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ATTORNEYS FOR PLAINTIFF, DAVID KELLEY AND THOSE
SIMILARLY SITUATED

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA
UNLIMITED JURISDICTION

DAVID KELLEY, INDIVIDUALLY AND ON)
BEHALF OF THOSE SIMILARLY SITUATED,)

PLAINTIFFS,

v.

OIL CHANGER, INC., A CALIFORNIA)
CORPORATION, AND DOES 1 THROUGH 10,)
INCLUSIVE,)

DEFENDANTS.)

CASE No.

CLASS ACTION COMPLAINT

- 1) Failure to Pay Overtime Wages
- 2) Failure to Pay Minimum and Regular Wages
- 3) Failure to Make Timely Final Wage Payments
- 4) Failure to Provide Proper Itemized Wage Statements
- 5) Failure to Reimburse Business Expenses
- 6) Failure to Provide Meal Periods and Premium Pay
- 7) Failure to Provide Rest Periods and Premium Pay
- 8) Unfair Competition

JURY TRIAL DEMANDED

1 Plaintiff, David Kelley, on behalf of himself and others similarly situated, make
2 the following allegations against Defendant, Oil Changer, Inc., and Does 1 through 10,
3 inclusive.

4 **I. NATURE OF ACTION AND INTRODUCTORY STATEMENT**

5 1. Plaintiff DAVID KELLEY (“PLAINTIFF”) brings this class action against
6 Defendant OIL CHANGER, INC. and Does 1 through 10, inclusive (“DEFENDANTS”)
7 for engaging in systematic violations of wage and hour laws. On information and belief,
8 DEFENDANTS failed to: (1) pay PLAINTIFF and other current and former non-exempt
9 California employees overtime wages, regular wages and minimum wages in violation of
10 Labor Code §§ 510, 1194 and 1197, Industrial Welfare Commission Wage Orders (the
11 “Wage Orders”); (2) provide PLAINTIFF and current and former non-exempt California
12 employees with proper wage statements in violation of Labor Code § 226; (3) timely pay
13 all final wages to PLAINTIFF and former California employees in violation of Labor
14 Code §§ 201-203; (4) reimburse business expenses incurred by PLAINTIFF and other
15 employees in violation of Labor Code § 2802; and (5) provide meal and rest periods or
16 premium pay for the same in violation of Labor Code §§ 226.7 and 512. On information
17 and belief, DEFENDANTS committed the same violations against all other California
18 employees, who are aggrieved employees under the Private Attorneys General Act.

19 2. PLAINTIFF seeks all damages, restitution, statutory penalties, and other relief to
20 which they and other similarly situated current and former employees of DEFENDANTS
21 are entitled under California law.

22 **II. JURISDICTION AND VENUE**

23 3. DEFENDANTS are subject to the Court’s personal jurisdiction and have minimal
24 contacts with this county. DEFENDANTS conduct business by providing oil changing
25 services to clients within this county. In addition, venue is proper in this Court under
26 Code of Civil Procedure 395 et seq. because a substantial number of events, obligations,
27 and claims accrued or occurred in this county. DEFENDANT OIL CHANGER, INC. is
28 a California corporation, according to the California Secretary of State’s website.

III. PARTIES

4. Plaintiff DAVID KELLEY is and at all relevant times was a resident of Richmond, California. PLAINTIFF Kelley was employed by DEFENDANTS as a non-exempt employee until in or about March, 2020. He was an assistant manager for DEFENDANTS in Alameda County.

5. PLAINTIFF was an “aggrieved employee” within the meaning of Labor Code § 2699(c) because he was employed by DEFENDANTS and suffered the Labor Code violations in common with former or current employees of DEFENDANTS.

6. At all relevant times, DEFENDANT OIL CHANGER, INC. was a California corporation, which was authorized and licensed to conduct business in California. DEFENDANTS were the employer of PLAINTIFF and other similarly situated current and former employees, as defined in the California Labor Code and Wage Orders. DEFENDANTS provide oil changing services to customers.

7. The true names and capacities of the DEFENDANTS named as DOES 1 through 10, inclusive, are presently unknown to PLAINTIFF. PLAINTIFF will amend this Complaint, setting forth the true names and capacities of these fictitious DEFENDANTS when they are ascertained. PLAINTIFF is informed and believes and thereon alleges that each DEFENDANT, directly or indirectly, or through agents or other persons, jointly employed PLAINTIFF and exercised control over his wages, hours, and working conditions. PLAINTIFF is informed and believes and thereon allege that, at all relevant times, each DEFENDANT was the principal, agent, partner, joint venturer, officer, director, controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest, alter ego, and/or predecessor in interest of some or all of the other DEFENDANTS, and was engaged with some or all of the other DEFENDANTS in a joint enterprise for profit, and bore such other relationships to some or all of the other DEFENDANTS so as to be liable for their conduct with respect to the matters alleged below. PLAINTIFF is informed and believes and thereon alleges that each DEFENDANT acted pursuant to and within the scope of the relationships alleged above,

1 that each DEFENDANT knew or should have known about, and authorized, ratified,
2 adopted, approved, controlled, and aided and abetted the conduct of all other
3 DEFENDANTS.

4 IV. CLASS ACTION ALLEGATIONS

5 8. PLAINTIFF brings his claims on behalf of himself and all other similarly situated
6 current and former employees of DEFENDANTS who worked in California (collectively,
7 the "Class") as a class action pursuant to Code of Civil Procedure § 382. PLAINTIFFS
8 seek to represent the following classes and/or subclasses:

9 **Overtime Wage Class:** All non-exempt employees in California who, four years
10 prior to the filing of this action to the present, worked over eight (8) hours in a
11 workday or forty (40) hours in a workweek and were not paid for all overtime hours
12 worked including, but not limited to, time spent driving to the bank to make deposits.

13 **Minimum and Regular Wage Class:** All non-exempt employees in California who,
14 four years prior to the filing of this action to the present, were not paid for all hours
15 worked including, but not limited to, time spent driving to the bank to make deposits.

16 **Wage Statement Class:** All non-exempt employees in California who, from one
17 year prior to the filing of this action to the present, received wage statements.

18 **Waiting Time Class:** All former employees in California who, three years prior to
19 the filing of this action to the present, are in the Overtime Wage Class, the Minimum
20 and Regular Wage Class and/or did not receive all wages due on the termination date
21 or within 72 hours of resignation.

22 **Reimbursement Class:** All non-exempt employees in California who, from four
23 years prior to the filing of this action to the present, incurred business expenses that
24 were not reimbursed.

25 **Meal Period Class:** All non-exempt employees in California who, during the
26 applicable statute of limitations, did not receive compliant meal periods or premium
27 pay for noncompliant meal periods.

28 **Rest Period Class:** All non-exempt employees in California who, during the

1 applicable statute of limitations, did not receive compliant rest periods or premium
2 pay for noncompliant rest periods.

3 9. PLAINTIFF reserves the right under the Code of Civil Procedure and other
4 applicable authority to amend or modify the class descriptions with greater specificity or
5 further division into subclasses or limitation to particular issues.

6 10. PLAINTIFF'S claims are brought and may be maintained as a class action
7 under Code of Civil Procedure § 382.

8 a. **Numerosity**. The Class members are so numerous that individual joinder of all
9 of them as plaintiffs is impractical. While the exact number of Class members is
10 unknown to PLAINTIFF at this time, PLAINTIFF is informed and believes and
11 thereon allege that there are more than 50 members in each Class.

12 b. **Commonality**. There are questions of law or fact common to Class members.
13 Indeed, common issues of fact and law predominate over individual issues. These
14 common questions include, but are not limited to, the following:

- 15 1. Whether DEFENDANTS failed to pay Overtime Wage Class members for all
16 overtime wages at the legally required and applicable 1.5 or 2 times the
17 regular rate of pay for each hour worked in excess of eight (8) hours per day
18 or forty (40) hours per week;
- 19 2. Whether it was DEFENDANTS' practice or policy to pay for all hours
20 worked, at the agreed upon rate or minimum rate of pay including, but not
21 limited to, time spent driving to the bank to make deposits;
- 22 3. Whether it was DEFENDANTS' practice or policy to provide itemized wage
23 statements (and maintain them for 3 years) that do not include correct gross
24 and net wages earned, the correct total hours worked, the correct rates of pay
25 and the correct hours worked at each rate of pay, among other things required
26 by Labor Code § 226;
- 27 4. Whether it was DEFENDANTS' policy or practice to fail to pay Waiting
28 Time Class members all wages earned upon their discharge or resignation of

employment as required by Labor Code §§ 201-203; and

5. Whether DEFENDANTS engaged in unlawful and unfair wage and hour practices in violation of the California Labor Code, Business & Professions Code § 17200 and Wage Orders.
 6. Whether DEFENDANTS failed to reimburse business expenses incurred by Reimbursement Class members, as required by Labor Code § 2802.
 7. Whether DEFENDANTS failed to provide compliant meal and rest periods to the Meal Period Class and Rest Period Class or premium pay for missed meal and rest periods.
- c. **Typicality.** PLAINTIFF is a member of each Class, and his claims are typical of the claims of the other Class members who PLAINTIFFS seeks to represent. PLAINTIFF suffered the same kinds of injuries suffered by other Class members and seek the same kind of relief sought by other Class members.
- d. **Adequate Representation.** PLAINTIFF will adequately and fairly protect the interests of the members of the Class. PLAINTIFF has no interests adverse to the interests of the absent Class members. PLAINTIFF is represented by legal counsel with substantial class action experience in civil litigation and employment law.

11. This case is brought and may be maintained as a class action under Code of Civil Procedure § 382. Questions of law or fact common to class members predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy. Class action treatment will allow a large number of similarly situated employees to prosecute their common claims in a single forum, simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions would require. Further, the monetary amounts due to many individual members are likely to be relatively small, and the burden and expense of individual litigation would make it difficult or impossible for individual Class members to seek and obtain relief. A class

1 action will serve an important public interest by permitting employees harmed by
2 DEFENDANTS' unlawful practices to effectively pursue recovery of the sums owed to
3 them.

4 **V. FACTUAL ALLEGATIONS**

5 12. PLAINTIFF and other Class members were non-exempt and/or exempt
6 employees of DEFENDANTS who worked in California. They worked at
7 DEFENDANTS' oil changing store locations, among other locations. PLAINTIFF and
8 non-exempt Class members were not paid for all time worked including, but not limited
9 to, when they drove to the bank to make deposits after clocking out from work.
10 DEFENDANTS also adjusted the time entries of PLAINTIFF and non-exempt Class
11 members, thereby reducing the amount of pay they would receive. The foregoing
12 resulted in PLAINTIFF and Class members not being paid all overtime wages, agreed
13 upon or regular wages and minimum wages in violation of Labor Code §§ 510, 1194 and
14 1197.

15 13. On information and belief, DEFENDANTS failed to provide accurate and
16 compliant wage statements to PLAINTIFF and other Class members in violation of Labor
17 Code § 226. On information and belief, the wage statements do not contain the correct
18 number of hours worked, the correct number of hours of worked at each rate of pay, and
19 the correct gross and net wages, among other things. For example, because
20 DEFENDANTS adjusted the time entry records and required PLAINTIFF and other
21 Class members to clock out prior to making bank runs at the end of the day, the gross and
22 net wages earned, the number of hours worked and number of hours worked at each rate
23 of pay were incorrect.

24 14. On information and belief, when PLAINTIFF and other Class members
25 were discharged or resigned, DEFENDANTS did not timely pay them all wages due
26 under Labor Code §§ 201-203 including, but not limited to, unpaid minimum wages,
27 regular/agreed upon wages and overtime wages, which remain unpaid. PLAINTIFF was
28 discharged in or about March, 2020, yet he did not receive all unpaid wages and still has

not received all wages earned.

15. On information and belief, when PLAINTIFF and other Class members incurred business expenses, such as vehicle expenses related to driving to other store locations or the bank, they were not reimbursed.

16. On information and belief, DEFENDANTS did not provide PLAINTIFF and Class members with an uninterrupted, 30-minute meal period within the first five hours of work or a 10-minute rest period for every four hours of work or major fraction thereof, or premium pay for the missed meal and rest periods.

VI. CAUSES OF ACTION

FIRST CAUSE OF ACTION FAILURE TO PAY OVERTIME WAGES (Violation of Labor Code §§ 510 and 1194)

(By PLAINTIFF, on behalf of himself and the Overtime Wage Class)

17. PLAINTIFF realleges and incorporates by reference the foregoing paragraphs as though fully set forth herein.

18. PLAINTIFF and the Overtime Wage Class members were “non-exempt” employees of DEFENDANTS who did not receive proper protections and benefits of the laws governing payment of overtime wages.

19. During the time of PLAINTIFF’S and the Overtime Wage Class members’ employment with DEFENDANTS, they were not exempt from receiving overtime compensation and were entitled to receive overtime compensation under Labor Code §§ 510, 1194 and 1198 and Wage Orders for any and all work performed in excess of 8 hours per day, and/or for any and all work performed in excess of 40 hours per week.

20. On information and belief, DEFENDANTS knowingly and willfully failed to pay PLAINTIFFS and the Overtime Wage Class members all overtime compensation owed to them, including: (a) 1.5 times their regular rate of pay for hours worked in excess of 8 hours per day and 40 hours per week and during the first 8 hours worked on the seventh day of a workweek; and (b) 2 times their regular rate of pay for all hours worked

1 in excess of 12 hours per day and for any work performed in excess of 8 hours on any
2 seventh day of a workweek. Among other things, on information and belief,
3 DEFENDANTS failed to pay overtime wages for all such hours worked because
4 DEFENDANTS did not pay for time spent driving to make bank deposits and when time
5 was improperly reduced by managers. DEFENDANTS also implemented policies and
6 practices that discouraged employees from working more than 8 hours per day or 40
7 hours per week and failed to pay for all such time worked.

8 21. On information and belief, as a direct result, PLAINTIFF and the Overtime
9 Wage Class members have suffered and continue to suffer, substantial losses related to
10 the use and enjoyment of such wages, lost interest on such wages and expenses and
11 attorney's fees in seeking to compel DEFENDANTS to fully perform their obligations
12 under the Labor Code, all to their respective damage in amounts according to proof at
13 trial. PLAINTIFF, on behalf of himself and the Overtime Wage Class members, seeks to
14 recover in a civil action the unpaid balance of the full amount of the unpaid overtime
15 compensation, including interest thereon, reasonable attorney's fees, and costs of suit,
16 and other remedies provided under the Labor Code.

17 **SECOND CAUSE OF ACTION**
18 **FAILURE TO PAY MINIMUM AND REGULAR WAGES**
19 **(Violation of Labor Code §§ 1194, 1194.2 and 1197)**

20 **(By PLAINTIFF, on behalf of himself and the Minimum and**
21 **Regular Wage Class)**

22 22. PLAINTIFF realleges and incorporates by reference the foregoing
23 paragraphs as though fully set forth herein.

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

24. Labor Code § 1194.2 states: "In any action under Section 98, 1193.6, 1194,

1 or 1197.1 to recover wages because of the payment of a wage less than the minimum
2 wage fixed by an order of the commission or by statute, an employee shall be entitled to
3 recover liquidated damages in an amount equal to the wages unlawfully unpaid and
4 interest thereon.” This provision also provides for liquidated damages equal to
5 unlawfully unpaid minimum wages, with interest.

6 25. Labor Code § 1197 states: “The minimum wage for employees fixed by the
7 commission is the minimum wage to be paid to employees, and the payment of a less
8 wage than minimum wage so fixed is unlawful.”

9 26. Pursuant to the applicable Wage Order, an employer may not pay
10 employees less than the applicable minimum wage for all hours worked.

11 27. On information and belief, PLAINTIFF and Minimum and Regular Wage
12 Class members were not paid the minimum wages or regular, agreed upon wages for all
13 hours worked. Among other things, on information and belief, DEFENDANTS failed to
14 pay wages for time spent driving to the bank at the end of the day and other recorded time
15 that was edited and reduced by managers, either at the minimum wage rate or agreed
16 upon rate. On further information and belief, DEFENDANTS implemented policies and
17 practices that discouraged employees from working more than 8 hours per day or 40
18 hours per week and failed to pay for all such hours.

19 28. On information and belief, as a direct result, PLAINTIFF and the Minimum
20 and Regular Wage Class members have suffered and continue to suffer, substantial losses
21 related to the use and enjoyment of such wages, lost interest on such wages and expenses
22 and attorney’s fees in seeking to compel DEFENDANTS to fully perform their
23 obligations under the Labor Code, all to their respective damage in amounts according to
24 proof at trial. PLAINTIFF, on behalf of himself and the Minimum and Regular Wage
25 Class members, seeks to recover in a civil action the unpaid balance of the full amount of
26 the unpaid minimum wage and regular wage compensation and liquidated damages,
27 including interest thereon, reasonable attorney’s fees, and costs of suit, and other
28 remedies provided under the Labor Code.

**THIRD CAUSE OF ACTION
FAILURE TO PAY WAGES WITHIN REQUIRED TIME
(Violations of Labor Code §§ 201, 202 and 203)**

(By PLAINTIFF, on behalf of himself and the Waiting Time Class)

29. PLAINTIFF realleges and incorporates by this reference the foregoing paragraphs as though fully set forth herein.

30. Labor Code § 201 requires DEFENDANTS to immediately pay any wages, without abatement or reduction, to any employee who is discharged. Labor Code § 202 requires DEFENDANTS to pay all wages earned and unpaid, without abatement or reduction, no later than 72 hours of receiving an employee's notice of intent to quit or immediately at the time of quitting if the employee provided at least 72 hours' notice of intent to quit.

31. For a willful violation of Labor Code §§ 201 and/or 202, Labor Code § 203 causes the unpaid wages of the employee to continue as a penalty from the due date thereof at the same rate until paid, but the wages shall not continue for more than 30 days.

32. On information and belief, DEFENDANTS willfully did not provide PLAINTIFF and Waiting Time Class members, after their discharge or resignation, with all wages due and owing including, but not limited to, all minimum wages, regular/agreed upon wages, overtime wages and other wages and pay by the times specified by Labor Code § 201 or 202. Consequently, pursuant to Labor Code § 203, DEFENDANTS owe PLAINTIFF and Waiting Time Class members the above-described waiting time penalty, all in an amount to be shown according to proof at trial, which PLAINTIFF seeks on behalf of himself and the Waiting Time Class.

**FOURTH CAUSE OF ACTION
FAILURE TO PROVIDE COMPLIANT ITEMIZED WAGE STATEMENTS
(Violation of Labor Code § 226)**

(By PLAINTIFF, on behalf of himself and the Wage Statement Class)

33. PLAINTIFF realleges and incorporates the foregoing paragraphs as though fully set forth herein.

34. Labor Code § 226(a) requires that employers, including DEFENDANTS, to furnish employees with each wage payment an accurate, itemized writing that shows gross wages earned, total hours worked, all deductions, net wages earned, the inclusive dates of the period for which the employee is paid, the name and address of the legal entity that is the employer, the name of the employee and the portion of his or her social security number (or identification number) as required by law, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, among other things.

35. On information and belief, DEFENDANTS knowingly and intentionally failed to provide PLAINTIFF and Wage Statement Class members with the above-described writing required by Labor Code § 226 through actions alleged herein including, but not limited to, a failure to provide correct total hours worked, correct gross and net wages earned, the correct number of hours worked at the correct hourly rates, among other things. A reasonable person cannot determine this required information from the wage statements alone.

36. On information and belief, DEFENDANTS' failure to provide a proper writing deprived PLAINTIFF and Wage Statement Class members with the ability to know, understand and question the calculation and rate of pay and hours used to calculate the wages paid by DEFENDANTS. PLAINTIFF and Wage Statement Class members, therefore, had no way to dispute the resulting miscalculation of wages, all of which resulted in an unjustified economic enrichment to DEFENDANTS. DEFENDANTS' failure to provide the proper writing also required PLAINTIFF and Wage Statement

1 Class members to spend and continue to spend attorney's fees and costs to determine the
2 wages owed to them. As a direct result, PLAINTIFF and Wage Statement Class
3 members suffered and continue to suffer, substantial losses related to the use and
4 enjoyment of such wages, lost interest on such wages and expenses and attorney's fees
5 and costs in seeking to gather information and compel DEFENDANTS to fully perform
6 their obligations under state law, all to their respective damage in amounts according to
7 proof at trial.

8 37. Labor Code § 226(e) requires DEFENDANTS to pay the greater of all
9 actual damages or fifty dollars (\$50.00) for the initial pay period in which a violation
10 occurred, and one hundred dollars (\$100.00) per employee for each violation in
11 subsequent pay periods, plus attorney's fees and costs, to PLAINTIFF and Wage
12 Statement Class members who were injured by DEFENDANTS' failure to comply with
13 Labor Code § 226(a), which PLAINTIFF seeks on behalf of himself and the Wage
14 Statement Class. The exact amount of the applicable penalty is all in an amount to be
15 shown according to proof at trial.

16 **FIFTH CAUSE OF ACTION**
17 **FAILURE TO REIMBURSE EXPENSES**
18 **(Violation of Labor Code § 2802)**

19 **(By PLAINTIFF, on behalf of himself and the Reimbursement Class)**

20 38. PLAINTIFF realleges and incorporates by reference the foregoing
21 paragraphs as though fully set forth herein.

22 39. Pursuant to California Labor Code Section 2802, an employer must
23 indemnify its employees "for all necessary expenditures or losses incurred by the
24 employee in direct consequence of the discharge of his or her duties"

25 40. On information and belief, PLAINTIFF and the Reimbursement Class
26 members made necessary expenditures and incurred losses as a direct consequence of the
27 discharge of their duties and in obedience to the directions of DEFENDANTS including,
28 but not limited to, mileage or car expenses.

1 41. On information and belief, DEFENDANTS had knowledge or should have
2 had knowledge of the costs and expenses incurred and were responsible for reimbursing
3 PLAINTIFF and Reimbursement Class members for their expenditures and losses as a
4 direct consequence of the discharge of their duties, but failed to do so.

5 42. On information and belief, as a result of DEFENDANTS' unlawful
6 conduct, PLAINTIFF and Reimbursement Class members have suffered damages in an
7 amount within the limited jurisdiction of the Court. PLAINTIFF and the Reimbursement
8 Class members are entitled to recover the full amount of the unpaid expenditures and
9 losses, interest thereon, reasonable attorney's fees and costs of suit.

10 **SIXTH CAUSE OF ACTION**
11 **FAILURE TO PROVIDE MEAL PERIODS OR PREMIUM PAY**
12 **(Violations of Labor Code §§ 226.7 and 512)**

13 **(By PLAINTIFF, on behalf of himself and the Meal Period Class)**

14 43. PLAINTIFF realleges and incorporates by reference the foregoing
15 paragraphs as though fully set forth herein.

16 44. Under Labor Code § 512, an employer shall not employ an employee for a
17 work period of more than five hours without providing the employee with a meal period
18 of not less than 30 minutes. A second meal period must be provided when an employee
19 works over 10 hours in a workday.

20 45. Under Labor Code § 226.7, an employer shall not require an employee to
21 work during a meal period. If an employer fails to provide an employee a 30-minute,
22 uninterrupted meal period, in accordance with the applicable wage orders, the employer
23 shall pay the employee one additional hour of pay at the employee's regular rate of pay
24 for each workday that a meal period is not provided.

25 46. On information and belief, DEFENDANTS failed to provide timely,
26 uninterrupted 30-minute meal periods to PLAINTIFF and Meal Period Class members
27 who were not subjected to valid waivers and did not provide premium pay for the
28 noncompliant meal periods.

1 47. On information and belief, as a direct result, PLAINTIFF and the Meal
2 Period Class members have suffered and continue to suffer, substantial losses related to
3 the use and enjoyment of such wages, lost interest on such wages and expenses and
4 attorney's fees in seeking to compel DEFENDANTS to fully perform their obligations
5 under the Labor Code, all to their respective damage in amounts according to proof at
6 trial. PLAINTIFF, on behalf of himself and the Meal Period Class members, seeks to
7 recover in a civil action the unpaid balance of the full amount of the unpaid premium pay
8 for missed and noncompliant meal periods, including interest thereon, reasonable
9 attorney's fees, and costs of suit, and other remedies provided under the Labor Code.

10 **SEVENTH CAUSE OF ACTION**
11 **FAILURE TO PROVIDE REST PERIODS OR PREMIUM PAY**
12 **(Violations of Labor Code § 226.7)**

13 **(By PLAINTIFF, on behalf of himself and the Rest Period Class)**

14 48. PLAINTIFF realleges and incorporates by the foregoing paragraphs as
15 though fully set forth herein.

16 49. Labor Code § 226.7(a) provides: "No employer shall require any employee
17 to work during any meal or rest period mandated by an applicable order of the Industrial
18 Welfare Commission." The same provision provides that employees are entitled to an
19 hour of pay for each missed rest period. Wage Orders provide non-exempt employees
20 must be provided a 10-minute meal period for every four hours of work or major fraction
21 thereof.

22 50. On information and belief, PLAINTIFF and Rest Period Class members
23 were not provided timely, off-duty 10-minute rest periods for each four-hour work period
24 or major fraction thereof because they were too busy due to the demands of work, among
25 other things. They were told when and if they could take breaks by managers, which
26 often times did not provide them with compliant rest periods. PLAINTIFF and Rest
27 Period Class members were not provided premium pay for missed rest periods.

28 51. On information and belief, as a direct result, PLAINTIFF and the Rest

1 Period Class members have suffered and continue to suffer, substantial losses related to
2 the use and enjoyment of such wages, lost interest on such wages and expenses and
3 attorney's fees in seeking to compel DEFENDANTS to fully perform their obligations
4 under the Labor Code, all to their respective damage in amounts according to proof at
5 trial. PLAINTIFF, on behalf of himself and the Rest Period Class members, seeks to
6 recover in a civil action the unpaid balance of the full amount of the unpaid premium pay
7 for missed and noncompliant rest periods, including interest thereon, reasonable
8 attorney's fees, and costs of suit, and other remedies provided under the Labor Code.

9 **EIGHTH CAUSE OF ACTION**
10 **UNFAIR COMPETITION**
11 **(Violation of Business and Professions Code § 17200)**

12 **(By PLAINTIFF, on behalf of himself and the Minimum and Regular Wage Class,**
13 **Overtime Wage Class, Reimbursement Class, Meal Period Class**
14 **and Rest Period Class)**

15 52. PLAINTIFF realleges and incorporates by reference the foregoing
16 paragraphs as though fully set forth herein.

17 53. California Business & Professions Code § 17200 et seq. prohibits acts of
18 unfair competition, which includes any "unlawful, unfair or fraudulent business act or
19 practice..." On information and belief, PLAINTIFF and the Minimum Wage and Regular
20 Wage Class, Overtime Wage Class, Reimbursement Class, Meal Period Class and Rest
21 Periods Class have suffered and continue to suffer injuries in fact, due to the unlawful,
22 fraudulent and unfair business practices of DEFENDANTS.

23 54. As alleged herein, on information and belief, DEFENDANTS
24 systematically engaged in unlawful conduct such as wage and hour violations, failing to
25 pay proper wages and monies for hours worked and reimburse expenses all in order to
26 decrease its costs of doing business and increase profits.

27 55. On information and belief, at the time that PLAINTIFF and the Minimum
28 and Regular Wage Class, Overtime Wage Class, Reimbursement Class, Meal Period
Class and Rest Periods Class members were hired, DEFENDANTS knowingly,

intentionally and illegally misrepresented to each of them conformance with the California Labor Code and/or Wage Orders, including the payment all wages due, including overtime wages and regular wages, reimbursement of expenses and compliant meal and rest periods.

56. On information and belief, from the time that PLAINTIFF and the Minimum and Regular Wage Class, Overtime Wage Class, Reimbursement Class, Meal Period Class and Rest Periods Class members were hired, DEFENDANTS failed to comply with the California Labor Code and Wage Orders through their actions as herein alleged including, but not limited to its failure to provide minimum wages, regular/agreed upon wages and overtime wages for all hours worked, reimbursement of expenses incurred and compliant meal and rest periods.

57. At all times relevant, on information and belief, DEFENDANTS intentionally avoided paying to PLAINTIFF and the Minimum and Regular Wage Class, Overtime Wage Class, Reimbursement Class, Meal Period Class and Rest Periods Class members' wages and monies and other financial obligations attached thereto, thereby creating for DEFENDANTS an artificially lower cost of doing business in order to undercut competitors and establish and/or gain a greater foothold in the marketplace, all to the detriment of PLAINTIFF and the Minimum and Regular Wage Class, Overtime Wage Class, Reimbursement Class, Meal Period Class and Rest Periods Class members.

58. On information and belief, at all times relevant herein PLAINTIFF and the Minimum and Regular Wage Class, Overtime Wage Class, Reimbursement Class, Meal Period Class and Rest Periods Class members relied on and believed DEFENDANTS' representations concerning its conformance with the California wage and hour laws, all to their detriment.

59. On information and belief, as a result of DEFENDANTS' intentional, willful, purposeful, illegal and fraudulent misrepresentation of its conformance with the Labor Code and Wage Orders, PLAINTIFFS and the Minimum and Regular Wage Class, Overtime Wage Class, Reimbursement Class, Meal Period Class and Rest Periods Class

members suffered a loss of wages and monies, all in an amount to be shown according to proof at trial. By violating the foregoing statutes and regulations as herein alleged, DEFENDANTS' acts constitute unfair, fraudulent and unlawful business practices under Business and Professions Code § 17200 et seq.

60. As a result of the unfair, fraudulent and unlawful business practices of DEFENDANTS alleged herein, PLAINTIFF and the Minimum and Regular Wage Class, Overtime Wage Class, Reimbursement Class, Meal Period Class and Rest Periods Class members are entitled to declaratory relief and restitution in an amount according to proof. As private attorneys general under California Civil Code § 1021.5, PLAINTIFF, on behalf of himself and the Minimum and Regular Wage Class, Overtime Wage Class, Reimbursement Class, Meal Period Class and Rest Periods Class members seek to recover any and all attorney's fees incurred herein.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF, on behalf of himself and the Class, including the Minimum and Regular Wage Class, Overtime Wage Class, Waiting Time Class, Wage Statement Class, Reimbursement Class, Meal Period Class and Rest Periods Class pray for judgment and relief against DEFENDANTS as follows:

a. An order certifying that PLAINTIFF may pursue his claims against DEFENDANTS as a class action on behalf of the Minimum and Regular Wage Class, Overtime Wage Class, Waiting Time Class, Wage Statement Class, Reimbursement Class, Meal Period Class and Rest Periods Class members under Code of Civil Procedure 382;

b. An order appointing PLAINTIFF as Class representative and appointing PLAINTIFF'S counsel as Class Counsel;

c. For general damages and special damages including, but not limited to, unpaid minimum wages, agreed upon wages and overtime wages and unreimbursed expenses;

d. For reasonable attorney fees, cost of suit, and interest to the extent

1 permitted by law, including pursuant to Civil Code § 1021.5 and Labor Code;

2 e. For liquidated damages pursuant to the Labor Code;

3 f. Statutory penalties under Labor Code sections 226 and 203 and other
4 applicable Labor Code provisions;

5 g. For restitution, declaratory relief and other relief provided by
6 Business and Professions Code § 17200 et seq., including a declaratory judgment that
7 DEFENDANTS violated Labor Code §§ 510, 1194, 1197, 2802 and other provisions of
8 the Labor Code and/or Orders of the Industrial Welfare Commission;

9 h. For an order requiring DEFENDANTS to restore and disgorge all
10 funds to PLAINTIFF and Class members acquired by means of any act or practice
11 declared by this Court to be unlawful, unfair or fraudulent and, therefore, constituting
12 unfair competition under Business and Professions Code § 17200 et seq.;

13 i. For an accounting to determine all money wrongfully obtained and
14 held by DEFENDANTS;

15 j. For pre- and post-judgment interest, and

16 k. For such other relief as the Court deems just and proper.

17 WOODALL LAW OFFICES

18 DATE: MARCH 10, 2021

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20 BY: _____

21 KEVIN F. WOODALL
22 ATTORNEYS FOR PLAINTIFF, DAVID
23 KELLEY AND SIMILARLY SITUATED
24 FORMER AND CURRENT EMPLOYEES OF
25 DEFENDANTS
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