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Attorneys for Plaintiff ZACHARY KIMBER

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

ZACHARY KIMBER, individually, and on
behalf of other aggrieved employees, and
the State of California

Plaintiff,

vs.

LEE & ASSOCIATES COMMERCIAL
REAL ESTATE SERVICES, INC. – CITY
OF INDUSTRY; TPO CORPORATION;
THOMAS O'LOUGHLIN; JEFFREY
RINKOV; and DOES 1 through 50
inclusive,

Defendants.

CASE NO.: 22STCV04738

Assigned for all purposes to:
Hon. Richard J. Burdge, Dept. 37

FIRST AMENDED COMPLAINT FOR:

1. Failure to Pay All Wages;
2. Failure to Provide Meal Breaks;
3. Failure to Provide Rest Breaks;
4. Failure to Reimburse Business Expenses;
5. Waiting Time Penalties;
6. Failure to Provide Accurate Itemized Wage Statements;
7. Failure to Provide Timely Access to Employee Payroll and Personnel Records;
8. Unfair Business Practices;
9. Retaliation;
10. Wrongful Termination in Violation of Public Policy; and
11. Violation of the Private Attorneys General Act of 2004

Action Filed: February 7, 2022
Trial Date: None set

1 Plaintiff ZACHARY KIMBER (hereinafter “PLAINTIFF” or “MR. KIMBER”) hereby
2 brings this First Amended Complaint (“FAC”) against Defendants LEE & ASSOCIATES
3 COMMERCIAL REAL ESTATE SERVICES, INC. – CITY OF INDUSTRY; TPO
4 CORPORATION; THOMAS O’LOUGHLIN; JEFFREY RINKOV; and DOES 1 through 50,
5 inclusive (collectively referred to herein as “DEFENDANTS”) and alleges as follows:

6 **INTRODUCTION**

7 1. PLAINTIFF is, and at all relevant times herein has been, a California citizen.

8 2. PLAINTIFF brings this action individually against DEFENDANTS for various
9 wage and hour violations, retaliation, and wrongful termination.

10 3. PLAINTIFF also brings this action as a representative Private Attorneys General
11 Act of 2004 (“PAGA”) action, pursuant to Labor Code sections 2698, *et seq.*, on behalf of himself,
12 and all current and former employees of DEFENDANTS, including employees misclassified as
13 independent contractors, employed in California during the PAGA Period (collectively the
14 “Aggrieved Employees”). The term PAGA Period is defined as one (1) year prior to the submission
15 of Plaintiff’s notice of labor code violations to the Labor and Workforce Development Agency
16 (“LWDA”) and certified mail to DEFENDANTS until resolution. Through this action,
17 PLAINTIFF is alleging that DEFENDANTS have engaged in a systematic pattern of wage and
18 hour violations under the California Labor Code (“Labor Code”).

19 4. PLAINTIFF is informed and believes, and thereon alleges, that during the PAGA
20 Period, DEFENDANTS had a consistent policy of violating state wage and hour laws by, among
21 other things: failing to pay all wages (including minimum, regular, overtime, and double time
22 wages), failing to provide meal and rest periods or compensation in lieu thereof, failing to timely
23 pay all wages due upon separation of employment, failing to provide accurate itemized wage
24 statements, failing to maintain accurate records of hours worked, and failing to reimburse business
25 expenses.

26 5. PLAINTIFF’s representative PAGA action is brought under, *inter alia*, the
27 California Industrial Welfare Commission (“IWC”) Wage Orders and applicable provisions of the
28 California Code of Regulations, California Code of Civil Procedure section 1021.5, and California

1 Labor Code sections 98.6, 201, 202, 203, 204, 206, 210, 226, 226.3, 226.7, 226.8, 510, 512, 558,
2 558.1, 1102.5, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 2800, and 2802.

3 6. PLAINTIFF brings this representative action seeking monetary relief against
4 DEFENDANTS on behalf of himself and other Aggrieved Employees to recover, among other
5 things, penalties, attorneys' fees, and costs pursuant to Labor Code sections 1194.2 and 2698, *et*
6 *seq.*

7 **PARTIES**

8 7. PLAINTIFF is informed and believes and based thereon, alleges that Defendant
9 LEE & ASSOCIATES COMMERCIAL REAL ESTATE SERVICES, INC. – CITY OF
10 INDUSTRY ("LEE & ASSOCIATES") is a corporation organized and existing under the laws of
11 the State of California. LEE & ASSOCIATES is a commercial real estate company with locations
12 in Commerce and City of Industry, California.

13 8. PLAINTIFF is informed and believes and based thereon, alleges that Defendant
14 TPO Corporation ("TPO") is a corporation organized and existing under the laws of the State of
15 California. TPO is a commercial real estate company and is located in Commerce, California. TPO
16 was suspended by the California Secretary of State on or about November 23, 2021.

17 PLAINTIFF is informed and believes and based thereon, alleges THOMAS O'LOUGHLIN
18 ("O'LOUGHLIN") is a shareholder and Senior Vice President of LEE & ASSOCIATES, and
19 is also the Chief Executive Officer, Secretary, Chief Financial Officer, Director, and Agent
20 for Service of Process for TPO. O'LOUGHLIN was involved in the day-to-day operations of
21 LEE & ASSOCIATES and TPO, including, *inter alia*, misclassifying PLAINTIFF and other
22 Aggrieved Employees as independent contractors; managing, making payments to, and hiring and
23 firing PLAINTIFF and other Aggrieved Employees; and creating and implementing policies and
24 practices regarding wages, meal and rest periods, and reimbursements. Consequently,
25 O'LOUGHLIN violated or caused to be violated the IWC Wage Order provisions regulating
26 minimum wages or hours and days of work, as well as Labor Code sections 203, 226, 226.7, 1194,
27 and 2802 that are identified below. Thus, O'LOUGHLIN is personally liable for the Labor Code
28 and IWC Wage Order violations pursuant to Labor Code section 558.1.

1 9. PLAINTIFF is informed and believes and based thereon, alleges JEFFREY
2 RINKOV (“RINKOV”) is the Chief Executive Officer and Chairman of the Board of Lee &
3 Associates Licensing and Administrative Company, Inc. RINKOV was involved in the day-to-day
4 operations of LEE & ASSOCIATES, including, *inter alia*, misclassifying PLAINTIFF and other
5 Aggrieved Employees as independent contractors; managing, making payments to, and hiring and
6 firing PLAINTIFF and other Aggrieved Employees; and creating and implementing policies and
7 practices regarding wages, meal and rest periods, and reimbursements. Consequently, RINKOV
8 violated or caused to be violated the IWC Wage Order provisions regulating minimum wages or
9 hours and days of work, as well as Labor Code sections 203, 226, 226.7, 1194, and 2802 that are
10 identified below. Thus, RINKOV is personally liable for the Labor Code and IWC Wage Order
11 violations pursuant to Labor Code section 558.1.

12 10. PLAINTIFF is ignorant of the true names and capacities of the DEFENDANTS
13 sued as DOES 1 through 50, inclusive, and therefore sues these DEFENDANTS by such fictitious
14 names. PLAINTIFF is informed and believes, and based thereon alleges, that each of the
15 DEFENDANTS named as DEFENDANTS DOES 1 through 50, inclusive is and was in some
16 manner responsible for, participated in or contributed to the matters and things of which
17 PLAINTIFF complaints herein, and in some fashion, has legal responsibility. PLAINTIFF will
18 amend his FAC to allege their true names and capacities when ascertained.

19 11. PLAINTIFF is informed and believes and based thereon, alleges that at all times
20 material hereto, each Defendant acted in all respects pertinent to this action as the agent of the
21 other Defendant, carried out a joint scheme, business plan or policy in all respects pertinent hereto,
22 and the acts of each Defendant are legally attributable to the other Defendant. Furthermore,
23 DEFENDANTS in all respects acted as the employer and/or joint employer of PLAINTIFF and
24 the Aggrieved Employees.

25 12. PLAINTIFF is informed and believes and based thereon, alleges that
26 DEFENDANTS, each and all of them, at all times material hereto, were the joint employers, parent
27 companies, successor companies, predecessors in interest, affiliates, agents, employees, servants,
28 joint venturers, directors, fiduciaries, representatives, and/or co-conspirators of each of the

1 remaining DEFENDANTS. DEFENDANTS, unless otherwise alleged, at all times material hereto,
2 performed all acts and omissions alleged herein within the course and scope of said relationship(s),
3 and are a proximate cause of PLAINTIFF's damages as herein alleged.

4 13. PLAINTIFF is informed and believes and based thereon, alleges that there exists a
5 unity of interest in ownership between DEFENDANTS and DOES 1 through 50, inclusive, such
6 that any individuality and separateness between the individual and the corporation does not exist,
7 as DEFENDANTS, and DOES 1 through 50, inclusive, are alter egos, in that: (1) DEFENDANTS
8 are and at all times mentioned herein were mere shells, instrumentalities and conduits through
9 which DOES 1 through 50, inclusive, carried out their business in the business name, exercising
10 complete control and dominance over such business; (2) that DEFENDANTS were conceived,
11 intended and used by DOES 1 through 50, inclusive, as devices to avoid individual liability and in
12 place of DEFENDANTS, and DOES 1 through 50, inclusive, and were without the financial
13 solvency and responsibility required by law; and (3) that all of the assets of the DEFENDANTS
14 have been transferred to DOES 1 through 50, inclusive, or some other individual or entity which
15 he or she owns or controls, with the intent to hinder, delay or defraud creditors of DEFENDANTS,
16 leaving DEFENDANTS with no assets. Further, PLAINTIFF is informed and believes and based
17 thereon, alleges that there exists a principal-agency relationship between and among
18 DEFENDANTS.

19 14. At all relevant times herein, DEFENDANTS were agents of each other and acting
20 within the course and scope of their agency.

21 15. PLAINTIFF is informed and believes and thereon alleges, that the DEFENDANTS
22 committed other wrongful acts or omissions of which PLAINTIFF is presently unaware.
23 PLAINTIFF shall conduct discovery to identify said wrongful acts, and will seek leave of Court
24 to amend this FAC to add said acts upon discovery.

25 VENUE

26 16. Pursuant to section 395(a) of the California Code of Civil Procedure, venue is
27 proper in the above-entitled Court, because all facts giving rise to the causes of action stated herein
28 arose in Los Angeles County, California.

WAGE AND HOUR ALLEGATIONS

17. PLAINTIFF is informed and believes, and thereon alleges that at all relevant times herein, DEFENDANTS employed PLAINTIFF and other persons, including employees misclassified as independent contractors.

18. DEFENDANTS are in the business of commercial real estate with locations in Commerce and City of Industry. As employers in the State of California, DEFENDANTS are subject to the provisions of the California Government Code, California Labor Code, and California Business and Professions Code.

19. PLAINTIFF is informed and believes, and thereon alleges that at all times mentioned herein, DEFENDANTS were advised by skilled lawyers, employees and other professionals who were knowledgeable about California wage and hour law, employment and personnel practices, and the requirements of California.

20. Through this action, PLAINTIFF alleges DEFENDANTS have consistently maintained and enforced against PLAINTIFF and Aggrieved Employees unlawful employment practices and policies which violate the California Labor Code and IWC Wage Orders.

21. PLAINTIFF is informed and believes, and thereon alleges that DEFENDANTS knew or should have known they had a duty to compensate PLAINTIFF and Aggrieved Employees, and DEFENDANTS had the financial ability to pay such compensation but willfully, knowingly and intentionally failed to do so all in order to increase DEFENDANTS' profits.

22. On or about October 15, 2015, DEFENDANTS hired MR. KIMBER as a Commercial Real Estate Salesperson to work out of their offices located in Commerce and City of Industry, California. MR. KIMBER's duties included touring listings, collecting and distributing lease documents, cold calling, and creating listings, among other things, at the direction of O'LOUGHLIN.

23. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS agreed to pay PLAINTIFF 50% of all commissions he earned and pay him a monthly draw of \$1,200 for a six (6) month period but failed to do both in addition to misclassifying PLAINTIFF as an independent contractor.

1 24. DEFENDANTS failed to enter into an independent contractor agreement with
2 MR. KIMBER. Despite a lack of an agreement to perform work as an independent
3 contractor, DEFENDANTS misclassified MR. KIMBER as an independent contractor and in
4 2021, untimely provided PLAINTIFF with his 2018 and 2019 1099 forms.

5 25. MR. KIMBER should have been classified as a non-exempt employee since (A) he
6 was not free from the control and direction of DEFENDANTS in connection with the performance
7 of his work, (B) he did not perform work that is outside the usual course of DEFENDANTS'
8 business, and (C) he was not customarily engaged in an independently established trade,
9 occupation, or business of the same nature as the work performed. For example:

- 10 • DEFENDANTS directly and indirectly exercised control over the wages, hours, and
11 working conditions of MR. KIMBER since he was provided assignments, performed work
12 pursuant to DEFENDANTS' instructions and procedures, was subject to discipline, was
13 provided with work locations/listings to tour, and was otherwise controlled by
14 DEFENDANTS and/or subject to their direct or indirect control;
- 15 • DEFENDANTS retained the right to terminate MR. KIMBER's working relationship at
16 their discretion;
- 17 • MR. KIMBER was engaged in providing real estate services, an integral and entirely
18 essential aspect of DEFENDANTS' regular business;
- 19 • MR. KIMBER worked for DEFENDANTS for a lengthy period of time, from October 15,
20 2015 to February 8, 2021;
- 21 • MR. KIMBER was not customarily engaged in an independently established trade,
22 occupation, or business of the same nature as the work performed by DEFENDANTS;
- 23 • DEFENDANTS registered MR. KIMBER's real estate salesperson license with the
24 California Department of Real Estate ("DRE"), as an associate of LEE & ASSOCIATES,
25 thereby preventing him from working for any other brokerage;
- 26 • DEFENDANTS paid MR. KIMBER a minimum monthly draw; and
- 27 • The clients are and/or were DEFENDANTS' clients, and not those of MR. KIMBER.

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1 26. As a result of DEFENDANTS' misclassification of MR. KIMBER,
2 DEFENDANTS failed to pay MR. KIMBER and Aggrieved Employees all wages, including
3 minimum, regular, overtime, and double time wages. For example, PLAINTIFF regularly worked
4 seven (7) days a week and over 10 hours or 12 hours per workday. PLAINTIFF also received
5 communications from DEFENDANTS' clients at all hours of the day and performed work from
6 home by logging into DEFENDANTS' system via LandVision, CoStar, and LeadPro to complete
7 various work-related tasks at the direction of Mr. O'Loughlin.

8 27. Despite regularly working overtime and double time, PLAINTIFF was not paid any
9 wages (except a \$1,200 monthly draw for a six (6) month period) despite not earning commissions
10 in excess of 1.5 times the minimum wage during each pay period.

11 28. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS
12 failed to record his time worked and failed to pay him for time spent during rest breaks and non-
13 productive time as a commission only employee.

14 29. PLAINTIFF is informed and believes, and thereon alleges, that except for a monthly
15 draw in the amount of \$1,200 paid once a month (often paid late) by DEFENDANTS for a six (6)
16 month period, PLAINTIFF would only be paid when commissions were earned on a transaction,
17 however his share of the commissions were also often paid late, short, and/or unpaid altogether.

18 30. PLAINTIFF is informed and believes, and thereon alleges that DEFENDANTS
19 paid MR. KIMBER a monthly draw in 2019 after he repeatedly requested regular pay periods
20 and wages. The draw was paid by O'LOUGHLIN (\$600 per month) and RINKOV (\$600 per
21 month and often by the phone application Venmo). Similar to the payment of commissions, the
22 draw payments were often late. For example, in November 2020, RINKOV paid MR. KIMBER
23 the outstanding draw amount of \$1,800 with a personal check.

24 31. PLAINTIFF is informed and believes, and thereon alleges, that PLAINTIFF's
25 employment with DEFENDANTS was premised on an agreement that PLAINTIFF would
26 receive 50% of the total commissions earned for a completed transaction, with
27 D E F E N D A N T S r e c e i v i n g the remaining 50%. This arrangement was
28 honored by DEFENDANTS until approximately November 2017, when PLAINTIFF completed

1 the transaction for a commercial property located at 13984 Orange Avenue, Paramount,
2 California. The total commission earned on the transaction was \$166,250, with PLAINTIFF's
3 expected 50% portion to be roughly \$83,125. However, O'LOUGHLIN refused to pay
4 PLAINTIFF the full amount owed to him and instead retained half of PLAINTIFF's share, or
5 \$41,562.25, for himself. Thus, PLAINTIFF was left with only 25% of the total commission, in
6 violation of the parties' agreement.

7 32. O'LOUGHLIN committed the same act of withholding half of
8 PLAINTIFF's commissions owed on two (2) subsequent transactions that PLAINTIFF
9 facilitated and completed. The amount still outstanding for these two subsequent transactions
10 is \$3,500. To date, DEFENDANTS still owe PLAINTIFF \$45,062.25 in commissions despite
11 repeated requests by PLAINTIFF for payment.

12 33. Additionally, DEFENDANTS paid PLAINTIFF by personal check, cash, or other
13 means such as Venmo. At no point during his employment did DEFENDANTS issue wage
14 statements to PLAINTIFF, and he was without any protection for worker's compensation,
15 payment of payroll taxes, or deductions for state and federal social security, disability,
16 unemployment, and medical contributions. F u r t h e r , O ' L O U G H L I N
17 reported commissions earned by PLAINTIFF as O'LOUGHLIN's income in violation of state
18 and federal law. As a result of DEFENDANTS' failure to report PLAINTIFF's income or pay
19 employers' side payroll taxes and contributions for social security, Medicare, and/or federal and
20 state unemployment insurance, PLAINTIFF was deprived of social security benefits and
21 ineligible to collect unemployment benefits, among other things.

22 34. PLAINTIFF is informed and believes, and thereon alleges, that despite frequently
23 working over 10 hours per workday, DEFENDANTS regularly failed to provide PLAINTIFF with
24 timely, uninterrupted, off-duty meal periods for at least 30 minutes and rest breaks for at least 10
25 minutes. Specifically, PLAINTIFF was on-duty during his meal periods and had them regularly
26 interrupted, short, late and/or missed altogether due to work demands. For example, during his
27 shifts, PLAINTIFF was required to be on call for listings and tours, and to answer communications
28 from DEFENDANTS' clients, including during meal periods. However, DEFENDANTS failed to

1 maintain a system where another employee could relieve PLAINTIFF to take his required meal
2 breaks. Additionally, PLAINTIFF often worked shifts of more than 10 hours but never received a
3 second meal period. Similarly, DEFENDANTS failed to implement a rest break policy and/or
4 practice, and failed to provide any uninterrupted, off-duty 10-minute rest breaks. To the extent a
5 rest break was taken, it was on-duty since PLAINTIFF was required to be on call as explained
6 above and/or regularly shortened and/or interrupted. Despite these meal and rest periods violations,
7 PLAINTIFF was not paid an additional hour of pay at his regular rate of pay for every day in which
8 he was denied a compliant meal or rest period.

9 35. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS
10 failed to reimburse PLAINTIFF for all business expenses incurred for its benefit. Specifically,
11 DEFENDANTS regularly required PLAINTIFF to use his personal funds to cover necessary work-
12 related business expenses. For example, PLAINTIFF would use his own personal cell phone to
13 carry out his job duties which included communicating with DEFENDANTS and its clients, using
14 his cell phone's data plan and GPS application to navigate to various properties, and sending and
15 receiving e-mails. PLAINTIFF also used his personal vehicle for work purposes when touring
16 listings, driving to specific properties, meeting with DEFENDANTS' clients, and running errands
17 for DEFENDANTS. PLAINTIFF also purchased and maintained his own equipment to carry out
18 his job duties, such as purchasing a laptop, monitor, and wi-fi plan to work remotely from home.
19 DEFENDANTS never reimbursed PLAINTIFF for a reasonable portion of his cell phone and
20 home internet bills, mileage and wear and tear on his vehicle, or for the cost of work equipment.

21 36. As a result of DEFENDANTS' failure to pay all wages, reimbursements, and meal
22 and rest period premiums, DEFENDANTS failed to provide itemized wage statements to
23 PLAINTIFF that accurately reported, among other things, the gross and net wages earned, the total
24 hours worked, all applicable hourly rates in effect during the pay period, and the corresponding
25 number of hours worked at each hourly rate.

26 37. PLAINTIFF is a former employee of DEFENDANTS. As a result of
27 DEFENDANTS' failure to timely pay all wages owed, reimbursements, and meal and rest period
28 premiums, PLAINTIFF is entitled to 30 days' worth of wages.

1 38. On March 26, 2021, PLAINTIFF sent a written request to LEE & ASSOCIATES
2 for access to his personnel records, payroll records, and documents he signed relating to his
3 employment pursuant to Labor Code sections 226, 432 and 1198.5. LEE & ASSOCIATES failed
4 to produce any documents. PLAINTIFF is informed and believes, and thereon alleges, that LEE
5 & ASSOCIATES has willfully refused, and continues to refuse, to permit PLAINTIFF to inspect
6 or copy his complete records, as required by Labor Code sections 226, 432 and 1198.5.

7 **RETALIATION AND WRONGFUL TERMINATION ALLEGATIONS**

8 39. PLAINTIFF was an excellent employee with no negative performance reviews and
9 nearly five years of loyal employment with DEFENDANTS. During his employment, PLAINTIFF
10 believed that he was an employee for DEFENDANTS, which led to his numerous questions and
11 complaints regarding his employment status and wages that ultimately led to his wrongful
12 termination.

13 40. In approximately June 2020, due to the negative economic impact of COVID-
14 19, PLAINTIFF and his co-workers filed to receive unemployment benefits. However,
15 PLAINTIFF learned that he was ineligible for unemployment benefits (unlike his coworkers)
16 because the IRS had no record of him ever being employed by DEFENDANTS as an employee or
17 independent contractor. During PLAINTIFF's employment, DEFENDANTS failed to properly
18 report PLAINTIFF's earnings to the IRS or pay the required federal and state unemployment
19 insurance, which resulted in PLAINTIFF being ineligible for unemployment benefits. It was not
20 until 2021, after numerous complaints and requests by PLAINTIFF that DEFENDANTS finally
21 provided PLAINTIFF with 1099s for the 2018 and 2019 tax years (which misrepresented to the
22 IRS the actual amounts paid to Plaintiff).

23 41. In September 2020, PLAINTIFF began attempting to contact O'LOUGHLIN
24 regarding unpaid commissions and improper tax reporting by DEFENDANTS. Despite several
25 attempts by phone and email over several months, O'LOUGHLIN failed to respond. With no
26 other option, PLAINTIFF escalated the matter and sent an email on February 4, 2021 to LEE
27 & ASSOCIATES' President Craig Phillips detailing PLAINTIFF'S complaints about
28 unpaid commissions, O'LOUGHLIN'S failure to meet his tax reporting obligations, and his

ineligibility for unemployment benefits, among other things.

42. Just four (4) days later, on February 8, 2021, DEFENDANTS effectively terminated PLAINTIFF. On February 8, 2021, PLAINTIFF received an e-mail from the California Department of Real Estate stating that it had updated its records to indicate that he was no longer affiliated with LEE & ASSOCIATES.

43. It is patently clear that DEFENDANTS terminated PLAINTIFF's employment in retaliation for his lawfully protected complaints to DEFENDANTS' upper management.

44. DEFENDANTS' conduct was willful, malicious, and performed in conscious disregard of PLAINTIFF's rights. As a result of DEFENDANTS' conduct, PLAINTIFF has been damaged in an amount unknown, but which will be proven at trial.

FIRST CAUSE OF ACTION

Failure to Pay All Wages

(Against All DEFENDANTS)

45. PLAINTIFF incorporates by reference all previous paragraphs of this FAC as though fully set forth herein.

46. At all relevant times, DEFENDANTS had a duty to comply with Labor Code sections 204, 206, 226.8, 510, 1182.12, 1194, 1194.2, 1197, 1198, 2778, and the applicable IWC Wage Orders and California Code of Regulations.

47. Labor Code section 204 and the IWC Wage Orders require timely payment of all wages owed on regularly scheduled paydays at least twice during each calendar month, on days designated in advance by the DEFENDANTS as the regular paydays. All wages earned in excess of the normal work period must be paid no later than the payday for the next regular payroll period.

48. Labor Code section 206 provides that in case of a dispute over wages, the DEFENDANTS shall pay, without condition and promptly under the Labor Code all wages conceded due, leaving to the employee all remedies he/she is otherwise entitled to as to any balance claimed.

49. The IWC Wage Orders define "hours worked" as "the time during which an employee is subject to the control of an employer and includes all time the employee is suffered

1 or permitted to work, whether or not required to do so.”

2 50. Labor Code section 226.8 provides: “[i]t is unlawful for any person or employer to
3 engage in” the “[w]illful misclassification of an individual as an independent contractor.”

4 51. At all times relevant, Labor Code section 510, and applicable sections of the
5 California Code of Regulations and the IWC Wage Orders applied to PLAINTIFF’s work with
6 DEFENDANTS and continued to apply to his employment with DEFENDANTS. Labor Code
7 section 510 and applicable provisions of the California Code of Regulations and IWC Wage Orders
8 state that any work performed in excess of eight hours in a workday and/or 40 hours in a workweek
9 must be paid at one and one-half times the employee's regular rate of pay. Any work performed
10 in excess of 12 hours in a workday must be compensated at the rate of no less than twice the regular
11 rate of pay for an employee.

12 52. Labor Code section 1182.12 sets forth the minimum hourly wage that must be paid
13 to all employees in California for all hours worked. Local minimum wage ordinances, may provide
14 for higher minimum wage rates that must be paid to employees for all hours worked in those
15 locales where each local ordinance is in effect. Labor Code section 1197 affirms that it is unlawful
16 to pay less than the state or local minimum wage, whichever is higher, for any hour of work.

17 53. Labor Code section 1194 provides that any employee receiving less than the legal
18 minimum wage or the legal overtime compensation applicable to the employee is entitled to
19 recover in a civil action the unpaid balance of the full amount of the minimum wage or overtime
20 compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

21 54. Labor Code section 1194.2 authorizes the recovery of liquidated damages in an
22 amount equal to the wages unlawfully unpaid and interest thereon for unpaid wage violations.

23 55. Labor Code section 1198 prohibits DEFENDANTS from employing for longer
24 hours or less favorable conditions than those set forth in the Labor Code, IWC Wage Orders, or as
25 otherwise set by the Labor Commissioner.

26 56. Labor Code section 2778 provides that the *Borello* test applies when determining
27 whether a real estate licensee licensed by the State of California is an employee or independent
28 contractor. *See S. G. Borello & Sons, Inc. v. Dep't of Indus. Relations*, 48 Cal. 3d 341 (1989).

1 57. As alleged above, PLAINTIFF regularly earned less than 1.5 times the minimum
2 wage in commissions during pay periods, regularly performed work at DEFENDANTS' offices at
3 their direction and control, and was unable to work for any other real estate brokerage. Despite
4 performing work, DEFENDANTS failed to PLAINTIFF minimum, regular, overtime, and double
5 time wages for time worked including time spent during rest breaks and non-productive time.

6 58. As a direct and proximate result of DEFENDANTS' unlawful conduct, as set forth
7 herein, PLAINTIFF has sustained and continues to sustain damages, including loss of earnings
8 including minimum, regular, overtime and double time compensation due, in an amount to be
9 established at trial, plus prejudgment interest, attorneys' fees, and costs pursuant to statute.

10 59. WHEREFORE, PLAINTIFF requests relief as described herein and below.

11 **SECOND CAUSE OF ACTION**

12 **Failure to Provide Meal Breaks**

13 **(Against All DEFENDANTS)**

14 60. PLAINTIFF incorporates by reference all previous paragraphs of this FAC as
15 though fully set forth herein.

16 61. At all relevant times, DEFENDANTS had a duty to comply with Labor Code
17 sections 226.7 and 512, and the applicable IWC Wage Orders.

18 62. Labor Code section 512 and the IWC Wage Orders prohibit an employer from
19 employing any person for a work period of more than 5 hours per day without providing the
20 employee with a meal period of not less than 30 minutes (commencing before the employee's fifth
21 hour of work), except that if the total work period per day is no more than 6 hours, the meal period
22 may be waived by mutual consent of the employer and employee. A second meal period of not
23 less than 30 minutes is required if an employee works more than 10 hours per day and must begin
24 before the employee's tenth hour of work, except if the total hours worked is no more than
25 12 hours, the second meal period may be waived by mutual consent of the employer and employee,
26 but only if the first meal period was not waived. An employer must relieve an employee of all
27 duties during meal periods.

28 //

1 63. The applicable IWC Wage Orders state that “[u]nless the employee is relieved of
2 all duty during a 30-minute meal period, the meal period shall be considered an ‘on duty’ meal
3 period and counted as time worked.”

4 64. Labor Code section 226.7(b) and the IWC Wage Orders prohibit an employer from
5 requiring any employee to work during a meal period mandated by any California statute,
6 regulation, standard or order. If an employer fails to provide an employee with a meal period in
7 accordance with state law, Labor Code section 226.7(c) and the IWC Wage Orders require that the
8 employer pay the employee one additional hour of pay at the employee’s regular rate of
9 compensation for each workday that the meal period is noncompliant.

10 65. At all relevant times, PLAINTIFF regularly worked more than five (5) hours and/or
11 10 hours per workday without being provided an uninterrupted, off-duty 30-minute meal period
12 since PLAINTIFF’s meal periods were late, interrupted, missed, short, and/or on-duty.

13 66. During the relevant time period, DEFENDANTS failed to pay PLAINTIFF meal
14 period premiums for noncompliant meal periods pursuant to Labor Code section 226.7(b) and the
15 applicable IWC Wage Order.

16 67. DEFENDANTS have willfully, unfairly, fraudulently or unlawfully failed to allow
17 PLAINTIFF to take meal breaks pursuant to Labor Code section 512(a). As a result,
18 DEFENDANTS are liable to PLAINTIFF for premium compensation of one hour of pay at the
19 employee’s regular rate for each workday that the meal period was not provided pursuant to Labor
20 Code section 226.7, in a total amount to be proven at trial according to proof.

21 **THIRD CAUSE OF ACTION**

22 **Failure to Provide Rest Periods**

23 **(Against All DEFENDANTS)**

24 68. PLAINTIFF incorporates by reference all previous paragraphs of this FAC as
25 though fully set forth herein.

26 69. At all relevant times, DEFENDANTS had a duty to comply with Labor Code
27 section 226.7 and the applicable IWC Wage Orders.

28 70. The IWC Wage Orders require employers to authorize and permit all employees to

1 take 10-minute duty-free rest periods for each four hours worked, or major fraction thereof.

2 71. If an employer fails to provide an employee with a rest period in accordance with
3 California law, Labor Code section 226.7(c) and the IWC Wage Orders require that the employer
4 pay the employee one additional hour of pay at the employee's regular rate of compensation for
5 each workday that the rest period is noncompliant.

6 72. During the relevant time period, DEFENDANTS failed to provide compliant rest
7 breaks. Specifically, PLAINTIFF had his rest breaks on-duty, interrupted, missed, or shortened.
8 Consequently, PLAINTIFF did not receive a 10-minute rest period for every four (4) hours worked
9 or major fraction thereof.

10 73. During the relevant time period, DEFENDANTS failed to pay PLAINTIFF rest
11 period premiums for noncompliant rest periods pursuant to Labor Code section 226.7(b) and the
12 applicable IWC Wage Order.

13 74. DEFENDANTS have willfully, unfairly, fraudulently or unlawfully failed to allow
14 PLAINTIFF to take rest periods pursuant to California law. As a result, DEFENDANTS are liable
15 to PLAINTIFF for premium compensation of one hour of pay at the employee's regular rate for
16 each workday that the rest period was not provided pursuant to California Labor Code section
17 226.7, in a total amount to be determined at trial according to proof.

18 **FOURTH CAUSE OF ACTION**

19 **Failure to Reimburse Business Expenses**

20 **(Against All DEFENDANTS)**

21 75. PLAINTIFF hereby re-alleges and incorporates by reference all paragraphs above
22 as though fully set forth herein.

23 76. At all relevant times, DEFENDANTS had a duty to comply with Labor Code
24 sections 2800 and 2802. DEFENDANTS failed to comply with these indemnification and
25 reimbursement requirements with respect to PLAINTIFF.

26 77. Labor Code section 2800 requires employers to indemnify employees for losses
27 caused by the employer's want of ordinary care. To the extent DEFENDANTS claim that
28 PLAINTIFF failed to request, demand, notify or otherwise seek reimbursement for their expenses

1 and losses, DEFENDANTS were obligated to nevertheless indemnify PLAINTIFF due to their
2 own negligence.

3 78. Labor Code section 2802(a) requires that employers indemnify and reimburse
4 employees for all business expenses, which are defined as all necessary expenditures or losses
5 incurred by the employee in direct consequence of the discharge of the employee's duties or
6 otherwise incurred based on the employee's obedience to the employer's directions. Labor Code
7 section 2802(b) authorizes employees to recover in a court action interest which shall accrue from
8 the date on which the employee incurred the necessary expenditure or loss. Labor Code
9 section 2802(c) authorizes employees, who to enforce their right to reimbursements under Labor
10 Code section 2802, to also recover attorneys' fees and costs.

11 79. During the relevant time period, DEFENDANTS required PLAINTIFF to incur out-
12 of-pocket expenses without reimbursement, such as, using his personal cell phone and vehicle, and
13 purchasing equipment to carry out his job duties, such as purchasing a laptop, monitor, and wi-fi
14 plan to work remotely from home, among other things.

15 80. As a result of DEFENDANTS' failure to indemnify and reimburse PLAINTIFF for
16 all business and work-related costs, expenditures, losses and expenses in accordance with Labor
17 Code sections 2800 and 2802, PLAINTIFF is entitled to recover the full unreimbursed balance of
18 reimbursements, expenditures and losses, prejudgment interest, and statutory penalties, along with
19 attorneys' fees and costs in amounts that will be established at trial.

20 **FIFTH CAUSE OF ACTION**

21 **Waiting Time Penalties**

22 **(Against All DEFENDANTS)**

23 81. PLAINTIFF incorporates by reference all previous paragraphs of this FAC as
24 though fully set forth herein.

25 82. Labor Code section 201 requires that if an employer discharges an employee, the
26 wages earned and unpaid at the time of discharge are due and payable immediately.

27 83. Labor Code section 203 provides that if an employer willfully fails to pay
28 compensation promptly upon discharge as required pursuant to Labor Code section 201, the

1 employer is liable to the employee for penalties.

2 84. At the time of PLAINTIFF's termination of employment, PLAINTIFF had unpaid
3 wages, reimbursements, and premium pay for missed meal and rest periods outstanding.

4 85. DEFENDANTS have willfully, unfairly, fraudulently, or unlawfully failed to pay
5 PLAINTIFF compensation owed upon termination of employment pursuant to Labor Code
6 section 201. PLAINTIFF's employment with DEFENDANTS terminated but DEFENDANTS
7 failed to pay him any of the unpaid wages, reimbursements, and premiums due and owing to him
8 at the time of his termination. As a result, DEFENDANTS are liable to PLAINTIFF for waiting
9 time penalties pursuant to Labor Code section 203 in an amount to be determined at trial, according
10 to proof.

11 **SIXTH CAUSE OF ACTION**

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

13 **(Against All DEFENDANTS)**

14 86. PLAINTIFF hereby re-alleges and incorporates by reference all paragraphs above
15 as though fully set forth herein.

16 87. California Labor Code section 226(a) requires employers, at the time of each
17 payment of wages, to furnish each employee with an accurate statement itemizing, among other
18 things: (1) gross wages earned; (2) the total hours worked by the employee; (3) all deductions; (4)
19 net wages earned; (5) the inclusive dates of the period for which the employee is paid; (6) the name
20 of the employee and his or her social security number (last four digits); (7) the name and address
21 of the legal entity that is the employer; and (8) all applicable hourly rates in effect during the pay
22 period and the corresponding number of hours worked at each hourly rate by the employee.
23 California Labor Code section 1174 further requires that such payroll records be kept in a central
24 location.

25 88. California Labor Code section 226(e) further provides that if an employer
26 knowingly and intentionally fails to provide a statement itemizing, among other things, the total
27 hours worked by the employee, then the employee is entitled to recover the greater of all actual
28 damages or fifty dollars (\$50) for the initial violation and one hundred dollars (\$100) for each

1 subsequent violation, up to four thousand dollars (\$4,000).

2 89. As alleged herein, DEFENDANTS failed to pay all wages, reimbursements, and
3 premiums. Thus, DEFENDANTS have knowingly and intentionally failed to comply with the
4 Labor Code on each and every wage statement that should have been provided to PLAINTIFF by
5 failing to provide itemized wage statements to PLAINTIFF that accurately reported, among other
6 things, the gross and net wages earned, the total hours worked, all applicable hourly rates in effect
7 during the pay period, and the corresponding number of hours worked at each hourly rate.

8 90. By failing to keep accurate records and provide such records to PLAINTIFF as
9 required by California Labor Code sections 226(a) and 1174, DEFENDANTS have injured
10 PLAINTIFF and made it difficult to calculate the unpaid wages earned and due to PLAINTIFF.
11 Moreover, DEFENDANTS' failure to comply with California Labor Code section 1174 is unlawful
12 pursuant to California Labor Code section 1175.

13 91. As a consequence of DEFENDANTS' willful failure to provide PLAINTIFF with
14 accurate records as required by Labor Code section 226(a), PLAINTIFF is entitled to damages
15 pursuant to Labor Code section 226(e) in an amount to be determined at trial according to proof.

16 **SEVENTH CAUSE OF ACTION**

17 **Failure to Provide Timely Access to Employee Payroll and Personnel Records**

18 **(Against All DEFENDANTS)**

19 92. PLAINTIFF hereby re-alleges and incorporates by reference all paragraphs above
20 as though fully set forth herein.

21 93. Labor Code sections 226(a), (b) require employers to maintain payroll records for
22 each of its employees. Such records include, but are not limited to: (1) gross wages earned; (2)
23 total hours worked; (3) all deductions provided; and (4) net wages earned. The aforementioned
24 records must be kept by the employer for at least three years at the place of employment or at a
25 central location within the State of California.

26 94. Labor Code section 226(c) states that "[a]n employer who receives a written or oral
27 request to inspect or copy records pursuant to subdivision (b) pertaining to a current or former
28 employee shall comply with the request as soon as practicable, but no later than 21 calendar days

1 from the date of the request.”

2 95. Labor Code section 226(f) states that “failure by an employer to permit a current or
3 former employee to inspect or copy records within the time set forth in subdivision (c) entitles the
4 current or former employee or the Labor Commissioner to recover a seven-hundred-fifty-dollar
5 (\$750) penalty from the employer.”

6 96. Labor Code section 226(h) states that “[a]n employee may also bring an action for
7 injunctive relief to ensure compliance with this section, and is entitled to an award of costs and
8 reasonable attorney’s fees.”

9 97. Labor Code section 432 provides that “[i]f an employee or applicant signs any
10 instrument relating to the obtaining or holding of employment, he shall be given a copy of the
11 instrument upon request.”

12 98. Labor Code section 1198.5 provides current and former employees the right to
13 inspect their employee personnel records that the employer maintains relating the employee’s
14 performance or to any grievance concerning the employee.

15 99. Here, DEFENDANTS failed to timely produce PLAINTIFF’s personnel records,
16 time and payroll records, and documents he signed relating to his employment pursuant to Labor
17 Code sections 226, 432 and 1198.5. DEFENDANTS have willfully refused, and continues to
18 refuse, to permit PLAINTIFF to inspect or copy his complete records, as required by Labor Code
19 sections 226, 432 and 1198.5.

20 100. As a direct and proximate result of the unlawful employment practices described
21 herein, PLAINTIFF seeks damages, in an amount to be determined at trial according to proof,
22 costs and attorney’s fees.

23 101. As a direct and proximate result of the unlawful employment practices described
24 herein, PLAINTIFF is entitled to a penalty of \$750 pursuant to Labor Code section 226(f) for
25 DEFENDANTS’ failure to comply with his request.

26 102. As a direct and proximate result of the unlawful employment practices described
27 herein, PLAINTIFF is entitled to injunctive relief pursuant to Labor Code section 226(h)
28 mandating that DEFENDANTS provide PLAINTIFF access to inspect or copy records pursuant

1 to Labor Code section 226 *et seq.* and award PLAINTIFF reasonable attorney's fees and costs in
2 doing so.

3 **EIGHTH CAUSE OF ACTION**

4 **Unfair Business Practices**

5 **(Against All DEFENDANTS)**

6 103. PLAINTIFF incorporates by reference all previous paragraphs of this FAC as
7 though fully set forth herein.

8 104. The Unfair Competition Law as codified in California Business and Professions
9 Code section 17200, *et seq.* ("UCL") defines unfair business competition to include any "unlawful,
10 unfair or fraudulent" act or practice.

11 105. A business act or practice is "illegal" under UCL if it violates any statute, regulation
12 or ordinance

13 106. A business practice is "unfair" if the reasons, justifications and motives of the
14 alleged wrongdoer are outweighed by the gravity of the harm to the alleged victims.

15 107. A business act or practice is "fraudulent" under the UCL if it is "likely to deceive"
16 members of the general public.

17 108. PLAINTIFF is informed and believes that DEFENDANTS' unlawful failure to
18 timely pay wages, meal and rest periods or compensation, provide accurate itemized wage
19 statements, reimburse expenses, among other things constitute violations of the UCL.

20 109. DEFENDANTS' failure to pay PLAINTIFF in a lawful manner as set forth above
21 and below is fraudulent and deceptive and constitutes an ongoing and continuous unfair business
22 practice within the meaning of Business and Professions Code section 17200, *et seq.* Members of
23 the public have been deceived in the past, and will be in the future continue to be deceived, by
24 these continuous unfair business practices.

25 110. The illegal conduct alleged herein is continuing, and there is no indication that
26 DEFENDANTS will not continue such activity in the future. PLAINTIFF alleges that if
27 DEFENDANTS are not enjoined from said illegal conduct, it will continue to fail to provide rest
28 periods and meal breaks or provide appropriate compensation in-lieu thereof.

111. A request for injunctive relief, restitution and for the disgorgement of unlawfully earned profits is specifically authorized by Business and Professions Code section 17200, *et seq.* Thus, on behalf of himself and the general public, PLAINTIFF seeks injunctive relief, restitution, and the disgorgement of all unlawfully earned profits as a result of DEFENDANTS' alleged acts or omissions as described in this FAC. Furthermore, PLAINTIFF requests attorney's fees and costs pursuant to Code of Civil Procedure section 1021.5 upon proof that they have acted in the public interest.

112. PLAINTIFF is informed and believes, and thereon allege, that unless restrained and ordered to pay restitution and disgorge profits derived from said unfair and unlawful business practices, DEFENDANTS will continue to engage in the alleged acts and/or omissions as described in this FAC.

NINTH CAUSE OF ACTION

Retaliation

(Against All DEFENDANTS)

113. PLAINTIFF hereby incorporate by reference the allegations in all paragraphs in this FAC as though fully set forth herein.

114. At all times relevant herein, Labor Code sections 98.6 and 1102.5 were in full force and effect, and were binding upon DEFENDANTS.

115. Labor Code section 98.6 provides that "A person shall not discharge an employee or in any manner discriminate, retaliate, or take any adverse action against any employee . . . because the employee . . . made a written or oral complaint that he or she is owed unpaid wages . . . or because of the exercise by the employee . . . for employment on behalf of himself, herself, or others of any rights afforded him or her."

116. At all relevant times herein, each DEFENDANT constitutes "an employer, or any other person acting on behalf of the employer" as provided in Labor Code Section 1102.5.

117. Pursuant to Labor Code section 1102.5(a), "An employer, or any person acting on behalf of the employer, shall not make, adopt, or enforce any rule, regulation, or policy preventing an employee from disclosing . . . to a person with authority over the employee, or to another

1 employee who has authority to investigate, discover, or correct the violation or noncompliance . .
2 . if the employee has reasonable cause to believe that the information discloses a violation of state
3 or federal statute, or a violation of or noncompliance with a local, state, or federal rule or
4 regulation, regardless of whether disclosing the information is part of the employee's job duties.
5 Labor Code section 1102.5(b) prohibits retaliation for disclosing the information mentioned in
6 1025(a).

7 118. At all relevant times herein, PLAINTIFF was an employee of DEFENDANTS that
8 was misclassified as an independent contractor and was entitled to the protections afforded to him
9 pursuant to Labor Code section 98.6 and 1102.5, and PLAINTIFF engaged in protected activity
10 under Labor Code section 1102.5

11 119. PLAINTIFF is informed, believes, and thereon alleges that DEFENDANTS
12 terminated his employment in retaliation for his oral and/or written complaints regarding unpaid
13 commissions, taxes, and his employment status.

14 120. DEFENDANTS had direct and/or indirect knowledge of PLAINTIFF's protected
15 activity including his complaints regarding unpaid commissions, taxes, and his employment status.

16 121. PLAINTIFF has reasonable cause to believe that the information he
17 disclosed/complained of violated state, federal, or local statutes, rules or regulations.

18 122. PLAINTIFF is informed, believes, and thereon alleges that the decision to terminate
19 PLAINTIFF was made and/or ratified by DEFENDANTS, DEFENDANTS' managing agents,
20 officers, employees, supervisors, and/or directors. As a direct result of PLAINTIFF's complaints,
21 DEFENDANTS took adverse employment actions against PLAINTIFF which included
22 discharging PLAINTIFF from his employment.

23 123. PLAINTIFF's complaints regarding unpaid commissions, taxes, and his
24 employment status was a substantial motivating reason for DEFENDANTS' decision to discharge
25 PLAINTIFF.

26 124. PLAINTIFF was harmed by DEFENDANTS' retaliation and discharge of his
27 employment. Specifically, PLAINTIFF incurred damages since he lost his employment and wages
28 caused by the acts of the DEFENDANTS.

1 125. DEFENDANTS' conduct was a substantial factor in causing PLAINTIFF's harm.

2 126. PLAINTIFF is entitled to reinstatement and reimbursement for lost wages and work
3 benefits in an amount according to proof at the time of trial.

4 127. As a direct result of PLAINTIFF's complaints, DEFENDANTS took adverse
5 employment actions against PLAINTIFF which included discharging PLAINTIFF from his
6 employment. By such conduct, DEFENDANTS retaliated against PLAINTIFF because he
7 exercised the rights the law affords him. DEFENDANTS' retaliatory conduct violated Labor Code
8 sections 98.6 and 1102.5.

9 128. As a direct and proximate result of the wrongful conduct of DEFENDANTS, and
10 each of them, PLAINTIFF has suffered and continue to sustain substantial losses in earnings,
11 employment benefits, and other damages in an amount according to proof at the time of trial.
12 PLAINTIFF claims such amount as damages together with prejudgment interest thereon pursuant
13 to California Civil Code sections 3287, 3288, and/or any other applicable provision providing for
14 prejudgment interest in an amount according to proof at the time of trial.

15 129. As a direct and proximate result of the wrongful conduct of DEFENDANTS, and
16 each of them, PLAINTIFF has suffered humiliation, emotional distress, and mental pain and
17 anguish, all to PLAINTIFF's damage in an amount according to proof at the time of trial.

18 130. In doing the acts herein alleged, DEFENDANTS, and each of them, acted willfully
19 with oppression, fraud, and malice, and in conscious disregard of PLAINTIFF's rights and
20 PLAINTIFF is therefore entitled to punitive damages in an amount according to proof to be
21 determined at trial.

22 131. PLAINTIFF has also incurred and continues to incur attorney's fees and legal
23 expenses in an amount according to proof at the time of trial.

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1 **TENTH CAUSE OF ACTION**

2 **Wrongful Termination in Violation of Public Policy**

3 **(Against All DEFENDANTS)**

4 132. PLAINTIFF hereby re-alleges and incorporates by reference all paragraphs above
5 as though fully set forth herein.

6 133. The discharge of PLAINTIFF by DEFENDANTS violates fundamental principles
7 of public policy in that there is a substantial and fundamental policy against terminating employees
8 for unlawful purposes, including on account of an employee's exercise of rights under the
9 Constitution and laws of the State of California such as complaining about their health, safety,
10 and/or unsafe working conditions as well as the health and safety of others.

11 134. PLAINTIFF was employed by DEFENDANT.

12 135. After PLAINTIFF's complaints of what PLAINTIFF reasonably believed to be
13 unlawful activity, DEFENDANT wrongfully terminated PLAINTIFF's employment. PLAINTIFF
14 is informed, believes, and thereon alleges that his employment was terminated because he
15 exercised rights enumerated under the California Labor Code as described in this FAC such as
16 complaining about unpaid commissions, taxes, and employment status. PLAINTIFF is informed,
17 believes, and thereon alleges that his complaints about and/or refusal to engage in unlawful activity
18 was a substantial motivating reason for DEFENDANTS' decision to terminate PLAINTIFF's
19 employment.

20 136. PLAINTIFF had reasonable cause to believe that the information he disclosed
21 and/or complained of violated state, federal, or local statutes, rules or regulations.

22 137. PLAINTIFF was harmed by DEFENDANTS' retaliation and discharge of
23 PLAINTIFF's employment.

24 138. DEFENDANTS' discharge of PLAINTIFF was a substantial factor in causing
25 PLAINTIFF's harm.

26 139. In doing the acts described herein, DEFENDANTS deprived PLAINTIFF of
27 prospective career and employment opportunities, as well as other benefits, by failing to perform
28 its duties to administer and apply all State and local laws, procedures and regulations.

140. As a direct and proximate result of DEFENDANTS' willful, despicable, and intentional conduct towards PLAINTIFF, PLAINTIFF has sustained substantial losses in earnings and other employment benefits. PLAINTIFF claims such amount as damages together with prejudgment interest thereon pursuant to California Civil Code sections 3287, 3288, and/or any other applicable provision providing for prejudgment interest.

141. As a direct and proximate result of DEFENDANTS' willful, despicable, and intentional conduct towards PLAINTIFF, PLAINTIFF has suffered and continue to suffer humiliation and emotional distress; the amount of such damages to be determined by proof at trial.

142. In light of DEFENDANTS' willful, knowing, malicious, and discriminatory conduct towards PLAINTIFF, PLAINTIFF seeks an award of punitive and exemplary damages in an amount to be determined at trial according to proof.

ELEVENTH CAUSE OF ACTION

Violation of the Private Attorneys General Act of 2004

(Against All DEFENDANTS)

143. Plaintiff incorporates by reference all previous paragraphs of this FAC as though fully set forth herein.

144. PLAINTIFF is informed, believes, and thereon alleges that DEFENDANTS' Labor Code violations described in the previous paragraphs of this FAC were not limited to Plaintiff and that other Aggrieved Employees, including those misclassified as independent contractors, were not timely paid all wages, provided all meal and rest break premiums, reimbursed business expenses, and provided accurate itemized wage statements, among other things.

145. Pursuant to Labor Code section 2699(a), any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or employees for violation of the code may, as an alternative, can be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Labor Code section 2699.3.

146. Under Labor Code section 2699.3(a), a plaintiff may bring a cause of action under

1 PAGA only after giving the LWDA and the employer notice of the Labor Code sections alleged
2 to have been violated, and after receiving notice from the LWDA of its intention not to investigate
3 or after 65 days have passed without notice from the LWDA.

4 147. On April 6, 2021, Plaintiff gave written notice of the specified provisions alleged
5 to have been violated, including the facts and theories to support the alleged violations, as required
6 by Labor Code section 2699.3. This written notice was provided via certified mail to
7 DEFENDANTS and to the LWDA by electronically filing the notice via the Department of
8 Industrial Relations' website. More than 65 days have passed since Plaintiff submitted his PAGA
9 notice to the LWDA without notice from the LWDA. Accordingly, Plaintiff has exhausted the
10 procedural requirements under Labor Code section 2699.3 as to DEFENDANTS and is therefore
11 able to pursue a claim for penalties on behalf of himself and all other Aggrieved Employees under
12 PAGA.

13 148. For all provisions of the Labor Code except those for which a civil penalty is
14 specifically provided, Labor Code section 2699(f) imposes upon DEFENDANTS a penalty of one
15 hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and
16 two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent
17 pay period in which DEFENDANTS violated these provisions of the Labor Code.

18 149. Pursuant to Labor Code Sections 2699.3 and 2699.5, Plaintiff may seek civil
19 penalties for any alleged violation of the following provisions: subdivision (k) of Section 96,
20 Sections 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2,
21 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5,
22 223, and 224, paragraphs (1) to (5), inclusive, (7), and (9) of subdivision (a) of Section 226,
23 Sections 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c)
24 of Section 232, subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, and 403, subdivision
25 (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602,
26 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025,
27 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of Section 1174, Sections 1194,
28 1197, 1197.1, 1197.5, and 1198, subdivision (b) of Section 1198.3, Sections 1199, 1199.5, 1290,

1 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309,
2 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section 1695.5,
3 Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25,
4 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, Sections 1735, 1771, 1774, 1776, 1777.5, 1811,
5 1815, 2651, and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801, 2802, 2806,
6 and 2810, subdivision (b) of Section 2929, and Sections 3073.6, 6310, 6311, 6399.7, 6400, 6401,
7 6401.7, 6402, and 6403.

8 150. Labor Code sections 98.6 and 1102.5 each provide for a civil penalty up to ten
9 thousand dollars (\$10,000) per employee for each violation.

10 151. Labor Code section 558(a) provides “[a]ny employer or other person acting on
11 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
12 provision regulating hours and days of work in any order of the Industrial Welfare Commission
13 shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for
14 each underpaid employee for each pay period for which the employee was underpaid . . . (2) For
15 each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay
16 period for which the employee was underpaid.”

17 152. Labor Code section 1197.1 provides “[a]ny employer or other person acting either
18 individually or as an officer, agent, or employee of another person, who pays or causes to be paid
19 to any employee a wage less than the minimum fixed by an applicable state or local law, or by an
20 order of the commission shall be subject to a civil penalty . . . as follows: (1) For any initial
21 violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee
22 for each pay period for which the employee is underpaid . . . (2) For each subsequent violation for
23 the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each
24 pay period for which the employee is underpaid regardless of whether the initial violation is
25 intentionally committed.”

26 153. Labor Code section 226.3 provides: “[a]ny employer who violates subdivision (a)
27 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
28 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee

1 for each violation in a subsequent citation, for which the employer fails to provide the employee a
2 wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.
3 The civil penalties provided for in this section are in addition to any other penalty provided by
4 law.”

5 154. Labor Code section 1174.5 provides a \$500 penalty for an employer’s failure to
6 maintain accurate and complete payroll records showing the hours worked daily by and the wages
7 paid to employees.

8 155. DEFENDANTS’ conduct with respect to PLAINTIFF and the other Aggrieved
9 Employees violates numerous Labor Code sections including, but not limited to, the following:

10 (a) Violation of Labor Code sections 201-204, 206, 210, 510, 558, 1194, 1197,
11 1197.1, and 1198 for failure to timely pay all earned wages (including minimum, regular, and
12 overtime wages) owed to PLAINTIFF and other Aggrieved Employees during employment and
13 upon separation of employment as herein alleged;

14 (b) Violation of Labor Code sections 226.7 and 512 for failure to provide meal
15 periods to PLAINTIFF and other Aggrieved Employees and failure to pay premium wages for non-
16 compliant meal periods as herein alleged;

17 (c) Violation of Labor Code sections 226.7 for failure to permit rest breaks to
18 PLAINTIFF and other Aggrieved Employees and failure to pay premium wages for non-compliant
19 rest periods as herein alleged;

20 (d) Violation of Labor Code sections 226 and 226.3 for failure to provide
21 accurate itemized wage statements to PLAINTIFF and other Aggrieved Employees as herein
22 alleged;

23 (e) Violation of Labor Code sections 1174 and 1174.5 for failure to maintain
24 accurate records regarding the employment of PLAINTIFF and other Aggrieved Employees as
25 herein alleged; and

26 (f) Violation of Labor Code sections 2800 and 2802 for failure to reimburse
27 business expenses to PLAINTIFF and other Aggrieved Employees as herein alleged.

28 (g) Violation of Labor Code sections 98.6 and 1102.5 for retaliation and

wrongful termination of PLAINTIFF and other Aggrieved Employees for their lawfully protected complaints regarding DEFENDANTS' Labor Code violations.

156. As set forth above, DEFENDANTS have violated numerous provisions of the Labor Code regulating hours and days of work as well as the IWC Wage Orders.

157. Each Plaintiff is an "aggrieved employee" because each Plaintiff was employed by the alleged violators and had one or more of the alleged violations committed against him, and therefore is properly suited to represent the interests of all other Aggrieved Employees.

158. Pursuant to Labor Code sections 2699(a), 2699.3 and 2699.5, PLAINTIFF is entitled to recover civil penalties, in addition to other remedies, for violations of the Labor Code sections cited above.

159. For bringing this action, PLAINTIFF is also entitled to attorney's fees and costs incurred herein.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for judgment as follows:

1. For compensatory damages and general damages according to proof with interest thereon;
2. For economic and/or special damages, and/or liquidated damages according to proof with interest thereon;
3. For other compensatory damages for emotional distress and other economic losses;
4. For damages, monetary relief, wages, premiums, reimbursements, benefits and penalties, including interest thereon;
5. For prejudgment interest on all sums recovered pursuant to other compensatory damages at the legal rate from the date of injury or pursuant to California Code of Civil Procedure section 3287 and 3289, and Labor Code section 218.6;
6. For punitive and exemplary damages, according to proof;
7. For waiting time penalties pursuant to Labor Code section 203;
8. For liquidated damages pursuant to Labor Code section 1194.2;
9. For statutory penalties to the extent permitted by law, including those pursuant to

1 the Labor Code and IWC Wage Orders;

2 10. For injunctive relief, disgorgement, and restitution of all money and property
3 unlawfully acquired by DEFENDANTS through unfair or unlawful business practices pursuant to
4 Business and Professions Code sections 17200 *et seq.*;

5 11. For penalties according to proof;

6 12. For costs of suit incurred;

7 13. For an award of attorneys' fees pursuant to California Labor Code sections 226,
8 1194, 2802, 2698, *et seq.*, California Code of Civil Procedure section 1021.5, Labor Code section
9 1102.5 and any other applicable provisions of California statutory or common law;

10 14. For civil penalties against DEFENDANTS on behalf of all Aggrieved Employees
11 pursuant to, *inter alia*, Labor Code sections 210, 226.3, 558, 1174.5, 1197.1, and 2698, *et seq.*;
12 and

13 15. For any other and further relief as the Court deems just and proper.
14

15 Dated: March 16, 2022

ALAMI LAW GROUP &
LAW OFFICE OF DANIEL J. HYUN

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18 By: 

David Alami

Daniel J. Hyun

Attorneys for Plaintiff ZACHARY KIMBER
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21 **DEMAND FOR JURY TRIAL**

22 PLAINTIFF hereby demands a jury trial with respect to all issues triable by jury.
23

24 Dated: March 16, 2022

ALAMI LAW GROUP &
LAW OFFICE OF DANIEL J. HYUN &

25
26 By: 

David Alami

Daniel J. Hyun

Attorneys for Plaintiff ZACHARY KIMBER
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