cause of
24 action, Plaintiff is entitled to recover the damages, penalties, awards, and
25 remedies set forth below in the Prayer for Damages, Awards and Other Relief
26 under the section entitled "Individual Causes of Action for Labor Law Violations."
27
28

**SIXTH CAUSE OF ACTION -- FAILURE TO PROVIDE REST PERIODS OR
PREMIUM PAY BY PLAINTIFF RUDY ORELLANA AGAINST ALL
DEFENDANTS**

96. Plaintiff incorporates paragraphs 1 through 16 and 65 through 95 of this Complaint as though fully set forth herein.

Legally Mandated Rest Periods

97. At all times herein, pursuant to the California Labor Code, the applicable Industrial Wage Order, and/or applicable regulation, employers must authorize and permit employees to take paid rest periods at the rate of 10 minutes net rest time per four hours or major fraction thereof (unless the total work time is less than 3 ½ hours). California law further provides that so far as practical, the mandatory rest breaks must be provided in the middle of each work period.

98. California law further requires that for a rest break to qualify as a valid rest break under the law, the rest break must be timely, unrestricted, and uninterrupted.

Defendants' Failure to Provide Legally Mandated Rest Breaks

99. At all times during the statute of limitations period applicable to this cause of action, Rudy Orellana regularly worked more than 6 hours a day, entitling him to two 10-minute rest breaks, one in the middle of his first work period during his workday and one in the middle of his second work period during his workday.

100. In violation of California law, Defendants either 1) deprived Rudy Orellana of taking the rest periods required under California law, 2) required him to take his rest breaks too early or too late (even though it was practical for him to take them in the middle of each work period), 3) restricted his rest breaks and/or 4) interrupted his rest breaks.

101. In violation of Labor Code § 226.7, Defendants also failed to pay Mr. Orellana one (1) hour of pay at his regular rate of compensation for each workday that a mandated rest break was not provided, was provided too early or too late,

1 was restricted and/or was interrupted.

2 102. Defendants' failure to provide legally compliant rest breaks or the requisite
3 premium pay as set forth in this cause of action occurred on a continuous basis
4 during Plaintiff's employment with Defendants. Therefore, under the Continuous
5 Violation Doctrine, the statute of limitation for this cause of action did not begin to
6 accrue until the date that Plaintiff's employment with Defendants was terminated.
7 Additionally, in violation of various sections of the Labor Code and/or the
8 applicable Industrial Wage Order, Defendants failed to post the notices required
9 under California law which the Legislature, the Industrial Wage Commission
10 and/or other public authorized officials had determined were necessary to
11 reasonably place employees on notice of their rights under California law.
12 Defendants' failure to post the required notices was done for the purpose of
13 keeping its employees uninformed of their rights under California law, including
14 the right of non-exempt employees to legally compliant rest breaks or the requisite
15 premium wages as set forth above. Consequently, under the Delayed Discovery
16 Rule, Mr. Orellana did not discover (and could not have reasonably discovered)
17 that he had been denied legally compliant rest breaks and the requisite premium
18 wages until the date of his termination.

19 **No Applicable Legal Exemptions or Excuses**

20 103. There were no statutorily recognized exemptions, waivers or other legally
21 recognized exceptions which excused Defendants from providing Rudy Orellana
22 with legally complaint rest breaks or the requisite premium pay. Therefore,
23 Defendants were without legal justification or excuse from providing Mr. Orellana
24 with said rest breaks or providing him with the requisite premium pay when said
25 rest breaks were not provided.

26 **Joint Liability of Individual Defendants**

27 104. While acting on behalf of Orange Bang, Defendants DAVID FOX, RICHARD
28 STAIN and DOES 11-30 (who were owners, directors, officers and/or managing

agents of Orange Bang) caused the applicable law regarding mandatory rest breaks to be violated by establishing and/or implementing rest break policies/practices that violated the applicable Industrial Wage Order and/or California regulation as well as Labor Code § 226.7. Therefore, pursuant to Labor Code § 558.1, said Defendants are individually liable for such violation(s).

Legal Remedies

105. As a direct and proximate result of Defendants' failure to provide Plaintiff the legally mandated rest breaks or the premium pay required under Labor Code § 226.7, Plaintiff is entitled to recover the premium pay owed to Plaintiff under Labor Code § 226.7.

106. As a further direct and proximate result of Defendants' failure to provide the rest breaks mandated by law and/or the premium pay Plaintiff was entitled to as set forth herein, Plaintiff is seeking any and/or all statutory penalties and other damages that he is entitled to under the Labor Code and/or applicable Industrial Wage Order for Defendant's failure to provide the required rest breaks and/or premium pay.

107. As applicable under California law to the allegations made in this cause of action, Plaintiff is entitled to recover the other damages, penalties, awards, and remedies set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled "Individual Causes of Action for Labor Law Violations."

SEVENTH CAUSE OF ACTION -- FAILURE TO PAY WAGES/TIMELY PAY WAGES FOR ALL TIME WORKED BY PLAINTIFF RUDY ORELLANA AGAINST ALL DEFENDANTS

108. Plaintiff incorporates paragraphs 1 through 16 and 65 through 107 of this Complaint as though fully set forth.

Legal Duty to Pay Wages

109. At all times herein, pursuant to Labor Code § 200, wages in California

1 include all amounts for labor performed by employees of every description,
2 whether the amount is fixed or ascertained by the standard of time, task, piece,
3 commission basis, or other method of calculation. Wages under Labor Code § 200
4 also includes vested benefits such as premium pay for missed, untimely, restricted
5 and/or interrupted meal periods and/or rest breaks.

6 110. All non-exempt employees must be paid all wages earned within the
7 timeframes set forth in Labor Code § 204.

8 **Defendants' Failure to Pay All Earned Wages**

9 111. At all times during the statute of limitations period applicable to this cause
10 of action, Defendants and each of them willfully, knowingly, and intentionally
11 failed to compensate Rudy Orellana for all the time he actually worked and earned
12 wages by failing to pay him: 1) for time worked off-the-clock, 2) for unfairly
13 rounding his punch-in times to the unjust benefit of the employer; 3) for requiring
14 him to clock out for rest breaks that were legally required to be paid by the
15 employer; 4) for not paying him premium wages for missed, untimely, short,
16 interrupted or restricted meal periods and/or rest breaks, etc.

17 112. Since such wages were never compensated, said wages were also not paid in
18 accordance with the time frames set forth in Labor Code § 204.

19 113. Defendants' failure to pay wages/timely pay wages as set forth in this cause
20 of action occurred on a continuous basis until the date of his termination.

21 Therefore, under the Continuous Violation Doctrine, the statute of limitation for
22 this cause of action did not begin to accrue until the date that Plaintiff's
23 employment with Defendants ended. Additionally, in violation of various sections
24 of the Labor Code and/or the applicable Industrial Wage Order, Defendants failed
25 to post the notices required under California law which the Legislature, the
26 Industrial Wage Commission and/or other authorized officials determined were
27 necessary to reasonably place California employees on notice of their rights to be
28 paid earned wages in accordance with California law. Defendants' failure to post

1 the required notices was done for the purpose of keeping its employees (including
2 Mr. Orellana) uninformed of their rights to be paid wages in compliance with
3 California law. Consequently, Mr. Orellana did not discover (and could not have
4 reasonably discovered) that Defendants had not paid him the wages he had earned
5 as required under California law until sometime after the date of his termination.

6 **No Exemptions or Legal Excuse**

7 114. There is no legally recognized exemption or exception which excused
8 Defendants from paying Plaintiff his earned wages and to do so within the
9 timeframes set forth in Labor Code § 204.

10 **Joint Liability of Individual Defendants**

11 115. While acting on behalf of ORANGE BANG, Defendants DAVID FOX,
12 RICHARD STAIN and DOES 11-30 (who were owners, directors, officers and/or
13 managing agents of ORANGE BANG) caused Labor Code § 200, § 204, and/or
14 applicable Industrial Wage Order to be violated by establishing and/or
15 implementing employment, wage, and/or payroll procedures and/or policies that
16 violated Labor Code § 200, § 204, and/or applicable Industrial Wage Order.
17 Therefore, pursuant to Labor Code § 558.1, said Defendants are individually liable
18 for such violation(s).

19 **Legal Remedies**

20 116. As permitted under California law, including but not limited to Labor Code
21 § 218, Labor Code § 558, and/or § 1194, Plaintiff brings this cause of action to
22 recover the unpaid balance of all wages owed to him under the Labor Code, the
23 applicable Industrial Wage Order(s), and applicable California regulations, local
24 laws, and/or ordinances.

25 117. As a further direct and proximate result of Defendants' failure to pay
26 Plaintiff the wages he was entitled to as set forth herein, Plaintiff is seeking any
27 and/or all statutory penalties and other damages that he is entitled to under the
28 Labor Code and/or applicable Industrial Wage Order for Defendant's failure to pay

1 said wages.

2 118. As applicable under California law to the allegations made in this cause of
3 action, Plaintiff is entitled to recover the other damages, penalties, awards, and
4 remedies set forth below in the Prayer for Damages, Awards and Other Relief
5 under the section entitled "Individual Causes of Action for Labor Law Violations."
6

7 **EIGHTH CAUSE OF ACTION – FAILURE TO INDEMNIFY FOR**
8 **EXPENDITURES BY PLAINTIFF RUDY ORELLANA AGAINST ALL**
9 **DEFENDANTS**

10 119. Plaintiff incorporates paragraphs 1 through 16 of this Complaint as though
11 fully set forth herein.

12 **Statutory Requirement that Employees Be Indemnified for Expenditures**

13 120. At all times herein, pursuant to Labor Code § 2802(a), an employer is
14 required to indemnify employees for all necessary expenditures incurred by the
15 employee in the discharge of the employee's duties or in obedience to the directions
16 of the employer.

17 **Defendants' Failure to Indemnify for Expenditures**

18 121. At all times during the statute of limitations period applicable to this cause
19 of action, in violation of Labor Code § 2802(a), Defendants failed to indemnify
20 Rudy Orellana for necessary expenditures incurred by Mr. Orellana in the
21 discharge of his duties or in obedience to the directions of Defendants including
22 the following expenditures: Daily availability and/or use of his personal cell phone
23 device used to take pictures that were sent to ORANGE BANG's office and
24 managers and/or used to communicate with management and/or other employees
25 and/or customers.

26 122. Defendants' failure to indemnify Mr. Orellana for the necessary
27 expenditures he made in the discharge of his duties or in obedience to the
28 directions of Defendants as set forth herein occurred on a continuous basis during

1 Plaintiff's employment with Defendants. Therefore, under the Continuous
2 Violation Doctrine, the statute of limitation for this cause of action did not begin to
3 accrue until the date that Plaintiff's employment with Defendants was terminated.
4 Additionally, Defendants failed to post the notices required under California law
5 which the Legislature, the Industrial Wage Commission and/or other authorized
6 official determined were necessary to reasonably place California employees on
7 notice of their rights as employees under California law. Defendants' failure to
8 post the required notices was done for the purpose of keeping its employees
9 uninformed of their rights under California law, including the right to be
10 reimbursed for necessary expenditures as required by Labor Code § 2802.
11 Consequently, Mr. Orellana did not discover (and could not have reasonably
12 discovered) his rights under Labor Code § 2802 until sometime after his
13 termination when he first learned of his rights under Labor Code § 2802.

14 **No Applicable Legal Exemptions or Excuses**

15 123. There were no statutorily recognized exemptions, waivers or other legally
16 recognized exceptions which excused Defendants from indemnifying Mr. Orellana
17 for expenditures expended by him as referenced above. Therefore, Defendants
18 were without legal justification or excuse from failing to indemnify Mr. Orellana
19 for said expenditures.

20 **Joint Liability of Individual Defendants**

21 124. While acting on behalf of ORANGE BANG, Defendants DAVID FOX,
22 RICHARD STAIN and DOES 11-30 (who were owners, directors, officers and/or
23 managing agents of ORANGE BANG) caused Labor Code § 2802 and/or the
24 applicable Industrial Wage Order regarding employee expenditure reimbursement
25 to be violated by establishing and/or implementing employee reimbursement
26 policies that violated Labor Code § 2802 and/or the applicable Industrial Wage
27 Order. Therefore, pursuant to Labor Code § 558.1 and Labor Code § 2802, said
28 Defendants are individually liable for such violation(s).

Legal Remedies

125. As a direct and proximate result of Defendants' failure to indemnify Plaintiff for necessary expenditures incurred in the discharge of Plaintiff's duties or in obedience to the directions of Defendant as required by Labor Code § 2802, Plaintiff is entitled to recover the amount of expenditures that should have been indemnified by ORANGE BANG pursuant to Labor Code § 2802 as set forth herein.

126. As applicable under California law to the allegations made in this cause of action, Plaintiff is entitled to recover the other damages, penalties, awards, and remedies set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled "Individual Causes of Action for Labor Law Violations."

NINTH CAUSE OF ACTION – FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS BY PLAINTIFF RUDY ORELLANA AGAINST ALL DEFENDANTS

127. Plaintiff incorporates paragraphs 1 through 16 and 65 through 118 of this Complaint as if fully alleged herein.

Statutory Requirement to Provide Accurate Itemized Wage Statements

128. At all times herein, pursuant to Labor Code § 226(a), each time an employer pays wages to an employee, the employer is required to furnish the employee with an "accurate itemized statement in writing" that itemizes the following: 1) gross wages earned; 2) total hours worked; 3) the number of piece-rate units earned and the applicable piece rates; 4) all deductions; 5) net wages earned; 6) the inclusive dates for which the employee is being paid; 7) name of the employee and only the last 4 digits of her/his social security number or employee I.D. number; 8) the name and address of the legal entity of the employer; 9) all hourly rates in effect to the pay period and corresponding number of hours worked at each hourly rate.

Failure to Provide Accurate Itemized Wage Statements

129. At all times during the statute of limitations period applicable to this cause of action, Defendants violated Labor Code §226(a) in all of the following ways:

- a. ORANGE BANG did not provide wage statements in writing to Mr. Orellana,
- b. The wage statements provided to Mr. Orellana were not accurate because, among other things, the statements did not accurately record the gross and net wages earned by Mr. Orellana in that the statements:
 - 1) did not record the minimum wages he earned under California law as set forth herein, 2) did not record the overtime pay earned by Mr. Orellana as set forth herein, and/or 3) did not include the premium pay owed to Mr. Orellana for missed, untimely, restricted, interrupted meal periods/rest breaks as set forth herein,
- c. The wage statements did not accurately record the total hours worked by Mr. Orellana in that, among other times, the statements did not include the time that he worked off-the-clock as set forth herein,
- d. The wage statements did not state the hourly rate(s) in effect to the pay period and the corresponding number of hours worked at each hourly rate,
- e. The wage statements did not accurately identify the name and address of the legal entity of the employer.

130. As a result of the above statutory deficiencies in the wage statements provided to Mr. Orellana, he was not reasonably able to promptly and easily determine from the wage statements alone one or more of the following items of information:

- a. The accurate amount of gross wages he was paid during the pay period,
- b. The accurate amount of net wages he was paid during the pay period,
- c. The accurate total number of hours that he worked,

d. The accurate name and address of the legal entity of the employer.

131. A reasonable person would also have been unable to readily discern the above information without reference to other documents or information.

132. Defendants' failure to provide Rudy Orellana with accurate wage statements as set forth herein occurred on a continuous basis during Plaintiff's employment with Defendants. Therefore, under the Continuous Violation Doctrine, the statute of limitation for this cause of action did not begin to accrue until the date that Plaintiff's employment with Defendants was terminated. Additionally, Defendants failed to post the notices required under California law which the Legislature, the Industrial Wage Commission and/or authorized public official determined were necessary to reasonably place California employees on notice of their rights as employees under California law. Defendants' failure to post the required notices was done for the purpose of keeping its employees uninformed of their rights under California law, including their right to accurate wage statements that accurately recorded the information required under Labor Code § 226 as set forth herein. Consequently, Mr. Orellana did not discover (and could not have reasonably discovered) his rights under Labor Code § 226 until sometime after his termination and learned that ORANGE BANG had not provided Plaintiff with legally compliant wage statements.

No Applicable Legal Exemptions or Excuses

133. There were no statutorily recognized exemptions, waivers or other legally recognized exceptions which excused Defendants from providing Mr. Orellana with accurate wage statements as set forth above. Therefore, Defendants were without legal justification or excuse from failing to provide Mr. Orellana with accurate wage statements as required under Labor Code § 226.

Joint Liability of Individual Defendants

134. While acting on behalf of ORANGE BANG, Defendants DAVID FOX, RICHARD STAIN and DOES 11-30 (who were owners, directors, officers and/or

managing agents of ORANGE BANG) caused Labor Code § 226(a) and/or the applicable IWC Wage Order regarding providing employees with accurate itemized wage statements to be violated by giving instructions that did not comply with Labor Code § 226 and by establishing and/or implementing wage statement and/or payroll policies/practices that violated Labor Code § 226 or the applicable IWC Wage Order. Therefore, pursuant to Labor Code § 558.1, said Defendants are individually liable for such violation(s).

Legal Remedies

135. As a direct and proximate result of Defendants' knowing and intentional failure to comply with Labor Code § 226(a) and its business wide practice of failing to provide accurate wage statements which included accurate itemization of the items of information required under Labor Code § 226(a), Plaintiff is entitled to recover the penalties set forth in Labor Code § 226(e) up to a maximum of \$4,000, according to proof.

136. As a further direct and proximate result of Defendants' failure to provide the wage statements mandated by law, Plaintiff is seeking any and/or all statutory penalties and/or other damages that he is entitled to under the Labor Code and/or applicable Industrial Wage Order for Defendant's failure to provide accurate wage statements.

137. As applicable under California law to the allegations made in this cause of action, Plaintiff is entitled to recover the other damages, penalties, awards, and remedies set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled "Individual Causes of Action for Labor Law Violations."

TENTH CAUSE OF ACTION – FAILURE TO PROVIDE EMPLOYMENT RECORDS BY PLAINTIFF RUDY ORELLANA AGAINST ALL DEFENDANTS

138. Plaintiff incorporates paragraphs 1 through 16 and 65 through 137 of this

Complaint as if fully alleged herein.

Statutory Requirement to Provide Employment Records

139. At all times herein, pursuant to Labor Code § 226(b), employers are required to afford their current and former employees the right to inspect or copy all records pertaining to their employment upon reasonable notice.

140. Pursuant to Labor Code § 226(c), an employer who receives a written or oral request to inspect or copy records must comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request.

141. Pursuant to Labor Code § 226(b), if the employer provides copies of the records, the actual cost of reproduction may be charged to the employee.

Defendants' Failure to Provide Employment Records to Plaintiff

142. Pursuant to Labor Code §226(b), Plaintiff (via written correspondence transmitted via certified letter with return receipt) requested all records pertaining to Plaintiff's employment with Orange Bang.

143. Defendants received the request but failed to provide all the requested the documents for copying or to timely provide copies of all the requested records to Plaintiff. As a result, Defendants have prevented Mr. Orellana from discovering all facts and/or theories of liability which may support this action.

No Applicable Legal Exemptions or Excuses

144. There were no statutorily recognized exemptions, waivers or other legally recognized exceptions which excused Defendants from timely providing all of the records pertaining to Mr. Orellana's employment with ORANGE BANG.

Therefore, Defendants were without legal justification or excuse from providing Mr. Orellana with all of the records pertaining to his employment with ORANGE BANG within the timeframes required under California law.

Joint Liability of Individual Defendants

145. While acting on behalf of ORANGE BANG, Defendants DAVID FOX, RICHARD STAIN and DOES 11-30 who were owners, directors, officers and/or

managing agents of ORANGE BANG caused Labor Code § 226 to be violated by establishing and/or implementing policies, practices and/or procedures that violated Labor Code § 226. Therefore, pursuant to Labor Code § 558.1 said Defendants are individually liable for such violation(s).

Legal Remedies

146. As a direct and proximate result of Defendants' knowing and intentional failure to comply with Labor Code § 226, Plaintiff is entitled to recover the \$750 penalty set forth in Labor Code § 226(f). Plaintiff also seeks any and/or all statutory penalties and other damages that he is entitled to under the Labor Code and/or applicable Industrial Wage Order for Defendant's failure to provide employment records.

147. As applicable under California law to the allegations made in this cause of action, Plaintiff is entitled to recover the other damages, penalties, awards and remedies set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled "Individual Causes of Action for Labor Law Violations."

ELEVENTH CAUSE OF ACTION – VIOLATION OF LABOR LAWS GIVING RISE TO AN ACTION PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT (PAGA) – BY RUDY ORELLANA ON BEHALF OF HIMSELF AND OTHER CURRENT AND FORMER AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS

148. Plaintiff incorporates by reference and re-alleges the allegations contained in paragraphs 1 through 16 of this Complaint as if fully set forth herein.

149. Plaintiff brings this cause of action pursuant to the Private Attorneys General Act (Labor Code §2699) on behalf of herself/himself and all aggrieved employees as described as follows: All aggrieved current and former employees who have worked for Defendants in California during the applicable statute of limitations period.

COUNT ONE – FAILURE TO PAY OVERTIME WAGES

150. Plaintiff incorporates paragraphs 1 through 16 and 65 through 73 of this Complaint as though fully set forth.

Legally Mandated Overtime Pay

151. Pursuant Labor Code § 510 and the Industrial Wage Order applicable to Orange Bang, employers of non-exempt employees who are 18 years and older and doing the kind of work required by Orange Bang must pay non-exempt employees overtime pay as follows:

- a. If an employee works in excess of 8 hours in one workday, the employer must pay the employee no less than one and one-half times the employee's regular rate of pay for all hours worked in excess of 8 hours up to and including 12 hours in one workday.
- b. If an employee works in excess of 12 hours in one workday, the employer must pay the employee no less than twice the employee's regular rate of pay.
- c. If an employee works in excess of 40 hours in any one workweek, the employer must pay the employee no less than one and one-half times the employee's regular rate of pay for all hours worked in excess of 40 hours.
- d. If an employee works seven days in any workweek, the employer must pay the employee no less than one and one-half times the employee's regular rate of pay the first 8 hours worked on the seventh day.

Defendants' Failure to Pay Legally Mandated Overtime Pay

152. At all times during the statute of limitations period applicable to this cause of action, Defendants, and each of them, willfully, knowingly, and intentionally failed to calculate and compensate Mr. Orellana and all other aggrieved employees the overtime wages owed to him/her as required by Labor Code § 510 and/or

1 applicable Industrial Wage Order. Specifically, Defendants unfairly rounded Mr.
2 the employees' work hours to its benefit and/or otherwise failed to include all the
3 time they worked for ORANGE BANG in calculating the wages they were entitled
4 to be paid each pay period. This included failing to pay overtime for on-duty meal
5 periods and by combining one of the mandated paid rest breaks that said
6 employees were entitled to with their unpaid meal period such that the 10-minute
7 rest break was not included in the employee's worktime. Thereby, said employees
8 were denied overtime wages as required under Labor Code § 510 as set forth
9 above.

10 **No Exemptions or Legal Excuse**

11 153. There are no statutorily recognized exemptions or other legally recognized
12 exception which excused Defendants from paying overtime wages to Plaintiff and
13 the other aggrieved employees; therefore, Defendants were without legal
14 justification or excuse from paying Plaintiff overtime wages as mandated by law.

15 **Joint Liability of Individual Defendants**

16 154. While acting on behalf of Orange Bang, Defendants DAVID FOX, RICHARD
17 STAIN and DOES 11-30 (who were owners, directors, officers and/or managing
18 agents of Orange Bang) caused Labor Code § 510 and/or the applicable Industrial
19 Wage Order regarding overtime pay to be violated by establishing and/or
20 implementing overtime hours and overtime pay policies that violated Labor Code §
21 510 and/or the applicable Industrial Wage Order. Therefore, pursuant to Labor
22 Code § 558.1, said Defendants are as liable as Orange Bang for such violation(s).

23 **Legal Remedies**

24 155. The following remedies are sought to the extent such remedies are
25 collectable in an action brought under the PAGA:

- 26 a. All civil penalties available under California law for an employer's
27 failure to pay overtime wages to its employees which are collectable
28 under the PAGA.

156. As applicable under California law, Plaintiff (on behalf of himself and other similarly aggrieved employees) is entitled to recover the other damages, penalties, awards and remedies set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled "PAGA Cause of Action."

COUNT TWO -- FAILURE TO PAY MINIMIUM WAGES

157. Plaintiff incorporates paragraphs 1 through 16 and 65 through 83 of this Complaint as though fully set forth.

Legally Mandated Minimum Wages

158. At all times herein, pursuant to Labor Code § 1182.12, employers were required to pay their employees at least the minimum hourly wage set forth in the Labor Code, the applicable Industrial Wage Order or other applicable local law, ordinance and/or regulation for all time worked by the employees.

Defendants' Failure to Pay Legally Mandated Minimum Wages

159. At all times during the applicable statutes of limitations period, Defendants and each of them willfully, knowingly, and intentionally failed to calculate and compensate Rudy Orellana and the other aggrieved employees the minimum wages they were entitled to under Labor Code § 1182.12, the applicable wage order and/or local regulation for all the hours said employees worked for ORANGE BANG, including but not limited to the time they worked off the clock, the time they were required to clock out for rest breaks which are required to be paid by the employer, clock-in/out times that were unfairly rounded to the benefit of Defendants, etc. Defendants' failure to pay mandatory minimum wages as set forth in this count occurred on a continuous basis during Plaintiff's and the other aggrieved employees' employment with Orange Bang. Therefore, under the Continuous Violation Doctrine, the statute of limitation as to each said employee involved in this count did not begin to accrue until the date that each said employee's employment with Orange Bang ended.

No Exemptions or Legal Excuse

160. Because there are no statutorily recognized exemptions or other legally recognized exception which excused Defendants from paying such wages to Plaintiff and its other aggrieved employees, Defendants were without legal justification or excuse from paying Plaintiff and the other aggrieved employees at least the minimum wages mandated by law for all hours worked by said employees.

Joint Liability of Individual Defendants

161. While acting on behalf of Orange Bang, Defendants DAVID FOX, RICHARD STAIN and DOES 11-30 (who were owners, directors, officers and/or managing agents of Orange Bang) caused Labor Code § 1182.12, the applicable Industrial Wage Order and/or local law/ordinance regarding mandatory minimum wages to be violated by establishing and/or implementing minimum wage policies that violated said laws. Therefore, pursuant to Labor Code § 558.1, said Defendants are as liable as Orange Bang for such violation(s).

Legal Remedies

162. The following remedies are sought to the extent such remedies are collectable in an action brought under the PAGA:

- a. All civil penalties available under California law for an employer's failure to pay minimum wages to its employees.

163. As applicable under California law, Plaintiff (on behalf of himself and other similarly aggrieved employees) is entitled to recover the other damages, penalties, awards and remedies set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled "PAGA Cause of Action."

COUNT THREE – FAILURE TO PROVIDE MEAL PERIODS/PREMIUM PAY

164. Plaintiff incorporates paragraphs 1 through 16 and 65 through 95 of this Complaint as though fully set forth herein.

Legally Mandated Meal Periods

1 165. At all times herein, pursuant to Labor Code § 512 and the applicable wage
2 order, an employer may not employ a non-exempt employee to work more than a
3 five hours per day without providing the employee with a thirty-minute meal
4 break within the first five hours of their workday.

5 166. Labor Code § 512 and the applicable wage order further provide that an
6 employer may not employ a non-exempt employee for a work period of more than
7 ten hours per day without providing the employee with a second meal period of not
8 less than 30 minutes.

9 167. California law further requires that for a meal period to qualify as a valid
10 meal period under the law, the meal period must be timely, unrestricted and
11 uninterrupted.

12 **Defendants' Failure to Provide Legally Mandated Meal Periods**

13 168. At all times during the statute of limitations period applicable to this cause
14 of action, Defendants either deprived its non-exempt employees (Rudy Orellana
15 and the other aggrieved employees) of taking the meal period required under
16 California law, required them to take their meal periods after their fifth hour of
17 work, restricted their meal periods and/or interrupted their meal periods. As a
18 result, Defendants were required by Labor Code § 226.7 and/or the applicable IWC
19 Wage Order to pay said employees "premium pay", i.e., one (1) hour of pay at their
20 regular rate of compensation for each workday that a mandated meal period was
21 not provided at all, was provided in an untimely manner, was restricted and/or
22 was interrupted with work in violation of California law.

23 169. Nevertheless, Defendants failed to provide said employees with meal
24 periods in compliance with Labor Code § 512, and also failed to pay said employees
25 the premium pay required for the failure to provide such meal periods under
26 California law.

27 **No Applicable Legal Exemptions or Excuses**

28 170. There were no statutorily recognized exemptions, waivers or other legally

1 recognized exceptions which excused Defendants from providing Plaintiff and
2 other aggrieved employees with the legally mandated meal periods. Therefore,
3 Defendants were without legal justification or excuse from providing said
4 employees with the required meal periods or providing them with one hour of
5 premium pay when said meal periods were not provided.

6 **Joint Liability of Individual Defendants**

7 171. While acting on behalf of Orange Bang, Defendants DAVID FOX, RICHARD
8 STAIN and DOES 11-30 who were owners, directors, officers and/or managing
9 agents of Orange Bang caused Labor Code § 512 and Labor Code 226.7 and/or the
10 applicable Industrial Wage Order regarding mandatory meal periods to be violated
11 by establishing and/or implementing meal period policies that violated Labor Code
12 § 512, and Labor Code § 226.7 and/or the applicable Industrial Wage Order.
13 Therefore, pursuant to Labor Code § 558.1, said Defendants are as liable as
14 Orange Bang for such violation(s).

15 **Legal Remedies**

16 172. The following remedies are sought to the extent such remedies are
17 collectable in an action brought under the PAGA:

- 18 a. The unpaid balance of all premium wages owed to Plaintiff and the
19 other aggrieved employees for missed, untimely, restricted and/or
20 interrupted meal periods.
21 b. All civil penalties available under California law for an employer's
22 failure to provide its employee's with mandated meal periods or
23 premium pay.

24 173. As applicable under California law, Plaintiff (on behalf of himself and other
25 similarly aggrieved employees) is entitled to recover the other damages, penalties,
26 awards and remedies set forth below in the Prayer for Damages, Awards and
27 Other Relief under the section entitled "PAGA Cause of Action."

COUNT FOUR – FAILURE TO PROVIDE REST BREAKS/PREMIUM PAY

174. Plaintiff incorporates paragraphs 1 through 16 and 65 through 107 of this Complaint as though fully set forth herein.

Legally Mandated Rest Periods

175. At all times herein, pursuant to the California Labor Code, the applicable Industrial Wage Order, and/or applicable regulation, employers must authorize and permit employees to take paid rest periods at the rate of 10 minutes net rest time per four hours or major fraction thereof (unless the total work time is less than 3 ½ hours).

176. California law further provides that so far as practical, the mandatory rest breaks must be provided in the middle of each work period.

177. California law further requires that for a rest break to qualify as a valid rest break under the law, the rest break must be timely, unrestricted, and uninterrupted.

Defendants’ Failure to Provide Legally Mandated Rest Breaks

178. At all times during the statute of limitations period applicable to this cause of action, Rudy Orellana and the other aggrieved employees regularly worked more than 6 hours a day, entitling them to two 10-minute rest breaks, one in the middle of their first work period during their workday and one in the middle of their second work period during his workday.

179. In violation of California law, Defendants either 1) deprived said employees of taking the rest periods required under California law, 2) required them to take their rest breaks too early or too late (even though it was practical for them to take them in the middle of each work period), 3) restricted their rest breaks and/or 4) interrupted their rest breaks.

180. In violation of Labor Code § 226.7, Defendants also failed to pay said employees one (1) hour of pay at their regular rate of compensation for each workday that a mandated rest break was not provided, was provided too early or

too late, was restricted and/or was interrupted.

No Applicable Legal Exemptions or Excuses

181. There were no statutorily recognized exemptions, waivers or other legally recognized exceptions which excused Defendants from providing Plaintiff and the other aggrieved employees with the legally mandated rest breaks. Therefore, Defendants were without legal justification or excuse from providing said employees with said rest breaks and/or providing them with premium pay when said rest breaks were not provided.

Joint Liability of Individual Defendants

182. While acting on behalf of Orange Bang, Defendants DAVID FOX, RICHARD STAIN and DOES 11-30 (who were owners, directors, officers and/or managing agents of Orange Bang caused) the applicable Labor Code, Industrial Wage Order and/or regulation regarding mandatory rest breaks to be violated by establishing and/or implementing rest break policies that violated the Labor Code, applicable Industrial Wage Order, applicable regulation as well as Labor Code § 226.7. Therefore, pursuant to Labor Code § 558.1, said Defendants are as liable as Orange Bang for such violation(s).

Legal Remedies

183. The following remedies are sought to the extent such remedies are collectable in an action brought under the PAGA:

- a. The unpaid balance of all premium wages owed to Plaintiff and Defendants' other aggrieved employees for missed, untimely, restricted and/or interrupted rest breaks.
- b. All civil penalties available under California law for an employer's failure to provide its employee's with mandated rest breaks or premium pay.

184. As applicable under California law, Plaintiff is entitled to recover the other damages, penalties, awards and remedies set forth below in the Prayer for

Damages, Awards and Other Relief under the section entitled “PAGA Cause of Action.”

COUNT FIVE – FAILING TO PAY WAGES FOR ALL TIME WORKED

185. Plaintiff incorporates paragraphs 1 through 16 and 65 through 118 of this Complaint as though fully set forth.

Legal Duty to Pay Earned Wages

186. Pursuant to Labor Code § 200, wages in California include all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation. Wages under Labor Code § 200 also include vested benefits such as accrued vacation pay/PTO and sick leave pay owed due to use of accrued sick leave benefits.

187. All non-exempt employees must be paid owed wages within the timeframes set forth in Labor Code § 204, the applicable Industrial Wage Order or other applicable California law.

Defendants’ Failure to Pay/Timely Pay Employees All Earned Wages

188. At all times during the statute of limitations period applicable to this cause of action, Defendants and each of them willfully, knowingly, and intentionally failed to compensate Rudy Orellana and the other aggrieved employees for all the time they actually worked and earned wages by failing to pay them: 1) for time worked off-the-clock, 2) for unfairly rounding the employees’ punch-in times to the unjust benefit of the employer; 3) for requiring employees to clock out for rest breaks that were legally required to be paid by the employer; 4) for not paying employees premium wages for missed, untimely, short, interrupted or restricted meal periods and/or rest breaks, etc.

189. Since such wages were never compensated, said wages were also not paid in accordance with the time frames set forth in Labor Code § 204.

No Exemptions or Legal Excuse

190. There are no statutorily recognized exemptions or other legally recognized exception which excused Defendants from paying such wages to Plaintiff and its other aggrieved employees. Therefore, Defendants were without legal justification or excuse from paying Plaintiff and all other aggrieved employees the wages due them under California law and to do so within the time limits mandated by law.

Joint Liability of Individual Defendants

191. While acting on behalf of Orange Bang, Defendants DAVID FOX, RICHARD STAIN and DOES 11-30 (who were owners, directors, officers and/or managing agents of Orange Bang) caused Labor Code § 200, § 204 and/or applicable Industrial Wage Order regarding payment of wages to be violated by establishing and/or implementing clock-in procedures, rounding policies, payroll policies and other hour and/or wage policies that violated Labor Code § 200, § 204 and/or applicable Industrial Wage Order. Therefore, pursuant to Labor Code § 558.1, said Defendants are as liable as Orange Bang for such violation(s).

Legal Remedies

192. The following remedies are sought to the extent such remedies are collectable in an action brought under the PAGA:

- a. The unpaid balance of all wages owed to Defendant's aggrieved employees.
- b. All civil penalties available under California law for an employer's failure to pay/timely pay wages to its employees.

As applicable under California law, Plaintiff (on behalf of himself and other similarly aggrieved employees) is entitled to recover the other damages, penalties, awards and remedies set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled "PAGA Cause of Action."

COUNT SIX – FAILURE TO INDEMNIFY NECESSARY EXPENDITURES

193. Plaintiff incorporates paragraphs 1 through 16 and 119 through 126 of this Complaint as though fully set forth herein.

Statutory Requirement that Employees Be Indemnified for Expenditures

194. Pursuant to Labor Code § 2802(a), an employer is required to indemnify employees for all necessary expenditures incurred by the employee in the discharge of the employee's duties or in obedience to the directions of the employer.

Defendants' Failure to Indemnify for Expenditures

195. At all times during the statute of limitations period applicable to this cause of action, in violation of Labor Code § 2802(a), Defendants failed to indemnify Rudy Orellana and the other aggrieved employees for necessary expenditures incurred by them in the discharge of their duties or in obedience to the directions of Defendants including the following expenditures: Daily availability and/or use of their personal cell phone devices used to communicate with management and/or other employees and/or customers.

Liability of Individual Defendants

196. While acting on behalf of Orange Bang, Defendants DAVID FOX, RICHARD STAIN and DOES 11-30 (who were owners, directors, officers and/or managing agents of Orange Bang) caused Labor Code § 2802 and/or the applicable Industrial Wage Order regarding employee expenditure reimbursement to be violated by establishing and/or implementing employee reimbursement policies that violated Labor Code § 2802 and/or the applicable Industrial Wage Order. Therefore, pursuant to Labor Code § 558.1 and Labor Code § 2802, said Defendants are as liable as Orange Bang for such violation(s).

Legal Remedies

197. The following remedies are sought to the extent such remedies are collectable in an action brought under the PAGA:

- a. Recovery of the amount of expenditures that should have been indemnified to Orange Bang's aggrieved employees pursuant to Labor Code § 2802.

- b. All civil penalties available under California law for an employer's failure to reimburse its employees for necessary expenditures under Labor Code § 2802.

198. As applicable under California law, Plaintiff also seeks to recover the other damages, penalties, awards and remedies set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled "PAGA Cause of Action."

COUNT SEVEN – FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS

199. Plaintiff incorporates paragraphs 1 through 65 through 137 of this Complaint as if fully alleged herein.

Statutory Requirement to Provide Accurate Itemized Wage Statements

200. Pursuant to Labor Code § 226(a), each time an employer pays wages to an employee, the employer is required to furnish the employee with an "accurate itemized statement in writing" that itemizes the following: 1) gross wages earned; 2) total hours worked; 3) the number of piece-rate units earned and the applicable piece rates; 4) all deductions; 5) net wages earned; 6) the inclusive dates for which the employee is being paid; 7) name of the employee and only the last 4 digits of his social security number or employee I.D. number; 8) the name and address of the legal entity of the employer; 9) all hourly rates in effect to the pay period and corresponding number of hours worked at each hourly rate.

Failure to Provide Accurate Itemized Wage Statements

201. At all times during the statute of limitations period applicable to this cause of action, Defendants violated Labor Code §226(a) in all of the following ways:

- a. ORANGE BANG did not provide wage statements in writing to Mr. Orellana or the other aggrieved employees,
- b. The wage statements provided to said employees were not accurate because, among other things, the statements did not accurately record

the gross and net wages earned by said employees in that the statements: 1) did not record the minimum wages earned under California law as set forth herein, 2) did not record the overtime pay earned by said employees as set forth herein, and/or 3) did not include the premium pay owed to said employees for missed, untimely, restricted, interrupted meal periods/rest breaks as set forth herein,

c. The wage statements did not accurately record the total hours worked by said employees in that, among other times, the statements did not include the time that said employees worked off-the-clock as set forth herein,

d. The wage statements did not state the hourly rate(s) in effect to the pay period and the corresponding number of hours worked at each hourly rate,

e. The wage statements did not accurately identify the name and address of the legal entity of the employer.

202. As a result of the above statutory deficiencies in the wage statements provided to Mr. Orellana and the other aggrieved employees, they were not reasonably able to promptly and easily determine from the wage statements alone one or more of the following items of information:

- a. The accurate amount of gross wages they were paid during the pay period,
- b. The accurate amount of net wages they were paid during the pay period,
- c. The accurate total number of hours that they worked,
- d. The accurate name and address of the legal entity of the employer.

203. A reasonable person would also have been unable to readily discern the above information without reference to other documents or information.

Liability of Individual Defendants

204. While acting on behalf of Orange Bang, Defendants DAVID FOX, RICHARD STAIN and DOES 11-30 (who were owners, directors, officers and/or managing agents of Orange Bang) caused Labor Code § 226(a) and/or the applicable IWC Wage Order regarding providing employees with accurate itemized wage statements to be violated by giving instructions that did not comply with Labor Code § 226 and by establishing and/or implementing wage statement and/or payroll policies that violated Labor Code § 226 or the applicable IWC Wage Order. Therefore, pursuant to Labor Code § 558.1 said Defendants are as liable as Orange Bang for such violation(s).

Legal Remedies

205. The following remedies are sought to the extent such remedies are collectable in an action brought under the PAGA:

- a. Recovery of the penalties owed to employees under Labor Code 226(e) who are not provided with accurate wage statements set forth herein, up to a maximum of \$4,000.
- b. All civil penalties available under California law for an employer's failure to pay its employees the continuous pay required under Labor Code § 203.

206. As applicable under California law, Plaintiff also seeks to recover the other damages, penalties, awards and remedies set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled "PAGA Cause of Action."

TWELFTH CAUSE OF ACTION -- UNFAIR BUSINESS PRACTICES BY PLAINTIFF RUDY ORELLANA, INDIVIDUALLY AND ON BEHALF OF OTHER AGGRIEVED EMPLOYEES, AGAINST ORANGE BANG, INC. AND DOES 1 THROUGH 10

207. Plaintiff incorporates by reference and re-alleges the allegations contained

in paragraphs 1 through 206 of this Complaint as if fully set forth herein.

208. Business and Professions Code §17200 provides in pertinent part “. . . [U]nfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice”

209. Business and Professions Code §17205 provides that unless otherwise expressly provided, the remedies or penalties provided for unfair competition “are cumulative to each other and to the remedies or penalties available under all other laws of this state.”

210. Business and Professions Code §17204 provides that an action for any relief from unfair competition may be prosecuted by any person who has suffered injury in fact and has lost money or property as a result of such unfair competition.

211. Defendants have engaged in unlawful business acts or practices, including those set forth in the preceding paragraphs of the Complaint, and, thereby, has wrongfully deprived Plaintiff of the minimum working standards and conditions due Plaintiff under the California Labor Code, the Code of Regulations and/or applicable IWC Wage Order(s), as set forth herein.

212. Defendants have also engaged in unfair business practices in California by practicing, employing, and utilizing the employment practices outlined in the preceding paragraphs, including, but not limited to:

- a. Discriminating and harassing Hispanic and workers over the age of 40 years based on their age and race;
- b. Requiring employees to perform labor without paying/timely paying them the requisite compensation (including regular wages, overtime wages, minimum wages),
- c. Not providing employees with the requisite meal periods and/or rest breaks or the applicable premium pay,
- d. Not indemnifying employees for necessary business expenditures,
- e. Not providing employees with accurate wage statements.

213. Defendants' use of such illegal and unfair practices constitutes an unfair business practice, unfair competition and provides an unfair advantage over Defendants' competitors who comply with the above-referenced employment laws and regulations.

214. Defendants have engaged in said unlawful and unfair business practices on a continuous basis for many years up until the present time.

Legal Remedies

215. As a result of said unlawful and/or unfair business practices resulting in unfair competition prohibited by Business and Professions Code § 17200, Plaintiff and other aggrieved employees have suffered injury in fact and has lost money and/or property as described herein.

216. As a direct and proximate result of Defendants' unlawful and/or unfair business practices in violation of Business and Professions Code § 17200, Defendants are required to pay restitution, as necessary and according to proof, to restore any and all monies withheld, acquired and/or converted by Defendants by means of the unfair practices complained of herein.

217. Further, if Defendants are not enjoined from the conduct set forth above, Defendants will continue to practice, employ, and utilize the employment practices outlined in the preceding paragraphs. Therefore, the court is requested to issue a permanent injunction prohibiting Defendants from engaging in the foregoing conduct.

218. As necessary, the court is requested to appoint a receiver to establish the total monetary relief owed by Defendants.

219. Defendant is also subject to an award of attorneys' fees and costs of suit on this cause of action pursuant to Code of Civil Procedure §1021.5.

220. As applicable under California law, the other damages, penalties, awards and remedies set forth below in the Prayer for Damages, Awards and Other Relief under the section entitled "Unfair Business Practices Cause of Action" are also

being sought by way of this cause of action.

PRAYER FOR DAMAGES, AWARDS AND OTHER RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, in an amount within the jurisdiction of the above-entitled court and within the applicable statutes of limitation as follows:

FEHA Causes of Action

1. Economic, non-economic and consequential damages to the fullest extent permitted under California law, according to proof,
2. Punitive damages to the fullest extent permitted under Civil Code § 3294, according to proof,
3. Attorney's fees to the fullest extent permitted under Gov. Code § 12965(b), according to proof,
4. Costs (including expert witness fees) to the fullest extent permitted under Gov't Code § 12965(b), CCP § 998 and/or CCP § 1032, according to proof,
5. Prejudgment interest to the fullest extent permitted under California law, including but not limited to Civil Code § 3287(b), Civil Code § 3288, Civil Code § 3289, CCP § 998, CCP § 1032, and/or CCP § 3291,
6. Post-judgment interest if applicable, to the fullest extent permitted by law and according to proof,
7. For such further relief as the court deems just and proper as permitted under California law.

Individual Causes of Action for Labor Law Violations

8. Unpaid/underpaid wages or other pay (including but not limited to regular wages, overtime wages and/or minimum wages) owed to Plaintiff under the Labor Code and/or applicable Industrial Wage Order, according to proof,
9. All premium pay/wages owed to Plaintiff under the Labor Code, applicable Industrial Wage Order(s) and/or local law/ordinance for untimely, missed or interrupted meal periods and/or rest breaks, according to proof,

10. Reimbursement of expenditures to the fullest extent permitted under the Labor Code and/or applicable Industrial Wage Order(s),
11. All penalties which the Labor Code permits an individual employee to recover from an employer for violation(s) of the Labor Code, applicable Industrial Wage Order(s) and/or applicable local laws/ordinances which were violated with respect to Plaintiff's employment as alleged herein, according to proof,
12. All liquidated damages which the Labor Code permits an individual employee to recover from an employer for violation(s) of the Labor Code, applicable Industrial Wage Order(s) and/or applicable local laws/ordinances which were violated with respect to Plaintiff's employment as alleged herein, according to proof,
13. Any and all other economic, non-economic and consequential damages to the fullest extent recoverable under California law, according to proof,
14. All equitable relief permitted under California law, according to proof,
15. Attorney's fees to the fullest extent permitted under California law, according to proof,
16. Costs to the fullest extent permitted under California law,
17. Prejudgment interest to the fullest extent permitted under California law,
18. Post-judgment interest, as applicable, and to the fullest extent permitted under California law,
19. For such further relief as the court deems just and proper as permitted under California law.

PAGA Cause of Action

20. All penalties owed related to unpaid/underpaid wages and/or other pay (including regular wages, overtime wages and minimum wages) which were not paid to Plaintiff, and other aggrieved employees to the fullest extent recoverable under the PAGA and related sections of the Labor Code, the applicable Industrial Wage Order(s) and/or applicable regulations, local laws

- 1 and/or ordinances, according to proof.
- 2 21. All penalties owed related to premium pay/wages that were not paid to
- 3 Plaintiff and the other aggrieved employees under the Labor Code,
- 4 applicable Industrial Wage Order(s) and/or local law/ordinance for untimely,
- 5 missed or interrupted meal periods and/or rest breaks, according to proof.
- 6 22. All penalties owed related to the failure to reimburse Plaintiff and the other
- 7 aggrieved employees for business related expenses to the fullest extent
- 8 permitted under the Labor Code and/or applicable Industrial Wage Order(s);
- 9 23. All civil penalties recoverable under the PAGA for violations of the Labor
- 10 Code, applicable Industrial Wage Order(s) and/or applicable regulation, local
- 11 law/ordinance, according to proof. To the extent required by the PAGA, the
- 12 civil penalties recovered on behalf of all aggrieved employees shall be
- 13 distributed seventy-five percent (75%) to the LWDA and the remaining
- 14 twenty-five percent (25%) distributed to Plaintiff and all similarly aggrieved
- 15 employees.
- 16 24. Attorneys' fees and/or costs to the full extent permitted under the PAGA, the
- 17 Labor Code, the applicable Industrial Wage Order and/or other applicable
- 18 California law, according to proof.
- 19 25. Prejudgment interest to the fullest extent permitted under California law,
- 20 according to proof.
- 21 26. Post-judgment interest if applicable, to the fullest extent permitted by
- 22 California law, according to proof.
- 23 27. For such further relief as the court deems just and proper as permitted
- 24 under California law.

25 **Unfair Business Practices Cause of Action**

- 26 28. Full restitution of all monies withheld, acquired and/or converted by
- 27 Defendants by means of unlawful and/or unfair business practices
- 28 prohibited by Bus. & Prof. Code § 17200, according to proof.

29. A preliminary and permanent injunction prohibiting Defendants from engaging in the unlawful and/or unfair employment practices complained of herein.
30. The appointment of a receiver, as necessary, to establish the total monetary relief sought from Defendants.
31. Attorneys' fees and costs to the fullest extent permitted under California law, according to proof.
32. Prejudgment interest to the fullest extent permitted under California law, according to proof.
33. Post-judgment interest if applicable, to the fullest extent permitted under California law, according to proof.
34. For such further relief as the court deems just and proper as permitted under California law.

DATED: May 17, 2021

MOORADIAN LAW, APC

By: **Zorik Mooradian**

Zorik Mooradian

Andrina G. Hanson

Nanor C. Kamberian

Attorney for Plaintiff Rudy Orellana

DEMAND FOR A JURY TRIAL

Plaintiff, Rudy Orellana, hereby demands a jury trial in the within matter.

DATED: May 17, 2021

MOORADIAN LAW, APC

By: **Zorik Mooradian**

Zorik Mooradian

Andrina G. Hanson

Nanor C. Kamberian

Attorney for Plaintiff Rudy Orellana