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SUPERIOR COURT
OF CALIFORNIA
SACRAMENTO COUNTY

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EDUARDO RUIZ, on behalf of himself and others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

EDUARDO RUIZ, on behalf of himself and
others similarly situated,

PLAINTIFF,

vs.

SUTTER HOME WINERY, INC., a California
corporation; TRINCHERO FAMILY ESTATES,
a business entity of unknown for; and DOES 1 to
100, inclusive,

DEFENDANTS.

Case No.: 34-2017-00223127

CLASS ACTION

**PLAINTIFF EDUARDO RUIZ'S FIRST
AMENDED COMPLAINT FOR
DAMAGES AND EQUITABLE RELIEF
FOR**

1. **FAILURE TO PAY WAGES FOR
ALL HOURS OF WORK AT THE
LEGAL MINIMUM WAGE RATE
IN VIOLATION OF LABOR CODE
SECTIONS 1194, 1194.2, & 1197
AND THE WAGE ORDERS;**
2. **FAILURE TO PAY WAGES FOR
ALL TIME WORKED AT
OVERTIME RATE IN
VIOLATION OF LABOR CODE
SECTIONS 510 & 1194 AND THE
WAGE ORDERS;**
3. **FAILURE TO INCLUDE ALL
REMUNERATION WHEN
CALCULATING THE OVERTIME**

RATE OF PAY, IN VIOLATION OF LABOR CODE SECTIONS 510 & 1194 AND THE WAGE ORDERS;

- 4. FAILURE TO PROVIDE MEAL PERIODS AND MEAL PERIOD PREMIUM WAGES IN VIOLATION OF LABOR CODE SECTIONS 226.7 & 512 AND THE WAGE ORDERS;**
- 5. FAILURE TO PROVIDE REST BREAKS AND REST BREAK PREMIUM WAGES IN VIOLATION OF LABOR CODE SECTION 226.7 AND THE WAGE ORDERS;**
- 6. FAILURE TO TIMELY PAY FINAL WAGES IN VIOLATION OF LABOR CODE SECTIONS 201 & 202; and**
- 7. UNFAIR COMPETITION IN VIOLATION OF BUSINESS & PROFESSIONS CODE SECTION 17200, *et seq.***
- 8. CIVIL PENALTIES PURSANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF 2004 (“PAGA”), LABOR CODE SECTION 2698, *et seq.***

DEMAND FOR JURY TRIAL

NOW COMES Plaintiff EDUARDO RUIZ (“Plaintiff”), on behalf of himself, the general public, and all others similarly situated alleging and complaining against Defendants SUTTER HOME WINERY, INC., a California corporation; TRINCHERO FAMILY ESTATES, a business entity of unknown form; and DOES 1 to 100, inclusive, (hereinafter collectively referred to as “Defendants”) as follows:

INTRODUCTION

1. This is a class action lawsuit seeking unpaid wages and interest thereon for Defendants’ failure to pay employees for all hours worked at the minimum wage and/or applicable overtime rates of pay; failure to include all remuneration when calculating the applicable overtime

1 rate of pay; failure to provide legally compliant meal periods and/or pay meal period premium
2 wages; failure to provide legally compliant rest breaks and/or pay rest break premium wages;
3 waiting time penalties in the form of continuation wages for failure to timely pay employee all
4 earned and unpaid wages due upon separation of employment; applicable civil penalties; injunctive
5 relief and other equitable relief; and reasonable attorney's fees pursuant to Labor Code Section
6 1194 and 2699(g); costs; and interest, brought on behalf of Plaintiff and others similarly situated.

7 **JURISDICTION AND VENUE**

8 2. This Court has jurisdiction over Plaintiff and the Class Members' claims for
9 Defendants' failure to pay employees for all hours worked at the minimum wage and/or applicable
10 overtime rates of pay; failure to include all remuneration when calculating the applicable overtime
11 rate of pay; failure to provide legally compliant meal periods and/or pay meal period premium
12 wages; failure to provide legally compliant rest breaks and/or pay rest break premium wages;
13 waiting time penalties in the form of continuation wages for failure to timely pay employee all
14 earned and unpaid wages due upon separation of employment; and claims for injunctive relief and
15 restitution under California Business & Professions Code Section 17200 *et seq.* for the following
16 reasons: Plaintiff's lawsuit seeks permanent injunction and damages for himself and the Class
17 Members in excess of \$25,000; more than two-thirds of the putative class members are California
18 citizens; the principal violations of California law occurred in California; Defendants employed the
19 putative class members in Sacramento County, including at 8925 Eschinger Road, Elk Grove, CA
20 95757; the conduct of Defendants forms a significant basis for Plaintiff's and the Class Members'
21 claims; and Plaintiff and the Class Members seek significant relief from Defendants.

22 **PARTIES**

23 3. Plaintiff brings this action on behalf of himself and other members of the general
24 public similarly-situated. The named Plaintiff and the class of persons on whose behalf this action
25 is filed are current, former and/or future employees of Defendants who worked, work, or will work
26 for Defendants as non-exempt hourly employees in California. At all times mentioned herein, the
27 named Plaintiff is and was domiciled and a resident and citizen of California and was employed by
28 Defendants in a non-exempt position within the 4 years prior to the filing of the original complaint

1 on December 4, 2017. The named Plaintiff is no longer an employee of Defendants.

2 4. Defendants employed Plaintiff as an hourly non-exempt employee from on or around
3 May 20, 2013, until on or around June 2, 2016.

4 5. Plaintiff is informed and believes and thereon alleges that Defendant SUTTER
5 HOME WINERY, INC. is authorized to do business within the State of California and is doing
6 business in the State of California and/or that Defendants DOES 1 to 50 are, and at all times
7 relevant hereto were, officers, directors, or shareholders of Defendant SUTTER HOME WINERY,
8 INC. who were acting on behalf of Defendant SUTTER HOME WINERY, INC. in the
9 establishment of, or ratification, of, the aforementioned illegal payroll practices or policies. At all
10 times mentioned herein, Defendant SUTTER HOME WINERY, INC. employed numerous hourly
11 paid employees in Sacramento County.

12 6. Plaintiff is informed and believes and thereon alleges that Defendant TRINCHERO
13 FAMILY ESTATES is authorized to do business within the State of California and is doing
14 business in the State of California and/or that Defendants DOES 51 to 100 are, and at all times
15 relevant hereto were, officers, directors, or shareholders of Defendant TRINCHERO FAMILY
16 ESTATES who were acting on behalf of Defendant TRINCHERO FAMILY ESTATES in the
17 establishment of, or ratification, of, the aforementioned illegal payroll practices or policies. At all
18 times mentioned herein, Defendant TRINCHERO FAMILY ESTATES employed numerous hourly
19 paid employees in Sacramento County.

20 7. Plaintiff is informed and believes and thereon alleges that Defendants DOES 1
21 through 25 and 51 through 75 are corporations, or are other business entities or organizations of a
22 nature unknown to Plaintiff.

23 8. Plaintiff is informed and believes and thereon alleges that Defendants DOES 26
24 through 50 and 76 through 100 are individuals unknown to Plaintiff. Each of the individual
25 defendants is sued individually and in his or her capacity as an agent, shareholder, owner,
26 representative, manager, supervisor, independent contractor and/or employee of each Defendant and
27 had operational control for Defendants.

28 ///

1 9. Plaintiff is unaware of the true names of Defendants DOES 1 to 100 and therefore
2 sues said Defendants by said fictitious names, and will amend this complaint when the true names
3 and capacities are ascertained or when such facts pertaining to liability are ascertained, or as
4 permitted by law or by the Court. Plaintiff is informed and believes that each of the fictitiously
5 named defendants is in some manner responsible for the events and allegations set forth in this
6 complaint.

7 10. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each
8 Defendant was an employer, was the principal, agent, partner, joint venturer, officer, director,
9 controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or
10 predecessor in interest of some or all of the other Defendants, and was engaged with some or all of
11 the other defendants in a joint enterprise for profit, and bore such other relationships to some or all
12 of the other defendants so as to be liable for their conduct with respect to the matters alleged in this
13 complaint. Plaintiff is further informed and believes and thereon alleges that each defendant acted
14 pursuant to and within the scope of the relationships alleged above, and that at all relevant times,
15 each defendant knew or should have known about, authorized, ratified, adopted, approved,
16 controlled, aided and abetted the conduct of all other defendants. As used in this complaint,
17 “Defendant” means “Defendants and each of them,” and refers to the Defendants named in the
18 particular cause of action in which the word appears and includes Defendants SUTTER HOME
19 WINERY, INC., TRINCHERO FAMILY ESTATES, and DOES 1 to 100.

20 11. At all times mentioned herein, each Defendant was the co-conspirator, agent,
21 servant, employee, and/or joint venturer of each of the other defendants and was acting within the
22 course and scope of said conspiracy, agency, employment, and/or joint venture and with the
23 permission and consent of each of the other Defendants.

24 12. Plaintiff is informed and believes and thereon alleges that there exists such a unity of
25 interest and ownership between Defendants SUTTER HOME WINERY, INC., TRINCHERO
26 FAMILY ESTATES, and DOES 1 to 100, that the individuality and separateness of Defendants
27 have ceased to exist. The business affairs of Defendants are, and at all times relevant hereto were,
28 so mixed and intermingled that the same cannot reasonably be segregated, and the same are in

1 inextricable confusion. Defendants SUTTER HOME WINERY, INC., and TRINCHERO FAMILY
2 ESTATES are and at all times relevant hereto were, used by Defendants DOES 1 to 100, as a mere
3 shell and conduit for the conduct of Defendants DOES 1 to 100's affairs and was undercapitalized
4 during such use. The recognition of the separate existence of Defendants would not promote justice,
5 in that it would permit Defendants to insulate themselves from liability to Plaintiff. Accordingly,
6 Defendants constitute the alter ego of each other and the fiction of their separate existence must be
7 disregarded.

8 13. Plaintiff makes the allegations in this complaint without any admission that, as to
9 any particular allegation, Plaintiff bears the burden of pleading, proving, or persuading and Plaintiff
10 reserves all of Plaintiff's rights to plead in the alternative.

11 **DESCRIPTION OF ILLEGAL PAY PRACTICES**

12 14. Pursuant to the applicable Industrial Welfare Commission Wage Order ("Wage
13 Order"), codified at California Code of Regulations title 8, Section 11040, Defendants and business
14 entities sued as DOES 1-100 were employers of Plaintiff within the meaning of the applicable Wage
15 Order and applicable California Labor Code Sections. Therefore, Defendants are jointly and
16 severally liable for the wrongs complained of herein in violation of the Wage Order and the
17 California Labor Code.

18 15. **Failure to pay wages for all hours worked at the legal minimum wage:**
19 Defendants employed many of their employees, including Plaintiff, as non-exempt, hourly
20 employees. In California, an employer is required to pay hourly employees for all "hours worked,"
21 which includes all time that an employee is under control of the employer and all time the employee
22 is suffered and permitted to work. This includes the time an employee spends, either directly or
23 indirectly, performing services that inure to the benefit of the employer.

24 16. In this case, Defendants maintained policies, practices, and/or procedures whereby
25 they (i) "rounded" down or "shaved" daily hours worked at the time of their clock-in and clock-out
26 to the nearest hour, (ii) auto-deducted 30 minutes for meal breaks, and (iii) had supervisors
27 completing time entry (i.e., clocking-in and clocking-out) resulting in time worked off-the-clock, all
28 of which reduced the daily hours worked by Plaintiff and other California-based non-exempt

1 employees. Plaintiff and others similarly situated were not paid for this time. This resulted in time
2 during each workday which Plaintiff and similarly situated employees were under control of
3 Defendants but were not compensated.

4 17. California Labor Code Sections 1194, 1194.2, and 1197 require an employer to
5 compensate employees for all “hours worked” at least at a minimum wage rate of pay as established
6 by the IWC and the Wage Orders.

7 18. The foregoing resulted in non-exempt, hourly employees working time for which
8 they were not compensated any wages, in violation of California Labor Code Sections 1194,
9 1194.2, and 1197; and the IWC Wage Orders.

10 19. **Failure to pay wages for all hours worked at employees’ overtime rate of pay:**
11 Defendants employed many of their employees, including Plaintiff, as non-exempt, hourly
12 employees. In California, an employer is required to pay hourly employees for all “hours worked,”
13 which includes all time that an employee is under control of the employer and all time the employee
14 is suffered and permitted to work. This includes the time an employee spends, either directly or
15 indirectly, performing services that inure to the benefit of the employer.

16 20. California Labor Code Sections 510 and 1194 require an employer to compensate
17 employees a higher rate of pay for hours worked in excess of 8 hours in a workday, 40 hours in a
18 workweek, and on any seventh consecutive day of work in a workweek.

19 Any work in excess of eight hours in one workday and any work in
20 excess of 40 hours in any one workweek and the first eight hours
21 worked on the seventh day of work in any one workweek shall be
22 compensated at the rate of no less than one and one-half times the
23 regular rate of pay for an employee. Any work in excess of 12 hours
24 in one day shall be compensated at the rate of no less than twice the
25 regular rate of pay for an employee. In addition, any work in excess of
26 eight hours on any seventh day of a workweek shall be compensated
27 at the rate of no less than twice the regular rate of pay of an employee.
28 (Lab. Code §510.)

21. In this case, Defendants maintained policies, practices, and/or procedures whereby
they (i) “rounded” down or “shaved” daily hours worked at the time of their clock-in and clock-out
to the nearest hour, (ii) auto-deducted 30 minutes for meal breaks, and (iii) had supervisors
completing time entry (i.e., clocking-in and clocking-out) resulting in time worked off-the-clock, all

1 of which reduced the daily hours worked by Plaintiff and other California-based non-exempt
2 employees. Plaintiff and others similarly situated were not paid for this time. This resulted in time
3 during each workday which Plaintiff and similarly situated employees were under control of
4 Defendants but were not compensated. To the extent the employees had already worked 8 hours in
5 a workday and/or 40 hours in a workweek and/or on the seventh consecutive day, the foregoing
6 resulted in non-exempt, hourly employees working time that should have been paid at the legal
7 overtime rate, but were not paid any wages in violation of Labor Code Sections 510 and 1194, and
8 the IWC Wage Orders.

9 22. Furthermore, Defendants maintained policies, practices, and/or procedures whereby
10 they only paid Plaintiff and other California-based non-exempt employees one and one-half times
11 their regular rates of pay for work in excess of 10 hours in one day, in violation of Labor Code §
12 510 and Industrial Welfare Commission Order Nos. 8-2001 and 13-2001.

13 23. **Failure to pay overtime at the proper overtime rate by failing to include all**
14 **remuneration in calculating the regular rate of pay for purposes of paying overtime:** Under
15 California law in determining the regular rate of pay for purposes of calculating the proper overtime
16 premium pay the employer must consider not only straight hourly wage compensation but must also
17 include payment of all remuneration earned during the applicable time period.

18 24. At times, Plaintiff and similarly situated hourly non-exempt employees received
19 additional remuneration, including employees' bonuses, during pay periods in which they had
20 worked over eight hours in a day, over forty hours in a week, or on a seventh consecutive day of
21 work in a workweek. Defendants failed to account for the additional remuneration when calculating
22 employees' overtime rate of pay. This policy and practice resulted in Defendants paying their
23 hourly non-exempt employees less overtime than they should have received.

24 25. Defendants' policies and procedures were applied to all hourly non-exempt
25 employees in California and resulted in hourly non-exempt employees not receiving all overtime
26 wages due to them in violation of Labor Code Sections 510, 1194, and the Wage Orders.

27 26. **Failure to provide non-exempt employees with legally compliant meal periods**
28 **and/or pay non-exempt employees wages to compensate them for workdays Defendants failed**

1 **to provide legally compliant meal periods:** Defendants often employ non-exempt employees,
2 including the named Plaintiff and all others similarly-situated, for shifts of 10 hours or more in
3 length. California law requires an employer to provide an employee an uninterrupted meal period of
4 no less than 30-minutes before the end of a 5-hour work period. Lab. Code § 512. An employer
5 may not employ an employee for a work period of more than 10 hours per day without providing
6 the employee with a second meal period of not less than 30 minutes before the end of the tenth hour
7 of work. *Id.* If an employer fails to provide an employee a meal period in accordance with the law,
8 the employer must pay the employee one hour of pay at the employee's regular rate of
9 compensation for each work day that a legally required meal period was not provided or was not
10 duty free. *Id.*

11 27. Plaintiff and similarly situated employees would work on workdays in shifts of 10
12 hours or more entitling them to two meal periods under California law. Defendants maintained a
13 policy, practice, and/or procedure, however, that failed to provide for a (i) a first meal period when
14 non-exempt, hourly employees worked more than 6 hours in a day; (ii) a first meal period before the
15 end of a 5-hour work period; and/or (iii) a second meal period when non-exempt, hourly employees
16 worked between 5 and 10 or more hours in a day, throughout the class period. Defendants also
17 failed to provide the employees with premium wages for these missed first meal periods, late first
18 meal periods, and/or missed second meal periods. Defendants' failure to provide the employees
19 with legally compliant meal periods was in violation of Labor Code Section 226.7 and the IWC
20 Wage Orders. Accordingly, Defendants owe each hourly employee wages for these non-compliant
21 meal periods.

22 28. **Failure to provide non-exempt employees with legally compliant rest breaks**
23 **and/or pay non-exempt employees wages to compensate them for workdays Defendants failed**
24 **to provide legally compliant rest breaks:** Defendants often employ non-exempt employees,
25 including the named Plaintiff and all others similarly-situated, for shifts longer than 3.5 hours in in
26 length. California law states that "[e]very employer shall authorize and permit all employees to take
27 rest breaks, which insofar as practicable shall be in the middle of each work period. The authorized
28 rest break time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest

1 time per four (4) hours or major fraction thereof. ... If an employer fails to provide an employee a
2 rest break in accordance with the applicable provisions of this order, the employer shall pay the
3 employee one (1) hour of pay at the employee's regular rate of compensation for each workday that
4 the rest break is not provided." Wage Order 4, subd. 12; see Lab. Code § 226.7. Under California
5 law, "[e]mployees are entitled to 10 minutes' rest for shifts from three and one-half to six hours in
6 length, 20 minutes for shifts of more than six hours up to 10 hours, 30 minutes for shifts of more
7 than 10 hours up to 14 hours, and so on." *Brinker Restaurant Corp. v. Sup. Ct. (Hohnbaum)* (2012)
8 53 Cal.4th 1004, 1029; Lab. Code §226.7; Wage Order 5, subd. 12. Rest breaks must be in the
9 middle of each work period. Wage Order 5, subd. 12.

10 29. During the four years prior to the filing of the initial complaint, Plaintiff and
11 similarly situated employees would work on workdays in shifts of more than 10 hours which is long
12 enough to entitle them to three rest breaks under California law. Despite that California law requires
13 employers to provide employees with timely rest breaks, Defendants employed a policy and
14 procedure which failed to provide Plaintiff and class members with first, second, and/or third rest
15 breaks. Defendants also failed to pay employees one hour of pay at their regular rate of pay for
16 each workday Plaintiff and employees did not receive all legally compliant rest breaks. Defendants'
17 failure to provide the employees with rest breaks was in violation of Labor Code Section 226.7 and
18 the IWC Wage Orders. Defendants owe each of their hourly employees for these unpaid rest break
19 wages.

20 30. **Failure to Pay California Employees All Wages Due at Time of**
21 **Termination/Resignation:** An employer is required to pay all unpaid wages timely after an
22 employee's employment ends. The wages are due immediately upon termination (Lab. Code § 201)
23 or within 72 hours of resignation (Lab. Code § 202). Upon information and belief, Plaintiff's
24 employment with Defendants was terminated on or around June 2, 2016. Defendants, however,
25 failed to pay Plaintiff and other non-exempt, hourly employees with all wages, including all hours
26 worked at the minimum wage and/or applicable overtime rate of pay and premium pay for any and
27 all meal period and/or rest break violations, as outlined above, during their employment and never
28 paid these amounts after Plaintiff and other non-exempt, hourly employees separated employment

1 with Defendants. As a result, Defendants failed to provide all separated employees whose
2 employment ended within three years prior to the filing of the initial complaint all earned and
3 unpaid wages.

4 **CLASS DEFINITIONS AND CLASS ALLEGATIONS**

5 31. This action has been brought and may properly be maintained as a class action
6 pursuant to California Code of Civil Procedure Section 382 and other applicable law, because there
7 is a well-defined community of interest in the litigation and the proposed classes are ascertainable.

8 32. Plaintiff brings this action on behalf of himself, on behalf of all others similarly
9 situated, and on behalf of the General Public, and as a member of a Class defined as follows:

10 A. **Minimum Wage Class:** All current and former hourly non-exempt
11 employees employed by Defendants in California at any time within the four years prior to the
12 filing of the initial complaint in this action and through the date notice is mailed to a certified class
13 who were not paid at least at minimum wage for all time they were subject to Defendants' control.

14 B. **Overtime Class:** All current and former hourly non-exempt employees
15 employed by Defendants in California at any time within the four years prior to the filing of the
16 initial complaint in this action and through the date notice is mailed to a certified class who worked
17 more than eight hours in a workday and/or 40 hours in a workweek and/or on a seventh consecutive
18 day of work to whom Defendants did not pay earned overtime wages.

19 C. **Regular Rate Class:** All current and former hourly non-exempt employees
20 employed by Defendants in California at any time within the four years prior to the filing of the
21 initial complaint in this action and through the date notice is mailed to a certified class who earned
22 additional remuneration during pay periods the employees worked in excess of 8 hours in a
23 workday, 40 hours in a workweek, and/or on a seventh consecutive day of work in a workweek.

24 D. **Meal Period Class:** All current and former non-exempt, hourly employees
25 employed by Defendants in California at any time within the four years prior to the filing of the
26 initial complaint in this action and through the date notice is mailed to a certified class who worked
27 at least 5 hours in a workday and did not receive wages to compensate them for missed first meal
28 periods, late first meal periods, and/or missed second meal periods.

1 E. **Rest Break Class:** All current and former non-exempt, hourly employees
2 employed by Defendants in California at any time within the four years prior to the filing of the
3 initial complaint in this action and through the date notice is mailed to a certified class who worked
4 more than three and one-half (3.5) hours in a day yet Defendants did not provide required rest
5 breaks of ten net minutes rest time for every four hours worked between three and one-half (3.5)
6 and six hours, six and ten hours, ten and fourteen hours.

7 F. **Waiting Time Class:** All current and former non-exempt, hourly employees
8 employed by Defendants in California at any time within three years prior to the filing of the initial
9 complaint in this action and through the date notice is mailed to a certified class whose employment
10 ended and they did not receive payment of all unpaid wages within the statutory time period after
11 separation of employment.

12 G. **California Class:** All aforementioned classes are here collectively referred to
13 as the “California Class.”

14 33. All Classes are here collectively referred to as “California Class”.

15 34. There is a well-defined community of interest in the litigation and the classes are
16 ascertainable:

17 A. **Numerosity:** The Plaintiff classes are so numerous that the individual joinder
18 of all members is impractical under the circumstances of this case. While the exact number of class
19 members in each class is unknown to Plaintiff at this time, Plaintiff is informed and believes and
20 thereon allege that, in California, each class has over 100 members.

21 B. **Common Questions Predominate:** Common questions of law and fact exist
22 as to all members of the Plaintiff classes and predominates over any questions that affect only
23 individual members of each class. The common questions of law and fact include, but are not
24 limited to:

25 (i) Whether Defendants violated California Labor Code Sections 1194,
26 1194.2 and/or 1197 by not paying employees’ wages at a minimum wage rate for all time that the
27 Minimum Wage Class Members were subject to Defendants’ control but were not paid;

28 (ii) Whether Defendants violated California Labor Code Sections 510

and/or 1194 by not paying employees' wages at an overtime wage rate for all overtime hours that the Overtime Class Members were subject to Defendants' control but were not paid;

(iii) Whether Defendants violated Labor Code Sections 510 and 1194 by failing to include all remuneration when calculating the overtime rate of pay for the members of the Regular Rate Class;

(iv) Whether Defendants unlawfully failed to provide the Meal Period Class with proper meal periods or an hour wage for every day such periods were not provided;

(v) Whether Defendants unlawfully failed to provide the Rest Break Class with proper rest breaks or an hour wage for every day such breaks were not provided;

(vi) Whether Defendants failed to provide the Waiting Time Class with all unpaid wages within the statutory time period following separation of employment;

(vii) Whether Defendants violated Business & Professions Code Section 17200, *et seq.* by their wage and hour practices, furnishing of correct itemized wage statement practices, indemnification practices, as well as, payment at the time of separation practices;

(viii) Whether Class Members are entitled to unpaid wages, penalties, interest, fees and other relief in conjunction with their claims; and

(ix) Whether, as a consequence of Defendants' unlawful conduct, the Class Members are entitled to restitution, and/or equitable relief; and

(x) Plaintiff anticipates that Defendants' affirmative defenses will raise additional common issues of fact and law.

C. **Typicality:** Plaintiff's claims are typical of the claims of the class members in each of the classes. Plaintiff and the members of the Minimum Wage Class sustained damages arising out of Defendants' failure to pay wages at least at minimum wage for all time the employees were subject to Defendants' control. Plaintiff and the members of the Overtime Class sustained damages arising out of Defendants' failure to pay wages at the overtime wage for all overtime hours the employees were subject to Defendants' control. Plaintiff and the members of the Regular Rate Class sustained damages out of Defendants' failure to account for additional remuneration when paying overtime for pay periods employees worked in excess of 8 hours in a workday, 40 hours in a

workweek, and/or on a seventh consecutive day of work in a workweek. Plaintiff and the members of the Meal Period Classes sustained damages arising out of Defendants' failure to provide legally compliant meal periods and/or meal period premium wages. Plaintiff and the members of the Rest Break Class sustained damages arising out of Defendants' failure to provide legally compliant rest breaks and/or rest break premium wages. Plaintiff and the members of the Waiting Time and Class sustained damages arising out of Defendants' failure to provide all wages due upon the end of their employment.

D. **Adequacy of Representation:** Plaintiff will fairly and adequately protect the interests of the members of each class. Plaintiff has no interest that is adverse to the interests of the other class members. Plaintiff has retained counsel competent and experienced in complex class action litigation and Plaintiff intends to prosecute this action vigorously. The interests of the members of the Classes will be fairly and adequately protected by Plaintiff and his counsel.

E. **Superiority:** A class action is superior to other available means for the fair and efficient adjudication of this controversy. Because individual joinder of all members of each class is impractical, class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions would engender. The expenses and burdens of individual litigation would make it difficult or impossible for individual members of each class to redress the wrongs done to them, while important public interests will be served by addressing the matter as a class action. The cost to and burden on the court system of adjudication of individualized litigation would be substantial, and substantially more than the costs and burdens of a class action. Individualized litigation would also present the potential for inconsistent or contradictory judgments.

F. **Public Policy Consideration:** Employers throughout the state violate wage and hour laws. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing actions because they perceive their former employers can blacklist them in their future endeavors through negative references and by other means. Class actions provide the class members who are not named in the Complaint with a

1 type of anonymity that allows for vindication of their rights.

2 **FIRST CAUSE OF ACTION**

3 **FAILURE TO PAY WAGES FOR ALL HOURS OF WORK AT THE LEGAL MINIMUM**
4 **WAGE RATE IN VIOLATION OF LABOR CODE SECTIONS 1194, 1194.2, & 1197 AND**
5 **THE WAGE ORDERS**

6 **(On Behalf of the Minimum Wage Class against All Defendants and Does 1-100)**

7 35. Plaintiff hereby incorporates by reference paragraphs 1-34 above, as if fully set
8 herein by reference.

9 36. At all times relevant to this Complaint, Plaintiff and members of the Minimum Wage
10 Class were hourly employees of Defendants.

11 37. Pursuant to Labor Code Sections 1194, 1194.2, and 1197, and the IWC Wage
12 Orders, Plaintiff and members of the Minimum Wage Class are entitled to receive wages for all
13 hours worked, i.e., all time subject to Defendants' control, and those wages must be paid at least at
14 the minimum wage rate in effect during the time the employees earned the wages.

15 38. In this case, Defendants maintained policies, practices, and/or procedures whereby
16 they (i) "rounded" down or "shaved" daily hours worked at the time of their clock-in and clock-out
17 to the nearest hour, (ii) auto-deducted 30 minutes for meal breaks, and (iii) had supervisors
18 completing time entry (i.e., clocking-in and clocking-out) resulting in time worked off-the-clock, all
19 of which reduced the daily hours worked by Plaintiff and members of the Minimum Wage Class.
20 Plaintiff and members of the Minimum Wage Class were not paid for this time. This resulted in
21 time during each workday which Plaintiff and members of the Minimum Wage Class were under
22 control of Defendants but were not compensated.

23 39. As a result of Defendants' unlawful conduct, Plaintiff and members of the Minimum
24 Wage Class have suffered damages in an amount subject to proof, to the extent that they were not
25 paid wages at a minimum wage rate for all hours worked.

26 40. Pursuant to California Labor Code Sections 1194, 1194.2, and 1197, Plaintiff and
27 members of the Minimum Wage Class are entitled to recover unpaid minimum wage, interest
28 thereon, liquidated damages in the amount of their unpaid minimum wage, and attorneys' fees and

costs.

SECOND CAUSE OF ACTION

**FAILURE TO PAY WAGES FOR ALL TIME WORKED AT OVERTIME RATE IN
VIOLATION OF LABOR CODE SECTIONS 510 & 1194 AND THE WAGE ORDERS
(On Behalf of the Overtime Class against All Defendants and Does 1-100)**

41. Plaintiff hereby incorporates by reference paragraphs 1-40 above, as if fully set herein by reference.

42. At times relevant to this Complaint, Plaintiff and members of the Overtime Class were non-exempt employees of Defendants covered by California Labor Code Sections 510 and 1194 and the Wage Order.

43. Pursuant to California Labor Code Sections 510 and 1194 and the Wage Order, non-exempt employees are entitled to receive a higher rate of pay for all hours worked in excess of 8 hours in a workday and/or 40 hours in a workweek.

44. California Labor Code Section 510, subdivision (a), states in relevant part:

Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee. Nothing in this Section requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work.

45. Further, California Labor Code Section 1198 provides,

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

46. In this case, Defendants maintained policies, practices, and/or procedures whereby they (i) “rounded” down or “shaved” daily hours worked at the time of their clock-in and clock-out to the nearest hour, (ii) auto-deducted 30 minutes for meal breaks, and (iii) had supervisors completing time entry (i.e., clocking-in and clocking-out) resulting in time worked off-the-clock, all of which reduced the daily hours worked by Plaintiff and members of the Overtime Class. Plaintiff and members of the Overtime Class were not paid for this time. This resulted in time during each workday which Plaintiff and members of the Overtime Class were under control of Defendants but were not compensated. To the extent Plaintiff and members of the Overtime Class had already worked 8 hours in a workday and/or 40 hours in a workweek and/or on the seventh consecutive day, the foregoing resulted in non-exempt, hourly employees working time that should have been paid at the legal overtime rate, but were not paid any wages in violation of Labor Code Sections 510 and 1194, and the IWC Wage Orders.

47. Furthermore, Defendants maintained policies, practices, and/or procedures whereby they only paid Plaintiff and members of the Overtime Class one and one-half times their regular rates of pay for work in excess of 10 hours in one day, in violation of Labor Code § 510 and Industrial Welfare Commission Order Nos. 8-2001 and 13-2001.

48. As a result of Defendants' unlawful conduct, Plaintiff and members of Overtime Class have suffered damages in an amount subject to proof, to the extent that they were not paid wages at an overtime rate of pay for all hours worked which constitute overtime.

49. Pursuant to California Labor Code Sections 510 and 1194, Plaintiff and Overtime Class members are entitled to recover the full amount of their unpaid overtime wages, interest thereon, and attorneys' fees and costs.

THIRD CAUSE OF ACTION

**FAILURE TO INCLUDE ALL REMUNERATION WHEN CALCULATING THE
OVERTIME RATE IN VIOLATION OF LABOR CODE SECTIONS 510 & 1194 AND THE
WAGE ORDERS**

(On Behalf of the Regular Rate Class against All Defendants and Does 1-100)

50. Plaintiff hereby incorporates by reference paragraphs 1-49 above, as if fully set

1 herein.

2 51. At times relevant to this Complaint, Plaintiff and members of the Regular Rate Class
3 were hourly non-exempt employees of Defendants covered by Labor Code Sections 510, 1194 and
4 the Wage Orders.

5 52. Labor Code Sections 510, 1194 and the Wage Orders, non-exempt employees are
6 entitled to receive a higher rate of pay for all hours worked in excess of 8 hours in a workday; 40
7 hours in a workweek; or on any seventh consecutive day of work in a workweek.

8 53. Labor Code Section 510, subdivision (a), states in relevant part:

9 Eight hours of labor constitutes a day's work. Any work in excess of
10 eight hours in one workday and any work in excess of 40 hours in any
11 one workweek and the first eight hours worked on the seventh day of
12 work in any one workweek shall be compensated at the rate of no less
13 than one and one-half times the regular rate of pay for an employee.
14 Any work in excess of 12 hours in one day shall be compensated at
15 the rate of no less than twice the regular rate of pay for an employee.
16 In addition, any work in excess of eight hours on any seventh day of a
17 workweek shall be compensated at the rate of no less than twice the
18 regular rate of pay of an employee. Nothing in this Section requires an
19 employer to combine more than one rate of overtime compensation in
20 order to calculate the amount to be paid to an employee for any hour
21 of overtime work.

22 54. At times, Plaintiff and members of the Regular Rate Class received additional
23 remuneration, including employees' bonuses, during pay periods in which they had worked over
24 eight hours in a day, over forty hours in a week, or on a seventh consecutive day of work in a
25 workweek. Defendants failed to account for the additional remuneration when calculating the
26 regular rate of pay for purposes of paying overtime. This resulted in Plaintiff and members of the
27 Regular Rate Class receiving less overtime than they were entitled to during time periods that they
28 earned additional remuneration and worked overtime.

55. As a result of Defendants' unlawful conduct, Plaintiff and members of the Regular
Rate Class have suffered damages in an amount subject to proof, to the extent that they were not
paid all overtime due when receiving additional remuneration.

56. Pursuant to California Labor Code Section 1194, Plaintiff and members of the

1 Regular Rate Class are entitled to recover the full amount of their unpaid overtime wages,
2 prejudgment interest and attorneys' fees and costs.

3 **FOURTH CAUSE OF ACTION**

4 **FAILURE TO PROVIDE MEAL PERIODS AND MEAL PERIOD PREMIUM WAGES IN**
5 **VIOLATION OF LABOR CODE SECTIONS 226.7 & 512 AND THE WAGE ORDERS**

6 **(On Behalf of the Meal Period Class against All Defendants and Does 1-100)**

7 57. Plaintiff hereby incorporates by reference paragraphs 1-56 above, as if fully set
8 herein.

9 58. At all relevant times, Plaintiff and members of the Meal Period Class were non-
10 exempt, hourly employees of Defendants covered by Labor Code Sections 226.7 & 512 and the
11 IWC Wage Orders.

12 59. Pursuant to Labor Code Sections 226.7 & 512 and the IWC Wage Orders, an
13 employer is required to provide an employee an uninterrupted meal period of no less than 30-
14 minutes before the end of a 5-hour work period. Lab. Code § 512. An employer may not employ
15 an employee for a work period of more than 10 hours per day without providing the employee with
16 a second meal period of not less than 30 minutes before the end of the tenth hour of work. *Id.* If an
17 employer fails to provide an employee a meal period in accordance with the law, the employer must
18 pay the employee one hour of pay at the employee's regular rate of compensation for each work day
19 that a legally required meal period was not provided or was not duty free. *Id.*

20 60. Plaintiff is informed and believes and thereon alleges that Plaintiff and members of
21 the Meal Period Class would work on workdays in shifts of 10 hours or more entitling them to two
22 meal periods under California law. Defendants maintained a policy, practice, and/or procedure,
23 however, that failed to provide for a (i) a first meal period when non-exempt, hourly employees
24 worked more than 6 hours in a day; (ii) a first meal period before the end of a 5-hour work period;
25 and/or (iii) a second meal period when non-exempt, hourly employees worked between 5 and 10 or
26 more hours in a day, throughout the class period. Defendants also failed to provide Plaintiff and
27 members of the Meal Period Class with premium wages for these for these missed first meal
28 periods, late first meal periods, and/or missed second meal periods.

61. Despite that California law requires employers to provide employees with timely and uninterrupted meal periods when they have worked a sufficient amount of hours, Defendants did not provide Plaintiff and members of the Meal Period Class with first meal periods, timely first meal periods, and/or second meal periods.

62. As a result of Defendants' unlawful conduct, Plaintiff and members of the Meal Period Class have suffered damages in an amount, subject to proof, to the extent they were not paid an hour wage for every second meal period which they did not properly receive.

63. Pursuant to Labor Code Sections 226.7 and 512, Plaintiff and members of the Meal Period Class are entitled to recover the full amount of unpaid meal period wages, interest thereon, and costs of suit.

FIFTH CAUSE OF ACTION

FAILURE TO PROVIDE REST BREAKS AND REST BREAK PREMIUM WAGES IN VIOLATION OF LABOR CODE SECTION 226.7 AND THE WAGE ORDERS

(On Behalf of the Rest Break Class against All Defendants and Does 1-100)

64. Plaintiff hereby incorporates by reference paragraphs 1-63 above, as if fully set herein.

65. At all relevant times, Plaintiff and members of the Rest Break Class were non-exempt, hourly employees of Defendants covered by Labor Code Section 226.7 and the IWC Wage Orders.

66. Pursuant to Labor Code Section 226.7 and the IWC Wage Orders, Plaintiff and members of the Rest Break Class were entitled to receive rest breaks of 10-net minutes for every four hours, or major fraction thereof, worked. If Plaintiff and members of Rest Break Class did not receive rest breaks for every four hours, or major fraction thereof, worked in a day, Defendants were required to pay them one hour of pay at the employee's regular rate of pay for each workday that the rest break is not provided.

67. Plaintiff and members of the Rest Break Class would work on workdays in shifts of more than 10 hours which is long enough to entitle them to three rest breaks under California law. Despite that California law requires employers to provide employees with timely rest breaks,

1 Defendants employed a policy and procedure which failed to provide Plaintiff and members of the
2 Rest Break Class with timely and legally compliant first, second, and/or third rest breaks.

3 68. Plaintiff is informed and believes and thereon alleges that at all relevant times within
4 the limitations period applicable to this cause of action, Defendants' policies and procedures were to
5 not provide employees with legally compliant rest breaks and to not pay employees one hour of pay
6 at the employees' regular rate of pay for each workday that a rest break was not provided.

7 69. As a result of Defendants' unlawful conduct, Plaintiff and members of the Rest
8 Break Class have suffered damages in an amount, subject to proof, to the extent they were not paid
9 an hour wage for every rest break which they did not properly receive.

10 70. Pursuant to Labor Code Section 226.7 and the IWC Wage Orders, Plaintiff and
11 members of the Rest Break Class are entitled to recover the full amount of unpaid rest break wages,
12 interest thereon, and costs of suit.

13 **SIXTH CAUSE OF ACTION**

14 **FAILURE TO TIMELY PAY FINAL WAGES IN VIOLATION OF LABOR CODE**

15 **SECTIONS 201 & 202**

16 **(On Behalf of the Waiting Class against All Defendants and Does 1-100)**

17 71. Plaintiff hereby incorporates by reference paragraphs 1-70 above, as if fully set
18 herein.

19 72. At all relevant times, Plaintiff and members of the Waiting Time Class were
20 employees of Defendants covered by Labor Code Sections 201 or 202.

21 73. Pursuant to Labor Code Sections 201 or 202, Plaintiff and members of the Waiting
22 Time Class were entitled upon separation of employment to timely payment of all wages earned and
23 unpaid prior to separation of employment. Discharged employees were entitled to payment of all
24 wages earned and unpaid prior to discharge immediately upon termination. Employees who
25 resigned were entitled to payment of all wages earned and unpaid prior to resignation within 72
26 hours after giving notice of resignation or, if they gave 72 hours previous notice, they were entitled
27 to payment of all wages earned and unpaid prior to resignation at the time of resignation.

28 74. Defendants failed to pay Plaintiff and members of the Waiting Time Class all wages

1 earned and unpaid prior to separation in accordance with Labor Code Sections 201 and/or 202.
2 Plaintiff is informed and believes and thereon alleges that at all relevant times within the limitations
3 period applicable to this cause of action, Defendants maintained a policy or practice of failing to
4 pay at least minimum wage for all time worked, failing to pay overtime wages of all overtime hours
5 worked, failing to pay premium wages for all non-compliant meal periods, and failing to pay
6 premium wages for all non-compliant rest breaks.

7 75. Defendants' failure to pay Plaintiff and members of the Waiting Time Class all
8 wages earned prior to separation timely in accordance with Labor Code Sections 201 and/or 202
9 was willful. Defendants had the ability to pay all wages earned by Plaintiff and members of the
10 Waiting Time Class prior to separation in accordance with Labor Code Sections 201 and/or 202, but
11 intentionally adopted policies or practices incompatible with the requirements of Labor Code
12 Sections 201 and/or 202. When Defendants failed to pay Plaintiff and members of the Waiting Time
13 Class timely upon separation all wages earned prior to separation, Defendants knew what they were
14 doing and intended to do what they did.

15 76. Pursuant to Labor Code Sections 201 or 202, Plaintiff and members of the Waiting
16 Time Class are entitled to all wages earned prior to separation of employment that Defendants did
17 not pay them.

18 77. Pursuant to Labor Code Section 203, Plaintiff and members of the Waiting Time
19 Class are entitled to continuation of their wages, from the day their earned and unpaid wages were
20 due upon separation of employment until paid, up to a maximum of 30 days.

21 78. As a result of Defendants' conduct, Plaintiff and members of the Waiting Time Class
22 have suffered damages in an amount, subject to proof, to the extent they were not paid for all wages
23 earned prior to separation of employment.

24 79. As a result of Defendants' conduct, Plaintiff and members of the Waiting Time Class
25 have suffered damages in an amount, subject to proof, to the extent they were not paid all
26 continuation wages owed under Labor Code Section 203.

27 80. Pursuant to Labor Code Sections 201, 202, and 203, Plaintiff and members of the
28 Waiting Time Class are entitled to recover the full amount of their unpaid wages, continuation

1 wages under Section 203, interest thereon, reasonable attorney's fees and costs of suit.

2 **SEVENTH CAUSE OF ACTION**

3 **UNFAIR COMPETITION IN VIOLATION OF BUSINESS & PROFESSIONS CODE**

4 **SECTION 17200, *et seq.***

5 **(On Behalf of the California Class against All Defendants and Does 1-100)**

6 81. Plaintiff hereby incorporates by reference paragraphs 1-80 above, as if fully set
7 herein by reference.

8 82. The unlawful conduct of Defendants alleged herein constitutes unfair competition
9 within the meaning of California Business and Professions Code Section 17200. This unfair conduct
10 includes Defendants' use of policies and procedures which resulted in their failure to compensate
11 Plaintiff and the California Class for all hours worked at the minimum wage and/or applicable
12 overtime rates of pay; to include all remuneration when calculating the applicable overtime rate of
13 pay; to provide legally compliant meal periods and/or pay meal period premium wages; and to
14 provide legally compliant rest breaks and/or pay rest break premium wages.

15 83. Due to their unfair and unlawful business practices in violation of the California
16 Labor Code, as outline above, Defendants have gained a competitive advantage over other
17 comparable companies doing business in the State of California that comply with their obligations
18 to compensate their non-exempt, hourly employees for all hours worked at the minimum wage
19 and/or at the applicable overtime rate of pay; to include all remuneration when calculating the
20 applicable overtime rate of pay; to provide legally compliant meal periods and/or pay meal period
21 premium wages; and to provide legally compliant rest breaks and/or pay rest break premiums.

22 84. As a result of Defendants' unfair competition as alleged herein, Plaintiff and
23 members of the Minimum Wage Class, Overtime Class, Regular Rate Class, Meal Period Class,
24 Rest Break Class, and/or Waiting Time Class have suffered injury in fact and lost money or
25 property, as described in more detail above.

26 85. Pursuant to California Business and Professions Code Section 17203, Plaintiff and
27 members of the Minimum Wage Class, Overtime Class, Regular Rate Class, Meal Period Class,
28 Rest Break Class, and/or Waiting Time Class are entitled to restitution of all wages and other

monies rightfully belonging to them that Defendants failed to pay and wrongfully retained by means of their unlawful and unfair business practices.

86. Plaintiff also seeks an injunction against Defendants on behalf of the California Class enjoining them, and any and all persons acting in concert with them, from engaging in each of the unlawful practices, policies and patterns set forth herein.

87. Plaintiff also seeks attorneys' fees and costs of suit, including but not limited to that recoverable under California Code of Civil Procedure Section 1021.5.

EIGHTH CAUSE OF ACTION

CIVIL PENALTIES AND WAGES PURSUANT TO THE PRIVATE ATTORNEYS

GENERAL ACT OF 2004, LABOR CODE SECTION 2698, et seq.

(On Behalf of the California Class against All Defendants and Does 1-100)

88. Plaintiff hereby incorporates by reference paragraphs 1-87 above, as if fully set herein by reference.

89. During the period beginning one-year period preceding the sending of the initial notice to the LWDA to the present, Defendants violated Labor Code sections 201, 202, 203, 226.7, 510, 512, 1194, 1197, and 1198, as alleged in more detail above.

90. Specifically, Defendants have committed the following violations of California Labor Code:

91. **Failure to pay wages for all hours worked at the legal minimum wage:** Defendants employed many of their employees, including Plaintiff, as non-exempt, hourly employees. In California, an employer is required to pay hourly employees for all "hours worked," which includes all time that an employee is under control of the employer and all time the employee is suffered and permitted to work. This includes the time an employee spends, either directly or indirectly, performing services that inure to the benefit of the employer.

92. In this case, Defendants maintained policies, practices, and/or procedures whereby they (i) "rounded" down or "shaved" daily hours worked at the time of their clock-in and clock-out to the nearest hour, (ii) auto-deducted 30 minutes for meal breaks, and (iii) had supervisors completing time entry (i.e., clocking-in and clocking-out) resulting in time worked off-the-clock, all

1 of which reduced the daily hours worked by Plaintiff and other California-based non-exempt
2 employees. Plaintiff and others similarly situated were not paid for this time. This resulted in time
3 during each workday which Plaintiff and similarly situated employees were under control of
4 Defendants but were not compensated.

5 93. California Labor Code Sections 1194, 1194.2, and 1197 require an employer to
6 compensate employees for all “hours worked” at least at a minimum wage rate of pay as established
7 by the IWC and the Wage Orders.

8 94. The foregoing resulted in non-exempt, hourly employees working time for which
9 they were not compensated any wages, in violation of California Labor Code Sections 1194,
10 1194.2, and 1197; and the IWC Wage Orders.

11 95. **Failure to pay wages for all hours worked at employees’ overtime rate of pay:**
12 Defendants employed many of their employees, including Plaintiff, as non-exempt, hourly
13 employees. In California, an employer is required to pay hourly employees for all “hours worked,”
14 which includes all time that an employee is under control of the employer and all time the employee
15 is suffered and permitted to work. This includes the time an employee spends, either directly or
16 indirectly, performing services that inure to the benefit of the employer.

17 96. California Labor Code Sections 510 and 1194 require an employer to compensate
18 employees a higher rate of pay for hours worked in excess of 8 hours in a workday, 40 hours in a
19 workweek, and on any seventh consecutive day of work in a workweek.

20 Any work in excess of eight hours in one workday and any work in
21 excess of 40 hours in any one workweek and the first eight hours
22 worked on the seventh day of work in any one workweek shall be
23 compensated at the rate of no less than one and one-half times the
24 regular rate of pay for an employee. Any work in excess of 12 hours
25 in one day shall be compensated at the rate of no less than twice the
26 regular rate of pay for an employee. In addition, any work in excess of
27 eight hours on any seventh day of a workweek shall be compensated
28 at the rate of no less than twice the regular rate of pay of an employee.
(Lab. Code §510.)

26 97. In this case, Defendants maintained policies, practices, and/or procedures whereby
27 they (i) “rounded” down or “shaved” daily hours worked at the time of their clock-in and clock-out
28 to the nearest hour, (ii) auto-deducted 30 minutes for meal breaks, and (iii) had supervisors

1 completing time entry (i.e., clocking-in and clocking-out) resulting in time worked off-the-clock, all
2 of which reduced the daily hours worked by Plaintiff and other California-based non-exempt
3 employees. Plaintiff and others similarly situated were not paid for this time. This resulted in time
4 during each workday which Plaintiff and similarly situated employees were under control of
5 Defendants but were not compensated. To the extent the employees had already worked 8 hours in
6 a workday and/or 40 hours in a workweek and/or on the seventh consecutive day, the foregoing
7 resulted in non-exempt, hourly employees working time that should have been paid at the legal
8 overtime rate, but were not paid any wages in violation of Labor Code Sections 510 and 1194, and
9 the IWC Wage Orders.

10 98. Furthermore, Defendants maintained policies, practices, and/or procedures whereby
11 they only paid Plaintiff and other California-based non-exempt employees one and one-half times
12 their regular rates of pay for work in excess of 10 hours in one day, in violation of Labor Code §
13 510 and Industrial Welfare Commission Order Nos. 8-2001 and 13-2001.

14 99. **Failure to pay overtime at the proper overtime rate by failing to include all**
15 **remuneration in calculating the regular rate of pay for purposes of paying overtime:** Under
16 California law in determining the regular rate of pay for purposes of calculating the proper overtime
17 premium pay the employer must consider not only straight hourly wage compensation but must also
18 include payment of all remuneration earned during the applicable time period.

19 100. At times, Plaintiff and similarly situated hourly non-exempt employees received
20 additional remuneration, including employees' bonuses, during pay periods in which they had
21 worked over eight hours in a day, over forty hours in a week, or on a seventh consecutive day of
22 work in a workweek. Defendants failed to account for the additional remuneration when calculating
23 employees' overtime rate of pay. This policy and practice resulted in Defendants paying their
24 hourly non-exempt employees less overtime than they should have received.

25 101. Defendants' policies and procedures were applied to all hourly non-exempt
26 employees in California and resulted in hourly non-exempt employees not receiving all overtime
27 wages due to them in violation of Labor Code Sections 510, 1194, and the Wage Orders.

28 ///

1 102. **Failure to provide non-exempt employees with legally compliant meal periods**
2 **and/or pay non-exempt employees wages to compensate them for workdays Defendants failed**
3 **to provide legally compliant meal periods:** Defendants often employ non-exempt employees,
4 including the named Plaintiff and all others similarly-situated, for shifts of 10 hours or more in
5 length. California law requires an employer to provide an employee an uninterrupted meal period of
6 no less than 30-minutes before the end of a 5-hour work period. Lab. Code § 512. An employer
7 may not employ an employee for a work period of more than 10 hours per day without providing
8 the employee with a second meal period of not less than 30 minutes before the end of the tenth hour
9 of work. *Id.* If an employer fails to provide an employee a meal period in accordance with the law,
10 the employer must pay the employee one hour of pay at the employee’s regular rate of
11 compensation for each work day that a legally required meal period was not provided or was not
12 duty free. *Id.*

13 103. Plaintiff and similarly situated employees would work on workdays in shifts of 10
14 hours or more entitling them to two meal periods under California law. Defendants maintained a
15 policy, practice, and/or procedure, however, that failed to provide for a (i) a first meal period when
16 non-exempt, hourly employees worked more than 6 hours in a day; (ii) a first meal period before the
17 end of a 5-hour work period; and/or (iii) a second meal period when non-exempt, hourly employees
18 worked between 5 and 10 or more hours in a day, throughout the class period. Defendants also
19 failed to provide the employees with premium wages for these missed first meal periods, late first
20 meal periods, and/or missed second meal periods. Defendants’ failure to provide the employees
21 with legally compliant meal periods was in violation of Labor Code Section 226.7 and the IWC
22 Wage Orders. Accordingly, Defendants owe each hourly employee wages for these non-compliant
23 meal periods.

24 104. **Failure to provide non-exempt employees with legally compliant rest breaks**
25 **and/or pay non-exempt employees wages to compensate them for workdays Defendants failed**
26 **to provide legally compliant rest breaks:** Defendants often employ non-exempt employees,
27 including the named Plaintiff and all others similarly-situated, for shifts longer than 3.5 hours in in
28 length. California law states that “[e]very employer shall authorize and permit all employees to take

1 rest breaks, which insofar as practicable shall be in the middle of each work period. The authorized
2 rest break time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest
3 time per four (4) hours or major fraction thereof. ... If an employer fails to provide an employee a
4 rest break in accordance with the applicable provisions of this order, the employer shall pay the
5 employee one (1) hour of pay at the employee's regular rate of compensation for each workday that
6 the rest break is not provided." Wage Order 4, subd. 12; see Lab. Code § 226.7. Under California
7 law, "[e]mployees are entitled to 10 minutes' rest for shifts from three and one-half to six hours in
8 length, 20 minutes for shifts of more than six hours up to 10 hours, 30 minutes for shifts of more
9 than 10 hours up to 14 hours, and so on." *Brinker Restaurant Corp. v. Sup. Ct. (Hohnbaum)* (2012)
10 53 Cal.4th 1004, 1029; Lab. Code §226.7; Wage Order 5, subd. 12. Rest breaks must be in the
11 middle of each work period. Wage Order 5, subd. 12.

12 105. From December 4, 2016 to the present, Plaintiff and similarly situated employees
13 would work on workdays in shifts of more than 10 hours which is long enough to entitle them to
14 three rest breaks under California law. Despite that California law requires employers to provide
15 employees with timely rest breaks, Defendants employed a policy and procedure which failed to
16 provide Plaintiff and class members with first, second, and/or third rest breaks. Defendants also
17 failed to pay employees one hour of pay at their regular rate of pay for each workday Plaintiff and
18 employees did not receive all legally compliant rest breaks. Defendants' failure to provide the
19 employees with rest breaks was in violation of Labor Code Section 226.7 and the IWC Wage
20 Orders. Defendants owe each of their hourly employees for these unpaid rest break wages.

21 106. **Failure to Pay California Employees All Wages Due at Time of**
22 **Termination/Resignation:** An employer is required to pay all unpaid wages timely after an
23 employee's employment ends. The wages are due immediately upon termination (Lab. Code § 201)
24 or within 72 hours of resignation (Lab. Code § 202). Upon information and belief, Plaintiff's
25 employment with Defendants was terminated on or around June 2, 2016. Defendants, however,
26 failed to pay Plaintiff and other non-exempt, hourly employees with all wages, including all hours
27 worked at the minimum wage and/or applicable overtime rate of pay and premium pay for any and
28 all meal period and/or rest break violations, as outlined above, during their employment and never

1 paid these amounts after Plaintiff and other non-exempt, hourly employees separated employment
2 with Defendants. As a result, Defendants failed to provide all separated employees whose
3 employment ended within three years prior to the filing of the initial complaint all earned and
4 unpaid wages.

5 107. Labor Code sections 2699, subdivisions (a) and (g) authorize an aggrieved employee,
6 on behalf of oneself and all other current or former employees, to bring a civil action to recover
7 civil penalties against all Defendants pursuant to the procedures specified in Labor Code section
8 2699.3.

9 108. Plaintiff has complied with the procedures for bringing suit specified in Labor Code
10 section 2699.3. On May 27, 2021, Plaintiff filed a PAGA Claim Notice with LWDA and gave
11 notice to Defendants by certified mail, providing notice of the specific provisions of the Labor Code
12 alleged to have been violated and including the facts and theories to support the violations alleged.

13 109. Pursuant to Labor Code section 2699.3, LWDA must give written notice by certified
14 mail to the parties that it intends to investigate the alleged violations of the Labor Code within sixty-
15 five (65) days of the date of the aggrieved employee or representative's written notice and/or the
16 employer may attempt to cure for certain violations. LWDA failed to provide the parties notice
17 within sixty-five (65) days of the date of Plaintiff's PAGA Claim Notice that it intended to
18 investigate Plaintiff's claims and/or Defendants failed to cure any of the alleged violations which
19 could have been cured.

20 110. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff seeks civil penalties for
21 Defendants' violations of Labor Code sections 201, 202, 203, 226.7, 510, 512, 1194, 1197, and
22 1198, for the one (1) year preceding the filing of the PAGA Claim Notice with LWDA, in the
23 following amounts:

24 111. For violations of Labor Code sections 201, 202, 203, 226.7, and 1198, one hundred
25 dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred
26 dollars (\$200) for each aggrieved employee per pay period for each subsequent violation [penalty
27 amounts established by Labor Code section 2699(f)(2)];

28 ///

112. For violations of California Labor Code section 510 and 512, fifty dollars (\$50) for each aggrieved employee per pay period for the initial violation and one hundred dollars (\$100) for each aggrieved employee per pay period for each subsequent violation [penalty amounts established by California Labor Code section 558]; and

113. For violations of Labor Code sections 1194 and 1197, one hundred dollars (\$100) for each underpaid employee for each pay period for the initial violation, and for each subsequent violation, two hundred fifty dollars (\$250) for each underpaid employee for each pay period [penalty amounts established by Labor Code section 1197.1].;

114. Pursuant to Labor Code section 2699(g), Plaintiff is entitled to an award of reasonable attorneys' fees and costs in connection with his claims for civil penalties.

PRAYER FOR RELIEF

ON ALL CAUSES OF ACTION:

1. That the Court determine that this action may be maintained as a class action (for the entire California Class and/or any and all of the specified sub-classes) pursuant to Code of Civil Procedure Section 382 and any other applicable law;

2. That the named Plaintiff be designated as class representative for the California Class (and all sub-classes thereof);

3. A declaratory judgment that the practices complained herein are unlawful;

4. An injunction against Defendants enjoining them, and any and all persons acting in concert with them, from engaging in each of the unlawful practices, policies and patterns set forth herein; and

5. For attorneys' fees and costs of suit, including but not limited to that recoverable under Code of Civil Procedure Section 1021.5.

ON THE FIRST CAUSE OF ACTION:

1. That Defendants be found to have violated the minimum wage provisions of the California Labor Code and the IWC Wage Order as to Plaintiff and the Minimum Wage Class;

2. For damages, according to proof, including but not necessarily limited to unpaid wages;

3. For any and all legally applicable penalties;
4. For liquidated damages pursuant to California Labor Code Section 1194.2;
5. For pre-judgment interest, including but not limited to that recoverable under California Labor Code Section 1194, and post-judgment interest;
6. For attorneys' fees and costs of suit, including but not limited to that recoverable under California Labor Code Section 1194;
7. For such and other further relief, in law and/or equity, as the Court deems just or appropriate.

ON THE SECOND CAUSE OF ACTION:

1. That Defendants be found to have violated the overtime provisions of the California Labor Code and the Wage Order as to Plaintiff and the Overtime Class;
2. For damages, according to proof, including but not necessarily limited to unpaid wages;
3. For any and all legally applicable penalties;
4. For pre-judgment interest, including but not limited to that recoverable under California Labor Code Section 1194, and post-judgment interest;
5. For attorneys' fees and costs of suit, including but not limited to that recoverable under California Labor Code Section 1194; and,
6. For such and other further relief, in law and/or equity, as the Court deems just or appropriate.

ON THE THIRD CAUSE OF ACTION:

1. That Defendants be found to have violated the overtime provisions of the Labor Code and the IWC Wages Orders as to the Plaintiff and the Regular Rate Class;
2. For damages, according to proof, including but not necessarily limited to unpaid wages;
3. For any and all legally applicable penalties;
4. For pre-judgment interest, including but not limited to that recoverable under California Labor Code section 1194, and post-judgment interest;

5. For attorneys' fees and costs of suit, including but not limited to that recoverable under California Labor Code section 1194; and,

6. For such and other further relief, in law and/or equity, as the Court deems just or appropriate.

ON THE FOURTH CAUSE OF ACTION:

1. That the Defendants be found to have violated the meal period provisions of the Labor Code and the IWC Wages Orders as to Plaintiff and the Meal Period Class;

2. For damages, according to proof, including unpaid wages;

3. For any and all legally applicable penalties;

4. For pre-judgment interest, including but not limited to that recoverable under Labor Code Section 218.6, and post-judgment interest; and

5. For such and other further relief, in law and/or equity, as the Court deems just or appropriate.

ON THE FIFTH CAUSE OF ACTION:

1. That the Defendants be found to have violated the rest break provisions of the Labor Code and the IWC Wages Orders as to Plaintiff and the Rest Break Class;

2. For damages, according to proof, including unpaid wages;

3. For any and all legally applicable penalties;

4. For pre-judgment interest, including but not limited to that recoverable under Labor Code Section 218.6, and post-judgment interest; and

5. For such and other further relief, in law and/or equity, as the Court deems just or appropriate.

ON THE SIXTH CAUSE OF ACTION:

1. That the Defendants be found to have violated the provisions of the Labor Code regarding payment of wages due upon resignation or termination as to Plaintiff and the Waiting Time Class;

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2. For damages and/or penalties, according to proof, including damages and/or statutory penalties under Labor Code Section 203 and any other legally applicable damages or penalties;

3. For pre-judgment interest, including under Labor Code Section 218.6, and post-judgment interest; and

4. For such and other further relief, in law and/or equity, as the Court deems just or appropriate.

ON THE SEVENTH CAUSE OF ACTION:

1. That the Defendants be found to have violated Business and Professions Code Section 17200 for the conduct alleged herein as to Plaintiff and all Classes;

2. A declaratory judgment that the practices complained herein are unlawful;

3. An injunction against Defendants enjoining them, and any and all persons acting in concert with them, from engaging in each of the unlawful practices, policies and patterns set forth herein;

4. For restitution to the full extent permitted by law; and

5. For such and other further relief, in law and/or equity, as the Court deems just or appropriate.

ON THE EIGHTH CAUSE OF ACTION:

1. That the Defendants be found to have violated the provisions of the Labor Code and the IWC Wages Orders as to the Plaintiff and current or former aggrieved employees;

2. For any and all legally applicable penalties, including but not limited to that recoverable under California Labor Code section 2699(f), 201, 202, 226.7, 510, 512, 1194, and 1197;

3. For attorneys' fees and costs of suit, including but not limited to that recoverable under California Labor Code section 2699(g); and

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1 4. For such and other further relief, in law and/or equity, as the Court deems just or
2 appropriate.

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4 Dated: September 22, 2021

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP
Law Offices of Sahag Majarian II

6
7 By: 
8 Joseph Lavi, Esq.
9 Vincent C. Granberry, Esq.
10 Melissa A. Huether, Esq.
11 Sahag Majarian II, Esq.

Attorneys for Plaintiff
EDUARDO RUIZ, on behalf of
himself and others similarly situated.

12
13 **DEMAND FOR JURY TRIAL**

14 Plaintiff EDUARDO RUIZ demands a trial by jury for himself and the California Class on
15 all claims so triable.

16 Dated: September 22, 2021

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP
Law Offices of Sahag Majarian II

18
19
20 By: 
21 Joseph Lavi, Esq.
22 Vincent C. Granberry, Esq.
23 Sahag Majarian II, Esq.
24 Melissa A. Huether, Esq.
25 Attorneys for Plaintiff
26 EDUARDO RUIZ, on behalf of
27 himself and others similarly situated
28

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am an employee in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 8889 W. Olympic Blvd., Suite 200, Beverly Hills, California 90211.

On September 22, 2021, I served the foregoing documents, described as:

1. PLAINTIFF EDUARDO RUIZ'S FIRST AMENDED COMPLAINT FOR DAMAGES AND EQUITABLE RELIEF

on all interested parties in this action by placing a true copy thereof in a sealed envelope, addressed as follows:

Attorney for Defendant(s) SUTTER HOME WINDERY, INC. dba TRINCHERO FAMILY STATES:

R. Brian Dixon, Esq.
Kurt R. Bockes, Esq.
LITTLER MENDELSON, P.C.
333 Bush Street, 34th FL
San Francisco, CA 94101

☒ **(BY MAIL)** As follows:

I placed such envelope, with postage thereon prepaid, in the United States mail at Los Angeles, California.

I am "readily familiar" with the firm's practice of collecting and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day, with postage thereon fully prepaid, at Los Angeles, California, in the ordinary course of business. I am aware that, on motion of the party served, service is presumed invalid if the postal cancellation or postage meter date is more than one day after the date of deposit for mailing in this affidavit.

☒ **(STATE)** I declare, under penalty of perjury under the laws of the State of California, that the above is true and correct.

Executed September 22, 2021, at Beverly Hills, California.


Fatima Marchan