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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

MANUEL MATEO MIGUEL, individually, and
on behalf of all others similarly situated,

Plaintiff,

vs.

NATE 'N AL'S THEN & NOW, LLC, a limited
liability company dba NATE 'N AL'S
DELICATESSEN; and DOES 1 through 10,
inclusive,

Defendants

Case No.: 21STCV14637

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

1. Failure to Pay Minimum and Regular Rate Wages [Cal. Lab. Code §§ 204, 1194, 1194.2, and 1197];
2. Failure to Pay Overtime Compensation [Cal. Lab. Code §§ 1194 and 1198];
3. Failure to Provide Meal Periods [Cal. Lab. Code §§ 226.7, 512];
4. Failure to Authorize and Permit Rest Breaks [Cal. Lab. Code §§ 226.7];
5. Failure to Timely Pay Final Wages at Termination [Cal. Lab. Code §§ 201-203];
6. Failure to Provide Accurate Itemized Wage Statements [Cal. Lab. Code § 226]; and
7. Unfair Business Practices [Cal. Bus. & Prof. Code §§ 17200, et seq.];
8. Civil Penalties Under PAGA [Cal. Lab. Code § 2699, et seq.].

DEMAND FOR JURY TRIAL

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1 Plaintiff Manuel Mateo Miguel (“Plaintiff”), based upon facts that either have evidentiary
2 support or are likely to have evidentiary support after a reasonable opportunity for further
3 investigation and discovery, alleges as follows:

4 **INTRODUCTION & PRELIMINARY STATEMENT**

5 1. Plaintiff brings this action against Defendants Nate ‘N Al’s Then & Now, LLC dba Nate
6 ‘N Al’s Delicatessen, and Does 1 through 10 (collectively referred to as “Defendants”) for
7 California Labor Code violations and unfair business practices stemming from Defendants’
8 failure to pay minimum and regular rate wages, failure to pay overtime wages, failure to provide
9 meal periods, failure to authorize and permit rest periods, failure to maintain accurate records of
10 hours worked and meal periods, failure to timely pay all wages to terminated employees, and
11 failure to furnish accurate wage statements.

12 2. Plaintiff brings the First through Seventh Causes of Action individually and as a class
13 action on behalf of himself and certain current and former employees of Defendants (hereinafter
14 collectively referred to as the “Class” or “Class Members” and defined more fully below). The
15 Class consists of Plaintiff and all other persons who have been employed by any Defendants in
16 California and classified as a non-exempt employee during the statute of limitations period
17 applicable to the claims pleaded here.

18 3. Plaintiff brings the Eight Cause of Action as a representative action under the California
19 Private Attorney General Act (“PAGA”) to recover civil penalties that are owed to Plaintiff, the
20 State of California, and past and present employees of Defendants (hereinafter referred to as the
21 “Aggrieved Employees”).

22 4. Defendants own/owned and operate/operated an industry, business, and establishment
23 within the State of California, including Los Angeles County. As such and based upon all the
24 facts and circumstances incident to Defendants’ business in California, Defendants are subject to
25 the California Labor Code, Wage Orders issued by the Industrial Welfare Commission (“IWC”),
26 and the California Business & Professions Code.

27 5. Despite these requirements, throughout the statutory period Defendants maintained a
28 systematic, company-wide policy and practice of:

- (a) Failing to pay employees for all hours worked, including all minimum wages, overtime wages, in compliance with the California Labor Code and IWC Wage Orders;
- (b) Failing to maintain accurate records of the hours employees worked;
- (c) Failing to provide employees with timely and duty-free meal periods in compliance with the California Labor Code and IWC Wage Orders, failing to maintain accurate records of all meal periods taken or missed, and failing to pay an additional hour's pay for each workday a meal period violation occurred;
- (d) Failing to authorize and permit employees to take timely and duty-free rest periods in compliance with the California Labor Code and IWC Wage Orders, and failing to pay an additional hour's pay for each workday a rest period violation occurred;
- (e) Willfully failing to pay employees all minimum wages, overtime wages, meal period premium wages, and rest period premium wages due within the time period specified by California law when employment terminates; and
- (f) Failing to provide employees with accurate, itemized wage statements containing all the information required by the California Labor Code and IWC Wage Orders.

6. On information and belief, Defendants, and each of them were on actual and constructive notice of the improprieties alleged herein and intentionally refused to rectify their unlawful policies. Defendants' violations, as alleged above, during all relevant times herein were willful and deliberate.

7. At all relevant times, Defendants were and are legally responsible for all of the unlawful conduct, policies, practices, acts and omissions as described in each and all of the foregoing paragraphs as the employer of Plaintiff and the Class. Further, Defendants are responsible for each of the unlawful acts or omissions complained of herein under the doctrine of "respondeat

superior”.

THE PARTIES

A. Plaintiff

8. Plaintiff is a California resident who worked for Defendants in Los Angeles County, California as a cook from approximately April 2019 to January 2021.

9. Plaintiff reserves the right to seek leave to amend this complaint to add new plaintiffs, if necessary, in order to establish suitable representative(s) pursuant to *La Sala v. American Savings and Loan Association* (1971) 5 Cal.3d 864, 872, and other applicable law.

B. Defendants

10. Plaintiff is informed and believes, and based upon that information and belief alleges, that Defendant Nate ‘N Al’s Then & Now, LLC dba Nate ‘N Al’s Delicatessen is:

(g) A California corporation with its principal place of business in Los Angeles, California.

(h) A business entity conducting business in numerous counties throughout the State of California, including in Los Angeles County; and

(i) The former employers of Plaintiff, and the current and/or former employer of the putative Class. Nate ‘N Al’s Then & Now, LLC suffered and permitted Plaintiff and the Class to work, and/or controlled their wages, hours, or working conditions;

(j) Is and at all times mentioned herein was doing business as Nate ‘N Al’s Delicatessen.

11. Plaintiff does not know the true names or capacities of the persons or entities sued herein as Does 1-10, inclusive, and therefore sues said Defendants by such fictitious names. Each of the Doe Defendants was in some manner legally responsible for the damages suffered by Plaintiff and the Class as alleged herein. Plaintiff will amend this complaint to set forth the true names and capacities of these Defendants when they have been ascertained, together with appropriate charging allegations, as may be necessary.

12. At all times mentioned herein, the Defendants named as Does 1-10, inclusive, and each of

1 them, were residents of, doing business in, availed themselves of the jurisdiction of, and/or
2 injured a significant number of the Plaintiff and the Class in the State of California.

3 13. Plaintiff is informed and believes and thereon alleges that at all relevant times each
4 Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and the
5 other employees described in the class definitions below, and exercised control over their wages,
6 hours, and working conditions. Plaintiff is informed and believes and thereon alleges that, at all
7 relevant times, each Defendant was the principal, agent, partner, joint venturer, officer, director,
8 controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or
9 predecessor in interest of some or all of the other Defendants, and was engaged with some or all
10 of the other Defendants in a joint enterprise for profit, and bore such other relationships to some
11 or all of the other Defendants so as to be liable for their conduct with respect to the matters
12 alleged below. Plaintiff is informed and believes and thereon alleges that each Defendant acted
13 pursuant to and within the scope of the relationships alleged above, that each Defendant knew or
14 should have known about, and authorized, ratified, adopted, approved, controlled, aided and
15 abetted the conduct of all other Defendants.

16 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

17 14. Plaintiff Manuel Mateo Miguel worked for Defendants in Los Angeles County, California
18 as a cook from approximately April 2019 to January 2021. At all times Defendants classified
19 Plaintiff as non-exempt from California's overtime requirements. During the statutory time
20 period, Plaintiff was typically scheduled to work 5 days in a workweek, and typically in excess
21 of 8 hours in a single workday.

22 15. Throughout the statutory period, Defendants failed to pay Plaintiff for all hours worked
23 (including minimum wages and overtime compensation), failed to provide Plaintiff with
24 uninterrupted meal periods, failed to authorize and permit Plaintiff to take uninterrupted rest
25 periods, failed to maintain accurate records of the hours Plaintiff worked, failed to timely pay all
26 final wages to Plaintiff when Defendants terminated Plaintiff's employment, and failed to furnish
27 accurate wage statements to Plaintiff. As discussed below, Plaintiff's experience working for
28 Defendants was typical and illustrative.

1 16. Throughout the statutory period, Defendants maintained a policy and practice of no
2 paying Plaintiff and the Class for all hours worked, including all overtime wages. Defendants
3 regularly use a system of time rounding in a manner that resulted, over a period of time, in failing
4 to compensate Plaintiff and the Class properly for all the time they have actually worked, even
5 though the realities of Defendants' operations are such that it is possible, practical, and feasible
6 to count and pay for work time to the minute. Also, throughout the statutory period, Defendants
7 maintained a policy and practice of not paying Plaintiff and the Class for all hours worked,
8 including all overtime wages. Plaintiff and the Class were typically required to work "off the
9 clock". For example, Plaintiff and the Class were required to wait in line in order to clock into
10 work each workday, both at the beginning of the workday and when returning from meal periods,
11 uncompensated. Specifically, Plaintiff and the Class were required to use a tablet to clock in,
12 which was used by staff to take orders from customers and to clock in and out of work, meaning
13 Plaintiff and the Class would have to wait in line in order to clock in, and/or wait until a staff
14 member was finished taking a customer's order before clocking into work. Additionally,
15 Defendant improperly deducted employer-provided meals from Plaintiff, particularly in those
16 instances where Plaintiff and the Class did not eat a meal provided by Defendants. As a result,
17 Defendants frequently paid Plaintiff and the Class less than all their work time, some of which
18 should have been paid at the overtime rate. As a further result, Defendants failed to maintain
19 accurate records of the hours Plaintiff and the Class worked.

20 17. Throughout the statutory period, Defendants have wrongfully failed to provide Plaintiff
21 and the Class with legally compliant meal periods. Defendants regularly, but not always,
22 required Plaintiff and the Class to work in excess of five consecutive hours a day without
23 providing a 30-minute, continuous and uninterrupted, duty-free meal period for every five hours
24 of work, or without compensating Plaintiff and the Class for meal periods that were not provided
25 by the end of the fifth hour of work or tenth hour of work. Defendants did not adequately inform
26 Plaintiff and the Class of their right to take a meal period by the end of the fifth hour of work, or,
27 for shifts greater than 10 hours, by the end of the tenth hour of work. Defendants also did not
28 have adequate policies or practices to document and verify whether Plaintiff and the Class were

1 taking their required meal periods. Accordingly, Defendants' policy and practice was to not
2 provide meal periods to Plaintiff and the Class in compliance with California law.

3 18. Throughout the statutory period, Defendants have wrongfully failed to authorize and
4 permit Plaintiff and the Class to take timely and duty-free rest periods. Defendants regularly, but
5 not always, required Plaintiff and the Class to work in excess of four consecutive hours a day
6 without Defendants authorizing and permitting them to take a 10-minute, continuous and
7 uninterrupted, rest period for every four hours of work (or major fraction of four hours), or
8 without compensating Plaintiff and the Class for rest periods that were not authorized or
9 permitted. Further, Plaintiff and the Class were not authorized to take a third rest period in those
10 instances where they worked in excess of 10 hours per workday. Accordingly, Defendants'
11 policy and practice was to not authorize and permit Plaintiff and the Class to take rest periods in
12 compliance with California law.

13 19. Throughout the statutory period, Defendants willfully failed and refused to timely pay
14 Plaintiff and the Class at the conclusion of their employment all wages, including overtime
15 wages, meal period premium wages, and rest period premium wages.

16 20. Throughout the statutory period, Defendants failed to furnish Plaintiff and the Class with
17 accurate, itemized wage statements showing all applicable hourly rates, and all gross and net
18 wages earned (including correct hours worked, correct wages earned for hours worked, correct
19 overtime hours worked, correct wages for meal periods that were not provided in accordance
20 with California law, and correct wages for rest periods that were not authorized and permitted to
21 take in accordance with California law). As a result of these violations of California Labor Code
22 § 226(a), Plaintiff and the Class suffered injury because, among other things:

23 (k) the violations led them to believe that they were not entitled to be paid
24 minimum wages, overtime wages, meal period premium wages, and rest
25 period premium wages to which they were entitled, even though they were
26 entitled;

27 (l) the violations led them to believe that they had been paid the minimum,
28 overtime, meal period premium, and rest period premium wages to which

1 they were entitled, even though they had not been;

- 2 (m) the violations led them to believe they were not entitled to be paid
3 minimum, overtime, meal period premium, and rest period premium wages
4 at the correct California rate even though they were;
- 5 (n) the violations led them to believe they had been paid minimum, overtime,
6 meal period premium, and rest period premium wages at the correct
7 California rate even though they had not been;
- 8 (o) the violations hindered them from determining the amounts of minimum,
9 overtime, meal period premium, and rest period premium owed to them;
- 10 (p) in connection with their employment before and during this action, and in
11 connection with prosecuting this action, the violations caused them to have
12 to perform mathematical computations to determine the amounts of wages
13 owed to them, computations they would not have to make if the wage
14 statements contained the required accurate information;
- 15 (q) by understating the wages truly due them, the violations caused them to
16 lose entitlement and/or accrual of the full amount of Social Security,
17 disability, unemployment, and other governmental benefits;
- 18 (r) the wage statements inaccurately understated the wages, hours, and wage
19 rates to which Plaintiff and the Class were entitled, and Plaintiff and the
20 Class were paid less than the wages and wage rates to which they were
21 entitled.

22 Thus, Plaintiff and the Class are owed the amounts provided for in California Labor Code §
23 226(e).

24 **CLASS ACTION ALLEGATIONS**

25 21. Plaintiff brings certain claims individually, as well as on behalf of each and all other
26 persons similarly situated, and thus, seeks class certification under California Code of Civil
27 Procedure § 382.

28 22. All claims alleged herein arise under California law for which Plaintiff seeks relief

1 authorized by California law.

2 23. The proposed Class consists of and is defined as:

3 All persons who worked for any Defendants in California as an hourly-paid,
4 non-exempt employee at any time during the period beginning April 2019 and
5 ending when notice to the Class is sent.

6 24. At all material times, Plaintiff was a member of the Class.

7 25. Plaintiff undertakes this concerted activity to improve the wages and working conditions
8 of all Class Members.

9 26. There is a well-defined community of interest in the litigation and the Class is readily
10 ascertainable:

11 (s) Numerosity: The members of the Class (and each subclass, if any) are so
12 numerous that joinder of all members would be unfeasible and impractical.
13 The membership of the entire Class is unknown to Plaintiff at this time,
14 however, the Class is estimated to be greater than 100 individuals and the
15 identity of such membership is readily ascertainable by inspection of
16 Defendants' records.

17 (t) Typicality: Plaintiff is qualified to, and will, fairly and adequately protect
18 the interests of each Class Member with whom there is a shared, well-
19 defined community of interest, and Plaintiff's claims (or defenses, if any)
20 are typical of all Class Members' claims as demonstrated herein.

21 (u) Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect
22 the interests of each Class Member with whom there is a shared, well-
23 defined community of interest and typicality of claims, as demonstrated
24 herein. Plaintiff has no conflicts with or interests antagonistic to any Class
25 Member. Plaintiff's attorneys, the proposed class counsel, are versed in
26 the rules governing class action discovery, certification, and settlement.
27 Plaintiff has incurred, and throughout the duration of this action, will
28 continue to incur costs and attorneys' fees that have been, are, and will be

necessarily expended for the prosecution of this action for the substantial benefit of each class member.

(v) Superiority: A Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:

- 1) The interests of the members of the Class in individually controlling the prosecution or defense of separate actions;
- 2) The extent and nature of any litigation concerning the controversy already commenced by or against members of the Class;
- 3) The desirability or undesirability of concentrating the litigation of the claims in the particular forum; and
- 4) The difficulties likely to be encountered in the management of a class action.

(w) Public Policy Considerations: The public policy of the State of California is to resolve the California Labor Code claims of many employees through a class action. Indeed, current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. Former employees are also fearful of bringing actions because they believe their former employers might damage their future endeavors through negative references and/or other means. Class actions provide the class members who are not named in the complaint with a type of anonymity that allows for the vindication of their rights at the same time as their privacy is protected.

27. There are common questions of law and fact as to the Class (and each subclass, if any) that predominate over questions affecting only individual members, including without limitation, whether, as alleged herein, Defendants have:

- (x) Failed to pay Class Members for all hours worked, including minimum wages, and overtime wages;

- (y) Failed to provide meal periods and pay meal period premium wages to Class Members;
- (z) Failed to authorize and permit rest periods and pay rest period premium wages to Class Members;
- (aa) Failed to promptly pay all wages due to Class Members upon their discharge or resignation;
- (bb) Failed to provide Class Members with accurate wages statements;
- (cc) Failed to maintain accurate records of all hours Class Members worked, and all meal periods Class Members took or missed; and
- (dd) Violated California Business & Professions Code §§ 17200 *et. seq.* as a result of their illegal conduct as described above.

28. This Court should permit this action to be maintained as a class action pursuant to California Code of Civil Procedure § 382 because:

- (ee) The questions of law and fact common to the Class predominate over any question affecting only individual members;
- (ff) A class action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the Class;
- (gg) The members of the Class are so numerous that it is impractical to bring all members of the class before the Court;
- (hh) Plaintiff, and the other members of the Class, will not be able to obtain effective and economic legal redress unless the action is maintained as a class action;
- (ii) There is a community of interest in obtaining appropriate legal and equitable relief for the statutory violations, and in obtaining adequate compensation for the damages and injuries for which Defendants are responsible in an amount sufficient to adequately compensate the members of the Class for the injuries sustained;
- (jj) Without class certification, the prosecution of separate actions by

individual members of the class would create a risk of:

- 1) Inconsistent or varying adjudications with respect to individual members of the Class which would establish incompatible standards of conduct for Defendants; and/or
 - 2) Adjudications with respect to the individual members which would, as a practical matter, be dispositive of the interests of other members not parties to the adjudications, or would substantially impair or impede their ability to protect their interests, including but not limited to the potential for exhausting the funds available from those parties who are, or may be, responsible Defendants; and,
- (kk) Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making final injunctive relief appropriate with respect to the class as a whole.

29. Plaintiff contemplates the eventual issuance of notice to the proposed members of the Class that would set forth the subject and nature of the instant action. The Defendants' own business records may be utilized for assistance in the preparation and issuance of the contemplated notices. To the extent that any further notices may be required, Plaintiff would contemplate the use of additional techniques and forms commonly used in class actions, such as published notice, e-mail notice, website notice, first-class mail, or combinations thereof, or by other methods suitable to the Class and deemed necessary and/or appropriate by the Court.

FIRST CAUSE OF ACTION

(Against all Defendants for Failure to Pay Minimum Wages for All Hours Worked)

30. Plaintiff incorporates by reference and re-alleges as if fully stated herein paragraphs 1 through 20 in this First Amended Complaint.

31. "Hours worked" is the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

32. At all relevant times herein mentioned, Defendants knowingly failed to pay to Plaintiff

1 and the Class compensation for all hours they worked. By their failure to pay compensation for
2 each hour worked as alleged above, Defendants willfully violated the provisions of Section 1194
3 of the California Labor Code, and any additional applicable Wage Orders, which require such
4 compensation to non-exempt employees.

5 33. Accordingly, Plaintiff and the Class are entitled to recover minimum wages for all non
6 overtime hours worked for Defendants.

7 34. By and through the conduct described above, Plaintiff and the Class have been deprived
8 of their rights to be paid wages earned by virtue of their employment with Defendants.

9 35. By virtue of the Defendants' unlawful failure to pay additional compensation to Plaintiff
10 and the Class for their non-overtime hours worked without pay, Plaintiff and the Class suffered,
11 and will continue to suffer, damages in amounts which are presently unknown to Plaintiff and the
12 Class, but which exceed the jurisdictional minimum of this Court, and which will be ascertained
13 according to proof at trial.

14 36. By failing to keep adequate time records required by California Labor Code § 1174(d),
15 Defendants have made it difficult to calculate the full extent of minimum wage compensation due
16 Plaintiff and the Class.

17 37. Pursuant to California Labor Code section 1194.2, Plaintiff and the Class are entitled to
18 recover liquidated damages (double damages) for Defendants' failure to pay minimum wages.

19 38. California Labor Code section 204 requires employers to provide employees with all
20 wages due and payable twice a month. Throughout the statute of limitations period applicable to
21 this cause of action, Plaintiff and the Class were entitled to be paid twice a month at rates
22 required by law, including minimum wages. However, during all such times, Defendants
23 systematically failed and refused to pay Plaintiff and the Class all such wages due, and failed to
24 pay those wages twice a month.

25 39. Plaintiff and the Class are also entitled to seek recovery of all unpaid minimum wages,
26 interest, and reasonable attorneys' fees and costs pursuant to California Labor Code §§ 218.5,
27 218.6, and 1194(a).

28 ///

1 **SECOND CAUSE OF ACTION**

2 **(Against all Defendants for Failure to Pay Overtime Wages)**

3 40. Plaintiff incorporates by reference and re-alleges as if fully stated herein paragraphs 1
4 through 20 in this First Amended Complaint.

5 41. California Labor Code § 510 provides that employees in California shall not be employed
6 more than eight (8) hours in any workday or forty (40) hours in a workweek unless they receive
7 additional compensation beyond their regular wages in amounts specified by law.

8 42. California Labor Code §§ 1194 and 1198 provide that employees in California shall not
9 be employed more than eight hours in any workday unless they receive additional compensation
10 beyond their regular wages in amounts specified by law. Additionally, California Labor Code §
11 1198 states that the employment of an employee for longer hours than those fixed by the
12 Industrial Welfare Commission is unlawful.

13 43. At all times relevant hereto, Plaintiff and the Class have worked more than eight hours in
14 a workday, as employees of Defendants.

15 44. At all times relevant hereto, Defendants failed to pay Plaintiff and the Class overtime
16 compensation for the hours they have worked in excess of the maximum hours permissible by
17 law as required by California Labor Code § 510 and 1198. Plaintiff and the Class are regularly
18 required to work overtime hours.

19 45. By virtue of Defendants' unlawful failure to pay additional premium rate compensation to
20 the Plaintiff and the Class for their overtime hours worked, Plaintiff and the Class have suffered,
21 and will continue to suffer, damages in amounts which are presently unknown to them but which
22 exceed the jurisdictional minimum of this Court and which will be ascertained according to proof
23 at trial.

24 46. By failing to keep adequate time records required by Labor Code § 1174(d), Defendants
25 have made it difficult to calculate the full extent of overtime compensation due to Plaintiff and
26 the Class.

27 47. Plaintiff and the Class also request recovery of overtime compensation according to
28 proof, interest, attorneys' fees and costs pursuant to California Labor Code § 1194(a), as well as

1 the assessment of any statutory penalties against Defendants, in a sum as provided by the
2 California Labor Code and/or other statutes.

3 48. California Labor Code § 204 requires employers to provide employees with all wages due
4 and payable twice a month. The Wage Orders also provide that every employer shall pay to each
5 employee, on the established payday for the period involved, overtime wages for all overtime
6 hours worked in the payroll period. Defendants failed to provide Plaintiff and the Class with all
7 compensation due, in violation of California Labor Code § 204.

8 **THIRD CAUSE OF ACTION**

9 **(Against All Defendants for Failure to Provide Meal Periods)**

10 49. Plaintiff incorporates by reference and re-alleges as if fully stated herein paragraphs 1
11 through 20 in this First Amended Complaint.

12 50. Under California law, Defendants have an affirmative obligation to relieve the Plaintiff
13 and the Class of all duty in order to take their first daily meal periods no later than the start of
14 Plaintiff and the Class' sixth hour of work in a workday, and to take their second meal periods no
15 later than the start of the eleventh hour of work in the workday. Section 512 of the California
16 Labor Code, and Section 11 of the applicable Wage Orders require that an employer provide
17 unpaid meal periods of at least 30 minutes for each five-hour period worked. It is a violation of
18 Section 226.7 of the California Labor Code for an employer to require any employee to work
19 during any meal period mandated under any Wage Order.

20 51. Despite these legal requirements, Defendants regularly failed to provide Plaintiff and the
21 Class with both meal periods as required by California law. By their failure to permit and
22 authorize Plaintiff and the Class to take all meal periods as alleged above (or due to the fact that
23 Defendants made it impossible or impracticable to take these uninterrupted meal periods),
24 Defendants willfully violated the provisions of Section 226.7 of the California Labor Code and
25 the applicable Wage Orders.

26 52. Under California law, Plaintiff and the Class are entitled to be paid one hour of additional
27 wages for each workday he or she was not provided with all required meal period(s), plus interest
28 thereon.

1 **FOURTH CAUSE OF ACTION**

2 **(Against All Defendants for Failure to Authorize and Permit Rest Periods)**

3 53. Plaintiff incorporates by reference and re-alleges as if fully stated herein paragraphs 1
4 through 20 in this First Amended Complaint.

5 54. Defendants are required by California law to authorize and permit breaks of 10
6 uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than
7 two hours). Section 512 of the California Labor Code, the applicable Wage Orders require that
8 the employer permit and authorize all employees to take paid rest periods of 10 minutes each for
9 each 4-hour period worked. Thus, for example, if an employee's work time is 6 hours and ten
10 minutes, the employee is entitled to two rest breaks. Each failure to authorize rest breaks as so
11 required is itself a violation of California's rest break laws. It is a violation of Section 226.7 of
12 the California Labor Code for an employer to require any employee to work during any rest
13 period mandated under any Wage Order.

14 55. Despite these legal requirements, Defendants failed to authorize Plaintiff and the Class to
15 take rest breaks, regardless of whether employees worked more than 4 hours in a workday. By
16 their failure to permit and authorize Plaintiff and the Class to take rest periods as alleged above
17 (or due to the fact that Defendants made it impossible or impracticable to take these
18 uninterrupted rest periods), Defendants willfully violated the provisions of Section 226.7 of the
19 California Labor Code and the applicable Wage Orders.

20 56. Under California law, Plaintiff and the Class are entitled to be paid one hour of premium
21 wages rate for each workday he or she was not provided with all required rest break(s), plus
22 interest thereon.

23 **FIFTH CAUSE OF ACTION**

24 **(Against all Defendants for Failure to Pay Wages of Discharged Employees – Waiting Time**
25 **Penalties)**

26 57. Plaintiff incorporates by reference and re-alleges as if fully stated herein paragraphs 1
27 through 20 in this First Amended Complaint.

28 58. At all times herein set forth, California Labor Code §§ 201 and 202 provide that if an

1 employer discharges an employee, the wages earned and unpaid at the time of discharge are due
2 and payable immediately, and that if an employee voluntarily leaves his or her employment, his
3 or her wages shall become due and payable not later than seventy-two (72) hours thereafter,
4 unless the employee has given seventy-two (72) hours previous notice of his or her intention to
5 quit, in which case the employee is entitled to his or her wages at the time of quitting.

6 59. Within the applicable statute of limitations, the employment of Plaintiff and many other
7 members of the Class ended, i.e. was terminated by quitting or discharge, and the employment of
8 others will be. However, during the relevant time period, Defendants failed, and continue to fail
9 to pay terminated Class Members, without abatement, all wages required to be paid by California
10 Labor Code sections 201 and 202 either at the time of discharge, or within seventy-two (72)
11 hours of their leaving Defendants' employ.

12 60. Defendants' failure to pay Plaintiff and those Class members who are no longer employed
13 by Defendants their wages earned and unpaid at the time of discharge, or within seventy-two (72)
14 hours of their leaving Defendants' employ, is in violation of California Labor Code §§ 201 and
15 202.

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

20 62. Plaintiff and the Class are entitled to recover from Defendants their additionally accruing
21 wages for each day they were not paid, at their regular hourly rate of pay, up to 30 days
22 maximum pursuant to California Labor Code § 203.

23 63. Pursuant to California Labor Code §§ 218.5, 218.6 and 1194, Plaintiff and the Class are
24 also entitled to an award of reasonable attorneys' fees, interest, expenses, and costs incurred in
25 this action.

26 **SIXTH CAUSE OF ACTION**

27 **(Against all Defendants for Failure to Provide and Maintain Accurate and**
28 **Compliant Wage Records)**

1 64. Plaintiff incorporates by reference and re-alleges as if fully stated herein paragraphs 1
2 through 20 in this First Amended Complaint.

3 65. At all material times set forth herein, California Labor Code § 226(a) provides that every
4 employer shall furnish each of his or her employees an accurate itemized wage statement in
5 writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours
6 worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate
7 if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made
8 on written orders of the employee may be aggregated and shown as one item, (5) net wages
9 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the
10 employee and the last four digits of his or her social security number or an employee
11 identification number other than a social security number, (8) the name and address of the legal
12 entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and
13 the corresponding number of hours worked at each hourly rate by the employee.

14 66. Defendants have intentionally and willfully failed to provide employees with complete
15 and accurate wage statements. The deficiencies include, among other things, the failure to
16 correctly identify the gross wages earned by Plaintiff and the Class, the failure to list the true
17 “total hours worked by the employee,” and the failure to list the true net wages earned.

18 67. As a result of Defendants’ violation of California Labor Code § 226(a), Plaintiff and the
19 Class have suffered injury and damage to their statutorily-protected rights.

20 68. Specifically, Plaintiff and the members of the Class have been injured by Defendants’
21 intentional violation of California Labor Code § 226(a) because they were denied both their legal
22 right to receive, and their protected interest in receiving, accurate, itemized wage statements
23 under California Labor Code § 226(a).

24 69. Calculation of the true wage entitlement for Plaintiff and the Class is difficult and time
25 consuming. As a result of this unlawful burden, Plaintiff and the Class were also injured as a
26 result of having to bring this action to attempt to obtain correct wage information following
27 Defendants’ refusal to comply with many of the mandates of California’s Labor Code and related
28 laws and regulations.

1 70. Plaintiff and the Class are entitled to recover from Defendants the greater of their actual
2 damages caused by Defendants' failure to comply with California Labor Code § 226(a), or an
3 aggregate penalty not exceeding four thousand dollars per employee.

4 71. Plaintiff and the Class are also entitled to injunctive relief, as well as an award of
5 attorney's fees and costs to ensure compliance with this section, pursuant to California Labor
6 Code § 226(h).

7 **SEVENTH CAUSE OF ACTION**

8 **(Against all Defendants for Violation of California Business & Professions Code §§ 17200,**
9 **et seq.)**

10 72. Plaintiff incorporates by reference and re-alleges as if fully stated herein paragraphs 1
11 through 20 in this First Amended Complaint.

12 73. Defendants, and each of them, are "persons" as defined under California Business &
13 Professions Code § 17201.

14 74. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, unlawful,
15 and harmful to Plaintiff, other Class members, and to the general public. Plaintiff seek to enforce
16 important rights affecting the public interest within the meaning of Code of Civil Procedure §
17 1021.5.

18 75. Defendants' activities, as alleged herein, are violations of California law, and constitute
19 unlawful business acts and practices in violation of California Business & Professions Code §§
20 17200, *et seq.*

21 76. A violation of California Business & Professions Code §§ 17200, *et seq.* may be
22 predicated on the violation of any state or federal law. All of the acts described herein as
23 violations of, among other things, the California Labor Code, are unlawful and in violation of
24 public policy; and in addition are immoral, unethical, oppressive, fraudulent and unscrupulous,
25 and thereby constitute unfair, unlawful and/or fraudulent business practices in violation of
26 California Business & Professions Code §§ 17200, *et seq.*

27 **Failure to Pay Minimum Wages**

28 77. Defendants' failure to pay minimum wages, and other benefits in violation of the

1 California Labor Code constitutes unlawful and/or unfair activity prohibited by California
2 Business & Professions Code §§ 17200, *et seq.*

3 **Failure to Pay Overtime Wages**

4 78. Defendants' failure to pay overtime compensation and other benefits in violation of
5 California Labor Code §§ 510, 1194, and 1198 constitutes unlawful and/or unfair activity
6 prohibited by California Business & Professions Code §§ 17200, *et seq.*

7 **Failure to Maintain Accurate Records of All Hours Worked**

8 79. Defendants' failure to maintain accurate records of all hours worked in accordance with
9 California Labor Code § 1174.5 and the IWC Wage Orders constitutes unlawful and/or unfair
10 activity prohibited by California Business & Professions Code §§ 17200, *et seq.*

11 **Failure to Provide Meal Periods**

12 80. Defendants' failure to provide meal periods in accordance with California Labor Code §§
13 226.7 and 512, and the IWC Wage Orders, as alleged above, constitutes unlawful and/or unfair
14 activity prohibited by California Business & Professions Code §§ 17200, *et seq.*

15 **Failure to Maintain Accurate Records of Meal Periods**

16 81. Defendants' failure to maintain accurate records of employee meal periods in accordance
17 with California Labor Code § 226.7 and the IWC Wage Orders, as alleged above, constitutes
18 unlawful and/or unfair activity prohibited by California Business & Professions Code §§ 17200,
19 *et seq.*

20 **Failure to Authorize and Permit Rest Periods**

21 82. Defendants' failure to authorize and permit rest periods in accordance with California
22 Labor Code § 226.7 and the IWC Wage Orders, as alleged above, constitutes unlawful and/or
23 unfair activity prohibited by Business and Professions Code §§ 17200, *et seq.*

24 **Failure to Provide Accurate Itemized Wage Statements**

25 83. Defendants' failure to provide accurate itemized wage statements in accordance with
26 California Labor Code § 226, as alleged above, constitutes unlawful and/or unfair activity
27 prohibited by California Business & Professions Code §§ 17200, *et seq.*

28 84. By and through their unfair, unlawful and/or fraudulent business practices described

1 herein, the Defendants, have obtained valuable property, money and services from Plaintiff, and
2 all persons similarly situated, and have deprived Plaintiff, and all persons similarly situated, of
3 valuable rights and benefits guaranteed by law, all to their detriment.

4 85. Plaintiff and the Class Members suffered monetary injury as a direct result of Defendants'
5 wrongful conduct.

6 86. Plaintiff, individually, and on behalf of members of the putative Class, are entitled to, and
7 do, seek such relief as may be necessary to disgorge money and/or property which the
8 Defendants have wrongfully acquired, or of which Plaintiff and the Class have been deprived, by
9 means of the above-described unfair, unlawful and/or fraudulent business practices. Plaintiff and
10 the Class are not obligated to establish individual knowledge of the wrongful practices of
11 Defendants in order to recover restitution.

12 87. Plaintiff, individually, and on behalf of members of the putative class, are further entitled
13 to and do seek a declaration that the above described business practices are unfair, unlawful
14 and/or fraudulent, and injunctive relief restraining the Defendants, and each of them, from
15 engaging in any of the above-described unfair, unlawful and/or fraudulent business practices in
16 the future.

17 88. Plaintiff, individually, and on behalf of members of the putative class, have no plain,
18 speedy, and/or adequate remedy at law to redress the injuries which the Class Members suffered
19 as a consequence of the Defendants' unfair, unlawful and/or fraudulent business practices. As a
20 result of the unfair, unlawful and/or fraudulent business practices described above, Plaintiff,
21 individually, and on behalf of members of the putative Class, suffered and will continue to suffer
22 irreparable harm unless the Defendants, and each of them, are restrained from continuing to
23 engage in said unfair, unlawful and/or fraudulent business practices.

24 89. Plaintiff also alleges that if Defendants are not enjoined from the conduct set forth herein
25 above, they will continue to avoid paying the appropriate taxes, insurance and other
26 withholdings.

27 90. Pursuant to California Business & Professions Code §§ 17200, *et seq.*, Plaintiff and
28 putative Class Members are entitled to restitution of the wages withheld and retained by

1 Defendants during a period that commences four years prior to the filing of this complaint; a
2 permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and
3 Class Members; an award of attorneys' fees pursuant to California Code of Civil Procedure §
4 1021.5 and other applicable laws; and an award of costs.

5 **EIGHT CAUSE OF ACTION**

6 **(Against all Defendants for Civil Penalties Under the Private Attorneys General Act of**
7 **2004, Cal. Lab. Code § 2698 et seq.)**

8 91. Plaintiff incorporate by reference and re-allege as if fully stated herein paragraphs 1
9 through 20 in this First Amended Complaint.

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

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

19 94. Plaintiff has exhausted his administrative remedies pursuant to California Labor Code §
20 2699.3. On April 14, 2021 Plaintiff gave written notice by online filing to the Labor and
21 Workforce Development Agency and by certified mail to Defendants of the specific provisions
22 of the Labor Code that Defendants have violated against Plaintiff and current and former
23 aggrieved employees, including the facts and theories to support the violations. At the time of
24 this filing, 65 days has elapsed since Plaintiff provided notice, but the Labor and Workforce
25 Development Agency has not indicated that it intends to investigate Defendants' Labor Code
26 violations discussed in the notice. Accordingly, Plaintiff may commence a civil action to recover
27 penalties under Labor Code § 2699 pursuant to § 2699.3 for the violations of the Labor Code
28 described in this Complaint. These penalties include, but are not limited to, penalties under

1 California Labor Code §§ 210, 226.3, 558, 1197.1, and 2699(f)(2).

2 95. In addition, Plaintiff seeks penalties for Defendants' violation of California Labor Code §
3 1174(d). Pursuant to California Labor Code § 1174.5, any person, including any entity,
4 employing labor who willfully fails to maintain accurate and complete records required by
5 California Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable
6 IWC Order § 7(A)(3), every employer shall keep time records showing when the employee
7 begins and ends each work period. Meal periods, and total hours worked daily shall also be
8 recorded. Additionally, pursuant to the applicable IWC Order § 7(A)(5), every employer shall
9 keep total hours worked in the payroll period and applicable rates of pay.

10 96. During the time period of employment for Plaintiff and the Aggrieved Employees,
11 Defendants failed to maintain records pursuant to the Labor Code and IWC Orders by failing to
12 maintain accurate records showing meal periods, and accurate records showing when employees
13 begin and end each work period. Defendants' failure to provide and maintain records required by
14 the Labor Code IWC Wage Orders deprived Plaintiff and the Aggrieved Employees the ability to
15 know, understand and question the accuracy and frequency of meal periods, and the accuracy of
16 their hours worked stated in Defendants' records. Therefore, Plaintiff and the Aggrieved
17 Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an
18 unjustified economic enrichment to Defendants. As a direct result, Plaintiff and the Aggrieved
19 Employees have suffered and continue to suffer, substantial losses related to the use and
20 enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking
21 to compel Defendants to fully perform its obligation under state law, all to their respective
22 damage in amounts according to proof at trial. Because of Defendants' knowing failure to
23 comply with the Labor Code and applicable IWC Wage Orders, Plaintiff and the Aggrieved
24 Employees have also suffered an injury in that they were prevented from knowing,
25 understanding, and disputing the wage payments paid to them.

26 97. Based on the conduct described in this First Amended Complaint, Plaintiff is entitled to
27 an award of civil penalties on behalf of himself the State of California, and similarly Aggrieved
28 Employees of Defendants. The exact amount of the applicable penalties, in all, is in an amount

1 to be shown according to proof at trial. These penalties are in addition to all other remedies
2 permitted by law.

3 98. In addition, Plaintiff seeks an award of reasonable attorney's fees and costs pursuant to
4 California Labor Code § 2699(g)(1), which states, "Any employee who prevails in any action
5 shall be entitled to an award of reasonable attorney's fees and costs."

6 **PRAYER FOR RELIEF**

7 Plaintiff, individually, and on behalf of all others similarly situated only with respect to
8 the class claims, pray for relief and judgment against Defendants, jointly and severally, as
9 follows:

10 **Class Certification**

11 1. That this action be certified as a class action with respect to the First, Second, Third,
12 Fourth, Fifth, Sixth, and Eighth Causes of Action;

13 2. That Plaintiff be appointed as the representative of the Class; and

14 3. That counsel for Plaintiff be appointed as Class Counsel.

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

16 4. That the Court declare, adjudge and decree that Defendants violated California Labor
17 Code §§ 204 and 1194 and applicable IWC Wage Orders by willfully failing to pay all minimum
18 wages due;

19 5. For general unpaid wages as may be appropriate;

20 6. For pre-judgment interest on any unpaid compensation commencing from the date
21 such amounts were due;

22 7. For liquidated damages;

23 8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
24 California Labor Code § 1194(a); and,

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

26 **As to the Second Cause of Action**

27 10. That the Court declare, adjudge and decree that Defendants violated California Labor
28 Code §§ 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all overtime

1 wages due;

2 11. For general unpaid wages at overtime wage rates as may be appropriate;

3 12. For pre-judgment interest on any unpaid overtime compensation commencing from
4 the date such amounts were due;

5 13. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
6 California Labor Code § 1194(a); and,

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

8 As to the Third Cause of Action

9 15. That the Court declare, adjudge and decree that Defendants violated California Labor
10 Code §§ 226.7 and 512, and the IWC Wage Orders;

11 16. For unpaid meal period premium wages as may be appropriate;

12 17. For pre-judgment interest on any unpaid compensation commencing from the date
13 such amounts were due;

14 18. For reasonable attorneys' fees under California Code of Civil Procedure § 1021.5, and
15 for costs of suit incurred herein; and

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

17 As to the Fourth Cause of Action

18 20. That the Court declare, adjudge and decree that Defendants violated California Labor
19 Code §§ 226.7 and 512, and the IWC Wage Orders;

20 21. For unpaid rest period premium wages as may be appropriate;

21 22. For pre-judgment interest on any unpaid compensation commencing from the date
22 such amounts were due;

23 23. For reasonable attorneys' fees under California Code of Civil Procedure § 1021.5, and
24 for costs of suit incurred herein; and

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

26 As to the Fifth Cause of Action

27 25. That the Court declare, adjudge and decree that Defendants violated California Labor
28 Code §§ 201, 202, and 203 by willfully failing to pay all compensation owed at the time of

1 termination of the employment;

2 26. For statutory wage penalties pursuant to California Labor Code § 203 for former
3 employees who have left Defendants' employ;

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

5 28. For reasonable attorneys' fees and for costs of suit incurred herein; and

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

7 As to the Sixth Cause of Action

8 30. That the Court declare, adjudge and decree that Defendants violated the record
9 keeping provisions of California Labor Code § 226(a) and applicable IWC Wage Orders, and
10 willfully failed to provide accurate itemized wage statements thereto;

11 31. For statutory penalties and actual damages pursuant to California Labor Code §
12 226(e);

13 32. For injunctive relief to ensure compliance with this section, pursuant to California
14 Labor Code § 226(h);

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

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

17 As to the Seventh Cause of Action

18 35. That the Court declare, adjudge and decree that Defendants violated California
19 Business & Professions Code §§ 17200, *et seq.* by failing to pay wages for all hours worked
20 (including minimum and overtime wages), failing to provide meal periods, failing to maintain
21 accurate records of meal periods, failing to authorize and permit rest periods, failing to maintain
22 accurate records of all hours worked and meal periods, and failing to furnish accurate wage
23 statements;

24 36. For restitution of unpaid wages to Plaintiff and all Class Members and prejudgment
25 interest from the day such amounts were due and payable;

26 37. For the appointment of a receiver to receive, manage and distribute any and all funds
27 disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a
28 result of violations of California Business & Professions Code §§ 17200 *et seq.*;

38. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Code of Civil Procedure § 1021.5;

39. For injunctive relief to ensure compliance with this section, pursuant to California Business & Professions Code §§ 17200, *et seq.*; and,

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

As to the Eight Cause of Action

41. That the Court declare, adjudge and decree that Defendants violated the California Labor Code by failing to pay wages for all hours worked (including minimum, straight time, and overtime wages), failing to provide meal periods, failing to maintain accurate records of meal periods, failing to authorize and permit rest periods, failing to maintain accurate records of all hours worked and meal periods, failing to pay final wages at termination, and failing to furnish accurate wage statements;

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

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

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

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

As to all Causes of Action

46. For any additional relief that the Court deems just and proper.

Respectfully submitted,

Dated: August 19, 2021

MOON & YANG, APC

By: 

Kane Moon
Lilit Ter-Astvatsatryan

Attorneys for Plaintiff

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Dated: August 19, 2021

By:

Attorneys for Plaintiff

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA)
3) ss
4 COUNTY OF LOS ANGELES)

5 I am employed in the county of Los Angeles, State of California. I am over the age of 18
6 and not a party to the within action; my business address is 1055 West Seventh Street, Suite
7 1880, Los Angeles, California 90017. On August 19, 2021, I served the foregoing document
8 described as:

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

10 X by E-mailing ___ the original X a true copy to the following:

11 Matt Oster
12 Michael Sigall
13 **WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP**
14 11400 West Olympic Blvd., Ninth Floor
15 Los Angeles, CA 90064
16 Office: 310-744-6605
17 Cell: 310-717-6288
18 moster@wrslawyers.com
19 msigall@wrslawyers.com

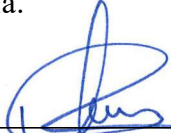
20 *Attorney for Defendant Nate 'N Al's Then & Now, LLC, dba, Nate 'N Al's Delicatessen*

21 [✓] **BY ELECTRONIC SERVICE:** Based on a court order or an agreement of the parties
22 to accept electronic service, I caused the documents to be sent to the persons at the
23 electronic service addresses listed above via third-party cloud service **CASEANYWHERE**.

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

26 Executed on August 19, 2021, at Los Angeles, California.

27 Jessica Reyes Flores
28 Name


Signature