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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

FEB 09 2022



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7 Attorneys for Plaintiffs Bernardo Hernandez and
8 Maria G. Flores, on behalf of themselves and others
similarly situated

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF SAN BERNARDINO**
12

13 BERNARDO HERNANDEZ and MARIA
14 G. FLORES, on behalf of themselves and
15 others similarly situated,

16 Plaintiffs,

17 v.

18 WILBUR CURTIS CO., INC.; WCCO
19 HOLDINGS, INC.; KEVIN ROBERT
20 CURTIS; MICHAEL AITKIN CURTIS; and
21 DOES 1 through 100, inclusive,

22 Defendants.
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Case No.: CIVSB2125955

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

1. Failure to Pay Minimum Wages
2. Failure to Pay All Overtime Wages
3. Meal Period Liability under Labor Code § 226.7
4. Rest Break Liability under Labor Code § 226.7
5. Failure to Reimburse for Business Expenses
6. Failure to Provide Accurate Itemized Employee Wage Statements
7. Failure to Pay All Wages Owed Timely and Upon Separation of Employment
8. Violation of Labor Code § 1174(d)
9. Violation of Business & Professions Code §§ 17200, *et seq.*
10. Penalties Pursuant to Labor Code § 2699

DEMAND FOR JURY TRIAL

1 Plaintiffs BERNARDO HERNANDEZ and MARIA G. FLORES (collectively,
2 “Plaintiffs”), on behalf of themselves, the State of California, and all others similarly situated,
3 allege and complain of defendants WILBUR CURTIS CO., INC., WCCO HOLDINGS, INC.,
4 KEVIN ROBERT CURTIS, MICHAEL AITKIN CURTIS and DOES 1 through 100, inclusive
5 (collectively, “Defendants”), and each of them, as follows:

6 **I. INTRODUCTION**

7 1. This is a class action pursuant to California Code of Civil Procedure section 382
8 on behalf of Plaintiffs and the following class: *All current and former hourly-paid or non-exempt*
9 *employees who worked for Defendants, and/or their predecessor or merged entities, within the*
10 *State of California from four years prior to the filing of the original Complaint plus the additional*
11 *time during which the statute of limitations was tolled (pursuant to Emergency Rule 9 of the*
12 *California Rules of Court) and continuing to final judgment* (the “Class” or “Class Members”).

13 2. The Judicial Council of California (JCC)’s amended Emergency Rule 9 (effective
14 May 29, 2020) provides: “Notwithstanding any other law, the statutes of limitations and repose
15 for civil causes of action that exceed 180 days are tolled from April 6, 2020, until October 1,
16 2020.” The Advisory Committee Comment notes that: “Emergency rule 9 is intended to apply
17 broadly to toll any statute of limitations on the filing of a pleading in court asserting a civil cause
18 of action. The term “civil causes of action” includes special proceedings. (*See* Code Civ. Proc.,
19 §§ 312, 363 [“action,” as used in title 2 of the code (Of the Time of Commencing Civil Actions),
20 is construed “as including a special proceeding of a civil nature”)] The rule also applies to
21 statutes of limitations on filing of causes of action in court found in codes other than the Code of
22 Civil Procedure.”

23 3. Throughout the time period involved in this case, Defendants willfully maintained
24 a consistent policy and/or practice of failing to pay all wages, including minimum wages, for all
25 hours worked; failing to pay all overtime wages; failing to provide compliant duty-free meal
26 periods; failing to authorize and permit compliant duty-free rest breaks; failing to reimburse for
27 business expenses; failing to maintain and provide accurate itemized wage statements; and failing
28 to pay all wages owed timely and upon separation of employment. Defendants’ illegal conduct

1 has also given rise to derivative claims for unfair business practices and violation of the Private
2 Attorneys General Act of 2004 (“PAGA”).

3 4. Plaintiffs, on behalf of themselves and all other similarly situated employees,
4 pursuant to California Business & Professions Code sections 17200 through 17208, also seek all
5 monies owed but withheld and retained by Defendants to which Plaintiffs and Class Members
6 are entitled. Plaintiffs seek an order by the Court awarding restitution, injunctive relief, and all
7 other legal and equitable relief allowed, plus interest, attorneys’ fees and costs.

8 5. Plaintiffs, on behalf of themselves and all other similarly situated aggrieved
9 employees (the “Aggrieved Employees”), also bring this representative action against
10 Defendants to recover wages and penalties owed pursuant to Labor Code section 2699. Plaintiffs
11 were compelled to retain the services of counsel to file this action to protect their interests and
12 those of Aggrieved Employees and has thereby incurred attorneys’ fees and costs, which they are
13 entitled to recover under Labor Code section 2699.

14 6. The relevant time period for the claims under the PAGA discussed herein is one
15 year prior to the date Plaintiff Hernandez filed his original PAGA notice online with the Labor
16 & Workforce Development Agency and sent a letter by certified mail to Defendants plus the
17 additional time during which the statute of limitations was tolled (pursuant to Emergency Rule 9
18 of the California Rules of Court) and ongoing.

19 7. For purposes of the allegations set forth herein, Class Members, along with
20 Aggrieved Employees comprising the PAGA representative action, are collectively referred to
21 as “Employees” except as otherwise specified.

22 **II. JURISDICTION AND VENUE**

23 8. This Court has jurisdiction over this action pursuant to the California Constitution,
24 Article VI, Section 10, which grants the superior court “original jurisdiction in all other causes”
25 except those given by statute to other courts. The statutes under which this action is brought do
26 not specify any other basis for jurisdiction.

27 9. This Court has jurisdiction over Defendants because, upon information and belief,
28 Defendants are citizens of California, have sufficient minimum contacts in California, or

otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by California courts consistent with traditional notions of fair play and substantial justice.

10. Venue as to Defendants is proper in this judicial district pursuant to Code of Civil Procedure section 395.5 because, upon information and belief, the obligations giving rise to liability occurred in part in the County of San Bernardino, State of California.

11. This case should be classified as complex according to California Rules of Court, Rule 3.400, and assigned to a complex litigation judge and department because it is a class action, will involve substantial documentary evidence and a large number of witnesses, is likely to involve extensive motion practice raising difficult or novel issues that will be time-consuming to resolve, and would require substantial post judgment judicial supervision.

III. PARTIES

12. Plaintiffs are residents of California. At all relevant times herein, Defendants employed Plaintiffs as non-exempt, hourly paid employees and subjected them to the same employment policies and/or practices that affected Employees.

13. Plaintiffs are informed and believe, and based thereon allege, that Defendant Wilbur Curtis Co., Inc. is registered to do business in the State of California.

14. Plaintiffs are informed and believe, and based thereon allege, that Defendant WCCO Holdings, Inc. is registered to do business in the State of California.

15. Plaintiffs are informed and believe, and based thereon allege, that Defendant Kevin Robert Curtis was an owner, director, officer and/or managing agent and, therefore, is liable in his individual capacity.¹

¹ It is the law in California that, as owners and officers of the corporate employer, individual defendants are liable in their individual capacity for civil penalties, attorneys' fees and litigation costs available to aggrieved employees pursuant to California Labor Code sections 558.1 and 1197.1. This rule was recently fortified in *Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809, where the California Court of Appeal held that the trial court did not err in holding the individual defendant liable, stating: "the language in both section 558(a) and section 1197.1(a) is broad enough to *unambiguously* include [the owner and CEO of the defendant employer] as a person *other than the corporate employer* subject to the civil penalties awarded by the trial court under those two statutes." (Emphasis in original).

1 16. Plaintiffs are informed and believe, and based thereon allege, that Defendant
2 Michael Aitkin Curtis was an owner, director, officer and/or managing agent and, therefore, is
3 liable in his individual capacity.²

4 17. Plaintiffs are informed and believe, and based thereon allege, that Defendants
5 acted as the employers and/or joint employers of Employees, and directly or indirectly, or through
6 actual agents, ostensible agents and/or other persons, employed Employees, and exercised
7 control over their wages, hours, and working conditions. Defendants' control included, but was
8 not limited to, the authority to hire and fire, assign work tasks, engage in day-to-day supervision,
9 and control of Employees' employment records.

10 18. The true names and capacities, whether individual, corporate, associate, or
11 otherwise, of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown
12 to Plaintiffs, who therefore sue defendants by such fictitious names under Code of Civil
13 Procedure section 474. Plaintiffs are informed and believe and based thereon allege that each of
14 the defendants designated herein as DOE is legally responsible in some manner for the unlawful
15 acts referred to herein. Plaintiffs will seek leave of court to amend this Complaint to reflect the
16 true names and capacities of the defendants designated hereinafter as DOES when such identities
17 become known.

18 19. Whenever, heretofore or hereinafter, reference is made to "Defendants," it shall
19 include DOES 1 through 100 identified herein.

20 20. Plaintiffs are informed and believe, and based thereon allege, that each Defendant
21 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a
22 joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each
23 Defendant are legally attributable to other Defendants. Plaintiffs are further informed and believe
24 and based thereon allege that Defendants are joint employers in that they employed Plaintiffs and
25 Employees, at the same time and were operating as a joint enterprise and single entity at all
26 relevant time periods.

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² See footnote 1, *supra*.

1 21. California courts have recognized that the definition of “employer” for purposes
2 of enforcement of the California Labor Code goes beyond the concept of traditional employment
3 to reach irregular working arrangements for the purpose of preventing evasion and subterfuge of
4 California’s labor laws. *Martinez v. Combs* (2010) 49 Cal.4th 35, 65. As such, anyone who
5 directly or indirectly, or through an agent or any other person, engages, suffers, or permits any
6 person to work or exercises control over the wages, hours, or working conditions of any person
7 may be liable for violations of the California Labor Code as to that person.

8 22. California law also permits and recognizes the piercing of a corporate veil
9 between sister companies under the single enterprise rule. *Hasso v. Hapke* (2014) 227
10 Cal.App.4th 107, 155; *Greenspan v. LADT, LLC* (2010) 191 Cal.App.4th 486, 512. The single
11 enterprise rule applies where “there are two or more personalities, there is but one enterprise; and
12 that this enterprise has been so handled that it should respond, as a whole, for the debts of certain
13 component elements of it.” *Hasso, supra*, 227 Cal.App.4th at 155; *Greenspan, supra*, 191
14 Cal.App.4th at 512.

15 23. At all times throughout their employment, Plaintiffs and Employees were
16 regularly and consistently subject to the common policies and/or practices utilized by
17 Defendants.

18 24. Accordingly, all Defendants engaged, suffered, and permitted Plaintiffs and
19 Employees to perform services from which they benefitted. Moreover, the aforementioned
20 entities had the right to exercise control over the wages, hours, and/or working conditions over
21 Plaintiffs and Employees at all relevant times herein, so as to be considered joint employers.

22 **IV. FACTUAL BACKGROUND**

23 **Defendants Systematically Violated State Wage and Hour Laws**

24 25. Plaintiffs are informed and believe that there are more than three hundred Class
25 Members employed by Defendants within the State of California at any given time. Accounting
26 for employee turnover necessarily increases this number substantially. Defendants design,
27 manufacture and market innovative commercial coffee and tea brewing equipment systems, and
28 specialty drink dispensers.

1 26. Plaintiffs and Employees are nonexempt employees pursuant to the applicable
2 IWC Wage Order. This action seeks recovery for wages and compensation due and owing to
3 Plaintiffs and Employees under California laws for the maximum period allowed to the present,
4 as set out herein.

5 27. Labor Code section 510 requires an employer to compensate an employee who
6 works more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first
7 eight (8) hours worked on the seventh consecutive day no less than one and one-half times the
8 regular rate of pay for an employee. Further, Labor Code section 510 obligates employers to
9 compensate employees at no less than twice the regular rate of pay when an employee works
10 more than twelve (12) hours in a day or more than eight (8) hours on the seventh consecutive day
11 of work.

12 28. During the relevant period, Defendants have had a consistent policy and/or
13 practice of failing to pay overtime wages to Plaintiffs and Employees for all overtime hours they
14 worked. The work times of Plaintiffs and Employees have been, and continue to be, greater than
15 eight (8) hours per day and/or forty (40) hours per week. Yet, because Defendants did not pay
16 Plaintiffs and Employees wages for, *inter alia*, hours that were worked off the clock, Plaintiffs
17 and Employees were deprived wages at overtime premium amounts attributable to overtime
18 hours. Moreover, the overtime that was paid was short as Defendants incorrectly calculated the
19 regular rate for purposes of calculating overtime; Defendants failed to include non-discretionary
20 forms of pay including bonuses in the regular rate calculations for Plaintiffs and Employees.

21 29. By their common policy and/or practice of requiring Plaintiffs and Employees to
22 work in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without
23 compensating them at the applicable overtime rate of pay, Defendants willfully violated the
24 provisions of Labor Code sections 510 and 1198, as well as the relevant IWC Wage Orders.

25 30. Throughout the applicable period of time, Defendants did not pay Plaintiffs and
26 Employees at least the California minimum wage for all hours worked, violating Labor Code
27 section 1194. Pursuant to Labor Code section 1194.2, Plaintiffs and Employees are entitled to
28 recover liquidated damages (double damages) for Defendants' failure to pay minimum wages.

1 31. Defendants failed to provide Plaintiffs and Employees with timely duty-free meal
2 periods. Labor Code sections 226.7, 512, and the relevant IWC Wage Orders require employers
3 to provide employees with a thirty (30) minute uninterrupted and duty-free meal period within
4 the first five (5) hours of work. *Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004,
5 1042 (“Accordingly, first meal periods must start after no more than five hours.”). Moreover, an
6 employee who works more than ten (10) hours per day is entitled to receive a second thirty (30)
7 minute uninterrupted and duty-free meal period.

8 32. Defendants denied Plaintiffs and Employees meal periods that comply with Labor
9 Code sections 226.7, 512, and the relevant IWC Wage Orders. By way of example, meal periods
10 were not always timely provided in that Plaintiffs and Employees would have to work over five
11 (5) hours and/or over ten (10) hours without receiving a meal period. In addition, meal periods
12 were occasionally less than thirty (30) minutes because Plaintiffs and Employees were asked by
13 Defendants and expected to work during meal periods. Plaintiffs and Employees thus suffered
14 late, short, interrupted, and/or missed meal periods. Finally, Defendants’ rounding policy and/or
15 practice for meal periods flouts California law. *See Donohue v. AMN Services, LLC* (2021) 11
16 Cal.5th 58.

17 33. Defendants were also obligated but failed to provide Plaintiffs and Employees
18 with net ten (10) minute rest breaks for work shifts exceeding four (4) hours or a major fraction
19 thereof worked as required by Labor Code section 226.7 and the relevant IWC Wage Orders.
20 Defendants failed to provide Plaintiffs and Employees with timely duty-free rest breaks. Further,
21 Plaintiffs and Employees were not allowed to leave the workplace premises during rest breaks.

22 34. In addition to failing to authorize and permit compliant meal and rest breaks,
23 Plaintiffs and Employees were not compensated with one (1) hour’s worth of pay at their regular
24 rates of pay when they were not provided with compliant meal and rest breaks in accordance with
25 Labor Code section 226.7(b). *See Ferra v. Loews Hollywood Hotel* (2021) 11 Cal.5th 858.

26 35. Plaintiffs and Employees incurred necessary business expenses (e.g., purchase
27 and use of personal cell phones) in discharging their duties. However, Defendants did not pay
28 fully, or at all, for these necessary business expenses incurred by Plaintiffs and Employees.

Defendants violated Labor Code sections 2800 and 2802 by failing to pay and/or indemnify Plaintiffs and Employees for their necessary business expenditures incurred in direct consequence of the discharge of their duties.

36. Labor Code section 203 provides “if an employer willfully fails to pay...any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty...” for up to 30 days. Labor Code § 203; *Mamika v. Barca* (1998) 68 Cal.App.4th 487, 492.

37. Due to Defendants’ non-compliant policies and/or practices described herein, Plaintiffs and Employees whose employment with Defendants concluded were not compensated for, *inter alia*, all straight-time and overtime hours worked, and were not paid all meal and rest break premiums owed at their regular rates of pay. Thus, Defendants have failed to pay Plaintiffs and Employees all wages owed, whose sums were certain, at the time of termination or within seventy-two (72) hours of their resignation and have failed to pay those sums for thirty (30) days thereafter in violation of Labor Code section 203.

38. Labor Code section 204 expressly requires that “[a]ll wages...earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.” Pursuant to Labor Code section 204(d), these requirements are “deemed satisfied by the payment of wages for weekly, biweekly or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.” Due to Defendants’ failure to pay Plaintiffs and Employees for, *inter alia*, all straight-time and overtime hours worked, Defendants failed to timely pay Plaintiffs and Employees within seven (7) days of the close of the payroll period in accordance with Labor Code section 204 on a regular and consistent basis.

39. Through Labor Code section 210 and the PAGA, and to the extent permitted by law, Plaintiffs and Employees are entitled to recover civil penalties for violations of Labor Code section 204.

40. Plaintiffs and Employees were not furnished with accurate itemized wage statements that accurately showed their gross wages earned, net wages earned, premium

1 payments at their regular rates of pay for noncompliant meal and rest breaks, all applicable hourly
2 rates and corresponding number of hours worked at each hourly rate in effect during their pay
3 periods, and other information required by Labor Code section 226(a).

4 41. During the relevant period, Defendants have knowingly and intentionally failed
5 to provide Plaintiffs and Employees with the above-described writing through actions alleged
6 herein in violation of Labor Code section 226. Plaintiffs and Employees have been injured by
7 Defendants' intentional violation of Labor Code section 226(a) because they were denied both
8 their legal right to receive, and their protected interest in receiving, accurate itemized wage
9 statements.

10 42. In addition, because Defendants failed to provide the accurate and mandated
11 information on the itemized wage statements, Plaintiffs and Employees have been prevented by
12 Defendants from determining, *inter alia*, if all hours worked were paid and the extent of the
13 underpayment. Plaintiffs had to file this lawsuit and will be required to conduct discovery and
14 perform computations in order to analyze whether, and to what extent, Plaintiffs and Employees
15 suffered underpayment, thereby causing Plaintiffs to incur expenses and time lost. Thus,
16 Plaintiffs and Employees are owed the greater of all actual damages or fifty dollars (\$50.00) for
17 the initial pay period in which a violation occurs and one hundred dollars (\$100.00) per employee
18 for each violation in a subsequent pay period, not exceeding an aggregate penalty of four
19 thousand dollars (\$4,000.00), as provided for in Labor Code section 226(e).

20 43. Further, for the violations described above, Plaintiffs and Employees may also
21 recover civil penalties pursuant to Labor Code section 226.3 and the PAGA for Defendants'
22 violations of Labor Code section 226(a).

23 44. Additionally, Plaintiffs and Employees have been denied their legal right and
24 protected interest in having available at a central location at the plant or establishment where they
25 are employed, accurate and complete payroll records showing the hours worked daily by, and the
26 wages paid to, Plaintiffs and Employees at those respective locations pursuant to Labor Code
27 section 1174. Pursuant to Labor Code section 1174.5 and the PAGA, Plaintiffs and Employees
28 may also recover civil penalties for violation of Labor Code section 1174(d).

1 45. Based on the foregoing, Defendants have also engaged in unlawful and unfair
2 business practices in violation of California’s Business and Professions Code sections 17200, *et*
3 *seq.*, thereby entitling Plaintiffs and Class Members to restitution, disgorgement of profits, or
4 other equitable remedies.

5 **V. CLASS ACTION ALLEGATIONS**

6 46. Plaintiffs bring this action on behalf of themselves and all others similarly
7 situated, as a class action pursuant to Code of Civil Procedure section 382. Plaintiffs seek to
8 represent a proposed class comprised of and defined as follows:

9 *All current and former hourly-paid or non-exempt employees who worked for*
10 *Defendants, and/or their predecessor or merged entities, within the State of*
11 *California from four years prior to the filing of the original Complaint plus the*
12 *additional time during which the statute of limitations was tolled (pursuant to*
 Emergency Rule 9 of the California Rules of Court) and continuing to final
 judgment (again, “Class” or “Class Members”).

13 47. Plaintiffs reserve the right under California Rule of Court, Rule 3.765(b), to
14 amend or modify the class description identified herein with greater specificity or further division
15 into subclasses or limitation to particular issues.

16 48. This action has been brought and may properly be maintained as a class action
17 under the provisions of Code of Civil Procedure section 382 because there is a well-defined
18 community of interest in the litigation and the Class is easily ascertainable.

19 **A. Numerosity**

20 49. The potential members of the Class as defined are so numerous that joinder of all
21 the members of the Class is not practicable. Plaintiffs are informed and believe that there are
22 more than three hundred Class Members employed by Defendants within the State of California
23 at any given time. Accounting for employee turnover necessarily increases this number
24 substantially.

25 50. Plaintiffs allege Defendants’ employment records would provide information as
26 to the number and location of all Class Members.

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1 **B. Commonality**

2 51. There are questions of law and fact common to the Class that predominate over
3 any questions affecting only individual Class Members. These common questions of law and fact
4 include, without limitation:

- 5 a. Whether Defendants' failure to pay wages, without abatement or
6 reduction, in accordance with the California Labor Code, was willful;
- 7 b. Whether Defendants had a corporate policy and/or practice of failing to
8 pay Class Members for all hours worked in violation of California law;
- 9 c. Whether Defendants had a corporate policy and/or practice of rounding
10 Class Members' work hours;
- 11 d. Whether Defendants failed to pay at least the minimum wage to Class
12 Members for all hours worked;
- 13 e. Whether Defendants required Class Members to work over eight (8) hours
14 per day and/or over forty (40) hours per week and failed to pay the legally
15 required overtime compensation to Class Members;
- 16 f. Whether Defendants deprived Class Members of legally compliant meal
17 and rest breaks;
- 18 g. Whether Defendants had a corporate policy and/or practice of rounding
19 time punches for meal periods;
- 20 h. Whether Defendants had a corporate policy and/or practice of failing to
21 pay Class Members required premium payments for noncompliant (e.g.,
22 short, late, interrupted, and/or missed altogether) meal periods and rest
23 breaks in violation of California law;
- 24 i. Whether Defendants failed to pay and/or indemnify Class Members for
25 their necessary business expenditures or losses incurred in direct
26 consequence of the discharge of their duties;
- 27 j. Whether Defendants failed to timely pay all wages due to Class Members
28 during their employment;

- 1 k. Whether Defendants failed to pay all wages due to Class Members within
2 the required time upon their discharge or resignation;
- 3 j. Whether Defendants complied with wage reporting as required by the
4 California Labor Code, including, *inter alia*, section 226;
- 5 k. Whether Defendants kept complete and accurate payroll records as
6 required by the California Labor Code, including, *inter alia*, section
7 1174(d);
- 8 l. Whether Defendants' conduct was willful or reckless;
- 9 m. Whether Defendants engaged in unfair business practices in violation of
10 the Unfair Competition Law, Business and Professions Code sections
11 17200, *et seq.*;
- 12 n. Whether Class Members are entitled to compensatory damages pursuant
13 to the California Labor Code;
- 14 o. The appropriate amount of damages, restitution, and/or monetary penalties
15 resulting from Defendants' violation of California law;
- 16 p. Whether Class Members are entitled to attorneys' fees and costs; and
- 17 q. Whether Class Members are entitled to interest.

18 **C. Typicality**

19 52. The claims of Plaintiffs are typical of the claims of the Class. Plaintiffs and Class
20 Members sustained injuries and damages arising out of and caused by Defendants' common
21 course of conduct in violation of laws and regulations that have the force and effect of law and
22 statutes, as alleged herein.

23 **D. Adequacy of Representation**

24 53. Plaintiffs will fairly and adequately represent and protect the interests of the Class.
25 Counsel who represent Plaintiffs and Class Members are competent and experienced in litigating
26 wage and hour class and representative actions, and have the financial resources to litigate the
27 claims at issue.

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1 which time was not compensated. Defendants engaged in the practice of rounding Plaintiffs' and
2 Class Members' work time such that they were not fully compensated for all hours worked.

3 58. Defendants' failure to pay Plaintiffs and Class Members the minimum wage as
4 required is unlawful and violates Labor Code sections 1194, 1194.2, 1197, and 1197.1. As a
5 result, Plaintiffs and Class Members are entitled to recover the unpaid balance of their minimum
6 wage compensation, as well as interest, costs, and attorney's fees and liquidated damages in an
7 amount equal to the wages unlawfully unpaid and interest thereon.

8 **SECOND CAUSE OF ACTION**

9 **FAILURE TO PAY ALL OVERTIME WAGES**

10 **Cal. Labor Code §§ 510 and 1198 and the Relevant IWC Wage Orders**

11 **[On Behalf of Plaintiffs and the Class against All Defendants]**

12 59. Plaintiffs, on behalf of themselves and the Class, re-allege and incorporate by
13 reference all of the allegations contained in the preceding paragraphs of this Complaint as though
14 fully set forth herein.

15 60. At all times relevant to this Complaint, Labor Code section 510(a) was in effect
16 and provided: "Eight hours of labor constitutes a day's work. Any work in excess of eight hours
17 in one workday and any work in excess of forty hours in any one workweek...shall be
18 compensated at the rate of no less than one and one-half times the regular rate of pay for an
19 employee."

20 61. Pursuant to the relevant IWC Wage Orders, an employee shall not be employed
21 more than eight (8) hours in any workday and/or more than forty (40) hours in any workweek
22 unless the employee receives one and one-half (1 ½) times such employee's regular rate of pay for
23 all hours worked over eight (8) hours in any workday and/or more than forty (40) hours in any
24 workweek. Further, an employer must compensate employees at no less than twice the regular rate
25 of pay when an employee works more than twelve (12) hours in a day or more than eight (8) hours
26 on the seventh consecutive day of work.

27 62. At all times mentioned, Plaintiffs and the Class regularly worked shifts that
28 consisted of more than eight (8) hours in a workday and/or more than forty (40) hours in a

workweek and were not paid proper overtime wages for all overtime hours worked as a result of, but not limited to, Defendants' failure to pay for work performed off the clock, including pre- and post-shift, and during meal and rest breaks. Defendants' practice of rounding Plaintiffs' and Class Members' work time also resulted in the undercounting and ultimately underpayment of all overtime hours worked. Moreover, the overtime that was paid was short as Defendants incorrectly calculated the regular rate for purposes of calculating overtime; Defendants failed to include non-discretionary forms of pay including bonuses in the regular rate calculations for Plaintiffs and Class Members.

63. Accordingly, by requiring Plaintiffs and the Class to work in excess of eight (8) hours per day and/or forty (40) hours per week without properly compensating them overtime wages, as described above, Defendants willfully violated the provisions of Labor Code section 1194.

64. As a result of the unlawful acts of Defendants, Plaintiffs and the Class have been deprived of overtime wages in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, costs, and attorneys' fees.

THIRD CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

Cal. Labor Code §§ 226.7, 512, and the Relevant IWC Wage Orders

[On Behalf of Plaintiffs and the Class against All Defendants]

65. Plaintiffs, on behalf of themselves and the Class, re-allege and incorporate by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully alleged herein.

63. Labor Code section 226.7 provides "an employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission ("IWC")." Similarly, Labor Code section 512 and the IWC Wage Orders require employers to provide employees with thirty (30) minute uninterrupted and duty-free meal periods within the first five (5) hours of work. *Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1042

1 (“Accordingly, first meal periods must start after no more than five hours.”) Moreover, an
2 employee who works more than ten (10) hours per day is entitled to receive a second thirty (30)
3 minute uninterrupted and duty-free meal period.

4 64. Despite these legal requirements, Defendants failed to always provide meal
5 periods that comply with Labor Code sections 512, 226.7, and the IWC Wage Orders. Plaintiffs
6 and Class Members experienced short, untimely and interrupted meal periods, and on occasion,
7 the demands of employee job duties were such that they were prevented from taking a meal
8 period altogether. Defendants’ practice of rounding time punches also contributed to Plaintiffs
9 and Class Members receiving untimely or shortened meal periods. Having been thus subjected
10 to late, short, interrupted, and missed meal periods, Plaintiffs and Class Members did not receive
11 their statutorily mandated meal periods.

12 65. To the extent Defendants claim that Plaintiffs and Class Members waived their
13 rights to second meal periods for shifts worked in excess of ten (10) hours, the waivers are not
14 applicable to those occasions when Plaintiffs and Class Members worked shifts in excess of
15 twelve (12) hours a day and/or to the extent the waivers are ineffective on-duty meal period
16 agreements where the nature of the work does not prevent them from being relieved of all duties.

17 66. Under Labor Code section 226.7 and the relevant IWC Wage Orders, Plaintiffs
18 and each Class Member is entitled to be paid one (1) hour of additional wages at their regular
19 rates of pay for each day he or she was not provided with all required meal periods. *See Ferra v.*
20 *Loews Hollywood Hotel* (2021) 11 Cal.5th 858. Defendants failed to pay Plaintiffs and Class
21 Members the additional wages to which they were entitled for non-compliant meal periods.

22 67. As a result, Defendants are liable to Plaintiffs and each Class Member for one (1)
23 hour of additional wages at their regular rates of pay for each workday a compliant meal period
24 was not provided.

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1 **FOURTH CAUSE OF ACTION**

2 **FAILURE TO AUTHORIZE AND PERMIT REST BREAKS**

3 **Cal. Labor Code § 226.7 and the Relevant IWC Wage Orders**

4 **[On Behalf of Plaintiffs and the Class against All Defendants]**

5 68. Plaintiffs, on behalf of themselves and the Class, re-allege and incorporate by
6 reference all of the allegations contained in the preceding paragraphs of this Complaint as though
7 fully alleged herein.

8 69. Under the applicable IWC Wage Orders, an employer must authorize and permit
9 all employees to take ten (10) minute duty free rest breaks for every major fraction of four hours
10 worked. Labor Code section 226.7 provides “an employer shall not require an employee to work
11 during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
12 regulation, standard, or order of the Industrial Welfare Commission.”

13 70. Defendants are required by California law to authorize and permit breaks of ten
14 (10) uninterrupted minutes for each four hours of work or major fraction thereof (i.e., more than
15 two hours). That is, the required number of rest breaks is equal to the number of work hours
16 divided by four, and if the work time is not evenly divisible by four, any remainder of two hours
17 or less is rounded down and that which exceeds two hours is rounded up. For example, if a Class
18 Member’s work time is six hours and ten minutes, he or she is entitled to two rest breaks. If the
19 work time is nine hours, the employee is still entitled to only two rest breaks. (There is an
20 exception: if the shift is under three and one-half hours, no rest break is required.) Each failure
21 to authorize rest breaks as so required is itself a violation of California’s rest break laws.

22 71. Despite these legal requirements, Defendants failed to authorize and permit
23 Plaintiffs and Class Members to take timely, duty-free rest breaks. Plaintiffs and Class Members
24 were subject to policies and/or practices that prevented them from taking legally compliant rest
25 breaks. Defendants did not relieve Plaintiffs and Class Members of all duties during their rest
26 breaks and occasionally required them to be available to continue working – or, in fact,
27 interrupted them – during their rest breaks. Notwithstanding any formal written policy to the
28 contrary, Defendants’ actual custom and business practice was to undermine any formal policy

1 of permitting rest breaks by pressuring Class Members to perform their duties in a way that
2 omitted breaks, including, but not limited to, scheduling a heavy workload that made taking
3 breaks extremely difficult, maintaining an informal anti-rest break policy enforced through
4 ridicule or reprimand, and exerting coercion against the taking of, creating incentives to forego,
5 or otherwise encouraging the skipping of legally protected breaks. Here, as a companywide
6 practice and in fact, Defendants did not offer Plaintiffs and Class Members the opportunity to
7 receive compliant off-duty rest breaks and, thus, “the court may not conclude employees
8 voluntarily chose to skip...breaks.” *Alberts v. Aurora Behavioral Health Care* (2015) 241
9 Cal.App.4th 388, 410 (“[i]f an employer fails to provide legally compliant meal or rest breaks,
10 the court may not conclude employees voluntarily chose to skip those breaks.”); *accord*, *Brinker*
11 53 Cal.4th at 1033 (“No issue of waiver ever arises for a rest break that was required by law but
12 never authorized; if a break is not authorized, an employee has no opportunity to decline to take
13 it.”)

14 72. In *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, the court
15 expressly rejected the employer’s assertion that it could provide an on-duty rest break to
16 employees who worked as security guards and further explained “that employers [must]
17 relinquish any control over how employees spend their break time, and relieve their employees
18 of all duties.” *Id.* at 273. During breaks employers must relieve employees of all duties and
19 relinquish control over how employees spend their time. However, Defendants did not allow
20 Plaintiffs and Class Members to leave the workplace premises during rest breaks.

21 73. Plaintiffs and Class Members were not compensated with one (1) hour’s worth of
22 pay at their regular rates of pay when they were not provided with compliant rest breaks in
23 accordance with Labor Code section 226.7(b). *See Ferra v. Loews Hollywood Hotel* (2021) 11
24 Cal.5th 858.

25 74. As a result, Defendants are liable to Plaintiffs and Class Members for one (1) hour
26 of additional of pay at their regular rates of pay for each workday when a compliant rest break
27 was not provided, in a sum to be proven at trial.

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1 **FIFTH CAUSE OF ACTION**

2 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

3 **Cal. Labor Code §§ 2800 and 2802**

4 **[On Behalf of Plaintiffs and the Class against All Defendants]**

5 75. Plaintiffs, on behalf of themselves and the Class, re-allege and incorporate by
6 reference all of the allegations contained in the preceding paragraphs of this Complaint as though
7 fully alleged herein.

8 76. Labor Code sections 2800 and 2802 provide that an employer shall indemnify his
9 or her employee for all necessary expenditures or losses incurred by the employee in direct
10 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
11 the employer.

12 77. Defendants required Plaintiffs and Class Members to use their personal cell
13 phones for business purposes. For example, Defendants' managers/supervisors communicated
14 with Plaintiffs and the other Class Members for business-related matters by calling them on their
15 personal cell phones. These expenses were incurred as a direct consequence of Plaintiffs' and
16 Class Members' duties and at the direction of Defendants.

17 78. Although Plaintiffs and Class Members were required to use their own personal
18 cell phones for work purposes, Plaintiffs and Class Members were not provided with any
19 reimbursement for the cost and use of their personal cell phones.

20 **SIXTH CAUSE OF ACTION**

21 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

22 **Cal. Labor Code §§ 226 and 226.3**

23 **[On Behalf of Plaintiffs and the Class against All Defendants]**

24 79. Plaintiffs, on behalf of themselves and the Class, re-allege and incorporate by
25 reference all of the allegations contained in the preceding paragraphs as though fully set forth
26 herein.

27 80. Labor Code section 226(a) requires employers, semi-monthly or at the time or
28 each payment of wages, to furnish employees an accurate itemized statement in writing showing:

- (1) gross wages earned;
- (2) total hours worked by the employee;
- (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece rate;
- (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;
- (5) net wages earned;
- (6) the inclusive dates of the period for which the employee is paid;
- (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number;
- (8) the name and address of the legal entity that is the employer...; and
- (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee....

81. During the relevant time period, due to Defendants' failure to provide, *inter alia*, Plaintiffs and Class Members with lawful meal periods and rest breaks (and pay missed meal and rest break premiums at the regular rate of pay thereon), along with the failure to pay minimum and overtime wages for all hours worked, the wage statements issued by Defendants, at a minimum, do not indicate the correct amount of gross wages earned, the correct total hours worked, the correct net wages earned, or the applicable and/or correct hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate in violation of Labor Code section 226(a)(1), (2), (5), and (9).

82. An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with Labor Code section 226(a) is entitled to recover the greater of all actual damages or fifty dollars (\$50.00) for the initial pay period in which a violation occurs and one hundred dollars (\$100.00) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000.00), and is entitled to an award of costs and reasonable attorneys' fees.

83. The absence of accurate information on their wage statements has delayed timely challenge to Defendants' unlawful pay practices, requires discovery and mathematical computations to determine the amount of wages owed, causes difficulty and expense in attempting to reconstruct time and pay records, and led to submission of inaccurate information about wages and amounts deducted from wages to state and federal governmental agencies. Plaintiffs would not have had to engage in these efforts and incur these costs had Defendants provided accurate wage statements. This also delayed Plaintiffs' ability to demand and recover the underpayment of wages from Defendants.

84. Thus, Plaintiffs and Class Members have been injured by Defendants' intentional violation of Labor Code section 226(a) because they were denied both their legal right to receive, and their protected interest in receiving, accurate itemized wage statements.

85. Plaintiffs and Class Members are thus entitled to recover from Defendants the greater of their actual damages caused by Defendants' failure to comply with Labor Code section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000.00) per employee pursuant to Labor Code section 226(e), and/or any other allowable penalties including those pursuant to Labor Code section 226.3.

SEVENTH CAUSE OF ACTION

FAILURE TO PAY ALL WAGES WITHIN A TIMELY MANNER

AND UPON SEPARATION OF EMPLOYMENT

Cal. Labor Code §§ 201, 202, 203, 204, and 210

[On Behalf of Plaintiffs and the Class against All Defendants]

86. Plaintiffs, on behalf of themselves and the Class, re-allege and incorporate by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully alleged herein.

87. Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given

seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

88. Labor Code section 203 provides that if an employer willfully fails to pay compensation promptly upon discharge or resignation, as required by sections 201 and 202, then the employer is liable for penalties in the form of continued compensation up to thirty (30) days.

89. As alleged herein and above, Defendants' failure to pay wages was willful in that Defendants knew wages (e.g., for off-the-clock work, unpaid premiums) were owed to Plaintiffs and Class Members, but failed to pay said wages, at the time of termination, or within 72 hours of resignation, thus entitling Plaintiffs and Class Members to penalties under Labor Code section 203, which provides that an employee's wages shall continue as a penalty until paid for a period of up to thirty (30) days from the time they were due.

90. Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and 15th day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and 10th day of the following month. Section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

91. The requirements of Labor Code section 204 shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period when the wages were earned.

92. During the relevant time period, Defendants failed to pay Plaintiffs and Class Members all wages due to them within any time period specified by Labor Code section 204 including, but not limited to, unpaid minimum and overtime wages, along with unpaid meal and rest break premiums.

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93. Labor Code section 210 imposes upon Defendants a penalty of \$100.00 for each violation of failing to pay the wages of each employee. Furthermore, Labor Code section 210 imposes upon Defendants for each subsequent violation, or any willful or intentional violation, of failure to pay the wages of each employee a penalty of \$200.00, plus 25 percent of the amount unlawfully withheld.

94. Pursuant to Labor Code sections 218.5 and 218.6, along with California Civil Code sections 3287(b) and 3289, Plaintiffs request that the Court award reasonable attorneys' fees and the costs incurred by them in this action, along with pre-judgment interest on all amounts recovered herein, as well as any statutory penalties Defendants may owe under the California Labor Code and/or any other statute.

EIGHTH CAUSE OF ACTION

VIOLATION OF LABOR CODE § 1174(d)

[On Behalf of Plaintiffs and the Class against All Defendants]

95. Plaintiffs, on behalf of themselves and the Class, re-allege and incorporate by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully alleged herein.

96. Pursuant to Labor Code section 1174(d), an employer shall keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years.

97. Defendants have intentionally and willfully failed to keep accurate and complete payroll records showing the hours worked daily by and the wages paid to Plaintiffs and Class Members.

98. As a result of Defendants' violation of Labor Code section 1174(d), Plaintiffs and Class Members have suffered injury and damage to their statutorily protected rights.

/ / /

1 99. More specifically, Plaintiffs and Class Members have been injured by
2 Defendants’ intentional and willful violation of Labor Code section 1174(d) because they were
3 denied both their legal right and protected interest in having available, accurate, and complete
4 payroll records pursuant to Labor Code section 1174(d).

5 **NINTH CAUSE OF ACTION**

6 **UNFAIR COMPETITION LAW VIOLATIONS**

7 **Cal. Business & Professions Code §§ 17200, *et seq.***

8 **[On Behalf of Plaintiffs and the Class against All Defendants]**

9 100. Plaintiffs, on behalf of themselves and the Class, re-allege and incorporate by
10 reference all of the allegations contained in the preceding paragraphs of this Complaint as though
11 fully set forth herein.

12 101. The Unfair Competition Law (“UCL”), California Business & Professions Code
13 sections 17200, *et seq.*, prohibits any unlawful, unfair, or fraudulent business practices. Business
14 & Professions Code section 17204 allows “any person who has suffered injury in fact and has
15 lost money or property” to prosecute a civil action for violation of the UCL. Such a person may
16 bring such an action on behalf of himself or herself and others similarly situated who are affected
17 by the unlawful, unfair, or fraudulent business practice.

18 102. The statute of limitations for a claim under the UCL is four years. Accordingly,
19 the actionable period for this cause of action is four years prior to the filing of the original
20 Complaint plus the additional time during which the statute of limitations was tolled (pursuant
21 to Emergency Rule 9 of the California Rules of Court) through the present, and on-going until
22 the violations are corrected and/or the Class is certified.

23 103. Labor Code section 90.5(a) states that it is the public policy of California to
24 vigorously enforce minimum labor standards in order to ensure employees are not required to
25 work under substandard and unlawful conditions, and to protect employers who comply with the
26 law from those who attempt to gain competitive advantage at the expense of their workers by
27 failing to comply with minimum labor standards.

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1 104. A violation of Business and Professions Code sections 17200, *et seq.* may be
2 predicated upon the violation of any state or federal law. Defendants' policies and/or practices
3 have violated state law in at least the following respects:

4 (a) Requiring Plaintiffs and Class Members to work without paying them minimum
5 wage for all hours worked in violation of Labor Code sections 1194, 1194.2, 1197, and the
6 applicable IWC Wage Orders;

7 (b) Requiring Plaintiffs and Class Members to work overtime without paying them
8 proper compensation in violation of Labor Code sections 510, 1198, and the applicable IWC
9 Wage Orders;

10 (c) Failing to provide compliant duty-free meal periods to Plaintiffs and Class
11 Members and failing to authorize and permit compliant duty-free rest breaks to Plaintiffs and
12 Class Members in violation of Labor Code sections 226.7, 512, and the applicable IWC Wage
13 Orders;

14 (d) Failing to reimburse and/or indemnify Plaintiffs and Class Members for business
15 expenses or losses in violation of Labor Code sections 2800 and 2802;

16 (e) Failing to timely pay all wages to Plaintiffs and Class Members during their
17 employment and upon separation of employment, in violation of Labor Code sections 201, 202,
18 203, 204, and 210; and

19 (f) Failing to maintain and provide Plaintiffs and Class Members with accurate
20 itemized wage statements, in violation of Labor Code section 226.

21 Thus, Defendants engaged in unlawful competition in violation of sections 17200, *et seq.*
22 of the California Business & Professions Code by violating sections 201, 202, 203, 204, 210,
23 226, 226.7, 510, 512, 1174, 1194, 1194.2, 1197, 1197.1, 1198, 2800 and 2802 of the Labor Code
24 and the applicable IWC Wage Orders.

25 105. As a direct and proximate result of Defendants' unlawful business practices,
26 Plaintiffs and Class Members have suffered economic injuries because Defendants' conduct has
27 damaged Plaintiffs and Class Members by wrongfully denying them all wages, including
28 minimum and overtime wages, and failing to pay all meal and rest breaks premiums at the regular

1 rate of pay, along with the corresponding interest, in a timely manner and upon separation, and
2 while supplying them inaccurate and misleading wage statements. Such conduct is substantially
3 injurious to Plaintiffs and Class Members.

4 106. Additionally, Defendants intentionally avoided paying Plaintiffs and Class
5 Members wages and monies, thereby creating for Defendants an artificially lower cost of doing
6 business in order to undercut their competitors and establish a greater foothold in the
7 marketplace. Through their actions alleged herein, Defendants have engaged in unfair
8 competition within the meaning of section 17200 of the California Business & Professions Code.

9 107. Defendants have profited from their unlawful, unfair, and/or fraudulent acts and
10 practices. Plaintiffs and Class Members are entitled to monetary relief pursuant to the California
11 Business & Professions Code sections 17203 and 17208 from at least four years prior to the filing
12 of the original Complaint plus the additional time during which the statute of limitations was
13 tolled (pursuant to Emergency Rule 9 of the California Rules of Court) through the date of such
14 restitution, at rates specified by law. Defendants should be required to disgorge all the profits and
15 gains they have reaped and restore such profits and gains to Plaintiffs and Class Members, from
16 whom they were unlawfully taken.

17 108. Defendants' course of conduct, acts, and practices in violation of the California
18 laws mentioned above constitute independent violations of sections 17200, *et seq.* of the
19 California Business & Professions Code.

20 109. Plaintiffs and Class Members are entitled to enforce all applicable penalty
21 provisions of the Labor Code pursuant to California Business & Professions Code section 17202.

22 110. Plaintiffs have assumed the responsibility of enforcement of the laws and public
23 policies specified herein by suing on behalf of themselves and Class Members previously or
24 presently employed by Defendants in California. Plaintiffs' success in this action will enforce
25 important rights affecting the public interest. Plaintiffs will incur a financial burden in pursuing
26 this action in the public interest. Therefore, an award of reasonable attorneys' fees to Plaintiffs
27 is appropriate pursuant to Code of Civil Procedure section 1021.5.

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1 **TENTH CAUSE OF ACTION**

2 **PENALTIES PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF 2004**

3 **Cal. Labor Code §§ 2698, *et seq.***

4 **[On Behalf of Plaintiffs and Aggrieved Employees against All Defendants]**

5 111. Plaintiffs, on behalf of themselves and Aggrieved Employees, re-allege and
6 incorporate by reference all of the allegations contained in the previous paragraphs of this
7 Complaint as though fully set forth herein.

8 112. Plaintiffs, on behalf of themselves and Aggrieved Employees, bring this
9 representative action against Defendants to recover wages and penalties pursuant to the Private
10 Attorneys General Act of 2004 (“PAGA”), Labor Code sections 2698, *et seq.*

11 113. Based on the above allegations incorporated by reference, Defendants have
12 violated Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 1174, 1174.5,
13 1194, 1194.2, 1197, 1197.1, 1198, 2800 and 2802, as well as the applicable IWC Wage Orders.

14 114. Under Labor Code sections 2699(f)(2) and 2699.5, Plaintiffs and Aggrieved
15 Employees are entitled to penalties in an amount to be shown at the time of trial subject to the
16 following formula:

17 \$100 for the initial violation per employee per pay period; and

18 \$200 for each subsequent violation per employee per pay period.

19 These penalties shall be allocated seventy-five percent (75%) to the Labor and Workforce
20 Development Agency (LWDA) and twenty-five percent (25%) to the affected employees.

21 115. Defendants failed to provide Plaintiffs and Aggrieved Employees with accurate
22 itemized wage statements in compliance with Labor Code section 226(a). Plaintiffs seek separate
23 PAGA penalties for Defendants’ violations of Labor Code section 226(a) and (e). *Lopez v. Friant*
24 *& Assocs., LLC* (2017) 15 Cal.App.5th 773, 788; *Bell v. Home Depot U.S.A.* (E.D. Cal. Dec. 11,
25 2017) No. 2:12-cv-02499 JAM-CKD, 2017 U.S. Dist. LEXIS 204493, at *5 [finding after *Friant*
26 that “[t]o the extent the Court’s Order [granting summary judgment to *Home Depot*] was
27 ambiguous, the Court now clarifies that it granted summary judgment on Plaintiffs’ derivative
28 claim for [PAGA] penalties under section 226(e)...the Court’s Order should not be read to grant

summary judgment on Plaintiffs' claim for PAGA penalties based on violation of section 226(a)."). For violations of Labor Code section 226(a), Plaintiffs seek the default penalty provided by Labor Code section 226.3. Labor Code section 226.3 provides that "[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required records in subdivision (a) of Section 226." Accordingly, through PAGA and to the extent permitted by law Plaintiffs and Aggrieved Employees are entitled to recover penalties for violations of Labor Code section 226.3 and seek default PAGA penalties for each of Defendants' numerous violations of Labor Code section 226(a).

116. Labor Code section 210 provides that "[i]n addition to, an entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) [f]or any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) [f]or each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld." As a result of the faulty compensation policies and/or practices, Plaintiffs and Aggrieved Employees are also entitled to recover penalties under Labor Code section 210 through PAGA.

117. Labor Code section 1197.1 authorizes a civil penalty, restitution of wages, and liquidated damages, in the amount of: "(1) [f]or any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid...[and] (2) [f]or each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed." Accordingly, through PAGA and to the extent permitted by law, Plaintiffs and Aggrieved Employees are entitled to recover pursuant to Labor Code section 1197.1.

1 118. Plaintiffs have fully and completely exhausted their administrative remedies
2 under the PAGA.

3 119. On July 2, 2021, Plaintiff Hernandez filed his PAGA Notice online with the
4 LWDA and sent a letter by certified mail to Defendant Wilbur Curtis Co., Inc. setting forth the
5 facts and theories of the violations alleged against Defendants, as prescribed by Labor Code
6 sections 2698, *et seq.* As required by the PAGA, Plaintiff Hernandez submitted the filing fee with
7 the LWDA. Pursuant to Labor Code section 2699.3(a)(2)(A), no notice was received by Plaintiff
8 Hernandez from the LWDA evidencing its intention to investigate within sixty-five (65) calendar
9 days of the postmark date of the PAGA notice.

10 120. On December 3, 2021, Plaintiffs Hernandez and Flores filed their Amended
11 PAGA Notice online with the LWDA and sent a letter by certified mail to Defendants Wilbur
12 Curtis Co., Inc., WCCO Holdings, Inc., Kevin Robert Curtis, and Michael Aitkin Curtis setting
13 forth the facts and theories of the violations alleged against Defendants, as prescribed by Labor
14 Code sections 2698, *et seq.* As required by the PAGA, Plaintiffs submitted the filing fee with the
15 LWDA. Pursuant to Labor Code section 2699.3(a)(2)(A), no notice was received by Plaintiffs
16 from the LWDA evidencing its intention to investigate within sixty-five (65) calendar days of
17 the postmark date of the Amended PAGA Notice.

18 119. Plaintiffs, as personal representatives of the general public, on behalf of
19 Aggrieved Employees and the State of California, will and do seek to recover any and all
20 penalties for each and every violation shown to exist or to have occurred during the PAGA
21 period, in an amount according to proof, as to those penalties that are otherwise only available to
22 public agency enforcement actions. Funds recovered will be distributed in accordance with the
23 PAGA, with 75% of the penalties recovered being reimbursed to the State of California and the
24 LWDA.

25 120. Plaintiffs were compelled to retain the services of counsel to file this action to
26 protect their interests and those of Aggrieved Employees, and to assess and collect the wages and
27 penalties owed by Defendants. Plaintiffs have thereby incurred attorneys' fees and costs, which
28 they are entitled to recover under Labor Code section 2699(g)(1).

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12. For all civil penalties available under section 226.3 of the Labor Code and the Private Attorneys General Act of 2004;

13. For all civil penalties available under section 1174.5 of the Labor Code and the Private Attorneys General Act of 2004;

14. For all civil penalties available under section 1197.1 of the Labor Code and the Private Attorneys General Act of 2004;

15. For an order enjoining Defendants and their agents, servants, and employees, and all persons acting under, in concert with, or for them, from acting in derogation of any rights or duties adumbrated in this Complaint;

16. For an award of pre-judgment and post-judgment interest;

17. For an award providing for the payment of the costs of this suit;

18. For an award of attorneys' fees, to the extent provided by law; and

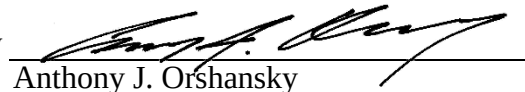
19. For such other and further relief as the Court may deem proper and just.

Respectfully submitted,

Dated: February 9, 2022

COUNSELONE, PC

By



Anthony J. Orshansky
Jennifer L. Connor
Justin Kachadoorian
Attorneys for Plaintiffs, putative Class
Members, and Aggrieved Employees

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Dated: February 9, 2022

COUNSELONE, PC


Anthony J. Orshansky

Members, and Aggrieved Employees