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Superior Court of California
County of Los Angeles

AUG 13 2021

Sharrl R. Carter, Executive Officer/Clerk of Court
By: Kristina Vargas, Deputy

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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF LOS ANGELES**

12 **SPRING STREET COURT HOUSE**

13
14 **JOSUE AVALOS**, individually, and on behalf
15 of all others similarly situated,

16 Plaintiff,

17 v.

18 **KENWOOD FLOORS, INC.**, a California
19 corporation; and **DOES 1** through **50**,
20 inclusive,

21 Defendants.

CASE NO. **21STCV29962**

**CLASS AND REPRESENTATIVE
ACTION COMPLAINT**

1. Failure to Provide Required Meal Periods
2. Failure to Provide Required Rest Breaks
3. Failure to Pay Overtime Wages
4. Failure to Pay Minimum Wages
5. Failure to Pay Timely Wages
6. Failure to Pay All Wages Due to Discharged and Quitting Employees
7. Failure to Maintain Required Records
8. Failure to Furnish Accurate Itemized Statements
9. Failure to Indemnify for Necessary Expenditures
10. Unfair and Unlawful Business Practices

REPRESENTATIVE ACTION

11. Penalties Under the Labor Code Private Attorneys General Act

DEMAND FOR JURY TRIAL

INTRODUCTION

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2 1. This is a class action brought by Josue Avalos ("Plaintiff"), on behalf of himself
3 and all other similarly situated individuals, against his former employer Kenwood Floors, Inc.
4 (referred to as "KENWOOD" individual), in order to hold Defendant accountable for its wage
5 theft and other violations of California wage and hour laws. Plaintiff makes the following
6 allegations on information and belief, except as to allegations pertaining to Plaintiff individually,
7 which are based on his respective personal knowledge.

8 2. KENWOOD, is a private, for-profit manufacturer of hardwood flooring and custom
9 moldings.

10 3. At all relevant times herein, Defendant has implemented common policies and
11 practices designed to maximize profits at the expense of its non-exempt employees. These
12 policies and practices have resulted in systematic violations of California's wage and hour laws.

13 4. Defendant maximizes profits by cutting labor costs through understaffing, denying
14 meal and rest breaks, unlawfully rounding the time worked by its non-exempt employees, cheating
15 its non-exempt employees out of wages and premiums, and related violations of California wage
16 and hour laws. For instance, in order to minimize labor costs, Defendant has implemented
17 unlawful policies with respect to meal and rest breaks. Defendant requires its non-exempt
18 employees to work through meal and rest breaks, and/or take their meal periods and breaks at
19 times after the start of the fifth hour from the beginning of their shifts. As a result, Plaintiff and
20 other non-exempt employees have been denied the ability to take the legally-compliant meal and
21 rest breaks that they were and are entitled to take.

22 5. Defendant has implemented an unlawful rounding practice which results in the
23 systematic underpayment of wages to Plaintiff and other non-exempt employees. Defendant also
24 willfully turns a blind eye to off-the-clock work that Plaintiff and other non-exempt employees
25 perform as a direct consequence of Defendant's inadequate staffing and imposition of an
26 unreasonable workload.

27 6. Plaintiff seeks declaratory, compensatory and other statutorily available relief for
28 himself and a Class of all current and former non-exempt employees of Defendant's during the

1 applicable limitations period to compensate these workers for the wages Defendant has stolen
2 from the Class members and to protect current and future workers from being subjected to similar
3 unlawful working conditions perpetrated by Defendant.

4 **JURISDICTION AND VENUE**

5 7. The Superior Court of the State of California has jurisdiction in this matter because
6 Plaintiff is a resident and citizen of California and Defendant is a California corporation. All
7 Class members are residents and citizens of California. No federal question is at issue because
8 Plaintiff's claims are based solely on California law.

9 8. Venue is proper in this judicial district and the County of Los Angeles because
10 Plaintiff, and all other persons similarly situated, performed work for Defendant in the County of
11 Los Angeles, Defendant is located within the County of Los Angeles, and Defendant's illegal
12 payroll policies and practices, which are the subject of this action were applied, at least in part, to
13 Plaintiff, and other persons similarly situated, in the County of Los Angeles.

14 **THE PARTIES**

15 9. Plaintiff is a resident and citizen of the State of California and a former employee
16 of Defendant. Plaintiff was employed by Defendant starting in July 2, 2018 through May 10, 2021
17 as a receiver, assembly line worker and craftsman. Plaintiff was assigned to work at
18 Defendant's facility located in City of Industry, California.

19 10. Plaintiff, on behalf of himself and all other similarly situated individuals, brings
20 this class action to recover, among other things, wages and penalties from unpaid wages earned
21 and due, including but not limited to, Defendant's failure to provide legally compliant meal and
22 rest breaks and failure to provide proper compensation for missed and otherwise unlawful meal
23 and rest breaks, failure to pay all wages earned, including minimum and overtime wages,
24 Defendant's failure to pay all wages due to discharged or quitting non-exempt employees,
25 Defendant's failure to maintain required records and failure to provide accurate itemized wage
26 statements, and failure to reimburse for necessary business expenditures.

27 11. Defendant KENWOOD is a licensed business, and at all times relevant herein was,
28 a corporation organized and existing under the laws of the State of California.

1 12. The true names and capacities of DOES 1 through 50, inclusive, are unknown to
2 Plaintiff at this time, and Plaintiff therefore sues such DOE defendants under fictitious names.
3 Upon information and belief, each Defendant designated as a DOE is in some manner highly
4 responsible for the occurrences alleged herein, and Plaintiff and Class members' injuries and
5 damages, as alleged herein, were proximately caused by the conduct of such DOE defendants.
6 Plaintiff will seek leave of the Court to amend this Complaint to allege the true names and
7 capacities of such DOE defendants when ascertained.

8 13. As a direct and proximate result of the unlawful actions of Defendants, and each of
9 them, Plaintiff and Class members have suffered, and continue to suffer, from loss of earnings in
10 amounts as yet unascertained, but subject to proof at trial, and within the jurisdiction of this Court.

11 **CLASS ACTION ALLEGATIONS**

12 14. Pursuant to Cal. Code of Civ. P. § 382, Plaintiff brings this action on behalf of
13 himself and the following Class:

14 All California citizens who performed work for Defendant in California as
15 non-exempt employees during the relevant statute of limitations period.

16 15. Plaintiff reserves the right to name additional Class representatives as may be
17 necessary and appropriate. Plaintiff also reserves the right to modify or amend the definition of
18 the proposed Class and/or add subclasses before the Court determines whether certification is
19 appropriate

20 16. This action is appropriately suited for a class action because:

21 A. The proposed Class is a significant number. Plaintiff is informed and
22 believes that the proposed Class consists of at least thirty (30) current and former non-exempt
23 employees, rendering joinder impractical.

24 B. This action involves common questions of law and fact to the proposed
25 Class because the action focuses on Defendant's systematic course of illegal payroll practices and
26 policies, which was applied to all non-exempt employees in uniform violation of the California
27 Labor Code, IWC Wage Orders, and the California Business and Professions Code, which
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1 prohibits unfair business practices arising from such violations. Here are a few common questions
2 of law and fact that will drive resolution of this action:

- 3 1. Whether Defendant's failed to provide non-exempt employees with
4 legally compliant meal periods and rest breaks, and whether
5 Defendant's properly paid premium pay as a result of missed and
6 non-compliant meal periods and rest breaks;
- 7 2. Whether Defendant's failed to timely pay wages to non-exempt
8 employees in compliance with California law;
- 9 3. Whether Defendant's time rounding policy and practice is in
10 violation of California law;
- 11 4. Whether Defendant's failed to pay overtime and minimum wages
12 non-exempt employees in compliance with California law;
- 13 5. Whether Defendant's failed to pay sick leave in compliance with
14 California law;
- 15 6. Whether Defendant's failed to maintain required records and
16 accurate wage statements for non-exempt employees; and
- 17 7. Whether Defendant's engaged in unfair and/or unlawful business
18 practices.

19 C. Plaintiff's claims are typical of the proposed Class because Defendant's
20 subjected all of its non-exempt employees to the similar and overlapping violations of the
21 California Labor Code, the applicable IWC wage order, and the California Business and
22 Professions Code.

23 D. Plaintiff is able to fairly and adequately protect the interests of all members
24 of the proposed Class because it is in his best interests to prosecute the claims alleged herein to
25 obtain full compensation due to the proposed Class for all services rendered and hours worked.
26 Plaintiff has also retained counsel that is experienced in wage and hour class action litigation.

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1 **FIRST CAUSE OF ACTION**

2 **Failure to Provide Required Meal Periods**

3 **[Cal. Lab. Code §§ 226.7, 510, 512, 1194, 1197; IWC Wage Order No. 4-2001, § 11**

4 **And All Other Applicable Wage Orders and Applicable Sections]**

5 ***(On Behalf of Plaintiff and the Class against all Defendants)***

6 17. Plaintiff incorporates herein by specific reference, as though fully set forth, the
7 allegations in paragraphs 1 through 16 (A-D).

8 18. During the statute of limitations period, as part of Defendant's unlawful policies
9 and practices to deprive its non-exempt employees of all wages earned and due, Defendant
10 required, permitted or otherwise suffered Plaintiff and Class members to perform work during
11 their meal periods, to completely skip their meal periods, to take late and short meal periods, and
12 Defendants have otherwise failed to provide the required meal periods to Plaintiff and Class
13 members as required under California Labor Code §§ 226.7, 512, and §§10-11 of all applicable
14 IWC Orders.

15 19. Defendant has implemented several common policies and practices that have
16 caused Plaintiff and Class members to systematically miss and otherwise take non-compliant meal
17 periods. For example, Defendant has failed to adequately inform Plaintiff and Class members of
18 their rights to take meal periods under California law. Defendant also understaffed its work
19 location such that Plaintiff and Class members are given so much work to complete that they
20 regularly miss or take non-compliant meal periods. Part and parcel with this practice is
21 Defendant's practice of setting unrealistic deadlines for its non-exempt employees to complete
22 which also resulted in non-compliant meal periods. As a result, Plaintiff and Class members have
23 so much work to complete within their scheduled shifts that they are forced to skip their meal
24 periods altogether, to take them after working longer than five (5) hours, to perform work during
25 their meal periods, or return to work after taking less than a thirty (30) minute meal periods.

26 20. Further, Defendant systemically deprived Plaintiff and Class members of the
27 opportunity to take second meal periods even though they regularly work shifts in excess of ten
28 (10) hours.

1 them unreasonable amounts of work that had to be completed within their shift such that rest
2 periods simply could not be taken. This was the result of systematic understaffing at the
3 warehouse. Further, as set forth above, Defendant implemented skeletal staffing policies, which
4 resulted in the inability of Plaintiff and Class members to take compliant rest periods. In addition,
5 Defendant did not adequately notify Plaintiff and Class members of their rights to take rest
6 periods, and systematically denied them the opportunity to take rest periods, including all rest
7 periods required during long shifts.

8 26. Defendants further violated California Labor Code § 226.7, IWC Wage Order No.
9 4-2001, § 12, and the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et*
10 *seq.*, by failing to pay Plaintiff and Class members who were not provided with a rest break, in
11 accordance with the applicable wage order, one additional hour of compensation at the proper
12 regular rate of pay for each workday that a rest break was not provided.

13 27. As a proximate result of the aforementioned violations, Plaintiff and Class
14 members have been damaged in an amount according to proof at trial, and seek all wages earned
15 and due, interest, penalties, expenses, and costs of suit.

16 **THIRD CAUSE OF ACTION**

17 **Failure to Pay Overtime Wages**

18 **[Cal. Lab. Code §§ 510, 1194, 1198; IWC Wage Order No. 4-2001, § 3**

19 **And All Other Applicable Wages Orders And Sections]**

20 ***(On Behalf of Plaintiffs and the Class against all Defendants)***

21 28. Plaintiff incorporates herein by specific reference, as though fully set forth, the
22 allegations in paragraphs 1 through 27.

23 29. Pursuant to California Labor Code §§ 510, 1194, and § 3 of all applicable wage
24 orders, Defendants are required to compensate Plaintiff and Class members for all overtime, which
25 is calculated at one and one-half (1 ½) times the regular rate of pay for all hours worked in excess
26 of eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on the
27 seventh consecutive workday, with double time for all hours worked in excess of twelve (12)

1 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh
2 consecutive day of work in any workweek.

3 30. During the statute of limitations period, Defendant failed to compensate Plaintiff
4 and Class members for all overtime hours worked as required under the foregoing provisions of
5 the California Labor Code and IWC Wage Orders by, among other methods, failing to pay
6 overtime at one and one-half (1 ½) or double the regular rate of pay as provided by California
7 Labor Code §§ 510, 1194 and IWC Wage Order No. 4-2001, § 3 and all other applicable wage
8 orders, requiring, permitting or suffering Plaintiff and Class members to work off-the-clock, and
9 to work through meal and rest breaks, but not compensating them for this time, illegally and
10 inaccurately recording time in which Plaintiff and Class members worked, illegally rounding the
11 time worked by Plaintiff and Class members, and other methods to be discovered.

12 31. Plaintiff and Class members also perform substantial work off-the-clock.
13 Defendant implemented a rounding practice wherein it rounds the time worked by non-exempt
14 employees because it does not record the actual times worked by Plaintiff and Class members, and
15 instead has them record rounded times based on scheduled and/or estimated hours. Plaintiff and
16 Class members regularly work over 80 hours per pay period but are not paid any overtime.

17 32. In violation of California law, Defendant has knowingly and willfully refused to
18 perform its obligations to compensate Plaintiff and Class members for all wages earned and all
19 hours worked at the legally required rates of pay. As a proximate result, Plaintiff and Class
20 members have suffered, and continue to suffer, substantial losses related to the use and enjoyment
21 of such wages, lost interest on such wages, and expenses and attorneys' fees in seeking to compel
22 Defendant to fully perform their obligations under state law, all to their respective damages in
23 amounts according to proof at time of trial, and within the jurisdiction of this Court.

24 33. Defendant's conduct described herein violates California Labor Code §§ 510, 1194,
25 1198 and § 3 of all applicable IWC Wage Orders. Therefore, pursuant to California Labor Code
26 §§ 200, 203, 226, 558, 1194, 1197.1, and other applicable provisions under the California Labor
27 Code and IWC Wage Orders, Plaintiff and Class members are entitled to recover the unpaid
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1 balance of wages owed to them by Defendant, plus interest, penalties, attorneys' fees, expenses,
2 and costs of suit.

3 **FOURTH CAUSE OF ACTION**

4 **Failure to Pay Minimum Wages**

5 **[Cal. Lab. Code §§ 1194, 1197; IWC Wage Order No. 4-2001,**
6 **And § 4 And All Other Applicable Wages Orders And Sections]**
7 ***(On Behalf of Plaintiffs and the Class against all Defendants)***

8 34. Plaintiff incorporates herein by specific reference, as though fully set forth, the
9 allegations in paragraphs 1 through 33.

10 35. Pursuant to Cal. Lab. Code §§ 1194, 1197, and § 4 of IWC Wage Order No. 4-2001
11 and all applicable wage orders and sections, payment to an employee of less than the applicable
12 minimum wage for all hours worked in a payroll period is unlawful.

13 36. During the statute of limitations period, the hourly rates for Plaintiff and Class
14 members were at or slightly above minimum wage. Based on this common practice, Defendant
15 failed to actually pay Plaintiff and Class members minimum wages for all hours worked by
16 requiring, permitting or suffering Plaintiff and Class members to work off-the-clock, such as
17 requiring them to work through meal and rest breaks, but not compensating them for this time as
18 Plaintiff and the Class members were required to write down the time of their work shifts on their
19 time cards which did not accurately reflect their actual hours worked, and failing to include this
20 time in all hours worked, unlawfully rounding their time, and other methods to be discovered.

21 37. Defendant's conduct described herein violates Cal. Lab. Code §§ 1194, 1197, and §
22 4 of IWC Wage Order No. 1, and any other applicable IWC Wage Order. As a proximate result of
23 the aforementioned violations, Plaintiff and Class members have been damaged in an amount
24 according to proof at trial. Therefore, pursuant to California Labor Code §§ 200, 203, 226, 558,
25 1194, 1197.1, and any other applicable wage orders and law, Plaintiff and Class members are
26 entitled to recover the unpaid balance of wages owed to them by Defendant, plus interest,
27 penalties, attorneys' fees, expenses, and costs of suit.

1 **FIFTH CAUSE OF ACTION**

2 **Failure to Pay Timely Wages**

3 **[Cal. Lab. Code §§ 204, 210]**

4 ***(On Behalf of Plaintiff and the Class against all Defendants)***

5 38. Plaintiff incorporates herein by specific reference, as though fully set forth, the
6 allegations in paragraphs 1 through 37.

7 39. California Labor Code § 204 provides that all wages earned by any person in any
8 employment between the 1st and 15th days, inclusive, of any calendar month, other than those
9 wages due upon termination of an employee, are due and payable between the 16th and 26th day
10 of the month during which the labor was performed. California Labor Code § 204 further
11 provides that all wages earned by any person in any employment between the 16th and the last
12 day, inclusive, of any calendar month, other than those wages due upon termination of an
13 employee, are due and payable between the 1st and the 10th day of the following month.
14 California Labor Code § 204 further provides that all wages earned for labor in excess of the
15 normal work period shall be paid no later than the payday for the next regular payroll period.

16 40. During the statute of limitations period, Defendant, among other things, willfully
17 failed to pay Plaintiff and Class members all wages earned and due to them, including but not
18 limited to, meal and rest break premiums, and payment for work performed off-the-clock, within
19 any time period permissible under Labor Code § 204.

20 41. As a proximate result of Defendant's unlawful actions and omissions, Plaintiff and
21 Class members are entitled to all available statutory penalties, including but not limited to, civil
22 penalties pursuant to California Labor Code §§ 200, 210, 558, 1194, 1197.1, 2699(a), and other
23 applicable provisions under the California Labor Code and IWC Wage Orders, and an award of
24 costs, expenses, and reasonable attorneys' fees.

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1 47. As a result, Plaintiff and Class members are entitled to all available statutory
2 penalties, including the waiting time penalties provided in California Labor Code § 203, together
3 with interest thereon, as well as other available remedies.

4 **SEVENTH CAUSE OF ACTION**

5 **Failure to Maintain Required Records**

6 **[Cal. Lab. Code §§ 226, 1174; IWC Wage Order No. 4-2001, § 6 And**

7 **All Applicable Wage Orders And Sections]**

8 ***(On Behalf of Plaintiff and the Class against all Defendants)***

9 48. Plaintiff incorporates herein by specific reference, as though fully set forth, the
10 allegations in paragraphs 1 through 47.

11 49. During the statute of limitations period, as part of Defendant's illegal payroll
12 policies and practices to deprive Plaintiff and Class members of all wages earned and due,
13 Defendant's knowingly and intentionally failed to maintain records as required under California
14 Labor Code §§ 226, 1174, and §§ 6 and 7 of the applicable IWC Wage Orders, including but not
15 limited to, the following records: total daily hours worked by each non-exempt employee;
16 applicable rates of pay; all deductions; meal periods; time records showing when each non-exempt
17 employee begins and ends each workday; and accurate itemized wage statements.

18 50. As a proximate result of Defendant's unlawful actions and omissions, Plaintiff and
19 Class members have been damaged in an amount according to proof at trial, and are entitled to all
20 wages earned and due, plus interest thereon. Additionally, Plaintiff and Class members are
21 entitled to all available penalties, including but not limited to, penalties pursuant to California
22 Labor Code §§ 226(a) and (e), 226.3, and 1174.5, and an award of costs, expenses, and reasonable
23 attorneys' fees, including but not limited to those provided in California Labor Code § 226(e), as
24 well as other available remedies.

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1 **EIGHTH CAUSE OF ACTION**

2 **Failure to Furnish Accurate Itemized Wage Statements**

3 **[Cal. Lab. Code §§ 226; IWC Wage Order No. 4-2001, § 6 And**

4 **All Applicable Wage Orders And Sections]**

5 ***(On Behalf of Plaintiff and the Class against all Defendants)***

6 51. Plaintiff incorporates herein by specific reference, as though fully set forth, the
7 allegations in paragraphs 1 through 50.

8 52. During the statute of limitations period, Defendant routinely failed to provide
9 Plaintiff and Class members with timely, accurate, and itemized wage statements in writing
10 showing each employee's gross wages earned, total hours worked, overtime hours worked and
11 paid, all deductions made, net wages earned, all sick leave used and accrued, and all applicable
12 hourly rates in effect during each pay period and the corresponding number of hours worked at
13 each hourly rate, in violation of California Labor Code § 226 and §§ 6 and 7 of the applicable
14 IWC Wage Orders.

15 53. Defendant's pay stubs further violate Labor Code § 226 because Defendant
16 routinely and intentionally fails to provide Plaintiff and Class members with proper meal and rest
17 breaks but fails to include in their wage statements one (1) additional hour of compensation at
18 their regular rates of pay for each non-compliant meal or rest break. In addition, Defendant listed
19 the full social security number on the wage statements for Plaintiff and the Class Members instead
20 of their employee identification or the last four (4) digits of their social security number.
21 Defendant required Plaintiff and Class members to work off-the-clock without compensation and
22 illegally rounded the time that they worked, failed to list the rendering the pay stubs incorrect as to
23 time worked, rates of pay and remuneration. As a result of these violations, Defendant's pay stubs
24 failed to accurately list the compensation owed and due to Plaintiff and Class members.

25 54. Defendant knowingly and intentionally failed to provide Plaintiff and Class
26 members with timely, accurate, and itemized wage statements in accordance with California Labor
27 Code § 226(a) so as to prevent Plaintiff and Class members from being able to determine whether
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1 they were being paid for, among other things, all of the hours they worked and at the proper rates
2 of pay.

3 55. As a proximate result of Defendant's unlawful actions and omissions, Plaintiff and
4 Class members have been damaged in an amount according to proof at trial, and seek all wages
5 earned and due, plus interest thereon. Additionally, Plaintiff and Class members are entitled to all
6 available penalties, including but not limited to penalties pursuant to California Labor Code §§
7 226(e), 226.3, and 1174.5, and an award of costs, expenses, and reasonable attorneys' fees,
8 including but not limited to those provided in California Labor Code § 226(e), as well as other
9 available remedies.

10 **NINTH CAUSE OF ACTION**

11 **Failure to Indemnify for Necessary Expenditures Incurred in Discharge of Duties**

12 **[Cal. Lab. Code § 2802]**

13 ***(On Behalf of Plaintiff and the Class against all Defendants)***

14 56. Plaintiff incorporates herein by specific reference, as though fully set forth, the
15 allegations in paragraphs 1 through 55.

16 57. California Labor Code § 2802(a) requires an employer to indemnify an employee
17 for all necessary expenditures or losses incurred by the employee in direct consequence of the
18 discharge of his or her duties, or of his or her obedience to the directions of the employer.

19 58. During the statute of limitations period, Defendant knowingly and willfully failed
20 to indemnify Plaintiff and Class members for all business expenses and/or losses incurred in direct
21 consequence of the discharge of their duties while working under the direction of Defendant,
22 including but not limited to, the usage of their personal cellular phones for work purposes, work
23 gloves, safety glasses and other protective gear, in violation of California Labor Code § 2802.

24 59. As a proximate result of Defendant's unlawful actions and omissions, Plaintiff and
25 Class members have been damaged in an amount according to proof at trial, and seek
26 reimbursement of all necessary expenditures, plus interest thereon pursuant to California Labor
27 Code § 2802(b). Additionally, Plaintiff and Class members are entitled to all available statutory
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1 penalties and an award of costs, expenses, and reasonable attorneys' fees, including those provided
2 in California Labor Code § 2802(c), as well as other available remedies.

3 **TENTH CAUSE OF ACTION**

4 **Unfair and Unlawful Business Practices**

5 **[Cal. Bus. & Prof. Code § 17200 *et. seq.*]**

6 ***(On Behalf of Plaintiff and the Class against all Defendants)***

7 60. Plaintiff incorporates herein by specific reference, as though fully set forth, the
8 allegations in paragraphs 1 through 59.

9 61. Each and every one of Defendant's acts and omissions in violation of the California
10 Labor Code and/or the applicable IWC Wage Orders as alleged herein, including but not limited
11 to, Defendants failure to provide required meal and rest breaks, unlawful rounding and requiring
12 off-the-clock work, failure to pay all wages due to discharged or quitting employees or to pay
13 timely wages, failure to furnish accurate itemized wage statements or to maintain required records,
14 and failure indemnify Plaintiff and Class members for necessary expenditures and/or losses
15 incurred in discharging their duties, constitute an unfair and unlawful business practice under
16 California Business and Professions Code § 17200 *et seq.*

17 62. Defendant's violations of California wage and hour laws constitute a business
18 practice because the aforementioned acts and omissions were done repeatedly over a significant
19 period of time, and in a systematic manner, to the detriment of Plaintiff and Class members.

20 63. Defendant has avoided payment of wages, the provision of meal and rest breaks,
21 and other benefits as required by the California Labor Code, the California Code of Regulations,
22 and the applicable IWC Wage Orders. Further, Defendant has failed to record, report, and pay the
23 correct sums of assessment to the state authorities under the California Labor Code and other
24 applicable regulations.

25 64. As a result of these unfair and unlawful business practices, Defendant has reaped
26 unfair and illegal profits during the Class period at the expense of Plaintiff and Class members,
27 and members of the public. Defendant should be made to disgorge their ill-gotten gains and to
28 restore them to Plaintiff and Class members.

65. Defendant's unfair and unlawful business practices entitle Plaintiff and Class members to seek preliminary and permanent injunctive relief, including but not limited to orders that Defendant accounts for, disgorges, and restores to Plaintiff and Class members the wages and other compensation unlawfully withheld from them. Plaintiff and Class members are entitled to restitution of all monies to be disgorged from Defendant in an amount according to proof at the time of trial.

ELEVENTH CAUSE OF ACTION

Representative Action for Civil Penalties

[Cal. Lab. Code §§ 2698- 2699.5]

(On Behalf of Plaintiff and Other Aggrieved Employees against all Defendants)

66. Plaintiff incorporates herein by specific reference as though fully set forth the allegations in paragraphs 1 through 65, with exception of the allegations in Paragraphs 15 through 16 (A-D).

68. Plaintiff is an “aggrieved employee” within the meaning of California Labor Code § 2699(c), and is a proper representative to bring a civil action on behalf of himself, and other non-exempt employees of Defendant who are California citizens, pursuant to the procedures specified in California Labor Code § 2699.3, because Plaintiff was employed by Defendant and the alleged violations of the California Labor Code were committed against Plaintiff.

69. Pursuant to the California Private Attorneys General Act of 2004 ("PAGA"), Labor Code §§ 2698-2699.5, Plaintiff seeks to recover civil penalties, including but not limited to penalties under California Labor Code §§ 2699, 210, 225.5, 226.3, 354, 558, 1174.5, 1197.1, 1775, 1199, 2802 and all applicable IWC wage order penalties, from Defendant in a representative action for the violations set forth above, including but not limited to violations of California Labor Code §§ 201, 202, 203, 226, 226.7, 351, 510, 512, 1174, 1194, 1197, 1198 and 1774. Plaintiff is also entitled to an award of reasonable attorneys' fees and costs pursuant to California Labor Code § 2699(g)(1).

70. Pursuant to California Labor Code §§ 2699.3, on May 18, 2021, Plaintiff gave written notice by certified mail to the California Labor and Workforce Development Agency

1 ("LWDA") and Defendant of the specific provisions of the California Labor Code and IWC Wage
2 Orders alleged to have been violated, including the facts and theories to support the alleged
3 violations. Within sixty-five (65) calendar of the postmark date of Plaintiff's notice letter, the
4 LWDA did not provide notice to Plaintiff that it intends to investigate the alleged violations.
5 Therefore, Plaintiff has complied with all of the requirements set forth in California Labor Code §
6 2699.3 to commence a representative action under PAGA.

7 **PRAYER FOR RELIEF**

8 **WHEREFORE**, Plaintiff, individually and on behalf of all other persons similarly
9 situated, respectfully prays for relief against Defendant and DOES 1 through 50, inclusive, and
10 each of them, as follows:

- 11 1. For compensatory damages in an amount to be ascertained at trial;
- 12 2. For restitution of all monies due to Plaintiff and Class members, as well as
13 disgorged profits from the unfair and unlawful business practices of Defendant;
- 14 3. For meal and rest break compensation pursuant to California Labor Code § 226.7
15 and IWC Wage Order No. 4-2001 and all applicable IWC Wage Orders and pertinent sections;
- 16 4. For liquidated damages pursuant to California Labor Code § 1194.2;
- 17 5. For preliminary and permanent injunctive relief enjoining Defendants from
18 violating the relevant provisions of the California Labor Code and the IWC Wager Orders, and
19 from engaging in the unlawful business practices complained of herein;
- 20 6. For waiting time penalties pursuant to California Labor Code § 203;
- 21 7. For statutory penalties according to proof, including but not limited to all penalties
22 authorized by the California Labor Code §§ 210, 225.5, 226(e), 226.3, 354, 558, 1174.5, 1775, and
23 1197.1;
- 24 8. An award of actual, statutory, and/or punitive damages to Plaintiff and the Class
25 pursuant to California Civil Code §§ 1785.31 and 1786.50, in an amount subject to proof at trial;
- 26 9. For interest on the unpaid wages at 10 percent per annum pursuant to California
27 Labor Code §§ 218.6, 1194, 2802 and California Civil Code §§ 3287, 3288, and/or any other
28 applicable provision providing for pre-judgment interest;

1 10. For reasonable attorneys' fees and costs pursuant to California Labor Code §§
2 218.5, 226, 1194, 2802 and California Code of Civil Procedure § 1021.5, California Civil Code §
3 1786.50(a)(2), California Civil Code § 1785.31(a), and/or any other applicable provisions
4 providing for attorneys' fees and costs;

5 11. For declaratory relief;

6 12. For an order requiring and certifying the First through Tenth Causes of Action as a
7 class action;

8 13. For an order appointing Plaintiff as Class representative and Plaintiff's counsel as
9 Class counsel; and

10 14. For such further relief that the Court may deem just and proper.

11 **DEMAND FOR JURY TRIAL**

12 Plaintiff, on behalf of himself and all others similarly situated, hereby demands a jury trial
13 with respect to all issues triable of right by jury.

14 DATED: August 10, 2021

THE LAW OFFICE OF SCOTT ERNEST WHEELER

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SCOTT ERNEST WHEELER

Attorney for Plaintiff and the Putative Class