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and on behalf of all others similarly situated

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
MONTEREY COUNTY SUPERIOR COURT
MONTEREY COURTHOUSE – COMPLEX DIVISION

URIEL VAZQUEZ CABRERA, individual
and class representative on behalf of himself
and all other similarly situated non-exempt
former and current employees,

Plaintiffs,

vs.

WISH FARMS CA, LLC, a Florida Limited
Liability Company; GARY WISHNATZKI,
an individual; and DOES 1 through 100,
inclusive,

Defendants.

Case No.: 21CV002491

[assigned for all purposes to Hon. Vanessa W.
Vallarta, Dept. 13]

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

- 1. FAILURE TO PROVIDE REQUIRED MEAL PERIODS**
- 2. FAILURE TO PROVIDE REQUIRED REST AND RECOVERY PERIODS**
- 3. FAILURE TO PAY OVERTIME WAGES**
- 4. FAILURE TO PAY MINIMUM WAGE**
- 5. FAILURE TO TIMELY PAY 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 EMPLOYEES FOR NECESSARY EXPENDITURES INCURRED IN DISCHARGE OF DUTIES**
- 10. UNFAIR AND UNLAWFUL BUSINESS PRACTICES**
- 11. PRIVATE ATTORNEYS GENERAL ACT OF 2004**

DEMAND FOR JURY TRIAL

1 Plaintiff URIEL VAZQUEZ CABRERA, an individual, ("PLAINTIFF"), demanding a
2 jury trial, on behalf of himself and all other persons similarly situated, hereby amends his
3 complaint and alleges as follows:

4 **JURISDICTION AND VENUE**

5 1. The Superior Court of the State of California has jurisdiction in this matter
6 because PLAINTIFF was and is a resident of the State of California, Defendants WISH FARMS
7 CA, LLC, a Florida Limited Liability Company; GARY WISHNATZKI, an individual; and
8 DOES 1 through 100, inclusive (collectively, "DEFENDANTS") are qualified to do business in
9 California and regularly conduct business in California. Further, no federal question is at issue
10 because the claims are based solely on California law.

11 2. Venue is proper in this judicial district and the COUNTY OF MONTEREY,
12 California because PLAINTIFF, and other persons similarly situated, performed work for
13 DEFENDANTS in the COUNTY OF MONTEREY, DEFENDANTS maintain offices and
14 facilities and transact business in the COUNTY OF MONTEREY, and DEFENDANTS' illegal
15 misclassification of employees as independent contractors, illegal payroll policies and practices,
16 which are the subject of this action, were applied, at least in part, to PLAINTIFF, and other
17 persons similarly situated, in the COUNTY OF MONTEREY. Further, the amount in
18 controversy exceeds the sum of \$25,000.00, exclusive of interest and costs.

19 **PLAINTIFF**

20 3. PLAINTIFF URIEL VAZQUEZ CABRERA is a resident of the State of
21 California who was employed by DEFENDANTS as a non-exempt employee at times relevant to
22 this Complaint.

23 4. PLAINTIFF, on behalf of himself and all other similarly situated current and
24 former non-exempt employees of DEFENDANTS who were employed by DEFENDANTS at
25 any time during the four (4) years preceding the filing of this complaint, and continuing while
26 this action is pending, bring this class action to recover, among other things, wages and penalties
27 from unpaid wages earned and due, including but not limited to unpaid minimum wages and
28 unpaid wages, unpaid and illegally calculated overtime compensation, illegal meal and rest

1 period policies, failure to timely pay wages, failure to pay all wages due to discharged or quitting
2 employees, failure to maintain required records, failure to provide accurate itemized wage
3 statements, failure to indemnify employees for necessary expenditures and/or losses incurred in
4 discharging their duties, and interest, attorneys' fees, costs, and expenses.

5 5. PLAINTIFF brings this action on behalf of himself and the following similarly
6 situated class of individuals ("CLASS MEMBERS"): All current and former non-exempt
7 employees of DEFENDANTS who worked at any locations in the State of California at any time
8 within the period beginning four (4) years prior to the filing of the this action, and ending at the
9 time this action settles or proceeds to final judgment (the "CLASS PERIOD").

10 6. PLAINTIFF reserves the right to name additional class representatives, change
11 the definition of class members, and/or change the class period.

12 **DEFENDANTS**

13 7. PLAINTIFF is informed and believes, and thereon alleges, that Defendant WISH
14 FARMS CA, LLC, a Florida Limited Liability Company is, and at all times relevant hereto was,
15 a company authorized to do business in the State of California and doing business in the State of
16 California. Specifically, upon information and belief, Defendant WISH FARMS CA, LLC
17 conducts business in the COUNTY OF MONTEREY, State of California.

18 8. PLAINTIFF is informed and believes, and thereon alleges, that Defendant GARY
19 WISHNATZKI is, and at all times relevant hereto was, an individual employer authorized to do
20 business in the State of California and doing business in the State of California. Specifically,
21 upon information and belief, Defendant GARY WISHNATZKI conducts business and resides in
22 the COUNTY OF MONTEREY, State of California. Further, Defendant GARY WISHNATZKI
23 is liable for damages under California Labor Code 558.1 and other statutes.

24 9. The true names and capacities of DOES 1 through 100, inclusive, are unknown to
25 PLAINTIFF at this time, and PLAINTIFF therefore sues such DOE Defendants under fictitious
26 names. PLAINTIFF is informed and believes, and thereon alleges, that each Defendant
27 designated as a DOE is in some manner responsible for the occurrences alleged herein, and that
28 PLAINTIFF and CLASS MEMBERS' injuries and damages, as alleged herein, were proximately

1 caused by the conduct of such DOE Defendants. PLAINTIFF will seek leave of the court to
2 amend this complaint to allege the true names and capacities of such DOE Defendants when
3 ascertained.

4 10. At all relevant times herein, DEFENDANTS were the joint employers of
5 PLAINTIFF and the CLASS MEMBERS. PLAINTIFF is informed and believes, and thereon
6 alleges, that at all times material to this complaint DEFENDANTS, as categorized above, were
7 the alter egos, divisions, affiliates, integrated enterprises, joint employers, subsidiaries, parents,
8 principals, related entities, co-conspirators, authorized agents, partners, joint venturers, and/or
9 guarantors, actual or ostensible, of each other. Each DEFENDANT, as categorized above, was
10 completely dominated by his, her or its co-DEFENDANT, and each was the alter ego of the
11 other. Each DEFENDANT is also a joint employer per California Labor Code Sections 2810,
12 2810.3, 2810.4 and 2810.5.

13 11. At all relevant times herein, PLAINTIFF and CLASS MEMBERS were employed
14 by DEFENDANTS under employment agreements that were partly written, partly oral, and
15 partly implied. In perpetrating the acts and omissions alleged herein, DEFENDANTS, and each
16 of them, acted pursuant to, and in furtherance of, their policies and practices of not paying
17 PLAINTIFF and CLASS MEMBERS all wages earned and due, through methods and schemes
18 which include, but are not limited to, failing to pay overtime premiums; failing to provide rest,
19 recovery, and meal periods; failing to properly maintain records; failing to provide accurate
20 itemized statements for each pay period; failing to properly compensate PLAINTIFF and CLASS
21 MEMBERS for necessary expenditures; and requiring, permitting or suffering PLAINTIFF and
22 CLASS MEMBERS to work off the clock, in violation of the California Labor Code and the
23 applicable IWC Wage Order.

24 12. PLAINTIFF is informed and believes, and thereon alleges, that each and every
25 one of the acts and omissions alleged herein was performed by, and/or attributable to, all
26 DEFENDANTS, each acting as agents and/or employees, and/or under the direction and control
27 of, each of the other DEFENDANTS, and that said acts and failures to act were within the course
28 and scope of said agency, employment and/or direction and control.

1 13. As a direct and proximate result of the unlawful actions of DEFENDANTS,
2 PLAINTIFF and CLASS MEMBERS have suffered, and continue to suffer, from loss of
3 earnings in amounts as yet unascertained, but subject to proof at trial, and within the jurisdiction
4 of this Court.

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6 **CLASS ACTION ALLEGATIONS**

7 14. This action is appropriately suited for a class action because:

8 A. The potential class is a significant number. Joinder of all current and
9 former employees individually would be impractical.

10 B. This action involves common questions of law and fact to the potential
11 class because the action focuses on DEFENDANTS' systematic course of illegal payroll
12 practices and policies, which was applied to all non-exempt employees in violation of the
13 California Labor Code, IWC Wage Orders, and the California Business and Professions Code
14 which prohibits unfair and unlawful business practices arising from such violations.

15 C. The claims of PLAINTIFF are typical of the class because
16 DEFENDANTS subjected all non-exempt employees to identical violations of the California
17 Labor Code, the applicable IWC wage order, and the California Business and Professions Code.

18 D. PLAINTIFF is able to fairly and adequately protect the interests of all
19 CLASS MEMBERS because it is in their best interest to prosecute the claims alleged herein to
20 obtain full compensation due to the CLASS MEMBERS for all services rendered and hours
21 worked.

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2 **FIRST CAUSE OF ACTION**

3 **Failure to Provide Required Meal Periods**

4 **[Cal. Labor Code §§ 226.7, 510, 512, 1194, 1197; IWC Wage Order Nos. 8, 13, and 14, § 11]**

5 **(Against all DEFENDANTS)**

6 15. PLAINTIFF incorporates herein by specific reference, as though fully set forth,
7 the allegations in all preceding paragraphs.

8 16. During the CLASS PERIOD, as part of DEFENDANTS' illegal payroll policies
9 and practices to deprive their non-exempt employees all wages earned and due, DEFENDANTS
10 required, permitted or otherwise suffered PLAINTIFF and CLASS MEMBERS to take less than
11 the 30-minute meal period, or to work through them, and have failed to otherwise provide the
12 required meal periods to PLAINTIFF and CLASS MEMBERS pursuant to California Labor
13 Code § 226.7, 512 and IWC Order Nos. 8, 13, and 14, § 11.

14 17. DEFENDANTS further violated California Labor Code §§ 226.7 and IWC Wage
15 Order Nos. 8, 13, and 14, § 11 by failing to compensate PLAINTIFF and CLASS MEMBERS
16 who were not provided with a meal period, in accordance with the applicable wage order, one
17 additional hour of compensation at each employee's regular rate of pay for each workday that a
18 meal period was not provided.

19 18. DEFENDANTS further violated California Labor Code §§ 226.7, 510, 1194,
20 1197, and IWC Wage Order Nos. 8, 13, and 14 by failing to compensate PLAINTIFF and
21 CLASS MEMBERS for all hours worked during their meal periods.

22 19. As a proximate result of the aforementioned violations, PLAINTIFF and CLASS
23 MEMBERS have been damaged in an amount according to proof at trial, and seek all wages
24 earned and due, interest, penalties, expenses, and costs of suit.

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2 **SECOND CAUSE OF ACTION**

3 **Failure to Provide Required Rest and Recovery Periods**

4 **[Cal. Labor Code §§ 226.7, 512; IWC Wage Order Nos. 8, 13, and 14, § 12]**

5 **(Against all DEFENDANTS)**

6 20. PLAINTIFF incorporates herein by specific reference, as though fully set forth,
7 the allegations in all preceding paragraphs.

8 21. At all times relevant herein, as part of DEFENDANTS' illegal payroll policies
9 and practices to deprive their non-exempt employees all wages earned and due, DEFENDANTS
10 failed to provide rest and recovery periods to PLAINTIFF and CLASS MEMBERS as required
11 under California Labor Code §§ 226.7 and 512, and IWC Wage Order Nos. 8, 13, and 14, § 12.
12 This includes not providing water, shade and restroom facilities on the work fields.

13 22. DEFENDANTS further violated California Labor Code § 226.7 and IWC Wage
14 Order Nos. 8, 13, and 14, § 12 by failing to pay PLAINTIFF and CLASS MEMBERS who were
15 not provided with a rest and recovery periods, in accordance with the applicable wage order, one
16 additional hour of compensation at each employee's regular rate of pay for each workday that a
17 rest period was not provided.

18 23. As a proximate result of the aforementioned violations, PLAINTIFF and CLASS
19 MEMBERS have been damaged in an amount according to proof at trial, and seek all wages
20 earned and due, interest, penalties, expenses, and costs of suit.

21
22 **THIRD CAUSE OF ACTION**

23 **Failure to Pay Overtime Wages**

24 **[Cal. Labor Code §§ 510, 1194, 1198; IWC Wage Order Nos. 8, 13, and 14, § 3]**

25 **(Against all DEFENDANTS)**

26 24. PLAINTIFF incorporates herein by specific reference, as though fully set forth,
27 the allegations in all preceding paragraphs.

28 25. Pursuant to California Labor Code §§ 510, 1194, and IWC Wage Order Nos. 8,

1 13, and 14, § 3, DEFENDANTS are required to compensate PLAINTIFF and CLASS
2 MEMBERS for all overtime, which is calculated at one and one-half (1 ½) times the regular rate
3 of pay for all hours worked in excess of eight (8) hours per day and/or forty (40) hours per week,
4 and for the first eight (8) hours on the seventh consecutive workday, with double time for all
5 hours worked in excess of twelve (12) hours in any workday and for all hours worked in excess
6 of eight (8) hours on the seventh consecutive day of work in any workweek.

7 26. PLAINTIFF and CLASS MEMBERS are current and former non-exempt
8 employees entitled to the protections of California Labor Code §§ 510, 1194, and IWC Wage
9 Order Nos. 8, 13, and 14 . During the CLASS PERIOD, DEFENDANTS failed to compensate
10 PLAINTIFF and CLASS MEMBERS for all overtime hours worked as required under the
11 foregoing provisions of the California Labor Code and IWC Wage Order by, among other things:
12 failing to pay overtime at one and one-half (1 ½) or double the regular rate of pay as provided by
13 California Labor Code §§ 510, 1194, and IWC Wage Order Nos. 8, 13, and 14, § 3; requiring,
14 permitting or suffering PLAINTIFF and CLASS MEMBERS to work off the clock; requiring,
15 permitting or suffering PLAINTIFF and CLASS MEMBERS to work through meal and rest
16 breaks; illegally and inaccurately recording time in which PLAINTIFF and CLASS MEMBERS
17 worked; illegally rounding the work hours of PLAINTIFF and CLASS MEMBERS; failing to
18 properly maintain PLAINTIFF'S and CLASS MEMBERS' records; failing to provide accurate
19 itemized wage statements to PLAINTIFF and CLASS MEMBERS for each pay period; and
20 other methods to be discovered.

21 27. In violation of California law, DEFENDANTS have knowingly and willfully
22 refused to perform their obligations to compensate PLAINTIFF and CLASS MEMBERS for all
23 wages earned and all hours worked. As a proximate result, PLAINTIFF and CLASS
24 MEMBERS have suffered, and continue to suffer, substantial losses related to the use and
25 enjoyment of such wages, lost interest on such wages, and expenses and attorneys' fees in
26 seeking to compel DEFENDANTS to fully perform their obligations under state law, all to their
27 respective damages in amounts according to proof at time of trial, and within the jurisdiction of
28 this Court.

1 28. DEFENDANTS' conduct described herein violates California Labor Code §§
2 510, 1194, 1198 and IWC Wage Order Nos. 8, 13, and 14, § 3. Therefore, pursuant to California
3 Labor Code §§ 200, 203, 226, 558, 1194, 1197.1, and other applicable provisions under the
4 California Labor Code and IWC Wage Orders, PLAINTIFF and CLASS MEMBERS are entitled
5 to recover the unpaid balance of wages owed to them by DEFENDANTS, plus interest,
6 penalties, attorneys' fees, expenses, and costs of suit.

7
8 **FOURTH CAUSE OF ACTION**

9 **Failure to Pay Minimum Wages**

10 **[Cal Labor Code §§ 1194, 1197; IWC Wage Order Nos. 8, 13, and 14, § 4]**

11 **(Against all DEFENDANTS)**

12 29. PLAINTIFF incorporates herein by specific reference, as though fully set forth,
13 the allegations in all preceding paragraphs.

14 30. Pursuant to California Labor Code §§ 1194, 1197, and IWC Wage Order Nos. 8,
15 13, and 14, § 4, payment to an employee of less than the applicable minimum wage for all hours
16 worked in a payroll period is unlawful.

17 31. During the CLASS PERIOD, DEFENDANTS failed to pay PLAINTIFF and
18 CLASS MEMBERS minimum wages for all hours worked by, among other things: requiring,
19 permitting or suffering PLAINTIFF and CLASS MEMBERS to work off the clock; requiring,
20 permitting or suffering PLAINTIFF and CLASS MEMBERS to work through meal and rest
21 breaks; illegally and inaccurately recording time in which PLAINTIFF and CLASS MEMBERS
22 worked; illegally rounding the work hours of PLAINTIFF and CLASS MEMBERS; failing to
23 properly maintain PLAINTIFF'S and CLASS MEMBERS' records; failing to provide accurate
24 itemized wage statements to PLAINTIFF and CLASS MEMBERS for each pay period; and
25 other methods to be discovered.

26 32. DEFENDANTS' conduct described herein violates California Labor Code §§
27 1194, 1197, and IWC Wage Order Nos. 8, 13, and 14, § 4. As a proximate result of the
28 aforementioned violations, PLAINTIFF and CLASS MEMBERS have been damaged in an

1 amount according to proof at trial. Therefore, pursuant to California Labor Code §§ 200, 203,
2 226, 558, 1194, 1197.1, and other applicable provisions under the Labor Code and IWC Wage
3 Orders, PLAINTIFF and CLASS MEMBERS are entitled to recover the unpaid balance of wages
4 owed to them by DEFENDANTS, plus interest, penalties, attorneys' fees, expenses, and costs of
5 suit.

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7 **FIFTH CAUSE OF ACTION**

8 **Failure to Timely Pay Wages During Employment**

9 **[Cal. Labor Code § 204]**

10 **(Against All DEFENDANTS)**

11 33. PLAINTIFF incorporates herein by specific reference, as though fully set forth,
12 the allegations in all preceding paragraphs.

13 34. Pursuant to California Labor Code § 204, for all labor performed between the 1st
14 and 15th days of any calendar month, DEFENDANTS are required to pay their nonexempt
15 employees between the 16th and 26th day of the month during which the labor was performed.
16 California Labor Code § 204 also provides that for all labor performed between the 16th and 26th
17 days of any calendar month, DEFENDANTS are required to pay their nonexempt employees
18 between the 1st and 10th day of the following calendar month. In addition, California Labor Code
19 § 204 provides that all wages earned for labor in excess of the normal work period shall be paid
20 no later than the payday of the next regular payroll period.

21 35. During the CLASS PERIOD, DEFENDANTS knowingly and willfully failed to
22 pay PLAINTIFF and CLASS MEMBERS all the wages they earned when due as required by
23 California Labor Code § 204.

24 36. Pursuant to California Labor Code § 210, failure to pay the wages of each
25 employee as provided in California Labor Code § 204 will subject DEFENDANTS to a civil
26 penalty of: (1) one hundred dollars (\$100) for each failure to pay each employee for each initial
27 violation; and (2) two hundred dollars (\$200) for each failure to pay each employee, plus twenty-
28 five percent (25%) of the amount unlawfully withheld, for each subsequent violation.

1 37. DEFENDANTS' conduct described herein violates California Labor Code § 204.
2 As a proximate result of the aforementioned violations, PLAINTIFF and CLASS MEMBERS
3 have been damaged in an amount according to proof at trial. Therefore, pursuant to California
4 Labor Code §§ 200, 210, 226, 558, 1194, 1197.1, 2699, and other applicable provisions under
5 the Labor Code and IWC Wage Orders, PLAINTIFF and CLASS MEMBERS are entitled to
6 recover the unpaid balance of wages owed to them by DEFENDANTS, plus interest, penalties,
7 attorneys' fees, expenses, and costs of suit.

8
9 **SIXTH CAUSE OF ACTION**

10 **Failure to Pay All Wages Due to Discharged and Quitting Employees**

11 **[Cal. Labor Code §§ 201, 202, 203]**

12 **(Against all DEFENDANTS)**

13 38. PLAINTIFF incorporates herein by specific reference, as though fully set forth,
14 the allegations in all preceding paragraphs.

15 39. Pursuant to California Labor Code § 201, 202, and 203, DEFENDANTS are
16 required to pay all earned and unpaid wages to an employee who is discharged. California Labor
17 Code § 201 mandates that if an employer discharges an employee, the employee's wages accrued
18 and unpaid at the time of discharge are due and payable immediately.

19 40. Furthermore, pursuant to California Labor Code § 202, DEFENDANTS are
20 required to pay all accrued wages due to an employee no later than 72 hours after the employee
21 quits his or her employment, unless the employee provided 72 hours previous notice of his or her
22 intention to quit, in which case the employee is entitled to his or her wages at the time of
23 quitting.

24 41. California Labor Code § 203 provides that if an employer willfully fails to pay, in
25 accordance with California Labor Code §§ 201 and 202, any wages of an employee who is
26 discharged or who quits, the employer is liable for waiting time penalties in the form of
27 continued compensation to the employee at the same rate for up to 30 workdays.

28 42. During the CLASS PERIOD, DEFENDANTS have willfully failed to pay

1 accrued wages and other compensation to PLAINTIFF and CLASS MEMBERS in accordance
2 with California Labor Code §§ 201, 202, and 203.

3 43. As a result, PLAINTIFF and CLASS MEMBERS are entitled to all available
4 statutory penalties, including the waiting time penalties provided in California Labor Code §
5 203, together with interest thereon, as well as other available remedies.

6 44. As a proximate result of DEFENDANTS' unlawful actions and omissions,
7 PLAINTIFF and CLASS MEMBERS have been deprived of compensation in an amount
8 according to proof at the time of trial, but in excess of the jurisdiction of this Court, and are
9 entitled to recovery of such amounts, plus interest thereon, and attorneys' fees and costs,
10 pursuant to California Labor Code §§ 1194 and 2699.

11
12 **SEVENTH CAUSE OF ACTION**

13 **Failure to Maintain Required Records**

14 **[Cal. Labor Code §§ 226, 1174; IWC Wage Order Nos. 8, 13, and 14, § 7]**

15 **(Against all DEFENDANTS)**

16 45. PLAINTIFF incorporates herein by specific reference, as though fully set forth,
17 the allegations in all preceding paragraphs.

18 46. During the CLASS PERIOD, as part of DEFENDANTS' illegal payroll policies
19 and practices to deprive PLAINTIFF and CLASS MEMBERS of all wages earned and due,
20 DEFENDANTS knowingly and intentionally failed to maintain records as required under
21 California Labor Code §§ 226, 1174, and IWC Wage Order Nos. 8, 13, and 14, § 7, including but
22 not limited to the following records: total daily hours worked by each employee; applicable rates
23 of pay; all deductions; meal periods; time records showing when each employee begins and ends
24 each work period; and accurate itemized statements.

25 47. As a proximate result of DEFENDANTS' unlawful actions and omissions,
26 PLAINTIFF and CLASS MEMBERS have been damaged in an amount according to proof at
27 trial, and are entitled to all wages earned and due, plus interest thereon. Additionally,
28 PLAINTIFF and CLASS MEMBERS are entitled to all available statutory penalties, including

1 but not limited to civil penalties pursuant to California Labor Code §§ 226(e), 226.3, and 1174.5,
2 and an award of costs, expenses, and reasonable attorneys' fees, including but not limited to
3 those provided in California Labor Code § 226(e), as well as other available remedies.

4
5 **EIGHTH CAUSE OF ACTION**

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

7 **[Cal. Labor Code §§ 226; IWC Wage Order Nos. 8, 13, and 14, § 7]**

8 **(Against all DEFENDANTS)**

9 48. PLAINTIFF incorporates herein by specific reference, as though fully set forth,
10 the allegations in all preceding paragraphs.

11 49. During the CLASS PERIOD, DEFENDANTS routinely failed to provide
12 PLAINTIFF and CLASS MEMBERS with timely, accurate, and itemized wage statements in
13 writing showing each employee's gross wages earned, total hours worked, all deductions made,
14 net wages earned, the inclusive dates of the period for which the employee is paid, the name and
15 address of the legal entity or entities employing PLAINTIFF and CLASS MEMBERS, and all
16 applicable hourly rates in effect during each pay period and the corresponding number of hours
17 worked at each hourly rate, in violation of California Labor Code § 226 and IWC Wage Order
18 Nos. 8, 13, and 14, § 7.

19 50. During the CLASS PERIOD, DEFENDANTS knowingly and intentionally failed
20 to provide PLAINTIFF and CLASS MEMBERS with timely, accurate, and itemized wage
21 statements in accordance with California Labor Code § 226(a).

22 51. As a proximate result of DEFENDANTS' unlawful actions and omissions, PLAINTIFF
23 and CLASS MEMBERS have been damaged in an amount according to proof at trial, and seek
24 all wages earned and due, plus interest thereon. Additionally, PLAINTIFF and CLASS
25 MEMBERS are entitled to all available statutory penalties, including but not limited to civil
26 penalties pursuant to California Labor Code §§ 226(e), 226.3, and 1174.5, and an award of costs,
27 expenses, and reasonable attorneys' fees, including but not limited to those provided in
28 California Labor Code § 226(e), as well as other available remedies.

1 **NINTH CAUSE OF ACTION**

2 **Failure to Indemnify Employees for Necessary Expenditures**

3 **Incurred in Discharge of Duties**

4 **[Cal. Labor Code § 2802]**

5 **(Against all DEFENDANTS)**

6 52. PLAINTIFF incorporates herein by specific reference, as though fully set forth,
7 the allegations in all preceding paragraphs.

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

11 54. During the CLASS PERIOD, DEFENDANTS knowingly and willfully failed to
12 indemnify PLAINTIFF and CLASS MEMBERS for all business expenses and/or losses incurred
13 in direct consequence of the discharge of their duties while working under the direction of
14 DEFENDANTS, including but not limited to expenses for uniforms, travel expenses, cell phone
15 usage, and other employment-related expenses, in violation of California Labor Code § 2802.

16 55. As a proximate result of DEFENDANTS' unlawful actions and omissions,
17 PLAINTIFF and CLASS MEMBERS have been damaged in an amount according to proof at
18 trial, and seek reimbursement of all necessary expenditures, plus interest thereon pursuant to
19 California Labor Code § 2802(b). Additionally, PLAINTIFF and CLASS MEMBERS are
20 entitled to all available statutory penalties and an award of costs, expenses, and reasonable
21 attorneys' fees, including those provided in California Labor Code § 2802(c), as well as other
22 available remedies.

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TENTH CAUSE OF ACTION
Unfair and Unlawful Business Practices
[Cal. Bus. & Prof. Code §§ 17200 et. seq.]
(Against all DEFENDANTS)

56. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the allegations in all preceding paragraphs.

57. Each and every one of DEFENDANTS’ acts and omissions in violation of the California Labor Code and/or the applicable IWC Wage Order as alleged herein, including but not limited to DEFENDANTS’ failure and refusal to provide required meal periods, DEFENDANTS’ failure and refusal to provide required rest periods, DEFENDANTS’ failure and refusal to pay overtime compensation, DEFENDANTS’ failure and refusal to pay minimum wages, DEFENDANTS’ failure and refusal to furnish accurate itemized wage statements; DEFENDANTS’ failure and refusal to maintain required records, DEFENDANTS’ failure and refusal to indemnify PLAINTIFF and CLASS MEMBERS for necessary expenditures and/or losses incurring in discharging their duties, constitutes an unfair and unlawful business practice under California Business and Professions Code § 17200 et seq.

58. DEFENDANTS’ violations of California wage and hour laws constitute a business practice because DEFENDANTS’ aforementioned acts and omissions were done repeatedly over a significant period of time, and in a systematic manner, to the detriment of PLAINTIFF and CLASS MEMBERS.

59. DEFENDANTS have avoided payment of wages, overtime wages, meal periods, rest periods, and other benefits as required by the California Labor Code, the California Code of Regulations, and the applicable IWC Wage Order. Further, DEFENDANTS have failed to record, report, and pay the correct sums of assessment to the state authorities under the California Labor Code and other applicable regulations.

60. As a result of DEFENDANTS’ unfair and unlawful business practices, DEFENDANTS have reaped unfair and illegal profits during the CLASS PERIOD at the expense of PLAINTIFF, CLASS MEMBERS, and members of the public. DEFENDANTS

1 should be made to disgorge their ill-gotten gains and to restore them to PLAINTIFF and CLASS
2 MEMBERS.

3 61. DEFENDANTS' unfair and unlawful business practices entitle PLAINTIFF and
4 CLASS MEMBERS to seek preliminary and permanent injunctive relief, including but not
5 limited to orders that DEFENDANTS account for, disgorge, and restore to PLAINTIFF and
6 CLASS MEMBERS the wages and other compensation unlawfully withheld from them.
7 PLAINTIFF and CLASS MEMBERS are entitled to restitution of all monies to be disgorged
8 from DEFENDANTS in an amount according to proof at the time of trial, but in excess of the
9 jurisdiction of this Court.

10
11 **ELEVENTH CAUSE OF ACTION**

12 **PRIVATE ATTORNEYS GENERAL ACT OF 2004**

13 **[Cal. Lab. Code § 2699, et. seq.]**

14 **(Against all DEFENDANTS)**

15 62. PLAINTIFF incorporate herein by specific reference, as though fully set forth, the
16 allegations in all preceding paragraphs.

17 63. PLAINTIFF and CLASS MEMBERS are "aggrieved employees" under PAGA,
18 as they were employed by DEFENDANTS during the applicable statutory period and suffered
19 one or more of the Labor Code violations set forth herein. Accordingly, they seeks to recover on
20 behalf of themselves and all other current and former aggrieved employees of DEFENDANTS,
21 the civil penalties provided by PAGA, plus reasonable attorney's fees and costs.

22 64. PLAINTIFF and CLASS MEMBERS seek to recover the PAGA civil penalties
23 through a representative action permitted by PAGA and the California Supreme Court in *Arias v.*
24 *Superior Court* (2009) 46 Cal. 4th 969. Therefore, class certification of the PAGA claims is not
25 required.

26 65. PLAINTIFF and CLASS MEMBERS seek civil penalties pursuant to PAGA for
27 violations of the following Labor Code provisions:

28 a. failure to provide prompt payment of wages to Labor Code §§ 200, 201, 202,

203;

b. failure to provide accurate itemized wage statements to employees in violation of Labor Code §§ 226(a), 1174, and 1174.5;

c. failure to provide meal and rest periods in violation of Wage Order No. 9 and Labor Code §§ 226.7, 512, and 558;

d. failure to pay overtime wages in violation of Wage Order No. 9 and Labor Code §§ 510, 558, 1194 and 1198;

e. failure to pay minimum wages in violation of Wage Order No. 9 and Labor Code §§ 1182.12, 1194, and 1197;

f. failure to provide itemized wage statements to employees in violation of Labor Code §§ 226(a); and failure to pay all wages twice during each calendar month on days designated in advance by the employer as the regular paydays in violation of Labor Code § 204;

g. Failure to Maintain Records in violation of Labor Code § 226 (c) and 1198.5.

66. With respect to violations of Labor Code § 226(a), Labor Code § 226.3 imposes a civil penalty in addition to any other penalty provided by law of two hundred fifty dollars (\$250) per aggrieved employee for the first violation, and one thousand dollars (\$1,000) per aggrieved employee for each subsequent violation of Labor Code § 226(a).

67. With respect to violations of Labor Code §§ 510, 512, Labor Code § 558 imposes a civil penalty in addition to any other penalty provided by law of fifty dollars (\$50) for initial violations for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages, and one hundred dollars (\$100) for subsequent violations for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. Moreover, Plaintiffs seeks civil penalties in the amount of unpaid wages owed to aggrieved employees pursuant to Labor Code § 558(a)(3).

68. With respect to violations of Labor Code § 1174, Labor Code § 1174.5 imposes a civil penalty of \$500.

1 69. Labor Code § 2699 et seq. imposes a civil penalty of one hundred dollars (\$100)
2 per pay period, per aggrieved employee for initial violations, and two hundred dollars (\$200) pay
3 period, per aggrieved employee for subsequent violations for all Labor Code provisions for
4 which a civil penalty is not specifically provided, including Labor Code §§ 200, 201, 202, 203,
5 226, 226.7, 226.8, 350, 351, 1174, 1182.12, 1194, 1197, 1198, 1198.5 and 2802.

6 70. On July 29, 2021, PLAINTIFF gave written notice by certified mail of
7 DEFENDANTS' violations of various provisions of the California Labor Code as alleged in this
8 complaint to the Labor and Workforce Development Agency ("LWDA") and DEFENDANTS.

9 71. The LWDA did not provide notice of its intention to investigate DEFENDANTS'
10 alleged violations within sixty-five (65) calendar days of the postmark date of the notice sent by
11 Plaintiff. See Cal. Lab. Code § 2699.3(a)(2)(A).

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PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF, individually and on behalf of all other persons similarly situated, respectfully pray for relief against DEFENDANTS and DOES 1 through 100, inclusive, and each of them, as follows:

1. For compensatory damages in an amount to be ascertained at trial;
2. For restitution of all monies due to PLAINTIFF and CLASS MEMBERS, as well as disgorged profits from the unfair and unlawful business practices of DEFENDANTS;
3. For meal and rest period compensation pursuant to California Labor Code § 226.7 and IWC Wage Order Nos. 8, 13, and 14 ;
4. For liquidated damages pursuant to California Labor Code §§ 1194.2 and 1197.1;
5. For preliminary and permanent injunctive relief enjoining DEFENDANTS from violating the relevant provisions of the California Labor Code and the IWC Wager Orders, and from engaging in the unlawful business practices complained of herein;
6. For waiting time penalties pursuant to California Labor Code § 203;
7. For statutory and civil penalties according to proof, including but not limited to all penalties authorized by the California Labor Code §§ 210, 226.3, 226(e), 558, 1197.1, and 2699;
8. For interest on the unpaid wages at 10% per annum pursuant to California Labor Code §§ 218.6, 1194, 2802, California Civil Code §§ 3287, 3288, and/or any other applicable provision providing for pre-judgment interest;
9. For reasonable attorneys' fees and costs pursuant to California Labor Code §§ 218.5, 1021.5, 1194, 2699, 2802, California Civil Code § 1021.5, and/or any other applicable provisions providing for attorneys' fees and costs;
10. For declaratory relief;
11. For an order requiring and certifying the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, and Tenth Causes of Action as a class action;
12. For an order appointing PLAINTIFF as class representatives, and PLAINTIFF'S counsel as class counsel; and
13. For such further relief that the Court may deem just and proper.

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DATED: November 10, 2021

Respectfully submitted,

SOLOUKI | SAVOY, LLP

By: Shoham J. Solouki
SHOHAM J. SOLOUKI
GRANT JOSEPH SAVOY
Attorneys for Plaintiff
URIEL VAZQUEZ CABRERA

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DEMAND FOR JURY TRIAL

PLAINTIFF, individually and on behalf of all other persons similarly situated, hereby
demands a jury trial with respect to all issues triable of right by jury.

DATED: November 10, 2021

Respectfully submitted,

SOLOUKI | SAVOY, LLP

By: Shoham J. Solouki
SHOHAM J. SOLOUKI
GRANT JOSEPH SAVOY
Attorneys for Plaintiff
URIEL VAZQUEZ CABRERA

PROOF OF SERVICE

I am a resident of the State of California, over eighteen years of age, and not a party to this action. My business address is 316 W. 2nd Street, Suite 1200, Los Angeles, CA 90012.

On, November 10, 2021, I served the following documents:

FIRST AMENDED CLASS ACTION COMPLAINT

- ☐ BY FAX: by transmitting via facsimile the document(s) listed above to the following fax number(s) listed below.
- ☒ BY ELECTRONIC SERVICE: I caused the documents to be sent to the persons at the email addressed listed below via email, as ordered by the court. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.
- ☐ BY PERSONAL DELIVERY: by causing personal delivery (by hand) of the documents listed above to the person(s) at the address set forth below.
- ☒ BY MAIL: by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, CA, addressed as set forth below.
- ☐ BY MAIL: I am "readily familiar" with the office's practice of collection and processing of correspondence for mailing. It is deposited in a sealed envelope with the U.S. Postal Service on that same day with postage thereon fully prepaid, at Los Angeles, CA, in the ordinary course of business, addressed as set forth below.

[SEE ATTACHED SERVICE LIST]

I certify (or declare), under penalty of perjury of the laws of the State of California, that the foregoing is true and correct.

Executed on November 10, 2021, at Los Angeles, California.

Shoham J. Solouki

Shoham Solouki

SERVICE LIST

William P. Keith, Esq. Duckor Spradling Metzger & Wynne, A Law Corporation 101 West Broadway, Suite 1700 San Diego, CA tel (619) 209-3053 main (619) 209-3000 fax (619) 209-3043 Email: metzger@dsmw.com, Keith@dsmw.com	<i>Attorneys for Defendants</i>
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