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FILED
 Superior Court of California
 County of Los Angeles
12/02/2021
 Sherri R. Carter, Executive Officer / Clerk of Court
 By: M. Molinar Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF LOS ANGELES, CENTRAL DIVISION**

**DAVID SAFIER, individually and on behalf of
 all others similarly situated;**

Plaintiff,

vs.

**NSA DOC PREP LLC dba MILLENNIA TAX
 RELIEF, a Nevada Limited Liability Company;
 Robert Kim aka Rob King, an individual;
 Adam Correa, an individual;
 Calen Meza, an individual;
 Jimmy Perez, an individual;
 Kevin Trinh, an individual; and
 DOES 1 through 50, inclusive;**

Defendants

CASE NO.: 21STCV27782

**FIRST AMENDED CLASS ACTION
 AND PAGA COMPLAINT FOR
 DAMAGES AND INJUNCTIVE
 RELIEF**

1. Failure to Pay Overtime Wages
2. Failure to Provide Meal Periods
3. Failure to Provide Rest Periods
4. Failure to Pay Wages Upon Ending of Employment
5. Failure to Provide Accurate Wage Statements
6. Unfair Business Practices (Cal. Bus. & Prof. Code § 17200, *et seq.*)
7. Recovery Under the Private Attorneys General Act of 2004 (Cal. Labor Code § 2698 *et seq.*)

DEMAND FOR JURY TRIAL

DAMAGES EXCEED \$25,000

Complaint Filed: July 29, 2021

1 Plaintiff, David Safier, (“Plaintiff” or “Mr. Safier”) on behalf of himself and acting for the
2 interests of all other similarly situated current and former employees (cumulatively “Plaintiff
3 Class”) alleges the following:

4
5 **NATURE OF THE ACTION**

6 1. Defendant NSA DOC PREP LLC dba MILLENNIA TAX RELIEF (“MTR”) is a
7 Nevada Limited Liability Company. MTR provides debt resolution services to individuals who
8 owe tax debts to the IRS.

9 2. MTR, along with certain individuals named as defendants herein (collectively
10 “Defendants”) employed Plaintiff, as well as employ and have employed others similarly situated,
11 as salespersons.

12 3. Plaintiff is informed and believes, and thereon alleges, that Defendants have
13 increased their profits by violating state wage and hour laws and exploiting their employees, by,
14 among other things, failing to pay their employees all wages for time worked, including failing to
15 properly calculate and pay overtime.

16 4. Plaintiff is informed and believes, and thereon alleges, that Defendants
17 systematically violated the wage and hour components of the Labor Code and Wage Orders to
18 decrease expenses and to increase its level of productivity and profits, something that its law-
19 abiding competitors are not able to do.

20 5. Plaintiff, on behalf of himself and Plaintiff Class, brings this action seeking unpaid
21 wages, penalties, restitution, injunctive and other equitable relief, reasonable attorneys’ fees, and
22 costs. The monetary damages and restitution sought by Plaintiff will be established according to
23 proof at trial.

24 6. Upon information and belief, the claims of individual Class Members, including
25 Plaintiff, are under the \$75,000 jurisdictional threshold for federal court. For example, a class
26 member who was employed even for the entire class period could never reasonably be expected to
27 receive a recovery of \$75,000 or more. Upon information and belief, the total damages for the
28 entire case are not anticipated to exceed \$5,000,000. Further, there is no federal question at issue,
as all the issues related to payment wages alleged herein are based solely on California law and

1 statutes, including the Labor Code, Civil Code, Code of Civil Procedure, and Business and
2 Professions Code. Finally, the claims are brought only on behalf of California workers.

3 4 **JURISDICTION AND VENUE**

5 7. Pursuant to Article VI, section 10 of the California Constitution, subject matter
6 jurisdiction is proper in the Superior Court of California, State of California.

7 8. Pursuant to sections 395 and 395.5 of the California Code of Civil Procedure,
8 venue is proper in the Superior Court of California for the County of San Diego, State of
9 California, because this is where Plaintiff was employed and this is where the wrongful
10 misconduct alleged herein occurred.

11 **THE PARTIES**

12 9. Mr. Safier is an individual that resides in the County of Los Angeles, California.

13 10. Defendant NSA DOC PREP LLC dba MILLENNIA TAX RELIEF ("MTR") is a
14 Nevada Limited Liability Company. MTR provides debt resolution services to individuals who
15 owe tax debts to the IRS. MTR operates call centers in Ontario, California, and City of Industry,
16 California, and a call center in Tijuana, Mexico. MTR employs salespersons who work in their
17 call centers to sell its services to potential customers.

18 11. Defendant Robert Kim aka Rob King ("Kim") is an individual who at all relevant
19 times was an owner, director, officer, or managing agent of the MTR who violated or caused to be
20 violated certain wage and hour laws as to Plaintiff and other similarly situated employees of MTR.
21 As such, Kim may be held personally liable under Labor Code section 558.1

22 12. Defendant Adam Correa ("Correa") is an individual who at all relevant times was
23 an owner, director, officer, or managing agent of the MTR who violated or caused to be violated
24 certain wage and hour laws as to Plaintiff and other similarly situated employees of MTR. As
25 such, Correa may be held personally liable under Labor Code section 558.1

26 13. Defendant Calen Meza ("Meza") is an individual who at all relevant times was an
27 owner, director, officer, or managing agent of the MTR who violated or caused to be violated
28 certain wage and hour laws as to Plaintiff and other similarly situated employees of MTR. As

1 such, Meza may be held personally liable under Labor Code section 558.1

2 14. Defendant Jimmy Perez (“Perez”) is an individual who at all relevant times was an
3 owner, director, officer, or managing agent of the MTR who violated or caused to be violated
4 certain wage and hour laws as to Plaintiff and other similarly situated employees of MTR. As
5 such, Perez may be held personally liable under Labor Code section 558.1

6 15. Defendant Kevin Trinh (“Trinh”) is an individual who at all relevant times was an
7 owner, director, officer, or managing agent of the MTR who violated or caused to be violated
8 certain wage and hour laws as to Plaintiff and other similarly situated employees of MTR. As
9 such, Trinh may be held personally liable under Labor Code section 558.1

10 16. Labor Code section 558.1 provides that “[a]ny employer or other person acting on
11 behalf of an employer, who violates, or causes to be violated, any provision regulating minimum
12 wages or hours and days of work in any order of the Industrial Welfare Commission, or violates,
13 or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the
14 employer for such violation ... For purposes of this section, the term “other person acting on
15 behalf of an employer” is limited to a natural person who is an owner, director, officer, or
16 managing agent of the employer, and the term “managing agent” has the same meaning as in
17 subdivision (b) of Section 3294 of the Civil Code.” Pursuant to statute, Kim, Correa, Meza and
18 Perez meet the criteria specified in Labor Code § 558.1 so as to be individually liable for the wage
and hour violations asserted in this Complaint.

19 17. The true names and capacities, whether individual, corporate, associate, or
20 otherwise of the Defendants named herein as DOES 1 through 50, are unknown to Plaintiff at this
21 time. Plaintiff therefore sues said Defendants by such fictitious names pursuant to section 474 of
22 the California Code of Civil Procedure. Plaintiff will seek leave to amend this complaint to allege
23 the true names and capacities of DOES 1 through 50 when the correct identities are ascertained.
24 Plaintiff is informed and believes, and based thereon alleges, that each of the DOE Defendants is
25 in some manner liable to Plaintiff for the events and actions alleged herein. All named Defendants
26 and DOES 1 through 50 are collectively referred to as “Defendants.”

27 18. Plaintiff is informed and believes, and based thereon alleges, that at all times
28 relevant herein, each Defendant was acting as an agent, joint venture, or as an integrated enterprise

1 and/or alter ego for each of the other Defendants, and each was a co-conspirator with respect to the
2 acts and the wrongful conduct alleged herein, so that each is responsible for the acts of the other in
3 connection with the conspiracy and in proximate connection with the other Defendants.

4 19. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
5 was acting partly within and partly without the scope and course of their employment, and was
6 acting with the knowledge, permission, consent, and ratification of every other Defendant.

7 20. Plaintiff is informed and believes, and based thereon alleges, that each of the
8 Defendants was an agent, managing general partner, managing member, owner, co-owner, partner,
9 employee, and/or representative of each of the Defendants, and was at all times material hereto,
10 acting within the purpose and scope of such agency, employment, contract and/or representation,
11 and that each of them are jointly and severally liable to Plaintiff and the proposed class for the acts
12 alleged herein.

13 21. Plaintiff is informed and believes, and based thereon alleges, that each of the
14 Defendants are liable to Plaintiff under legal theories and doctrines including but not limited to (1)
15 joint employer; (2) integrated enterprise; (3) agency; and/or (4) alter ego, based in part, on the
16 facts set forth below.

17 22. Plaintiff is informed and believes, and based thereon alleges, that each of the
18 named Defendants are part of an integrated enterprise and have acted or currently act as the
19 employer and/or joint employer of Plaintiff and Class Members, making each of them liable for
20 the wage and hour violations alleged herein.

21 **GENERAL ALLEGATIONS**

22 23. During all times relevant, Defendants operated call centers in Ontario, California,
23 and City of Industry, California.

24 24. Plaintiff and Plaintiff Class were employed as salespersons at Defendants' call
25 centers.

26 25. Plaintiff and Plaintiff Class assisted used computers with autodialer software to call
27 potential customers and sell Defendants' tax resolution products. Generally, they made and
28 fielded phone calls and for the purpose of generating sales.

1 26. Plaintiff and Plaintiff Class worked in a fast-paced sales environment where a
2 customer who was not served was potentially a lost sale.

3 27. Plaintiff and Plaintiff Class were nonexempt employees, but Defendants
4 misclassified their salespersons as independent contractors.

5 28. Plaintiff and Plaintiff Class received certain non-discretionary commission pay
6 (“Incentive Pay”) based on their sales of Defendants’ services.

7 29. Plaintiff and Plaintiff Class were not exempt from overtime because their earnings
8 did not exceed one and one-half (1^{1/2}) times the minimum wage and Incentive Pay did not
9 represent more than half more than half of their compensation. IWC Wage Order 4-2001 § 3(D).

10 **Facts Common to Plaintiff and Plaintiff Class as to Overtime Claims**

11 30. From on or about March of 2020, to on or about April 9, 2021, Mr. Safier worked
12 for Defendants as an salespersons at Defendants’ call center in City of Industry, California.

13 31. From at least four years before the filing of this action and continuing to the
14 present, and pursuant to company policy and/or practice and/or direction, Defendants required
15 Plaintiff and Plaintiff Class to work more than 40 hours per week and/or eight hours in a workday
16 and did not properly compensate them for their time.

17 32. Throughout his employment with Defendants, Plaintiff and Plaintiff Class routinely
18 worked in excess of 8 hours per workday and/or 40 hours per workweek, but did not receive
19 overtime compensation equal to one and one-half times their respective regular rates of pay for all
20 overtime hours worked because Defendants misclassified their salespersons as independent
21 contractors.

22 33. Throughout the relevant time period, Defendants paid Plaintiff and Plaintiff Class
23 earned Incentive Pay.

24 34. Despite Plaintiff and Plaintiff Class earning Incentive Pay and working overtime
25 hours during the corresponding pay period, Defendants failed to factor the Incentive Pay into
26 Plaintiff and Plaintiff Class’ regular rates of pay for the purpose of calculating their overtime rate.

27 **Facts Common to Plaintiff and Plaintiff Class as to Meal and Rest Period Claims**
28

1 35. Due to understaffing, the fast-paced workplace, and unreasonable productivity
2 requirements, and Defendants' misclassification of their salespersons as independent contractors,
3 Plaintiff and Class Members were often unable to take meal and rest periods.

4 36. Plaintiff and Plaintiff Class were required to be on the phone selling whenever they
5 were at the office.

6 37. Defendants would monitor productivity in real-time; if Plaintiff and Plaintiff Class
7 were not selling enough, Defendants would berate them, and/or send an email blast to the entire
8 sales staff ordering them to get back on the phones to make sales.

9 38. Plaintiff and Plaintiff Class were often unable to take their meal periods, and when
10 they did take their breaks, they risked being disciplined.

11 39. Defendants did not pay Plaintiff and Plaintiff Class the required meal and rest
12 period premium pay when they were not provided breaks.

13 40. Based on the policies implemented and enforced by Defendants, Defendants failed
14 to permit Plaintiff and putative Class Members from taking all of their compliant off-duty meal
15 and rest periods during the required timeframe as required by law, in an amount to be proven at
16 trial.

17 **Facts Common to Plaintiff and Plaintiff Class as to Wage Statement Claims**

18 41. Defendants did not issue Plaintiff and Plaintiff Class bi-weekly wage statements.

19 42. Plaintiff and Plaintiff Class received their wages on a company check with no
20 indication of how their pay was calculated.

21 43. Defendants did not provide Plaintiff and Plaintiff Class any document showing
22 what hours were worked, the applicable rates of pay, or what Incentive Pay was earned.

23
24 **Facts Common to Plaintiff and Plaintiff Class as to Waiting Time Claims**

25 44. Plaintiff is informed, believes and based thereon alleges that Defendants had a
26 policy of not issuing a final paycheck upon termination of employment.

45. When Plaintiff was terminated, he was not presented his final paycheck upon his termination, but was told that it was being put in the mail and he would be receiving it in the next few days.

46. Additionally, Defendants had a policy of not paying overtime, not accurately factoring the Incentive pay into Plaintiff and Plaintiff Class' regular rate of pay for the purposes of calculating overtime, and not paying meal and rest period premiums when owed, so Plaintiff and Plaintiff Class were owed additional wages throughout their employment and upon the ending of their employment.

47. Days after his termination, Plaintiff received a check in the mail containing some, but not all of the wages he was owed

48. To date, Defendants have not paid Plaintiff and Plaintiff Class all wages due and payable, in an amount to be proven at trial.

CLASS ACTION ALLEGATIONS

49. Plaintiff brings this action on behalf of himself and all others similarly situated as a Class Action pursuant to sections 382 of the Code of Civil Procedure.

50. Plaintiff seeks to represent a class consisting of and defined as follows:

All of Defendants’ nonexempt California employees who worked any time from July 29, 2017 to the date of final judgment (the “Class Period”).

51. Plaintiffs also seeks to represent the following subclasses composed of and defined as follows:

Overtime Subclass: All members of the Plaintiff Class who, during the relevant time period, worked for Defendants in excess of eight hours per day and/or in excess of 40 hours per week. (Plaintiff Subclass No. 1)

1 **Meal Period Subclass:** All members of the Plaintiff Class who,
2 during the relevant time period, were not provided compliant meal
3 periods. (Plaintiff Subclass No. 2)

4
5 **Rest Period Subclass:** All members of the Plaintiff Class who,
6 during the relevant time period, were not provided compliant rest periods.
7 (Plaintiff Subclass No. 3)

8
9 **Waiting Time Penalty Subclass:** All members of the Plaintiff
10 Class who, during the relevant time period, left employment and were not
11 paid all wages owed in the time required by law. (Plaintiff Subclass No. 4)

12 **Wage Statement Subclass:** All members of the Plaintiff Class
13 who, during the relevant time period, did not receive wage statements.
14 (Plaintiff Subclass No. 5)

15
16 **UCL Subclass:** All members of the Plaintiff Class who, during the
17 relevant time period, are owed restitution in the form of wages earned and
18 unpaid as a result of Defendants' uniform pay policies and procedures.
19 (Plaintiff Subclass No. 6)

20
21 52. Plaintiff reserves the right under the California Rules of Court, to amend or modify
22 the class description with greater specificity or further division into subclasses or limitation to
23 particular issues.

24 53. This action is brought and may properly be maintained as a Class Action under the
25 provisions of section 382 of the Code of Civil Procedure because there is a well-defined
26 community of interest in the litigation and the proposed Class Members are easily ascertainable.

1 **A. Numerosity**

2 54. The potential members of the Plaintiff Class as defined are so numerous or many,
3 that joinder of all the members of the Plaintiff Class is impracticable.

4 55. While the precise number of class members in the Plaintiff Class has not been
5 determined at the time, Plaintiff is informed, believes, and on that basis alleges, that Defendants
6 currently employ, and during the relevant time periods employed, over 500 Class Members.

7 56. Accounting for employee turnover during the relevant periods necessarily increases
8 the number substantially.

9
10 **B. Commonality**

11 57. There are questions of law and fact common to the Plaintiff Class that predominate
12 over any questions affecting only individual class members.

13 58. Common questions of law and fact include, without limitation and subject to
14 possible further amendment, the following:

- 15 a. Whether Defendants' policy or practice of not paying Plaintiff and
16 Plaintiff Class' overtime compensation for all hours they worked over
17 40 in a workweek or eight hours in a day in violates Labor Code
18 sections 510, 1194, and the applicable Wage Order;
- 19 b. Whether Defendants' policy or practice of not factoring the Incentive
20 Pay into the regular rate of pay when calculating Plaintiff and Plaintiff
21 Class' overtime compensation for all hours they worked over 40 in a
22 workweek or eight hours in a day in violates Labor Code sections 510,
23 1194, and the applicable Wage Order;
- 24 c. Whether Defendants' policy or practice unlawfully precluded Plaintiff
25 and Class Members from enjoying their right to take all of their
26 compliant meal and rest breaks violates Labor Code sections 226.7 and
27 512;
- 28 d. Whether Defendants' policy or practice of not paying hourly
employees all of their wages due in their final paychecks immediately

upon involuntary termination or when 72-hours notice was provided before voluntary resignation violates Labor Code sections 201, 202 and 203;

- e. Whether Defendants' policy or practice of not providing wage statements violate Labor Code section 226; and
- f. Whether Plaintiff and the Plaintiff Class are entitled to remedies pursuant to Business & Professions Code sections 17200, *et seq.*

C. Typicality

59. Plaintiff's claims are typical of the claims of the Plaintiff Class because Plaintiff and all members of the proposed Plaintiff Class and subclasses sustained similar injuries and damages arising out of and caused by Defendants' common course of conduct and policies in violation of laws, regulations that have the force and effect of law and statutes as alleged herein.

D. Adequacy of Representation

60. Plaintiff does not have any conflicts of interest with other class members, and will prosecute the case vigorously on behalf of the Plaintiff Class.

61. Counsel representing Plaintiff and the Plaintiff Class are competent and experienced in litigating employment and class actions, including wage and overtime class actions.

62. Plaintiff will fairly and adequately represent and protect the interests of the Plaintiff Class.

E. Superiority of Class Action and Manageability

63. A class action is superior to other available means for the fair and efficient adjudication of the controversy because individual joinder of all class members is not practicable, and questions of law and fact common to the Plaintiff Class predominate over any questions affecting only individual members of the Plaintiff Class.

64. Each class member in the Plaintiff Class and/or Plaintiff Subclasses has been damaged or suffered injury and is entitled to recovery because of Defendants' illegal policies and/or practices.

65. Class Action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system.

66. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of their action that would preclude maintenance as a Class Action.

67. At the appropriate time, Plaintiff will present a trial methodology and plan that will streamline the action, base liability and damages on common evidence and common modes of proof through Defendants' corporate records, testimony of corporate common policy and practices, representative evidence, sampled and presented in a manner consistent with recognized scientific and statistical principles.

68. For the reasons alleged in this complaint, this action should be certified as a Class Action.

FIRST CAUSE OF ACTION

Individual and Representative Claim for

Failure to Pay State Overtime Compensation in

Violation of California Labor Code §§ 510, 1194, 1194.2, and

Wage Order No. 4-2001 § 3(A)

(Against all Defendants)

69. Plaintiff re-alleges and incorporates herein by reference each and every allegation in the preceding and subsequent paragraphs.

70. From at least four years before the filing of this action and continuing to the present, and pursuant to company policy and/or practice and/or direction, Defendants required Plaintiff and Plaintiff Subclass No. 1 to work more than 40 hours per week and/or eight hours in a workday.

71. Defendants failed to properly calculate the rate of overtime earned by Plaintiff and Plaintiff Subclass No. 1, and routinely paid them at their regular rate of pay instead of their overtime rate for overtime hours.

72. In committing the violations of state law as herein alleged, Defendants have knowingly and willfully refused to perform their obligations to compensate Plaintiff and Plaintiff Subclass No. 1 for all wages earned and all hours worked.

73. As a direct result, Plaintiff and Plaintiff Subclass No. 1 have suffered and continue to suffer, substantial losses related to the use and enjoyment of such compensation, wages, lost interest on such monies and expenses and attorneys' fees in seeking to compel Defendants to fully perform their obligation under state law, all to their respective damage in amounts according to proof at trial and within the jurisdictional limitations of this Court.

74. Pursuant to Labor Code sections 510 at 1194, Plaintiff and Plaintiff Subclass No. 1 are entitled to wages for the time spent working for Defendant but for which they were not properly compensated.

75. Based on the misconduct alleged in this complaint, Plaintiff and Plaintiff Subclass No. 1 have suffered damages in an amount to be proven at trial.

76. Plaintiff and Plaintiff Subclass No. 1 request the unpaid overtime wages, all penalties to which they are entitled, interest, attorneys' fees, costs, liquidated damages, and any other remedies allowed by law in an amount to be proven at trial.

SECOND CAUSE OF ACTION

Individual and Representative Claim for

Failure to Comply with the Meal Break Requirements Under Labor Code §§ 226.7, 512, and

Industrial Welfare Commission (“IWC”)

Wage Order No. 4-2001 § 11

(Against all Defendants)

77. Plaintiff re-alleges and incorporates herein by reference each and every allegation in the preceding and subsequent paragraphs.

78. California Labor Code section 512 provides that no employer shall employ any

1 person for a work period of more than five (5) hours without one meal period of not less than 30
2 minutes, or two meal periods for every ten (10) hours of work. IWC Wage Order 4-2001(11)(A)
3 requires that employers authorize and permit all employees to take a duty-free meal period of at
4 least thirty (30) minutes for every five (5) hours worked.

5 79. IWC Wage Order 4-2001(11) that no employer shall employ any person for a work
6 period of more than five (5) hours without a meal period of not less than 30 minutes, except that
7 when a work period of not more than six (6) hours will complete the day's work the meal period
8 may be waived by mutual consent of the employer and the employee. Unless the employee is
9 relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on
10 duty" meal period and counted as time worked.

11 80. From at least four years before the filing of this action and continuing to the
12 present, and pursuant to company policy and/or practice and/or direction, Defendants failed to
13 provide Plaintiff and Plaintiff Subclass No. 2, legally-compliant meal periods.

14 81. Defendants are required to pay Plaintiff and Plaintiff Subclass No. 2 meal break
15 premium equal to one hour of pay for each day Defendants failed to provide meal period.

16 82. Plaintiff and Plaintiff Subclass No. 2 are entitled to damages under Labor Code
17 section 226.7 and IWC Wage Order 4-2001 § (11)(B) at 1-additional hour of pay at the
18 employees' regular rates of pay for each work day that a meal period was not provided.

19 83. Plaintiff and Plaintiff Subclass No. 2 request the unpaid meal and rest period
20 premiums, interest, attorneys' fees, costs, damages, and other remedies in an amount to be proven
21 at trial.

22 **THIRD CAUSE OF ACTION**

23 **Individual and Representative Claim for**

24 **Failure to Comply with the Rest Break Requirements Under Labor Code §§ 512, 226.7 and** 25 **Industrial Welfare Commission ("IWC")**

26 **Wage Order No. 4-2001 § 12**

27 (Against all Defendants)

28 84. Plaintiff re-alleges and incorporates herein by reference each and every allegation

1 in the preceding and subsequent paragraphs.

2 85. California Labor Code section 512 provides that no employer shall require an
3 employee to work during a rest or recovery period.

4 86. IWC Wage Order 4-2001(12)(A) requires that employers authorize and permit all
5 employees to take a ten (10) minute rest period for every four (4) hours or major fraction thereof.

6 87. From at least four years before the filing of this action and continuing to the
7 present, and pursuant to company policy and/or practice and/or direction, Defendants failed to
8 provide Plaintiff and Plaintiff Subclass No. 3, legally-compliant rest periods, or compensation in
9 lieu thereof, during their employment by Defendants.

10 88. Plaintiff and Plaintiff Subclass No. 2 are entitled to damages under Labor Code
11 section 226.7 and IWC Wage Order 4-2001 § (12)(B) at 1-additional hour of pay at the
12 employees' regular rates of pay for each work day that a rest period was not provided.

13 89. Plaintiff and Plaintiff Subclass No. 3 request the unpaid meal and rest period
14 premiums, interest, attorneys' fees, costs, damages, and other remedies in an amount to be proven
15 at trial.

16 **FOURTH CAUSE OF ACTION**

17 **Individual and Representative Claim for**

18 **Failure to Pay Timely Earned Wages Upon Separation of Employment in Violation of**
19 **California Labor Code §§ 201, 202, 203, 218.5, and 218.6**

20 (Against all Defendants)

21 90. Plaintiff re-alleges and incorporates herein by reference each and every allegation
22 in the preceding and subsequent paragraphs.

23 91. Pursuant to Labor Code section 201, "[i]f an employer discharges an employee, the
24 wages earned and unpaid at the time of discharge are due and payable immediately."

25 92. Pursuant to Labor Code section 202, "[i]f an employee not having a written
26 contract for a definite period quits his or her employment, his or her wages shall become due and
27 payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice
28

1 of his or her intention to quit, in which case the employee is entitled to his or her wages at the time
2 of quitting.”

3 93. Labor Code section 203 provides, in pertinent part: “[i]f an employer willfully fails
4 to pay, without abatement or reduction, ... any wages of an employee who is discharged or who
5 quits, the wages of the employee shall continue as a penalty from the due date thereof at the same
6 rate until paid or until an action therefore is commenced; but the wages shall not continue for more
7 than 30 days. ...”

8 94. Pursuant to Labor Code sections 218.5 and 218.6, an action may be brought for the
9 nonpayment of wages and fringe benefits.

10 95. Plaintiff and Plaintiff Subclass No. 4 were not properly paid pursuant to the
11 requirements of Labor Code sections 201, 202, and/or 201.3 and thereby seek all remedies
12 available to them.

13 96. Defendants willfully failed to pay Plaintiff and Plaintiff Subclass No. 4 wages
14 pursuant to the requirements of Labor Code sections 201, 201.3, and 202, and therefore Plaintiff
15 and Plaintiff Subclass No. 4 are entitled the associated unpaid wages and waiting time penalties.

16 97. Defendants did this with the intent to secure for themselves a discount on its
17 indebtedness and/or with intent to annoy harass, oppress, hinder, delay and/or defraud Plaintiff
18 and Plaintiff Subclass No. 4.

19 98. In committing the violations of state law as herein alleged Defendants have
20 knowingly and willfully refused to perform their obligations to compensate Plaintiff and Plaintiff
21 Subclass No. 4 for all wages earned and all hours worked.

22 99. As a direct result, Plaintiff and Plaintiff Subclass No. 4 have suffered and continue
23 to suffer, substantial losses related to the use and enjoyment of such compensation, wages, lost
24 interest on such monies and expenses and attorneys’ fees in seeking to compel Defendants to full
25 perform their obligation under state law, all to their respective damage in amounts according to
26 proof at trial and within the jurisdictional limitations of this Court.

27 100. Plaintiff and Plaintiff Subclass No. 4 have been deprived of their rightfully earned
28 wages as a direct and proximate result of Defendants’ failure and refusal to pay said compensation
and for the reasons alleged in this complaint.

101. Plaintiff and Plaintiff Subclass No. 4 request the unpaid wages, waiting time penalties, interest, attorneys' fees, costs, damages, and other remedies in an amount to be proven at trial.

FIFTH CAUSE OF ACTION

Individual and Representative Claim for Waiting Time Penalties for

Violations of California Labor Code § 226

(Against all Defendants)

102. Plaintiff re-alleges and incorporates herein by reference each and every allegation in the preceding and subsequent paragraphs.

103. Plaintiff alleges that Labor Code section 226 subdivision (a) requires, in pertinent part, that "[e]very employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (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..., (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. . ." (Labor Code section 226 subdivision (a).)

104. Throughout the Class Period, Defendants violated section 226, by failing to provide Plaintiff and the Class a statement in writing accurately showing rates of pay, gross wages earned, total hours worked by the employee, and net wages earned, among other things.

105. As a direct result, Plaintiff and Plaintiff Subclass No. 5 have suffered and continue to suffer actual damages including substantial losses related to the use and enjoyment of such compensation, wages, lost interest on such monies and expenses and attorneys' fees in seeking to compel Defendants to fully perform their obligations under state law, all to their respective damage in amounts according to proof at trial and within the jurisdictional limitations of this Court.

106. For Defendants' misconduct as alleged herein, Plaintiff and Plaintiff Subclass No. 5 seek damages including actual damages, injunctive relief, penalties, costs and attorneys' fees pursuant to Labor Code sections 226 in an amount to be proven at trial.

SIXTH CAUSE OF ACTION

Violations of California Business and Professions Code § 17200, *et seq.*

(Against All Defendants)

107. Plaintiff re-alleges and incorporates herein by reference each and every allegation in the preceding and subsequent paragraphs.

108. Defendants, and each of them, are “persons” as defined under Business and Professions Code section 17021.

109. Plaintiff is informed and believes and based thereon alleges that Defendants committed the unfair business practices, as defined by Cal. Bus. & Prof. Code sections 17200, *et seq.*, by violating the laws alleged to have been violated in this complaint and which allegations are incorporated herein by reference and which allegations include, but are not limited to:

- a. Failure to pay overtime wages;
- b. Failure to provide meal periods;
- c. Failure to provide rest periods;
- d. Failure to pay all wages due upon ending of employment; and
- e. Failure to provide accurate itemized wage statements.

110. Defendants' conduct, as alleged above, constitutes unlawful, unfair, and fraudulent activity prohibited by Business and Professions Code sections 17200, *et seq.*

111. Plaintiff and Plaintiff Subclass No. 6 have suffered injury in fact, lost money or property because of the aforementioned unfair competition and, as such, seek restitution and any other remedies permitted by law from Defendants.

112. As a result of their improper acts, Defendants, and each of them, have reaped and continue to reap unfair benefits and illegal profits at the expense of Plaintiff and Plaintiff Subclass No. 6.

113. Defendants, and each of them, should be made to disgorge these ill-gotten gains and restore to Plaintiff and Plaintiff Subclass No. 6 the wrongfully withheld wages, pursuant to Business and Professions Code sections 17202 and/or 17203.

114. Plaintiff and Plaintiff Subclass No. 6 have also incurred and continue to incur attorneys' fees and legal expenses in an amount according to proof at the time of trial and for which they seek compensation pursuant to law including but not limited to Code of Civil Procedure section 1021.5.

SEVENTH CAUSE OF ACTION

Individual and Representative Claim for Penalties and Wages

Under California Labor Code §§ 2698, 2699, et seq. for Violations of California Labor Code §§ 201, 202, 203, 204, 210, 226, 226.7, 226.8, 510, 512, 558, and 1198

(Against All Defendants)

115. Plaintiff re-alleges and incorporates herein by reference each and every allegation in the preceding and subsequent paragraphs.

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

117. Plaintiff is an “aggrieved employee” because Plaintiff was employed by the alleged violator and had one or more of the alleged violations committed against Plaintiff, and therefore is properly suited to represent the interests of other current and former aggrieved employees.

118. Plaintiff seeks damages and penalties under Labor Code sections 2698 and 2699 because of Defendants’ violation of numerous provisions of the California Labor Code as alleged in Plaintiffs’ complaint. Labor Code section 2699, *et seq.* imposes upon Defendants, and each of them, damages and penalties for violating Labor Code sections 201, 202, 203, 204, 226, 226.7, 226.8, 510, 512, 558, and 1198.

119. Plaintiff seeks damages and penalties on behalf of Plaintiff and Represented Employees for Defendants’ conduct as alleged herein as permitted by law.

120. Specifically, Plaintiffs seek damages and penalties under Labor Code section 2699, for the following:

- a. For the violations of Labor Code sections 510 for failing to pay Plaintiff and Represented Employees all overtime wages earned, as alleged in this complaint;
- b. For violations of Labor Code sections 226.7 and 512 for failing to provide meal periods, as alleged in this complaint;
- c. For violations of Labor Code sections 226.7 for failing to provide rest periods, as alleged in this complaint;
- d. For violations of Labor Code sections 201, 202, 203, and 204 for failing to timely pay wages and benefits as alleged in this complaint;
- e. For the violation of Labor Code sections 226 for failing to provide accurate wage statements as alleged in the complaint; and
- f. For the violation of Labor Code sections 226.8 for willfully misclassifying employees as independent contractors.

121. Pursuant to Labor Code section 2698, *et seq.*, Plaintiff seeks to recover civil penalties, attorneys’ fees, and costs on behalf of himself and other current and former similarly aggrieved employees as alleged herein in an amount to be shown according to proof at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

1. That the Court issue an Order that this action may be maintained as a class action and certify the Class and subclasses herein, appointing the Plaintiff as representative of all others similarly situated, and appointing the law firms representing the Plaintiff as counsel for the members of the Plaintiff Class and Subclasses;
2. For unpaid wages, premiums and penalties in the amount of \$4,900,000.00, according to proof;
3. For all remedies available to Plaintiff and the Plaintiff Class under the applicable Industrial Welfare Commission Order including but not limited to Wage Order Numbers 4-2001, and Labor Code provisions alleged herein;
4. For an accounting, under administration of Plaintiff and the Plaintiff Class and/or the receiver and subject to Court review, to determine the amount to be returned by Defendants, and the amounts to be paid to members of the Class and Plaintiff who are owed monies by Defendants;
5. For maximum civil penalties available under the PAGA, Labor Code section 2698, *et seq.*;
6. For an Order requiring Defendants to make full restitution and payment to the Class due to unfair competition;
7. For an Order enjoining Defendants further acts of restraint of trade or unfair competition, and or any other proper form of injunctive, declaratory or equitable relief to the full extent permitted by the UCL;
8. For the creation of an administrative process or constructive trust wherein each injured member of the Class and Subclasses may submit a claim in order to receive his/her money;
9. For all costs incurred in pursuit of this action;
10. For attorneys' fees;
11. For pre-judgment interest as allowed by law; and

12. For such other and further relief that the Court deems just.

DATED: December 2, 2021

LAW OFFICES OF DEVON K. ROEPCKE, PC

By: 
DEVON K. ROEPCKE, ESQ.

LAGUARDIA LAW, APC
Eric A. LaGuardia

Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial on all matters triable by jury.

DATED: December 2, 2021

LAW OFFICES OF DEVON K. ROEPCKE, PC

By: 
DEVON K. ROEPCKE, ESQ.

LAGUARDIA LAW, APC
Eric A. LaGuardia

Attorneys for Plaintiff