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County of Santa Cruz
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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CRUZ**

EDGAR GUTIERREZ, individually, and on
behalf of other members of the general
public similarly situated and on behalf of
other aggrieved employees pursuant to the
California Private Attorneys General Act,

Plaintiff,

vs.

ZERO MOTORCYCLES INC., an unknown
business entity; and DOES 1 through 100,
inclusive,

Defendants.

Case No. 19-CV-03725

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT:**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums);
- (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums);
- (4) Violation of California Labor Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages);
- (5) Violation of California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid);
- (6) Violation of California Labor Code § 204 (Wages Not Timely Paid During Employment);
- (7) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements);
- (8) Violation of California Labor Code § 1174(d) (Failure To Keep Requisite Payroll Records);
- (9) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses);

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- (10) Violation of California Business & Professions Code §§ 17200, *et seq.*; and
- (11) Violation of California Labor Code § 2698, *et seq.* (Private Attorneys General Act of 2004)

DEMAND FOR JURY TRIAL

COMES NOW, Plaintiff EDGAR GUTIERREZ (“Plaintiff” or “EDGAR GUTIERREZ”), individually, and on behalf of other members of the general public similarly situated, and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act (“PAGA”), and alleges as follows:

1. This is a class and representative action brought pursuant to the California Code of Civil Procedure section 382 and Labor Code section 2698, *et seq.* respectively. The monetary damages, restitution, and civil penalties sought by Plaintiff exceeds the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial.

2. This is a class action pursuant to California Code of Civil Procedure section 382, on behalf of Plaintiff EDGAR GUTIERREZ and the following class: *All current and former hourly-paid or non-exempt employees who worked for any of the Defendants within the State of California at any time during the period from four years preceding the filing of this Complaint to final judgment and who reside in California* (the “Class” or “Class Members”).

3. Further, Plaintiff EDGAR GUTIERREZ, on behalf of himself and all other similarly situated aggrieved employees, also bring this representative action against Defendant to recover wages and penalties owed pursuant to Labor Code section 2699 (the “Aggrieved Employees.”)

4. For purposes of the allegations set forth herein, Class Members, along with those similarly situated Aggrieved Employees comprising the PAGA representative action, are collectively referred to as “Employees” except as otherwise specified.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, Section 10, which grants the superior court “original jurisdiction in all other causes” except those given by statute to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

6. This Court has jurisdiction over Defendant because, upon information and belief, Defendant is a citizen of California, has sufficient minimum contacts in California, or otherwise intentionally avails itself of the California market so as to render the exercise of jurisdiction over

1 it by California courts consistent with traditional notions of fair play and substantial justice.

2 7. Venue is proper in this Court because, upon information and belief, Defendant
3 maintains offices, has agents, employs individuals, and/or transacts business in the State of
4 California, County of Santa Cruz. The majority of acts and omissions alleged herein relating to
5 Plaintiff and Employees took place in the State of California, including the County of Santa Cruz.
6 At all relevant times, Defendant maintained its headquarters/“nerve center” within the State of
7 California, County of Santa Cruz.

8 **PARTIES**

9 8. Plaintiff EDGAR GUTIERREZ is an individual residing in the State of California,
10 County of Santa Cruz.

11 9. Defendant ZERO MOTORCYCLES INC., at all times herein mentioned, was and
12 is, upon information and belief, an employer whose employees are engaged throughout the State
13 of California, including the County of Santa Cruz.

14 10. At all relevant times, Defendant ZERO MOTORCYCLES INC. was the
15 “employer” of Plaintiff within the meaning of all applicable California laws and statutes.

16 11. At all times herein relevant, Defendants ZERO MOTORCYCLES INC., and
17 DOES 1 through 100, and each of them, were the agents, partners, joint venturers, joint
18 employers, representatives, servants, employees, successors-in-interest, co-conspirators and/or
19 assigns, each of the other, and at all times relevant hereto were acting within the course and
20 scope of their authority as such agents, partners, joint venturers, joint employers, representatives,
21 servants, employees, successors, co-conspirators and/or assigns, and all acts or omissions alleged
22 herein were duly committed with the ratification, knowledge, permission, encouragement,
23 authorization and/or consent of each defendant designated as a DOE herein.

24 12. The true names and capacities, whether corporate, associate, individual or
25 otherwise, of defendants DOES 1 through 100, inclusive, are unknown to Plaintiff who sue said
26 defendants by such fictitious names. Plaintiff is informed and believes, and based on that
27 information and belief alleges, that each of the defendants designated as a DOE is legally
28 responsible for the events and happenings referred to in this Complaint, and unlawfully caused

1 the injuries and damages to Plaintiff and Employees as alleged in this Complaint. Plaintiff will
2 seek leave of court to amend this Complaint to show the true names and capacities when the
3 same have been ascertained.

4 13. Defendant ZERO MOTORCYCLES INC. and DOES 1 through 100 will
5 hereinafter collectively be referred to as “Defendants.”

6 14. Plaintiff further alleges that Defendants directly or indirectly controlled or
7 affected the working conditions, wages, working hours, and conditions of employment of
8 Plaintiff and Employees so as to make each of said Defendants employers and liable under the
9 statutory provisions set forth herein.

10 **CLASS ACTION ALLEGATIONS**

11 15. Plaintiff bring this action on his own behalf and on behalf of all other members
12 of the general public similarly situated, and, thus, seeks class certification under California Code
13 of Civil Procedure section 382

14 16. The proposed class is defined as follows:

15 All current and former hourly-paid or non-exempt employees who worked for any
16 of the Defendants within the State of California at any time during the period from
17 four years preceding the filing of this Complaint to final judgment and who reside
18 in California.

19 17. Plaintiff reserves the right to establish subclasses as appropriate.

20 18. The class is ascertainable and there is a well-defined community of interest in the
21 litigation:

22 a. Numerosity: The class members are so numerous that joinder of all class
23 members is impracticable. The membership of the entire class is unknown
24 to Plaintiff at this time; however, the class is estimated to be greater than
25 fifty (50) individuals and the identity of such membership is readily
26 ascertainable by inspection of Defendants’ employment records.

27 b. Typicality: Plaintiff’s claims are typical of all other class members’ as
28 demonstrated herein. Plaintiff will fairly and adequately protect the

1 interests of the other class members with whom he has a well-defined
2 community of interest.

- 3 c. Adequacy: Plaintiff will fairly and adequately protect the interests of each
4 class member, with whom he has a well-defined community of interest
5 and typicality of claims, as demonstrated herein. Plaintiff has no interest
6 that is antagonistic to the other class members. Plaintiff's attorneys, the
7 proposed class counsel, are versed in the rules governing class action
8 discovery, certification, and settlement. Plaintiff has incurred, and during
9 the pendency of this action will continue to incur, costs and attorneys'
10 fees, that have been, are, and will be necessarily expended for the
11 prosecution of this action for the substantial benefit of each class member.
- 12 d. Superiority: A class action is superior to other available methods for the
13 fair and efficient adjudication of this litigation because individual joinder
14 of all class members is impractical.
- 15 e. Public Policy Considerations: Certification of this lawsuit as a class action
16 will advance public policy objectives. Employers of this great state violate
17 employment and labor laws every day. Current employees are often afraid
18 to assert their rights out of fear of direct or indirect retaliation. However,
19 class actions provide the class members who are not named in the
20 complaint anonymity that allows for the vindication of their rights.

21 19. There are common questions of law and fact as to the class members that
22 predominate over questions affecting only individual members. The following common
23 questions of law or fact, among others, exist as to the members of the class:

- 24 a. Whether Defendants' failure to pay wages, without abatement or
25 reduction, in accordance with the California Labor Code, was willful;
- 26 b. Whether Defendants' had a corporate policy and practice of failing to pay
27 their hourly-paid or non-exempt employees within the State of California
28 for all hours worked and missed (short, late, interrupted, and/or missed

altogether) meal periods and rest breaks in violation of California law;

- c. Whether Defendants required Plaintiff and the other class members to work over eight (8) hours per day and/or over forty (40) hours per week and failed to pay the legally required overtime compensation to Plaintiff and the other class members;
- d. Whether Defendants deprived Plaintiff and the other class members of meal and/or rest periods or required Plaintiff and the other class members to work during meal and/or rest periods without compensation;
- e. Whether Defendants failed to pay minimum wages to Plaintiff and the other class members for all hours worked;
- f. Whether Defendants failed to pay all wages due to Plaintiff and the other class members within the required time upon their discharge or resignation;
- g. Whether Defendants failed to timely pay all wages due to Plaintiff and the other class members during their employment;
- h. Whether Defendants complied with wage reporting as required by the California Labor Code; including, *inter alia*, section 226;
- i. Whether Defendants kept complete and accurate payroll records as required by the California Labor Code, including, *inter alia*, section 1174(d);
- j. Whether Defendants failed to reimburse Plaintiff and the other class members for necessary business-related expenses and costs;
- k. Whether Defendants' conduct was willful or reckless;
- l. Whether Defendants engaged in unfair business practices in violation of California Business & Professions Code section 17200, et seq.;
- m. The appropriate amount of damages, restitution, and/or monetary penalties resulting from Defendants' violation of California law; and

1 n. Whether Plaintiff and the other class members are entitled to
2 compensatory damages pursuant to the California Labor Code.

3 **GENERAL ALLEGATIONS**

4 20. At all relevant times set forth herein, Defendants employed Plaintiff and
5 Employees as hourly-paid or non-exempt employees within the State of California, including the
6 County of Santa Cruz.

7 21. Defendants, jointly and severally, employed Plaintiff as an hourly-paid, non-
8 exempt employee, from approximately October 2014 to approximately January 2018, in the State
9 of California, County of Santa Cruz.

10 22. Defendants hired Plaintiff and Employees, classified them as hourly-paid or non-
11 exempt employees, and failed to compensate them for all hours worked and missed meal periods
12 and/or rest breaks.

13 23. Defendants had the authority to hire and terminate Plaintiff and Employees, to set
14 work rules and conditions governing Plaintiff's and Employees' employment, and to supervise
15 their daily employment activities.

16 24. Defendants exercised sufficient authority over the terms and conditions of
17 Plaintiff's and Employees' employment for them to be joint employers of Plaintiff and
18 Employees.

19 25. Defendants directly hired and paid wages and benefits to Plaintiff and Employees.

20 26. Defendants continue to employ hourly-paid or non-exempt employees within the
21 State of California.

22 27. Plaintiff and Employees worked over eight (8) hours in a day, and/or forty (40)
23 hours in a week during their employment with Defendants.

24 28. Plaintiff is informed and believes, and based thereon alleges, that Defendants
25 engaged in a pattern and practice of wage abuse against their hourly-paid or non-exempt
26 employees within the State of California. This pattern and practice involved, *inter alia*, failing
27 to pay them for all regular and/or overtime wages earned and for missed meal periods and rest
28 breaks in violation of California law.

1 29. Plaintiff is informed and believes, and based thereon alleges, that Defendants
2 knew or should have known that Plaintiff and Employees were entitled to receive certain wages
3 for overtime compensation and that they were not receiving accurate overtime compensation for
4 all overtime hours worked.

5 30. Plaintiff is informed and believes, and based thereon alleges, that Defendants
6 failed to provide Plaintiff and Employees all required rest and meal periods during the relevant
7 time period as required under the Industrial Welfare Commission Wage Orders and thus they are
8 entitled to any and all applicable penalties.

9 31. Plaintiff is informed and believes, and based thereon alleges, that Defendants
10 knew or should have known that Plaintiff and Employees were entitled to receive all meal
11 periods or payment of one additional hour of pay at Plaintiff's and Employee's regular rate of
12 pay when a meal period was missed, and they did not receive all meal periods or payment of one
13 additional hour of pay at Plaintiff's and Employee's regular rate of pay when a meal period was
14 missed.

15 32. Plaintiff is informed and believes, and based thereon alleges, that Defendants
16 knew or should have known that Plaintiff and Employees were entitled to receive all rest periods
17 or payment of one additional hour of pay at Plaintiff's and Employees regular rate of pay when
18 a rest period was missed, and they did not receive all rest periods or payment of one additional
19 hour of pay at Plaintiff's and Employees' regular rate of pay when a rest period was missed.

20 33. Plaintiff is informed and believes, and based thereon alleges, that Defendants
21 knew or should have known that Plaintiff and Employees were entitled to receive at least
22 minimum wages for compensation and that they were not receiving at least minimum wages for
23 all hours worked.

24 34. Plaintiff is informed and believes, and based thereon alleges, that Defendants
25 knew or should have known that Plaintiff and Employees were entitled to receive all wages owed
26 to them upon discharge or resignation, including overtime and minimum wages and meal and
27 rest period premiums, and they did not, in fact, receive all such wages owed to them at the time
28 of their discharge or resignation.

1 35. Plaintiff is informed and believes, and based thereon alleges, that Defendants
2 knew or should have known that Plaintiff and Employees were entitled to receive all wages owed
3 to them during their employment. Plaintiff and Employees did not receive payment of all wages,
4 including overtime and minimum wages and meal and rest period premiums, within any time
5 permissible under California Labor Code section 204.

6 36. Plaintiff is informed and believes, and based thereon alleges, that Defendants
7 knew or should have known that Plaintiff and Employees were entitled to receive complete and
8 accurate wage statements in accordance with California law, but, in fact, they did not receive
9 complete and accurate wage statements from Defendants. The deficiencies included, *inter alia*,
10 the failure to include the total number of hours worked by Plaintiff and Employees.

11 37. Plaintiff is informed and believes, and based thereon alleges, that Defendants
12 knew or should have known that Defendants had to keep complete and accurate payroll records
13 for Plaintiff and Employees in accordance with California law, but, in fact, did not keep complete
14 and accurate payroll records.

15 38. Plaintiff is informed and believes, and based thereon alleges, that Defendants
16 knew or should have known that Plaintiff and Employees were entitled to reimbursement for
17 necessary business-related expenses.

18 39. Plaintiff is informed and believes, and based thereon alleges, that Defendants
19 knew or should have known that they had a duty to compensate Plaintiff and Employees pursuant
20 to California law, and that Defendants had the financial ability to pay such compensation, but
21 willfully, knowingly, and intentionally failed to do so, and falsely represented to Plaintiff and
22 Employees that they were properly denied wages, all in order to increase Defendants' profits.

23 40. During the relevant time period, Defendants failed to pay overtime wages to
24 Plaintiff and Employees for all overtime hours worked. Plaintiff and Employees were required
25 to work more than eight (8) hours per day and/or forty (40) hours per week without overtime
26 compensation for all overtime hours worked.

27 41. During the relevant time period, Defendants failed to provide all requisite
28 uninterrupted meal and rest periods to Plaintiff and Employees.

42. During the relevant time period, Defendants failed to pay Plaintiff and Employees at least minimum wages for all hours worked.

43. During the relevant time period, Defendants failed to pay Plaintiff and Employees all wages owed to them upon discharge or resignation.

44. During the relevant time period, Defendants failed to pay Plaintiff and Employees all wages within any time permissible under California law, including, *inter alia*, California Labor Code section 204.

45. During the relevant time period, Defendants failed to provide complete or accurate wage statements to Plaintiff and Employees.

46. During the relevant time period, Defendants failed to keep complete or accurate payroll records for Plaintiff and Employees.

47. During the relevant time period, Defendants failed to reimburse Plaintiff and Employees for all necessary business-related expenses and costs.

48. During the relevant time period, Defendants failed to properly compensate Plaintiff and Employees pursuant to California law in order to increase Defendants' profits.

49. California Labor Code section 218 states that nothing in Article 1 of the Labor Code shall limit the right of any wage claimant to “sue directly . . . for any wages or penalty due to him [or her] under this article.”

FIRST CAUSE OF ACTION

(Violation of California Labor Code §§ 510 and 1198)

(Against ZERO MOTORCYCLES INC. and DOES 1 through 100)

50. Plaintiff incorporates by reference the allegations contained in Paragraphs 1 through 49, and each and every part thereof with the same force and effect as though fully set forth herein.

51. California Labor Code section 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order provide that it is unlawful to employ persons without compensating them at a rate of pay either time-and-one-half or two-times that person’s regular rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

52. Specifically, the applicable IWC Wage Order provides that Defendants are and were required to pay Plaintiff and the other class members employed by Defendants, and working more than eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time-and-one-half for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek.

53. The applicable IWC Wage Order further provides that Defendants are and were required to pay Plaintiff and the other class members overtime compensation at a rate of two times their regular rate of pay for all hours worked in excess of twelve (12) hours in a day.

54. California Labor Code section 510 codifies the right to overtime compensation at one-and-one-half times the regular hourly rate for hours worked in excess of eight (8) hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh day of work, and to overtime compensation at twice the regular hourly rate for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day of work.

55. During the relevant time period, Plaintiff and the other class members worked in excess of eight (8) hours in a day, and/or in excess of forty (40) hours in a week.

56. During the relevant time period, Defendants intentionally and willfully failed to pay overtime wages owed to Plaintiff and the other class members.

57. Defendants' failure to pay Plaintiff and the other class members the unpaid balance of overtime compensation, as required by California laws, violates the provisions of California Labor Code sections 510 and 1198, and is therefore unlawful.

58. Pursuant to California Labor Code section 1194, Plaintiff and the other class members are entitled to recover unpaid overtime compensation, as well as interest, costs, and attorneys' fees.

SECOND CAUSE OF ACTION

(Violation of California Labor Code §§ 226.7 and 512(a))

(Against ZERO MOTORCYCLES INC. and DOES 1 through 100)

59. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 58, and each and every part thereof with the same force and effect as though fully set

1 forth herein.

2 60. At all relevant times, the IWC Order and California Labor Code sections 226.7
3 and 512(a) were applicable to Plaintiff's and the other class members' employment by
4 Defendants.

5 61. At all relevant times, California Labor Code section 226.7 provides that no
6 employer shall require an employee to work during any meal or rest period mandated by an
7 applicable order of the California IWC.

8 62. At all relevant times, the applicable IWC Wage Order and California Labor Code
9 section 512(a) provide that an employer may not require, cause or permit an employee to work
10 for a work period of more than five (5) hours per day without providing the employee with a
11 meal period of not less than thirty (30) minutes, except that if the total work period per day of the
12 employee is no more than six (6) hours, the meal period may be waived by mutual consent of
13 both the employer and employee.

14 63. At all relevant times, the applicable IWC Wage Order and California Labor Code
15 section 512(a) further provide that an employer may not require, cause or permit an employee to
16 work for a work period of more than ten (10) hours per day without providing the employee with
17 a second uninterrupted meal period of not less than thirty (30) minutes, except that if the total
18 hours worked is no more than twelve (12) hours, the second meal period may be waived by
19 mutual consent of the employer and the employee only if the first meal period was not waived.

20 64. During the relevant time period, Plaintiff and the other class members who were
21 scheduled to work for a period of time no longer than six (6) hours, and who did not waive their
22 legally-mandated meal periods by mutual consent, were required to work for periods longer than
23 five (5) hours without an uninterrupted meal period of not less than thirty (30) minutes and/or
24 rest period.

25 65. During the relevant time period, Plaintiff and the other class members who were
26 scheduled to work for a period of time in excess of six (6) hours were required to work for
27 periods longer than five (5) hours without an uninterrupted meal period of not less than thirty
28 (30) minutes and/or rest period.

1 66. During the relevant time period, Defendants intentionally and willfully required
2 Plaintiff and the other class members to work during meal periods and failed to compensate
3 Plaintiff and the other class members the full meal period premium for work performed during
4 meal periods.

5 67. During the relevant time period, Defendants failed to pay Plaintiff and the other
6 class members the full meal period premium due pursuant to California Labor Code section
7 226.7.

8 68. Defendants' conduct violates applicable IWC Wage Order and California Labor
9 Code sections 226.7 and 512(a).

10 69. Pursuant to applicable IWC Wage Order and California Labor Code section
11 226.7(b), Plaintiff and the other class members are entitled to recover from Defendants one
12 additional hour of pay at the employee's regular rate of compensation for each work day that the
13 meal or rest period is not provided.

14 **THIRD CAUSE OF ACTION**

15 **(Violation of California Labor Code § 226.7)**

16 **(Against ZERO MOTORCYCLES INC. and DOES 1 through 100)**

17 70. Plaintiff incorporates by reference the allegations contained in paragraphs 1
18 through 69, and each and every part thereof with the same force and effect as though fully set
19 forth herein.

20 71. At all times herein set forth, the applicable IWC Wage Order and California Labor
21 Code section 226.7 were applicable to Plaintiff's and the other class members' employment by
22 Defendants.

23 72. At all relevant times, California Labor Code section 226.7 provides that no
24 employer shall require an employee to work during any rest period mandated by an applicable
25 order of the California IWC.

26 73. At all relevant times, the applicable IWC Wage Order provides that "[e]very
27 employer shall authorize and permit all employees to take rest periods, which insofar as
28 practicable shall be in the middle of each work period" and that the "rest period time shall be

1 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
2 hours or major fraction thereof” unless the total daily work time is less than three and one-half
3 (3 ½) hours.

4 74. During the relevant time period, Defendants required Plaintiff and other class
5 members to work four (4) or more hours without authorizing or permitting a ten (10) minute rest
6 period per each four (4) hour period worked.

7 75. During the relevant time period, Defendants willfully required Plaintiff and the
8 other class members to work during rest periods and failed to pay Plaintiff and the other class
9 members the full rest period premium for work performed during rest periods.

10 76. During the relevant time period, Defendants failed to pay Plaintiff and the other
11 class members the full rest period premium due pursuant to California Labor Code section 226.7

12 77. Defendants’ conduct violates applicable IWC Wage Orders and California Labor
13 Code section 226.7.

14 78. Pursuant to the applicable IWC Wage Orders and California Labor Code section
15 226.7(c), Plaintiff and the other class members are entitled to recover from Defendants one
16 additional hour of pay at the employees’ regular hourly rate of compensation for each work day
17 that the rest period was not provided.

18 **FOURTH CAUSE OF ACTION**

19 **(Violation of California Labor Code §§ 1194, 1197, and 1197.1)**

20 **(Against ZERO MOTORCYCLES INC. and DOES 1 through 100)**

21 79. Plaintiff incorporates by reference the allegations contained in paragraphs 1
22 through 78, and each and every part thereof with the same force and effect as though fully set
23 forth herein.

24 80. At all relevant times, California Labor Code sections 1194, 1197, and 1197.1
25 provide that the minimum wage to be paid to employees, and the payment of a lesser wage than
26 the minimum so fixed is unlawful.

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81. During the relevant time period, Defendants failed to pay minimum wage to Plaintiff and the other class members as required, pursuant to California Labor Code sections 1194, 1197, and 1197.1.

82. Defendants' failure to pay Plaintiff and the other class members the minimum wage as required violates California Labor Code sections 1194, 1197, and 1197.1. Pursuant to those sections Plaintiff and the other class members are entitled to recover the unpaid balance of their minimum wage compensation as well as interest, costs, and attorney's fees, and liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

83. Pursuant to California Labor Code section 1197.1, Plaintiff and the other class members are entitled to recover a penalty of \$100.00 for the initial failure to timely pay each employee minimum wages, and \$250.00 for each subsequent failure to pay each employee minimum wages.

84. Pursuant to California Labor Code section 1194.2, Plaintiff and the other class members are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

FIFTH CAUSE OF ACTION

(Violation of California Labor Code §§ 201 and 202)

(Against ZERO MOTORCYCLES INC. and DOES 1 through 100)

85. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 84, and each and every part thereof with the same force and effect as though fully set forth herein.

86. At all relevant times herein set forth, California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours' notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

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87. During the relevant time period, Defendants intentionally and willfully failed to pay Plaintiff and the other class members who are no longer employed by Defendants their wages, earned and unpaid, within seventy-two (72) hours of their leaving Defendants' employ.

88. Defendants' failure to pay Plaintiff and the other class members who are no longer employed by Defendants' their wages, earned and unpaid, within seventy-two (72) hours of their leaving Defendants' employ, is in violation of California Labor Code sections 201 and 202.

89. California Labor Code section 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

90. Plaintiff and the other class members are entitled to recover from Defendants the statutory penalty wages for each day they were not paid, up to a thirty (30) day maximum pursuant to California Labor Code section 203.

SIXTH CAUSE OF ACTION

(Violation of California Labor Code § 204)

(Against ZERO MOTORCYCLES INC. and DOES 1 through 100)

91. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 90, and each and every part thereof with the same force and effect as though fully set forth herein.

92. At all times herein set forth, California Labor Code section 204 provides that all wages earned by any person in any employment between the 1st and 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed.

93. At all times herein set forth, California Labor Code section 204 provides that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month.

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94. At all times herein set forth, California Labor Code section 204 provides that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

95. During the relevant time period, Defendants intentionally and willfully failed to pay Plaintiff and the other class members all wages due to them, within any time period permissible under California Labor Code section 204.

96. Plaintiff and the other class members are entitled to recover all remedies available for violations of California Labor Code section 204.

SEVENTH CAUSE OF ACTION

(Violation of California Labor Code § 226(a))

(Against ZERO MOTORCYCLES INC. and DOES 1 through 100)

97. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 96, and each and every part thereof with the same force and effect as though fully set forth herein.

98. At all material times set forth herein, California Labor Code section 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or her social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payments of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement or a record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

99. Defendants have intentionally and willfully failed to provide Plaintiff and the other class members with complete and accurate wage statements. The deficiencies include, but are not limited to: the failure to include the total number of hours worked by Plaintiff and the other class members.

100. As a result of Defendants' violation of California Labor Code section 226(a), Plaintiff and the other class members have suffered injury and damage to their statutorily-protected rights.

101. More specifically, Plaintiff and the other class members have been injured by Defendants' intentional and willful violation of California Labor Code section 226(a) because they were denied both their legal right to receive, and their protected interest in receiving, accurate and itemized wage statements pursuant to California Labor Code section 226(a).

102. Plaintiff and the other class members are entitled to recover from Defendants the greater of their actual damages caused by Defendants' failure to comply with California Labor Code section 226(a), or an aggregate penalty not exceeding four thousand dollars per employee.

103. Plaintiff and the other class members are also entitled to injunctive relief to ensure compliance with this section, pursuant to California Labor Code section 226(h).

EIGHTH CAUSE OF ACTION

(Violation of California Labor Code § 1174(d))

(Against ZERO MOTORCYCLES INC. and DOES 1 through 100)

104. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 103, and each and every part thereof with the same force and effect as though fully set forth herein.

105. Pursuant to California Labor Code section 1174(d), an employer shall keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules

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1 established for this purpose by the commission, but in any case shall be kept on file for not less
2 than two years.

3 106. Defendants have intentionally and willfully failed to keep accurate and complete
4 payroll records showing the hours worked daily and the wages paid, to Plaintiff and the other
5 class members.

6 107. As a result of Defendants' violation of California Labor Code section 1174(d),
7 Plaintiff and the other class members have suffered injury and damage to their statutorily-
8 protected rights.

9 108. More specifically, Plaintiff and the other class members have been injured by
10 Defendants' intentional and willful violation of California Labor Code section 1174(d) because
11 they were denied both their legal right and protected interest, in having available, accurate and
12 complete payroll records pursuant to California Labor Code section 1174(d).

13 **NINTH CAUSE OF ACTION**

14 **(Violation of California Labor Code §§ 2800 and 2802)**

15 **(Against ZERO MOTORCYCLES INC. and DOES 1 through 100)**

16 109. Plaintiff incorporates by reference the allegations contained in paragraphs 1
17 through 108, and each and every part thereof with the same force and effect as though fully set
18 forth herein.

19 110. Pursuant to California Labor Code sections 2800 and 2802, an employer must
20 reimburse its employee for all necessary expenditures incurred by the employee in direct
21 consequence of the discharge of his or her job duties or in direct consequence of his or her
22 obedience to the directions of the employer.

23 111. Plaintiff and the other class members incurred necessary business-related
24 expenses and costs that were not fully reimbursed by Defendants.

25 112. Defendants have intentionally and willfully failed to reimburse Plaintiff and the
26 other class members for all necessary business-related expenses and costs.

27 113. Plaintiff and the other class members are entitled to recover from Defendants their
28 business-related expenses and costs incurred during the course and scope of their employment,

1 plus interest accrued from the date on which the employee incurred the necessary expenditures
2 at the same rate as judgments in civil actions in the State of California.

3 **TENTH CAUSE OF ACTION**

4 **(Violation of California Business & Professions Code §§ 17200, et seq.)**

5 **(Against ZERO MOTORCYCLES INC. and DOES 1 through 100)**

6 114. Plaintiff incorporates by reference the allegations contained in paragraphs 1
7 through 113, and each and every part thereof with the same force and effect as though fully set
8 forth herein.

9 115. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
10 unlawful and harmful to Plaintiff, other class members, to the general public, and Defendants'
11 competitors. Accordingly, Plaintiff seek to enforce important rights affecting the public interest
12 within the meaning of Code of Civil Procedure section 1021.5.

13 116. Defendants' activities as alleged herein are violations of California law, and
14 constitute unlawful business acts and practices in violation of California Business & Professions
15 Code section 17200, et seq.

16 117. A violation of California Business & Professions Code section 17200, et seq. may
17 be predicated on the violation of any state or federal law. In this instant case, Defendants'
18 policies and practices of requiring employees, including Plaintiff and the other class members,
19 to work overtime without paying them proper compensation violate California Labor Code
20 sections 510 and 1198. Additionally, Defendants' policies and practices of requiring employees,
21 including Plaintiff and the other class members, to work through their meal and rest periods
22 without paying them proper compensation violate California Labor Code sections 226.7 and
23 512(a). Defendants' policies and practices of failing to pay minimum wages violate California
24 Labor Code sections 1194, 1197, and 1197.1. Moreover, Defendants' policies and practices of
25 failing to timely pay wages to Plaintiff and the other class members violate California Labor
26 Code sections 201, 202 and 204. Defendants also violated California Labor Code sections
27 226(a), 1174(d), 2800 and 2802.

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1 118. As a result of the herein described violations of California law, Defendants
2 unlawfully gained an unfair advantage over other businesses.

3 119. Plaintiff and the other class members have been personally injured by Defendants'
4 unlawful business acts and practices as alleged herein, including but not necessarily limited to
5 the loss of money and/or property.

6 120. Pursuant to California Business & Professions Code sections 17200, et seq.,
7 Plaintiff and the other class members are entitled to restitution of the wages withheld and retained
8 by Defendants during a period that commences four years preceding the filing of this Complaint;
9 an award of attorneys' fees pursuant to California Code of Civil procedure section 1021.5 and
10 other applicable laws; and an award of costs.

11 **ELEVENTH CAUSE OF ACTION**

12 **(Violation of California Labor Code §§ 2698, et seq.)**

13 **(Against ZERO MOTORCYCLES INC. and DOES 1 through 100)**

14 121. Plaintiff incorporates by reference the allegations contained in paragraphs 1
15 through 120, and each and every part thereof with the same force and effect as though fully set
16 forth herein.

17 122. PAGA expressly establishes that any provision of the California Labor Code
18 which provides for a civil penalty to be assessed and collected by the Labor Workforce
19 Development Agency ("LWDA") or any of its departments, divisions, commissions, bonds,
20 agencies or employees for a violation of the California Labor Code, may be recovered through
21 a civil action brought by an aggrieved employee on behalf of himself or herself, and other current
22 or former employees.

23 123. Whenever the LWDA, or any of its departments, divisions, commissions, boards,
24 agencies, or employees has discretion to assess a civil penalty, a court in a civil action is
25 authorized to exercise the same discretions, subject to the same limitations and conditions, to
26 assess a civil penalty.

27 124. Plaintiff and the other hourly-paid or non-exempt employees are "aggrieved
28 employees" as defined by California Labor Code section 2699(c) in that they are all current or

former employees of Defendants, and one or more of the alleged violations was committed against them.

Failure to Pay Overtime

125. Defendants' failure to pay legally required overtime wages to Plaintiff and the other aggrieved employees is in violation of the Wage Orders and constitutes unlawful and/or unfair activity prohibited by California Labor Code sections 510 and 1198.

Failure to Provide Meal Periods

126. Defendants' failure to provide legally required meal periods to Plaintiff and the other aggrieved employees is in violation of the Wage Orders and constitutes unlawful and/or unfair activity prohibited by California Labor Code sections 116.7 and 512(a).

Failure to Provide Rest Periods

127. Defendants' failure to provide legally required rest periods to Plaintiff and the other aggrieved employees is in violation of the Wage Orders and constitutes unlawful and/or unfair activity prohibited by California Labor Code section 226.7.

Failure to Pay Minimum Wages

128. Defendants' failure to pay legally required minimum wages to Plaintiff and the other aggrieved employees is in violation of the Wage Orders and constitutes unlawful and/or unfair activity prohibited by California Labor Code sections 1194, 1197, and 1197.1.

Failure to Timely Pay Wages Upon Termination

129. Defendants' failure to timely pay wages to Plaintiff and the other aggrieved employees upon termination in accordance with Labor Code sections 201 and 202 constitutes unlawful and/or unfair activity prohibited by California Labor Code sections 201 and 202.

Failure to Provide Complete and Accurate Wage Statements

130. Defendants' failure to provide complete and accurate wage statements to Plaintiff and the other aggrieved employees in accordance with Labor Code section 226(a) constitutes unlawful and/or unfair activity prohibited by California Labor Code section 226(a).

Failure to Reimburse Necessary Business-Related Expenses and Costs

131. Defendants' failure to reimburse Plaintiff and the other aggrieved employees for

1 necessary business-related expenses and costs in accordance with California Labor Code
2 sections 2800 and 2802 constitutes unlawful and/or unfair activity prohibited by California
3 Labor Code sections 2800 and 2802.

4 132. Pursuant to California Labor Code section 2699, Plaintiff, individually, and on
5 behalf of all aggrieved employees, requests and is entitled to recover from Defendants and each
6 of them, attorneys' fees and costs pursuant to California Labor Code section 218.5, as well as
7 penalties pursuant to PAGA against Defendants, and each of them, including but not limited to:

- 8 a. Penalties under California Labor Code section 2699 in the amount of a hundred
9 dollars (\$100) for each aggrieved employee per pay period for the initial violation
10 and two hundred dollars (\$200) for each aggrieved employees per pay period for
11 each subsequent violation;
- 12 b. Penalties under California Code of Regulations Title 8 section 11010 *et seq.* in
13 the amount of fifty dollars (\$50) for each aggrieved employee per pay period for
14 the initial violation, and one hundred dollars (\$100) for each aggrieved employee
15 per pay period for each subsequent violation;
- 16 c. Penalties under California Labor Code section 210 in addition to, and entirely
17 independent and apart from, any other penalty provided in the California Labor
18 Code in the amount of a hundred dollars (\$100) for each aggrieved employee per
19 pay period for the initial violation, and two hundred dollars (\$200) for each
20 aggrieved employee per pay period for each aggrieved employee per pay period
21 for each subsequent violation.
- 22 d. Any and all additional penalties and sums as provided by the California Labor
23 Code and/or other statutes.

24 133. Pursuant to California Labor Code section 2699(i), civil penalties recovered by
25 aggrieved employees shall be distributed as follows: seventy-five percent (75%) to the Labor
26 and Workforce Development Agency for the enforcement of labor laws and education of
27 employers and employees about their rights and responsibilities and twenty-five percent (25%)
28 to the aggrieved employees.

1 134. Further, Plaintiff is entitled to seek and recover reasonable attorneys' fees and
2 costs pursuant to California Labor Code sections 210, 218.5, and 2699 and any other applicable
3 statute.

4 **DEMAND FOR JURY TRIAL**

5 Plaintiff, individually, and on behalf of other members of the general public similarly
6 situated and aggrieved employees, requests a trial by jury.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff, individually, and on behalf of other members of the general
9 public similarly situated and aggrieved employees, prays for relief and judgment against
10 Defendants, jointly and severally, as follows:

11 **Class Certification**

- 12 1. That this action be certified as a class action;
13 2. That Plaintiff be appointed as the representative of the Class;
14 3. That counsel for Plaintiff be appointed as Class Counsel; and
15 4. That Defendants provide to Class Counsel immediately the names and most
16 current/last known contact information (address, e-mail and telephone numbers) of all class
17 members.

18 **As to the First Cause of Action**

- 19 5. That the Court declare, adjudge and decree that Defendants violated California
20 Labor Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay
21 all overtime wages due to Plaintiff and the other class members;
22 6. For general unpaid wages at overtime wage rates and such general and special
23 damages as may be appropriate;
24 7. For pre-judgment interest on any unpaid overtime compensation commencing
25 from the date such amounts were due;
26 8. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
27 California Labor Code section 1194; and
28 9. For such other and further relief as the Court may deem just and proper.

As to the Second Cause of Action

10. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7 and 512 and applicable IWC Wage Orders by willfully failing to provide all meal periods (including second meal periods) to Plaintiff and the other class members;

11. That the Court make an award to Plaintiff and the other class members of one (1) hour of pay at each employee's regular rate of compensation for each workday that a meal period was not provided;

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

13. For premium wages pursuant to California Labor Code section 226.7(c);

14. For pre-judgment interest on any unpaid wages from the date such amounts were due;

15. For reasonable attorneys' fees and costs of suit incurred herein; and

16. For such other and further relief as the Court may deem just and proper.

As to the Third Cause of Action

17. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 226.7 and applicable IWC Wage Orders by willfully failing to provide all rest periods to Plaintiff and the other class members;

18. That the Court make an award to Plaintiff and the other class members of one (1) hour of pay at each employee's regular rate of compensation for each workday that a rest period was not provided;

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

20. For premium wages pursuant to California Labor Code section 226.7(c);

21. For pre-judgment interest on any unpaid wages from the date such amounts were due; and

22. For such other and further relief as the Court may deem just and proper.

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23. That the Court declare, adjudge and decree that Defendants violated California Code sections 1194, 1197, and 1197.1 by willfully failing to pay minimum wages to Plaintiff and the other class members;

24. For general unpaid wages and such general and special damages as may be appropriate;

25. For statutory wage penalties pursuant to California Labor Code section 1197.1 for Plaintiff and the other class members in the amount as may be established according to proof at trial.

26. For pre-judgment interest on any unpaid compensation from the date such
 s were due;

27. For reasonable attorneys' fees and costs of suit incurred herein pursuant to Pennsylvania Labor Code section 1194(a);

28. For liquidated damages pursuant to California Labor Code section 1194.2; and

29. For such other and further relief as the Court may deem just and proper

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30. That the Court declare, adjudge and decree that Defendants violated California Code sections 201, 202, and 203 by willfully failing to pay all compensation owed at the termination of the employment of Plaintiff and the other class members no longer covered by Defendants;

31. For all actual, consequential, and incidental losses and damages, according to

32. For statutory wage penalties pursuant to California Labor Code section 203 for Plaintiff and the other class members who have left Defendants' employ;

33. For pre-judgment interest on any unpaid compensation from the date such
 s were due; and

34. For such other and further relief as the Court may deem just and proper

1 **As to the Sixth Cause of Action**

2 35. That the Court declare, adjudge and decree that Defendants violated California
3 Labor Code section 204 by willfully failing to pay all compensation owed at the time required
4 by California Labor Code section 204 to Plaintiff and the other class members;

5 36. For all actual, consequential, and incidental losses and damages, according to
6 proof;

7 37. For pre-judgment interest on any unpaid compensation from the date such
8 amounts were due; and

9 38. For such other and further relief as the Court may deem just and proper.

10 **As to the Seventh Cause of Action**

11 39. That the Court declare, adjudge and decree that Defendants violated the record
12 keeping provisions of California Labor Code section 226(a) and applicable IWC Wage Orders
13 as to Plaintiff and the other class members, and willfully failed to provide accurate itemized
14 wage statements thereto;

15 40. For actual, consequential and incidental losses and damages, according to proof;

16 41. For statutory penalties pursuant to California Labor Code section 226(e);

17 42. For injunctive relief to ensure compliance with this section, pursuant to California
18 Labor Code section 226(h); and

19 43. For such other and further relief as the Court may deem just and proper.

20 **As to the Eighth Cause of Action**

21 44. That the Court declare, adjudge and decree that Defendants violated California
22 Labor Code section 1174(d) by willfully failing to keep accurate and complete payroll records
23 for Plaintiff and the other class members as required by California Labor Code section 1174(d);

24 45. For actual, consequential and incidental losses and damages, according to proof;

25 46. For statutory penalties pursuant to California Labor Code section 1174.5; and

26 47. For such other and further relief as the Court may deem just and proper.

27 **As to the Ninth Cause of Action**

28 48. That the Court declare, adjudge and decree that Defendants violated California

1 Labor Code sections 2800 and 2802 by willfully failing to reimburse Plaintiff and the other class
2 members for all necessary business-related expenses as required by California Labor Code
3 sections 2800 and 2802;

4 49. For actual, consequential and incidental losses and damages, according to proof;

5 50. For the imposition of civil penalties and/or statutory penalties;

6 51. For reasonable attorneys' fees and costs of suit incurred herein; and

7 52. For such other and further relief as the Court may deem just and proper.

8 **As to the Tenth Cause of Action**

9 53. That the Court decree, adjudge and decree that Defendants violated California
10 Business and Professions Code sections 17200, et seq. by failing to provide Plaintiff and the
11 other class members all overtime compensation due to them, failing to provide all meal and rest
12 periods to Plaintiff and the other class members, failing to pay at least minimum wages to
13 Plaintiff and the other class members, failing to pay Plaintiff's and the other class members'
14 wages timely as required by California Labor Code section 201, 202 and 204 and by violating
15 California Labor Code sections 226(a), 1174(d), 2800 and 2802.

16 54. For restitution of unpaid wages to Plaintiff and all the other class members and
17 all pre-judgment interest from the day such amounts were due and payable;

18 55. For the appointment of a receiver to receive, manage and distribute any and all
19 funds disgorged from Defendants and determined to have been wrongfully acquired by
20 Defendants as a result of violation of California Business and Professions Code sections 17200,
21 et seq.;

22 56. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
23 California Code of Civil Procedure section 1021.5;

24 57. For injunctive relief to ensure compliance with this section, pursuant to California
25 Business and Professions Code sections 17200, et seq.; and

26 58. For such other and further relief as the Court may deem just and proper.

27 **As to the Eleventh Cause of Action**

28 59. For civil penalties pursuant to California Labor Code sections 2699(a), (f), and (g),

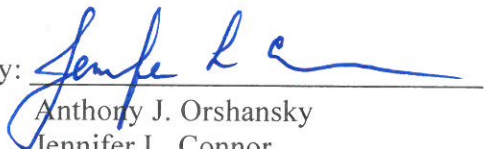
1 costs/expenses, and attorneys' fees for violation of California Labor Code sections 201, 202, 203,
2 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802; and

3 60. For such other and further relief as the Court may deem just and proper.
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5 Dated: October 14, 2021

COUNSELONE, P.C.

6
7 By:


8 Anthony J. Orshansky
9 Jennifer L. Connor
10 *Attorneys for Plaintiff*
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I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 9301 Wilshire Blvd., Suite 650, Beverly Hills, CA 90210.

Julie A. Marquis, Esq. Attorneys for Defendant
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[] (BY MAIL) I am “readily familiar” with the firm’s practice for collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Beverly Hills, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☒ (BY ELECTRONIC SERVICE) Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons listed above through One Legal. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

[] (BY FAX) I transmitted, pursuant to Rules 2001 et seq., the above-described document by facsimile machine (which complied with Rule 2003 (3), to the above-listed fax number (s). The transmission originated from facsimile phone number (424) 277-3727 and was reported as complete and without error. The facsimile machine properly issued a transmission report, a copy of which is attached hereto.

Executed on December 1, 2021, at Rancho Cucamonga, California.

[X] (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

/s/ *Cassandra Carlos*

CASSANDRA CARLOS