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ATTORNEYS FOR PLAINTIFF

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO**

PATRICK CLEGG, an individual, on behalf of
himself, and on behalf of all persons similarly
situated,

Plaintiffs,

vs.

POULIN VENTURES, LLC a California
Corporation; BRANDON POULIN, an
individual, and DOES 1 through 50, Inclusive;

Defendants.

Case No. 37-2021-00033824-Cu-OE-CTL

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq.*
3. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;

[additional causes of action continued on next page]

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6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
 7. FAILURE TO PAY WAGES WHEN DUE IN VIOLATION OF CAL. LABOR CODE §§ 201, 202 AND 203;
 8. VIOLATIONS OF THE PRIVATE ATTORNEY GENERAL ACT PURSUANT TO LABOR CODE SECTIONS 2698, ET SEQ;
 9. HOSTILE WORK ENVIRONMENT IN VIOLATION OF FEHA, CALIFORNIA GOV'T CODE §12940(J).
 10. FAILURE TO TAKE ALL REASONABLE STEPS TO PREVENT HARASSMENT, DISCRIMINATION AND RETALIATION FROM OCCURRING IN VIOLATION OF FEHA (CAL. GOV'T CODE §12940(K);
 11. DISCRIMINATION AND HARASSMENT IN VIOLATION OF FEHA;
 12. WRONGFUL TERMINATION; AND
 13. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS.

DEMAND FOR JURY TRIAL

Plaintiff PATRICK CLEGG ("PLAINTIFF") an individual, on behalf of himself and all other similarly situated current and former employees alleges on information and belief, except for his own acts and knowledge which are based on personal knowledge, the following:

THE PARTIES

1. Defendant POULIN VENTURES, LLC. ("DEFENDANT") is a California corporation, sometimes doing business as LadyBoss that at all relevant times mentioned herein conducted and continues to conduct substantial business in the State of California, County of San Diego. Defendant sells women's health supplements and weight loss programs.

2. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently unknown to PLAINTIFF who therefore sues these defendants by such fictitious names pursuant to Cal. Civ. Proc.

1 Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege the true names and
2 capacities of Does 1 through 50, inclusive, when they are ascertained. PLAINTIFF is informed and
3 believes, and based upon that information and belief allege, that the Defendants named in this
4 Complaint, including DOES 1 through 50, inclusive (hereinafter collectively "DEFENDANTS"), are
5 responsible in some manner for one or more of the events and happenings that proximately caused the
6 injuries and damages hereinafter alleged.

7 3. The agents, servants and/or employees of the DEFENDANTS and each of them acting on
8 behalf of the DEFENDANT acted within the course and scope of his or its authority as the agent,
9 servant and/or employee of the DEFENDANT, and personally participated in the conduct alleged
10 herein on behalf of the DEFENDANT with respect to the conduct alleged herein. Consequently, the
11 acts of each of the DEFENDANTS are legally attributable to the other and all DEFENDANTS are
12 jointly and severally liable to PLAINTIFF and those similarly situated, for the loss sustained as a
13 proximate result of the conduct of the DEFENDANTS' agents, servants and/or employees.

14 4. DEFENDANTS were PLAINTIFF's employers or persons acting on behalf of
15 PLAINTIFF's employer, within the meaning of California Labor Code § 558, who violated or caused
16 to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating
17 hours and days of work in any order of the Industrial Welfare Commission and, as such, are subject to
18 civil penalties for each underpaid employee, as set forth in Labor Code § 558, at all relevant times.

19 5. DEFENDANTS were PLAINTIFF's employers or persons acting on behalf of
20 PLAINTIFF's employer either individually or as an officer, agent, or employee of another person,
21 within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any employee
22 a wage less than the minimum fixed by California state law, and as such, are subject to civil penalties
23 for each underpaid employee.

24 6. PLAINTIFF has been employed by DEFENDANTS in San Diego as a non-exempt
25 employee, paid on an hourly basis and entitled to certain non-discretionary flat-sum incentive awards,
26 bonuses, overtime pay and legally compliant meal and rest periods from September 2019 to November
27 2020.

1 7. PLAINTIFF brings this Class Action on behalf of himself and on behalf of all of
2 DEFENDANT's current and former non-exempt California employees (the "CALIFORNIA CLASS")
3 at any time during the period beginning 4 years prior to the filing of the Complaint and ending on a
4 date determined by the Court (the "CLASS PERIOD"). The amount in controversy for the aggregate
5 claim of CALIFORNIA CLASS members is under five million dollars (\$5,000,000.00).

6 8. PLAINTIFF brings this Class Action on behalf of himself and on behalf of the
7 CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses
8 incurred during the CLASS PERIOD caused by DEFENDANT'S uniform policy and practice which
9 (1) failed to provide PLAINTIFF and the CALIFORNIA CLASS with legally complaint meal and rest
10 periods or an additional hour of pay at the regular rate of compensation in *lieu* thereof in violation of
11 California Labor Code Sections 226.7(c), 512(a) and the applicable Industrial Welfare Commission
12 Wage Order, (2) failed to pay PLAINTIFF and the CALIFORNIA CLASS for all hours worked in
13 violation of, *inter alia*, California Labor Code Sections 510, 1194, 1197, and 1197.1, and (3) failed to
14 provide accurate itemized wage statements in violation of California Labor Code Sections 226 and
15 226.3.

16 9. DEFENDANT'S uniform policies and practices alleged herein were unlawful, unfair and
17 deceptive business practices whereby DEFENDANT retained and continues to retain wages due
18 PLAINTIFF and the other members of the CALIFORNIA CLASS.

19 10. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction
20 enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and the other
21 members of the CALIFORNIA CLASS who have been economically injured by DEFENDANTS's past
22 and current unlawful conduct, and all other appropriate legal and equitable relief.

23 11. At all times herein mentioned, the acts and omissions of various Defendants, and each of
24 them, occurred and contributed to the various acts and omissions of each and all of the other Defendants
25 in proximately causing the injuries and damages as herein alleged. At all times herein mentioned,
26 Defendants, and each of them, ratified, each and every act or omission complained of herein. At all
27 times herein mentioned, the Defendants, and each of them, aided and abetted the acts and omissions of
28 each and all of the other Defendants in proximately causing the damages as herein alleged.

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3 **JURISDICTION AND VENUE**

4 12. This Court has jurisdiction over this Action pursuant to California Code of Civil
5 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This action is
6 brought as a Class Action on behalf of PLAINTIFF and similarly situated employees of
7 DEFENDANTS pursuant to Cal. Code of Civ. Proc. § 382.

8 13. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections
9 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANTS, resides in this County,
10 and DEFENDANTS (i) currently maintains and at all relevant times maintained offices and facilities
11 in this County and/or conducts substantial business in this County, and (ii) committed the wrongful
12 conduct herein alleged in this County against members of the CALIFORNIA CLASS.

13 **THE CONDUCT**

14 14. In violation of the applicable sections of the California Labor Code and the requirements
15 of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a matter of company
16 policy, practice and procedure, intentionally, knowingly and systematically failed to provide legally
17 compliant meal and rest period, failed to accurately compensate PLAINTIFF and the other members of
18 the CALIFORNIA CLASS for missed meal and rest periods, failed to pay PLAINTIFF and the other
19 members of the CALIFORNIA CLASS for all time worked, and failed to issue to PLAINTIFF and the
20 members of the CALIFORNIA CLASS with accurate itemized wage statements showing, among other
21 things, all applicable hourly rates in effect during the pay periods and the corresponding amount of time
22 worked at each hourly rate. DEFENDANT'S uniform policies and practices are intended to
23 purposefully avoid the accurate and full payment for all time worked as required by California law
24 which allows DEFENDANT to illegally profit and gain an unfair advantage over competitors who
25 comply with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA
26 CLASS against DEFENDANT, the CLASS PERIOD should be adjusted accordingly.

27 15. PLAINTIFF's and other CALIFORNIA CLASS Members' compensation was
28 DEFENDANT's non-discretionary incentive program that paid PLAINTIFF and other CALIFORNIA

1 CLASS Members incentive wages based on their performance for DEFENDANT. The non-
2 discretionary incentive program provided all employees paid on an hourly basis with incentive
3 compensation when the employees met the various performance goals set by DEFENDANT.
4 However, when calculating the regular rate of pay in order to pay overtime to PLAINTIFF and other
5 CALIFORNIA CLASS Members, DEFENDANT failed to include the incentive compensation as part
6 of the employees' "regular rate of pay" for purposes of calculating overtime pay. Management and
7 supervisors described the incentive program to potential and new employees as part of the
8 compensation package. As a matter of law, the incentive compensation received by PLAINTIFF and
9 other CALIFORNIA CLASS Members must be included in the "regular rate of pay." The failure to do
10 so has resulted in a systematic underpayment of overtime compensation to PLAINTIFF and other
11 CALIFORNIA CLASS Members by DEFENDANT.

12 **A. Meal Period Violations**

13 16. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were
14 required to pay PLAINTIFF and CALIFORNIA CLASS members for all their time worked, meaning
15 the time during which an employee is subject to the control of an employer, including all the time the
16 employee is suffered or permitted to work. From time-to-time during the CLASS PERIOD,
17 DEFENDANT required PLAINTIFF and CALIFORNIA CLASS members to work without paying
18 them for all the time they were under DEFENDANT'S control. Specifically, as a result of
19 PLAINTIFF's demanding work requirements and DEFENDANTS' under staffing, DEFENDANT
20 required PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF's off-
21 duty meal break. PLAINTIFF was from time to time interrupted by work assignments while clocked
22 out for what should have been PLAINTIFF's off-duty meal break. Indeed, there were many days where
23 PLAINTIFF did not even receive a partial lunch. As a result, the PLAINTIFF and other CALIFORNIA
24 CLASS members forfeited minimum wage and overtime wages by regularly working without their time
25 being accurately recorded and without compensation at the applicable minimum wage and overtime
26 rates. DEFENDANTS' uniform policy and practice not to pay PLAINTIFF and other CALIFORNIA
27 CLASS members for all time worked is evidenced by DEFENDANTS' business records.

1 17. From time-to-time during the CLASS PERIOD, as a result of their rigorous work
2 schedules and DEFENDANT'S inadequate staffing practices, PLAINTIFF and other CALIFORNIA
3 CLASS members were from time to time unable to take thirty (30) minute off duty meal breaks and
4 were not fully relieved of duty for their meal periods. PLAINTIFF and other CALIFORNIA CLASS
5 members were required from time to time to perform work as ordered by DEFENDANTS for more
6 than five (5) hours during some shifts without receiving a meal break. Further, DEFENDANTS from
7 time to time failed to provide PLAINTIFF and CALIFORNIA CLASS members with a second off-
8 duty meal period for some workdays in which these employees were required by DEFENDANTS to
9 work ten (10) hours of work from time to time. The nature of the work performed by the PLAINTIFF
10 and the members of the CALIFORNIA CLASS does not qualify for limited and narrowly construed
11 "on-duty" meal period exception. PLAINTIFF and other members of the CALIFORNIA CLASS
12 therefore forfeited meal breaks without additional compensation and in accordance with
13 DEFENDANTS' strict corporate policy and practice. DEFENDANTS failed to maintain adequate
14 staffing levels while increasing the production levels for each employee at the busy airports they
15 provided services for.

16 **B. Rest Period Violations**

17 18. From time-to-time during the CLASS PERIOD, PLAINTIFF and other CALIFORNIA
18 CLASS members were also required from time to time to work in excess of four (4) hours without
19 being provided ten (10) minute rest periods as a result of their rigorous work schedule and
20 DEFENDANTS' inadequate staffing . Further, for the same reasons these employees were denied their
21 first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours
22 from time to time, a first and second rest period of at least ten (10) minutes for some shifts worked of
23 between six (6) and eight (8) hours from time to time, and a first, second and third rest period of at least
24 ten (10) minutes for some shifts worked of ten (10) hours or more from time to time. PLAINTIFF and
25 other CALIFORNIA CLASS members were also not provided with one-hour wages in lieu thereof. As
26 a result of their rigorous work schedules and DEFENDANT'S inadequate staffing, PLAINTIFF and
27 other CALIFORNIA CLASS members were from time to time denied their proper rest periods by
28 DEFENDANT and DEFENDANT'S managers.

1 **C. Overtime Regular Rate Violation**

2 19. From time-to-time during the CLASS PERIOD, DEFENDANT failed and continues to
3 fail to accurately calculate and pay PLAINTIFF and the other CALIFORNIA CLASS members for
4 their overtime hours worked. As a result, PLAINTIFF and the other CALIFORNIA CLASS members
5 forfeited wages due them for working overtime without compensation at the correct overtime rates.
6 DEFENDANT'S uniform policy and practice to not pay the CALIFORNIA CLASS members the
7 correct overtime rate for all overtime worked in accordance with applicable law is evidenced by
8 DEFENDANT'S business records.

9 20. State law provides that employees must be paid overtime at one-and-one-half times their
10 "regular rate of pay." PLAINTIFF and other CALIFORNIA CLASS members were compensated at
11 an hourly rate plus flat-sum incentive pay that was tied to specific elements of an employee's
12 performance.

13 21. The second component of PLAINTIFF'S and other CALIFORNIA CLASS members'
14 compensation was DEFENDANT'S flat-sum non-discretionary incentive program that paid
15 PLAINTIFF and other CLASS MEMBERS flat-sum incentive wages based on their performance for
16 DEFENDANT. The flat-sum non-discretionary bonus program provided all employees paid on an
17 hourly basis with flat-sum bonus compensation when the employees met the various performance goals
18 set by DEFENDANTS. These flat-sum incentive payments are identified as "COMMISSION" and
19 "ADDITIONAL PAY" in the wage statements issued by DEFENDANTS to PLAINTIFF and the other
20 CALIFORNIA CLASS members.

21 22. However, from-time-to-time, when calculating the regular rate of pay, in those pay periods
22 where PLAINTIFF and other CALIFORNIA CLASS members worked overtime and earned this flat-
23 sum non-discretionary bonus, DEFENDANT failed to accurately include the flat-sum non-
24 discretionary bonus compensation as part of the employees' "regular rate of pay" and/or calculated all
25 hours worked rather than just all non-overtime hours worked. Management and supervisors described
26 the incentive/bonus program to potential and new employees as part of the compensation package. As
27 a matter of law, the incentive compensation received by PLAINTIFF and other CALIFORNIA CLASS
28 members must be included in the "regular rate of pay." The failure to do so has resulted in a systematic

1 underpayment of overtime compensation to PLAINTIFF and other CALIFORNIA CLASS members
2 by DEFENDANT.

3 23. In violation of the applicable sections of the California Labor Code and the requirements
4 of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a matter of company
5 policy, practice and procedure, intentionally and knowingly failed to compensate PLAINTIFF and the
6 other members of the CALIFORNIA CLASS at the correct rate of pay for all overtime worked. This
7 uniform policy and practice of DEFENDANT is intended to purposefully avoid the payment of the
8 correct overtime compensation as required by California law which allowed DEFENDANT to illegally
9 profit and gain an unfair advantage over competitors who complied with the law. To the extent
10 equitable tolling operates to toll claims by the CALIFORNIA CLASS members against DEFENDANT,
11 the CLASS PERIOD should be adjusted accordingly.

12 **D. Wage Statement Violations**

13 24. California Labor Code Section 226 requires an employer to furnish its employees an
14 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked, (3) the
15 number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net wages
16 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the
17 employee and only the last four digits of the employee's social security number or an employee
18 identification number other than a social security number, (8) the name and address of the legal entity
19 that is the employer and, (9) all applicable hourly rates in effect during the pay period and the
20 corresponding number of hours worked at each hourly rate by the employee.

21 25. From time to time during the CLASS PERIOD, when PLAINTIFF and other
22 CALIFORNIA CLASS members missed meal and rest breaks, or were paid inaccurate missed meal
23 and rest period premiums, or were paid overtime in the same pay period where they earned a non-
24 discretionary incentive award, DEFENDANT also failed to provide PLAINTIFF and the other
25 members of the CALIFORNIA CLASS with complete and accurate wage statements which failed to
26 show, among other things, all applicable hourly rates in effect during the pay period and the
27 corresponding amount of time worked at each hourly rate, correct rates of pay for penalty payments or
28 missed meal and rest periods, or the total hours worked during the pay period.

1 26. As a result, DEFENDANTS issued PLAINTIFF and the other members of the
2 CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code § 226. Further,
3 DEFENDANTS' violations are knowing and intentional, were not isolated or due to an unintentional
4 payroll error due to clerical or inadvertent mistake.

5 **CLASS ACTION ALLEGATIONS**

6 27. PLAINTIFF brings the First through Seventh Causes of Action as a class action pursuant
7 to California Code of Civil Procedure § 382 on behalf of all of DEFENDANTS' current and former non-
8 exempt California employees ("CALIFORNIA CLASS") during the period beginning 4 years prior to
9 the filing of the complaint and ending on a date determined by the Court ("CLASS PERIOD").

10 28. PLAINTIFF and the other CALIFORNIA CLASS members have uniformly been
11 deprived of wages and penalties from unpaid wages earned and due, including but not limited to unpaid
12 minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums, illegal meal
13 and rest period policies, failure to separately compensate rest periods, failure to separately compensate
14 for all non-productive time, failure to provide accurate itemized wage statements, failure to maintain
15 required records, and interest, statutory and civil penalties, attorney's fees, costs, and expenses.

16 29. The members of the class are so numerous that joinder of all class members is impractical.

17 30. Common questions of law and fact regarding DEFENDANT'S conduct, including but not
18 limited to, the off-the-clock work, unpaid meal and rest period premiums, failure to accurately calculate
19 the regular rate of pay for overtime compensation, failure to accurately calculate the regular rate of
20 compensation for missed meal and rest period premiums, failing to provide legally compliant meal and
21 rest periods, failure to provide accurate itemized wage statements accurate, and failure ensure they are
22 paid at least minimum wage and overtime, exist as to all members of the class and predominate over
23 any questions affecting solely any individual members of the class. Among the questions of law and fact
24 common to the class are:

25 a. Whether DEFENDANTS maintained legally compliant meal period
26 policies and practices;

27 b. Whether DEFENDANTS maintained legally compliant rest period
28 policies and practices;

1 c. Whether DEFENDANTS failed to pay PLAINTIFF and the
2 CALIFORNIA CLASS members accurate premium payments for missed
3 meal and rest periods;

4 d. Whether DEFENDANTS failed to pay PLAINTIFF and the
5 CALIFORNIA CLASS members accurate overtime wages.

6 e. Whether DEFENDANTS failed to pay PLAINTIFF and the
7 CALIFORNIA CLASS members at least minimum wage for all hours
8 worked.

9 f. Whether DEFENDANTS issued legally compliant wage statements;

10 g. Whether DEFENDANTS committed an act of unfair competition by
11 systematically failing to record and pay PLAINTIFF and the other members
12 of the CALIFORNIA CLASS for all time worked;

13 h. Whether DEFENDANTS committed an act of unfair competition by
14 systematically failing to record all meal and rest breaks missed by
15 PLAINTIFF and other CALIFORNIA CLASS members, even though
16 DEFENDANTS enjoyed the benefit of this work, required employees to
17 perform this work and permits or suffers to permit this work;

18 i. Whether DEFENDANTS committed an act of unfair competition in
19 violation of the UCL, by failing to provide the PLAINTIFF and the other
20 members of the CALIFORNIA CLASS with the legally required meal and
21 rest periods; and,

22 31. PLAINTIFF is a member of the CALIFORNIA CLASS and suffered damages as a result
23 of DEFENDANT'S conduct and actions alleged herein.

24 32. PLAINTIFF's claims are typical of the claims of the class, and PLAINTIFF has the same
25 interests as the other members of the class.

26 33. PLAINTIFF will fairly and adequately represent and protect the interests of the
27 CALIFORNIA CLASS members.

28 34. PLAINTIFF retained able class counsel with extensive experience in class action

1 litigation.

2 35. Further, PLAINTIFF's interests are coincident with, and not antagonistic to, the interests
3 of the other CALIFORNIA CLASS members.

4 36. There is a strong community of interest among PLAINTIFF and the members of the
5 CALIFORNIA CLASS to, *inter alia*, ensure that the combined assets of DEFENDANTS are sufficient
6 to adequately compensate the members of the CALIFORNIA CLASS for the injuries sustained;

7 37. The questions of law and fact common to the CALIFORNIA CLASS members
8 predominate over any questions affecting only individual members, including legal and factual issues
9 relating to liability and damages.

10 38. A class action is superior to other available methods for the fair and efficient adjudication
11 of this controversy because joinder of all class members is impractical. Moreover, since the damages
12 suffered by individual members of the class may be relatively small, the expense and burden of
13 individual litigation makes it practically impossible for the members of the class individually to redress
14 the wrongs done to them. Without class certification and determination of declaratory, injunctive,
15 statutory and other legal questions within the class format, prosecution of separate actions by individual
16 members of the CALIFORNIA CLASS will create the risk of:

17 a. Inconsistent or varying adjudications with respect to individual members of the
18 CALIFORNIA CLASS which would establish incompatible standards of conduct for the
19 parties opposing the CALIFORNIA CLASS; and/or,

20 b. Adjudication with respect to individual members of the CALIFORNIA CLASS
21 which would as a practical matter be dispositive of the interests of the other members not
22 party to the adjudication or substantially impair or impeded their ability to protect their
23 interests.

24 39. Class treatment provides manageable judicial treatment calculated to bring an efficient
25 and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of
26 DEFENDANTS.

27 **INDIVIDUAL ALLEGATIONS**

1 40. PLAINTIFF worked for Defendant beginning on or about September 2019 through
2 November 2020.

3 41. PLAINTIFF is over the age of 40.

4 42. Throughout PLAINTIFF's employment, he was subjected to unlawful harassment and
5 discrimination based on his protected status (i.e. being a male, age (over 40) and/or good faith
6 complaints).

7 43. Beginning on or about October 2019, PLAINTIFF's supervisor, Defendant Nikolas
8 Elliott, shunned and ignored Plaintiff because he was a male.

9 44. PLAINTIFF was denied promotions to a Tier 1 Sales position because he did not "fit in,"
10 meaning he was not a woman and was too old in age. This stymied his potential earning capacity and
11 made it difficult to meet DEFENDANT'S sales goals. A Tier 1 sales person had a greater opportunity
12 to make sales, and therefore, more commission. Upon information and belief, during PLAINTIFF's
13 EMPLOYMENT, all of the Tier 1 sales persons were women and in their late 20s, early 30s.

14 45. PLAINTIFF was called an "old white guy" numerous times during his employment with
15 DEFENDANT.

16 46. PLAINTIFF refused to participate in social lunches where the staff would drink, or in
17 drug use, and as such, he didn't "fit in" with DEFENDANT's culture.

18 47. During PLAINTIFF's employment with DEFENDANT, PLAINTIFF was slapped by a
19 female supervisor because he did not close a deal.

20 48. DEFENDANT harassed and discriminated against PLAINTIFF based on his sex and age
21 and created a hostile work environment at the workplace. As detailed above, PLAINTIFF was an
22 employee of DEFENDANTS and was subjected to continuous harassing conduct in the form of both
23 physical and verbal harassment. The harassment was so severe, widespread or persistent that
24 PLAINTIFF considered the work environment to be hostile and abusive.

25 49. During PLAINTIFF's employment with DEFENDANT, PLAINTIFF complained of the
26 physical and verbal assault he experienced, he also complained of the rampant drug and alcohol use he
27 witnessed at work and DEFENDANT failed to take any actions.

50. PLAINTIFF was wrongfully terminated because he was a male and over the age of 40 and did not “fit in” with DEFENDANT’s culture and environment.

51. Defendants actions were in violation of FEHA and the California Constitution

52. Plaintiff has met all the jurisdictional requirements for proceedings with his claims under FEHA, including without limitation, California Government Code Sections 12960 and 12965, by timely filing administrative complaints against Defendants with the California Department of Fair Employment and Housing (the “DFEH”) on or about October 4, 2021. Plaintiff also requested his right-to-sue letters from the DFEH against Defendants. True and correct copies of the DFEH complaints and right-to-sue letters are collectively attached hereto as Exhibit “B.”

FIRST CAUSE OF ACTION

For Unlawful Business Practices

[Cal. Bus. And Prof. Code §§ 17200, *et seq.*]

(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)

53. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

54. DEFENDANTS are “person[s]” as that term is defined under Cal. Bus. and Prof. Code § 17021.

55. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair competition as follows:

Any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition, as defined in this chapter, or as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition.

1 Cal. Bus. & Prof. Code § 17203.

2 56. By reason of this uniform conduct applicable to PLAINTIFF and all CALIFORNIA
3 CLASS members, during the CLASS PERIOD, DEFENDANTS commit acts of unfair competition in
4 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
5 “UCL”), by engaging and continuing to engage in business practices which violates California law,
6 including but not limited to, the applicable Industrial Wage Order(s), the California Code of Regulations
7 and the California Labor Code including Sections 201, 202, 203, 204, 210, 226, 226.7, 510, 512, 1194,
8 1197, 1197.1, 1198 & 2802, for which this Court should issue declaratory and other equitable relief
9 pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct
10 held to constitute unfair competition, including restitution of wages wrongfully withheld.

11 57. By the conduct alleged herein, DEFENDANTS’ practices were unlawful and unfair in that
12 these practices violated public policy, were immoral, unethical, oppressive, unscrupulous or
13 substantially injurious to employees, and were without valid justification or utility for which this Court
14 should issue equitable and injunctive relief pursuant to Section 17203 of the California Business &
15 Professions Code, including restitution of wages wrongfully withheld.

16 58. By the conduct alleged herein, DEFENDANTS’ practices were deceptive and fraudulent
17 in that DEFENDANTS’ uniform policy and practice failed to, *inter alia*, provide the legally mandated
18 meal and rest periods, the required accurate amount of compensation for missed meal and rest periods,
19 overtime and minimum wages owed, provide accurate itemized wage statements, due to a systematic
20 business practice that cannot be justified, pursuant to the applicable Cal. Lab. Code, and Industrial
21 Welfare Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this
22 Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including
23 restitution of wages wrongfully withheld.

24 59. By the conduct alleged herein, DEFENDANTS’ practices were also unlawful, unfair and
25 deceptive in that DEFENDANTS’ employment practices caused PLAINTIFF and the other members of
26 the CALIFORNIA CLASS to be underpaid during their employment with DEFENDANTS.

27 60. By the conduct alleged herein, DEFENDANTS’ practices were also unlawful, unfair and
28 deceptive in that DEFENDANTS’ uniform policies, practices and procedures failed to, *inter alia*,

1 provide the legally mandated meal and rest periods, the required accurate amount of compensation for
2 missed meal and rest periods, overtime and minimum wages owed, provide accurate itemized wage
3 statements, to PLAINTIFF and the other members of the CALIFORNIA CLASS as required by Cal.
4 Labor Code.

5 61. Therefore, PLAINTIFF demands on behalf of himself and on behalf of each
6 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty meal period
7 was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for each workday in
8 which a second off-duty meal period was not timely provided for each ten (10) hours of work.

9 62. PLAINTIFF further demands on behalf of himself and on behalf of each CALIFORNIA
10 CLASS member, one (1) hour of pay for each workday in which an off duty paid rest period was not
11 timely provided as required by law.

12 63. PLAINTIFF further demands on all wages due to PLAINTIFF and the members of the
13 CALIFORNIA CLASS as a result of working while off the clock on meal periods, inaccurately
14 calculated overtime and missed meal and rest periods premiums.

15 64. By and through the unlawful and unfair business practices described herein,
16 DEFENDANTS has obtained valuable property, money and services from PLAINTIFF and the other
17 members of the CALIFORNIA CLASS, including earned wages for all overtime worked, and has
18 deprived them of valuable rights and benefits guaranteed by law and contract, all to the detriment of
19 these employees and to the benefit of DEFENDANTS so as to allow DEFENDANTS to unfairly
20 compete against competitors who comply with the law.

21 65. All the acts described herein as violations of, among other things, the Industrial Welfare
22 Commission Wage Orders, the California Code of Regulations, and the California Labor Code, were
23 unlawful and in violation of public policy, were immoral, unethical, oppressive and unscrupulous, were
24 deceptive, and thereby constitute unlawful, unfair and deceptive business practices in violation of Cal.
25 Bus. & Prof. Code §§ 17200, *et seq.*

26 66. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to, and do,
27 seek such relief as may be necessary to restore to them the money and property which DEFENDANTS
28 has acquired, or of which PLAINTIFF and the other members of the CALIFORNIA CLASS have been

1 deprived, by means of the above described unlawful and unfair business practices, including earned but
2 unpaid wages for all overtime worked.

3 67. PLAINTIFF and the other members of the CALIFORNIA CLASS are further entitled to,
4 and do, seek a declaration that the described business practices are unlawful, unfair and deceptive, and
5 that injunctive relief should be issued restraining DEFENDANTS from engaging in any unlawful and
6 unfair business practices in the future.

7 68. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain, speedy
8 and/or adequate remedy at law that will end the unlawful and unfair business practices of
9 DEFENDANTS. Further, the practices herein alleged presently continue to occur unabated. As a result
10 of the unlawful and unfair business practices described herein, PLAINTIFF and the other members of
11 the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal and economic
12 harm unless DEFENDANTS is restrained from continuing to engage in these unlawful and unfair
13 business practices.

14 **SECOND CAUSE OF ACTION**

15 **For Failure to Pay Overtime Compensation**

16 **[Cal. Lab. Code §§ 510, *et seq.*]**

17 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

18 69. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
19 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

20 70. PLAINTIFF and the other members of the CALIFORNIA CLASS for the period between
21 July 2017 and the present ("LABOR CLASS PERIOD") bring a claim for DEFENDANTS' willful and
22 intentional violations of the California Labor Code and the Industrial Welfare Commission requirements
23 for DEFENDANTS' failure to pay these employees for all overtime worked, including, work performed
24 in excess of eight (8) hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours
25 in any workweek.

26 71. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public policy,
27 an employer must timely pay its employees for all hours worked.

28 72. Cal. Lab. Code § 510 further provides that employees in California shall not be employed

1 more than eight (8) hours per workday and/or more than forty (40) hours per workweek unless they
2 receive additional compensation beyond their regular wages in amounts specified by law.

3 73. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages, including
4 overtime compensation and interest thereon, together with the costs of suit. Cal. Lab. Code § 1198
5 further states that the employment of an employee for longer hours than those fixed by the Industrial
6 Welfare Commission is unlawful.

7 74. During the LABOR CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS members
8 were required by DEFENDANTS to work for DEFENDANTS and were not paid for all the time they
9 worked or were not accurately compensated for all overtime hours worked.

10 75. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
11 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of implementing a
12 uniform policy and practice that failed to accurately record overtime worked by PLAINTIFF and other
13 CALIFORNIA CLASS members and denied accurate compensation to PLAINTIFF and the other
14 members of the CALIFORNIA CLASS for overtime worked, including, the overtime work performed
15 in excess of eight (8) hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours
16 in any workweek.

17 76. In committing these violations of the California Labor Code, DEFENDANTS inaccurately
18 calculated the amount of overtime worked and the applicable overtime rates and consequently underpaid
19 the actual time worked by PLAINTIFF and other members of the CALIFORNIA CLASS.
20 DEFENDANTS acted in an illegal attempt to avoid the payment of all earned wages, and other benefits
21 in violation of the California Labor Code, the Industrial Welfare Commission requirements and other
22 applicable laws and regulations.

23 77. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
24 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive full compensation for
25 all overtime worked.

26 78. Cal. Lab. Code § 515 sets out various categories of employees who are exempt from the
27 overtime requirements of the law. None of these exemptions are applicable to PLAINTIFF and the other
28 members of the CALIFORNIA CLASS. Further, PLAINTIFF and the other members of the

1 CALIFORNIA CLASS are not subject to a valid collective bargaining agreement that would preclude
2 the causes of action contained herein this Complaint. Rather, the PLAINTIFF brings this Action on
3 behalf of himself and the CALIFORNIA CLASS based on DEFENDANTS' violations of non-
4 negotiable, non-waivable rights provided by the State of California.

5 79. During the LABOR CLASS PERIOD, PLAINTIFF and the other members of the
6 CALIFORNIA CLASS were paid less for time worked that they were entitled to, constituting a failure
7 to pay all earned wages.

8 80. DEFENDANTS failed to accurately pay PLAINTIFF and the other members of the
9 CALIFORNIA CLASS overtime wages for the time they worked which was in excess of the maximum
10 hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 & 1198, even though PLAINTIFF
11 and the other members of the CALIFORNIA CLASS were required to work, and did in fact work,
12 overtime as to which DEFENDANTS failed to accurately record and pay using the applicable overtime
13 rate as evidenced by DEFENDANTS' business records and witnessed by employees.

14 81. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned compensation
15 to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true time they worked,
16 PLAINTIFF and the other members of the CALIFORNIA CLASS have suffered and will continue to
17 suffer an economic injury in amounts which are presently unknown to them and which will be
18 ascertained according to proof at trial.

19 82. DEFENDANTS knew or should have known that PLAINTIFF and the other members of
20 the CALIFORNIA CLASS were under compensated for all overtime worked. DEFENDANTS
21 systematically elected, either through intentional malfeasance or gross nonfeasance, to not pay
22 employees for their labor as a matter of uniform company policy, practice and procedure, and
23 DEFENDANTS perpetrated this systematic scheme by refusing to pay PLAINTIFF and the other
24 members of the CALIFORNIA CLASS for overtime worked.

25 83. In performing the acts and practices herein alleged in violation of California labor laws,
26 and refusing to compensate the members of the CALIFORNIA CLASS for all time worked and provide
27 them with the requisite overtime compensation, DEFENDANTS acted and continues to act intentionally,
28 oppressively, and maliciously toward PLAINTIFF and the other members of the CALIFORNIA CLASS

1 with a conscious of and utter disregard for their legal rights, or the consequences to them, and with the
2 despicable intent of depriving them of their property and legal rights, and otherwise causing them injury
3 in order to increase company profits at the expense of these employees

4 84. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore request
5 recovery of all unpaid wages, including overtime wages, according to proof, interest, statutory costs, as
6 well as the assessment of any statutory penalties against DEFENDANTS, in a sum as provided by the
7 California Labor Code and/or other applicable statutes. To the extent overtime compensation is
8 determined to be owed to the CALIFORNIA CLASS members who have terminated their employment,
9 DEFENDANTS' conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals
10 are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought
11 herein on behalf of these CALIFORNIA CLASS members. DEFENDANTS' conduct as alleged herein
12 was willful, intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA CLASS
13 Members are entitled to seek and recover statutory costs.

14 **THIRD CAUSE OF ACTION**

15 **For Failure to Pay Minimum Wages**

16 **[Cal. Lab. Code §§ 1194, 1197 and 1197.1]**

17 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

18 85. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
19 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

20 86. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for
21 DEFENDANTS' willful and intentional violations of the California Labor Code and the Industrial
22 Welfare Commission requirements for DEFENDANTS' failure to accurately record, calculate and pay
23 minimum and reporting time wages to PLAINTIFF and CALIFORNIA CLASS members during the
24 LABOR CLASS PERIOD.

25 87. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public policy,
26 an employer must timely pay its employees for all hours worked.

27 88. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
28 commission is the minimum wage to be paid to employees, and the payment of a less wage than the

1 minimum so fixed in unlawful.

2 89. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages, including
3 minimum wage compensation and interest thereon, together with the costs of suit.

4 90. DEFENDANTS maintain a uniform wage practice of paying PLAINTIFF and the other
5 members of the CALIFORNIA CLASS without regard to the correct amount of time they work. For
6 instance, as set forth herein, DEFENDANTS maintained a uniform policy that required PLAINTIFF to
7 work while clocked out during what was supposed to be PLAINTIFF's off-duty meal break without
8 compensation. Further, as set forth herein, DEFENDANTS' uniform policy and practice was to
9 unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the other members
10 of the CALIFORNIA CLASS.

11 91. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
12 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of implementing a
13 uniform policy and practice that denies accurate compensation to PLAINTIFF and the other members
14 of the CALIFORNIA CLASS in regard to minimum wage pay.

15 92. In committing these violations of the California Labor Code, DEFENDANTS inaccurately
16 calculated the correct time worked and consequently underpaid the actual time worked by PLAINTIFF
17 and other members of the CALIFORNIA CLASS. DEFENDANTS acted in an illegal attempt to avoid
18 the payment of all earned wages, and other benefits in violation of the California Labor Code, the
19 Industrial Welfare Commission requirements and other applicable laws and regulations.

20 93. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
21 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct minimum
22 wage compensation for their time worked for DEFENDANTS.

23 94. During the LABOR CLASS PERIOD, PLAINTIFF and the other members of the
24 CALIFORNIA CLASS were paid less for time worked that they were entitled to, constituting a failure
25 to pay all earned wages.

26 95. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned compensation
27 to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true time they worked,
28 PLAINTIFF and the other members of the CALIFORNIA CLASS have suffered and will continue to

1 suffer an economic injury in amounts which are presently unknown to them and which will be
2 ascertained according to proof at trial.

3 96. DEFENDANTS knew or should have known that PLAINTIFF and the other members of
4 the CALIFORNIA CLASS were under compensated for their time worked. DEFENDANTS
5 systematically elected, either through intentional malfeasance or gross nonfeasance, to not pay
6 employees for their labor as a matter of uniform company policy, practice and procedure, and
7 DEFENDANTS perpetrated this systematic scheme by refusing to pay PLAINTIFF and the other
8 members of the CALIFORNIA CLASS the correct minimum wages for their time worked.

9 97. In performing the acts and practices herein alleged in violation of California labor laws,
10 and refusing to compensate the members of the CALIFORNIA CLASS for all time worked and provide
11 them with the requisite compensation, DEFENDANTS acted and continues to act intentionally,
12 oppressively, and maliciously toward PLAINTIFF and the other members of the CALIFORNIA CLASS
13 with a conscious and utter disregard for their legal rights, or the consequences to them, and with the
14 despicable intent of depriving them of their property and legal rights, and otherwise causing them injury
15 in order to increase company profits at the expense of these employees.

16 98. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore request
17 recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment of
18 any statutory penalties against DEFENDANTS, in a sum as provided by the California Labor Code
19 and/or other applicable statutes. To the extent minimum wage compensation is determined to be owed
20 to the CALIFORNIA CLASS members who have terminated their employment, DEFENDANTS'
21 conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled
22 to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein on behalf of
23 these CALIFORNIA CLASS members. DEFENDANTS' conduct as alleged herein was willful,
24 intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA CLASS members are
25 entitled to seek and recover statutory costs.

26 **FOURTH CAUSE OF ACTION**

27 **For Failure to Provide Required Meal Periods**

28 **[Cal. Lab. Code §§ 226.7 & 512]**

1 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

2 99. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
3 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

4 100. During the LABOR CLASS PERIOD, from time to time, DEFENDANTS failed to
5 provide all the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA
6 CLASS members as required by the applicable Wage Order and Labor Code. The nature of the work
7 performed by PLAINTIFF and CALIFORNIA CLASS members did not prevent these employees from
8 being relieved of all of their duties for the legally required off-duty meal periods. As a result of their
9 rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS members were from time to
10 time not fully relieved of duty by DEFENDANTS for their meal periods. Additionally,
11 DEFENDANTS' failure to provide PLAINTIFF and the CALIFORNIA CLASS members with legally
12 required meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANTS' business
13 records from time to time. Further, DEFENDANTS failed to provide PLAINTIFF and CALIFORNIA
14 CLASS members with a second off-duty meal period in some workdays in which these employees were
15 required by DEFENDANTS to work ten (10) hours of work. As a result, PLAINTIFF and other members
16 of the CALIFORNIA CLASS therefore forfeited meal breaks without additional compensation and in
17 accordance with DEFENDANTS' strict corporate policy and practice.

18 101. DEFENDANTS further violates California Labor Code §§ 226.7 and the applicable IWC
19 Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS Members who were not
20 provided a meal period, in accordance with the applicable Wage Order, one additional hour of
21 compensation at each employee's regular rate of compensation for each workday that a meal period was
22 not provided.

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

26 **FIFTH CAUSE OF ACTION**

27 **For Failure to Provide Required Rest Periods**

28 **[Cal. Lab. Code §§ 226.7 & 512]**

“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 his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement,
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.

109. During the LABOR CLASS PERIOD, DEFENDANTS also failed to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and accurate wage statements which failed to accurately show, among other things, (1) total number of hours worked, (2) net wages earned, (3) gross wages earned and (7) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee in violation of California Labor Code Section 226.

110. DEFENDANTS knowingly and intentionally failed to comply with Cal. Labor Code § 226, causing injury and damages to the PLAINTIFF and the other members of the CALIFORNIA CLASS. These damages include, but are not limited to, costs expended calculating the correct rates for

1 the overtime worked and the amount of employment taxes which were not properly paid to state and
2 federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFF and the other
3 members of the CALIFORNIA CLASS may elect to recover liquidated damages of fifty dollars (\$50.00)
4 for the initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each
5 violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, and all other damages and
6 penalties available pursuant to Labor Code § 226.2(a)(6), all in an amount according to proof at the time
7 of trial (but in no event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective
8 member of the CALIFORNIA CLASS herein.

9 **SEVENTH CAUSE OF ACTION**

10 **FAILURE TO PAY WAGES WHEN DUE**

11 **(Cal Lab. Code §§201, 202, 203)**

12 **((By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS))**

13 111. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
14 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

15 112. Cal. Lab. Code § 200 provides that:

16 As used in this article:(a) "Wages" includes all amounts for labor
17 performed by employees of every description, whether the amount
18 is fixed or ascertained by the standard of time, task, piece,
19 Commission basis, or other method of calculation. (b) "Labor"
20 includes labor, work, or service whether rendered or performed
21 under contract, subcontract, partnership, station plan, or other
22 agreement if the labor to be paid for is performed personally by the
23 person demanding payment.

24 113. Cal. Lab. Code § 201 provides, in relevant part, that "If an employer discharges an
25 employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

26 114. Cal. Lab. Code § 202 provides, in relevant part, that:

27 If an employee not having a written contract for a definite period
28 quits his or her employment, his or her wages shall become due and

1 payable not later than 72 hours thereafter, unless the employee has
2 given 72 hours previous notice of his or her intention to quit, in
3 which case the employee is entitled to his or her wages at the time
4 of quitting. Notwithstanding any other provision of law, an
5 employee who quits without providing a 72-hour notice shall be
6 entitled to receive payment by mail if he or she so requests and
7 designates a mailing address. The date of the mailing shall constitute
8 the date of payment for purposes of the requirement to provide
9 payment within 72 hours of the notice of quitting.

10 115. There was no definite term in PLAINTIFF's or any CALIFORNIA CLASS Members'
11 employment contract.

12 116. Cal. Lab. Code § 203 provides:

13 If an employer willfully fails to pay, without abatement or reduction,
14 in accordance with Sections 201, 201.5, 202, and 205.5, any wages
15 of an employee who is discharged or who quits, the wages of the
16 employee shall continue as a penalty from the due date thereof at the
17 same rate until paid or until an action therefor is commenced; but
18 the wages shall not continue for more than 30 days.

19 117. The employment of PLAINTIFF and many CALIFORNIA CLASS Members terminated
20 and DEFENDANTS has not tendered payment of wages, to these employees who missed meal and rest
21 breaks, as required by law.

22 118. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and the members
23 of the CALIFORNIA CLASS whose employment has, PLAINTIFF demand up to thirty days of pay as
24 penalty for not paying all wages due at time of termination for all employees who terminated
25 employment during the LABOR CLASS PERIOD, and demands an accounting and payment of all
26 wages due, plus interest and statutory costs as allowed by law.

27 **EIGHTH CAUSE OF ACTION**

28 **VIOLATION OF THE PRIVATE ATTORNEY GENERAL ACT**

(Cal. Lab. Code §§2698 et seq.)

(By PLAINTIFF and AGGRIEVED EMPLOYEES and Against All DEFENDANTS)

119. PLAINTIFF realleges and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

120. PAGA is a mechanism by which the State of California itself can enforce state labor laws through the employee suing under the PAGA who does so as the proxy or agent of the state's labor law enforcement agencies. An action to recover civil penalties under PAGA is fundamentally a law enforcement action designed to protect the public and not to benefit private parties. The purpose of the PAGA is not to recover damages or restitution, but to create a means of "deputizing" citizens as private attorneys general to enforce the Labor Code. In enacting PAGA, the California Legislature specified that "it was ... in the public interest to allow aggrieved employees, acting as private attorneys general to recover civil penalties for Labor Code violations ..." (Stats. 2003, ch. 906, § 1). Accordingly, PAGA claims cannot be subject to arbitration.

121. PLAINTIFF, and such persons that may be added from time to time who satisfy the requirements and exhaust the administrative procedures under the Private Attorney General Act, bring this Representative Action on behalf of the State of California with respect to herself and all individuals who are or previously were employed by DEFENDANTS in California during the time period of July 14, 2020 until the present (the "AGGRIEVED EMPLOYEES").

122. On July 14, 2021, PLAINTIFF gave written notice by certified mail to the Labor and Workforce Development Agency (the "Agency") and the employer of the specific provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See Exhibit "A", attached hereto and incorporated by this reference herein. The statutory waiting period for PLAINTIFF to add these allegations to the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now commence a representative civil action under PAGA pursuant to Section 2699 as the proxy of the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

123. The policies, acts and practices heretofore described were and are an unlawful business act or practice because Defendant (a) failed to pay PLAINTIFF and other AGGRIEVED EMPLOYEES

1 minimum wages and overtime wages, (b) failed to provide PLAINTIFF and other AGGRIEVED
2 EMPLOYEES legally required meal and rest breaks, (c) failed to provide accurate itemized wage
3 statements, and (d) failed to timely pay wages, all in violation of the applicable Labor Code sections
4 listed in Labor Code §2699.5, including but not limited to Labor Code §§ 201, 202, 203, 204, 210, 226,
5 226(a), 226.2, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1, 1198, Violations of Applicable Industrial
6 Welfare Commission Wage Order(s), and pursuant to California Labor Code Section 2699.5, and
7 thereby gives rise to statutory penalties as a result of such conduct. PLAINTIFF hereby seeks recovery
8 of civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the
9 representative of the State of California for the illegal conduct perpetrated on PLAINTIFF and the other
10 AGGRIEVED EMPLOYEES.

11 124. Some or all of the conduct and violations alleged herein occurred during the PAGA
12 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect PLAINTIFF
13 during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that affected other
14 AGGRIEVED EMPLOYEES. (*Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 519; See
15 also *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751 [“PAGA allows an
16 “aggrieved employee”—a person affected by **at least one** Labor Code violation committed by an
17 employer—to pursue penalties for all the Labor Code violations committed by that employer.”],
18 Emphasis added, reh'g denied (June 13, 2018).)

19 **NINTH CAUSE OF ACTION**

20 **HOSTILE WORK ENVIRONMENT**

21 **(Cal. Gov't Code §12940(j))**

22 **(By PLAINTIFF and Against All DEFENDANTS)**

23 125. PLAINTIFF realleges and incorporates by reference paragraphs 1 through 116, as though
24 set forth in full.

25 126. As alleged herein, an in violation of California Government Code § 12940(j),
26 DEFENDANTS, and each of them, violated California Fair Employment and Housing Act (“FEHA”)
27 by, among other things, harassing and discriminating PLAINTIFF based on his sex and age and creating
28 a hostile work environment at the workplace. As detailed above, PLAINTIFF was an employee of

1 DEFENDANTS and was subjected to continuous harassing conduct in the form of both physical and
2 verbal harassment. The harassment was so severe, widespread or persistent that PLAINTIFF
3 considered the work environment to be hostile and abusive.

4 127. By the aforesaid acts and omissions of DEFENDANTS, and each of them, PLAINTIFF
5 has been directly and legally caused to suffer actual damages including, but not limited to, loss of
6 earnings and future earning capacity, attorneys' fees, costs of suit and other pecuniary loss not presently
7 ascertained.

8 128. As a further direct and legal result of the acts and conduct of DEFENDANTS, and each
9 of them, as aforesaid, PLAINTIFF has been caused to and did suffer and continues to suffer severe
10 emotional and mental distress, anguish, humiliation, embarrassment, fright, shock, pain, discomfort
11 and anxiety. Plaintiff does not know at this time the exact duration or permanence of said injuries, but
12 is informed and believes and thereon alleges that some if not all of the injuries are reasonably certain
13 to be permanent in character.

14 129. PLAINTIFF is informed and believes, and thereon alleges, that the Defendants, and each
15 of them, by engaging in the aforementioned acts and/or in authorizing and/or ratifying such acts,
16 engaged in willful, malicious, intentional, oppressive and despicable conduct, and acted with willful
17 and conscious disregard of the rights, welfare and safety of PLAINTIFF, thereby justifying the award
18 of punitive and exemplary damages in an amount to be determined at trial.

19 130. As a result of Defendants' acts and conduct, as alleged herein, PLAINTIFF is entitled to
20 reasonable attorneys' fees and costs of suit as provided in *Section 12965(b) of the California*
21 *Government Code*.

22 **TENTH CAUSE OF ACTION**

23 **FAILURE TO TAKE ALL REASONABLE STEPS NECESSARY TO PREVENT**
24 **DISCRIMINATION, HARASSMENT, AND/OR RETALIATION FROM OCCURRING,**

25 **IN VIOLATION OF FEHA**

26 **(Cal. Gov't Code §12940(k))**

27 **(By PLAINTIFF and Against All DEFENDANTS)**

131. PLAINTIFF realleges and incorporates by reference paragraphs 1 through 122, as though set forth in full.

132. As alleged herein, and in violation of California Government Code §12940(k), DEFENDANTS, and each of them, violated FEHA by failing to take all reasonable steps necessary to prevent harassment from occurring against PLAINTIFF. As discussed above, PLAINTIFF complained about physical assault, verbal assault he was experiencing from DEFENDANTS and co-workers and DEFENDANTS failed to protect him from further harassment after complaints. PLAINTIFF also complained of the rampant drug and alcohol use he witnessed at work and DEFENDANTS failed to take any actions.

133. By the aforesaid acts and omissions of DEFENDANTS, and each of them, PLAINTIFF has been directly and legally caused to suffer actual damages including, but not limited to, loss of earnings and future earning capacity, attorney's fees, costs of suit and other pecuniary loss not presently ascertained.

134. As a further direct and legal result of the acts and conduct of DEFENDANTS, and each of them, as aforesaid, PLAINTIFF has been caused to and did suffer and continues to suffer severe emotional and mental distress, anguish, humiliation, embarrassment, fright, shock, pain, discomfort and anxiety. PLAINTIFF does not know at this time the exact duration or permanence of said injuries, but is informed and believes and thereon alleges that some if not all of the injuries are reasonably certain to be permanent in character.

135. PLAINTIFF is informed, believes and thereon alleges, that the DEFENDANTS and each of them, by engaging in the aforementioned acts, and/or in authorizing and/or ratifying such acts, engaged in willful, malicious, intentional, oppressive and despicable conduct, and acted with a willful and conscious disregard of the rights, welfare and safety of PLAINTIFF, thereby justifying the award of punitive and exemplary damages in an amount to be determined at trial.

136. As a result of DEFENDANT'S acts and conduct, as alleged herein, PLAINTIFF is entitled to reasonable attorneys' fees and costs of suit as provided in *Section 12965(b) of the California Government Code*.

ELEVENTH CAUSE OF ACTION

**DISCRIMINATION & HARASSMENT BASED ON SEX, GENDER AND AGE IN
VIOLATION OF FEHA**

(By PLAINTIFF and Against All DEFENDANTS)

1. PLAINTIFF realleges and incorporates by reference paragraphs 1 through 136, as though set forth in full.

137. As described above. PLAINTIFF first began working for DEFENDANT on or about September 2019. Since the beginning of PLAINTIFF's employment with DEFENDANT, he experienced discrimination and harassment based on his gender (i.e. male) and his age (above 40 years old).

138. During PLAINTIFF's employment he experienced age discrimination. He was called an "old white guy" by one of the supervisors on numerous occasions. PLAINTIFF was not given an opportunity to work in the TIER 1 due to his age and gender. His ideas were shunned by his supervisors because he was a male and over 40 years old. DEFENDANT's environment and culture at promoted alcohol and drug use. Oftentimes, the employees, including supervisors and team leads were visibly intoxicated at work. The environment was so toxic that a female supervisor, intoxicated, after a lunch, slapped him in the face in front of co-workers because he had not "closed" on a deal. PLAINTIFF complained to HR about the assault and DEFENDANT failed to take any actions. PLAINTIFF also complained of the rampant drug and alcohol use he witnessed at work and DEFENDANTS failed to take any actions.

139. By the aforesaid acts and omissions of DEFENDANTS, and each of them, PLAINTIFF has been directly and legally caused to suffer actual damages including, but not limited to, loss of earnings and future earning capacity, attorney's fees, costs of suit and other pecuniary loss not presently ascertained.

140. As a further direct and legal result of the acts and conduct of DEFENDANTS, and each of them, as aforesaid, PLAINTIFF has been caused to and did suffer and continues to suffer severe emotional and mental distress, anguish, humiliation, embarrassment, fright, shock, pain, discomfort and anxiety. PLAINTIFF does not know at this time the exact duration or permanence of said injuries,

1 but is informed and believes and thereon alleges that some if not all of the injuries are reasonably
2 certain to be permanent in character.

3 141. PLAINTIFF is informed, believes and thereon alleges, that the DEFENDANTS and each
4 of them, by engaging in the aforementioned acts, and/or in authorizing and/or ratifying such acts,
5 engaged in willful, malicious, intentional, oppressive and despicable conduct, and acted with a willful
6 and conscious disregard of the rights, welfare and safety of PLAINTIFF, thereby justifying the award
7 of punitive and exemplary damages in an amount to be determined at trial.

8 142. As a result of DEFENDANT'S acts and conduct, as alleged herein, PLAINTIFF is
9 entitled to reasonable attorneys' fees and costs of suit as provided in *Section 12965(b) of the California*
10 *Government Code*.

11 **TWELFTH CAUSE OF ACTION**

12 **WRONGFUL TERMINATION**

13 **(By PLAINTIFF and Against All DEFENDANTS)**

14 143. PLAINTIFF realleges and incorporates by reference paragraphs 1 through 142, as though
15 set forth in full.

16 144. As described above, PLAINTIFF'S employment with DEFENDANT was terminated
17 because of his protected status (i.e., age and gender, and/or good faith complaints). These actions
18 were in violation of FEHA.

19 145. By the aforesaid acts and omissions of DEFENDANTS, and each of them, PLAINTIFF
20 has been directly and legally caused to suffer actual damages including, but not limited to, loss of
21 earnings and future earning capacity, attorney's fees, costs of suit and other pecuniary loss not presently
22 ascertained.

23 146. As a further direct and legal result of the acts and conduct of DEFENDANTS, and each
24 of them, as aforesaid, PLAINTIFF has been caused to and did suffer and continues to suffer severe
25 emotional and mental distress, anguish, humiliation, embarrassment, fright, shock, pain, discomfort
26 and anxiety. PLAINTIFF does not know at this time the exact duration or permanence of said injuries,
27 but is informed and believes and thereon alleges that some if not all of the injuries are reasonably
28 certain to be permanent in character.

147. PLAINTIFF is informed, believes and thereon alleges, that the DEFENDANTS and each of them, by engaging in the aforementioned acts, and/or in authorizing and/or ratifying such acts, engaged in willful, malicious, intentional, oppressive and despicable conduct, and acted with a willful and conscious disregard of the rights, welfare and safety of PLAINTIFF, thereby justifying the award of punitive and exemplary damages in an amount to be determined at trial.

148. As a result of DEFENDANT'S acts and conduct, as alleged herein, PLAINTIFF is entitled to reasonable attorneys' fees and costs of suit as provided in *Section 12965(b) of the California Government Code*.

THIRTEENTH CAUSE OF ACTION

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

(By PLAINTIFF and Against All DEFENDANTS)

149. PLAINTIFF realleges and incorporates by reference paragraphs 1 through 148, as though set forth in full.

150. DEFENDANTS conduct as described above was extreme and outrageous and was done with the intent of causing PLAINTIFF to suffer emotional distress or with reckless disregard as to whether their conduct would cause PLAINTIFF to suffer such distress.

151. By the aforesaid acts and omissions of DEFENDANTS, as aforesaid, PLAINTIFF has been caused to and did suffer and continues to suffer severe emotional and mental distress, anguish, humiliation, embarrassment, fright, shock, pain, discomfort and anxiety. PLAINTIFF does not know at this time the exact duration or permanence of said injuries but is informed and believes and thereon alleges that some if not all of the injuries are reasonably certain to be permanent in character.

152. PLAINTIFFS informed and believes, and thereon alleges, that the DEFENDANTS, and each of them, by engaging in the aforementioned acts and/or in authorizing and/or ratifying such acts, engaged in willful, malicious, intentional, oppressive and despicable conduct, and acted with willful and conscious disregard of the rights, welfare and safety of PLAINTIFF, thereby justifying the award of punitive and exemplary damages in an amount to be determined at trial.

153. As a result of Defendant's acts and conduct, as alleged herein, PLAINTIFF is entitled to reasonable attorneys' fees and costs of suit as provided in *Section 12965(b) of the California Government Code*.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for judgment against each DEFENDANTS, jointly and severally, as follows:

1. On behalf of the CALIFORNIA CLASS:

A) That the Court certify the First Cause of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;

B) An order temporarily, preliminarily and permanently enjoining and restraining DEFENDANTS from engaging in similar unlawful conduct as set forth herein;

C) An order requiring DEFENDANTS to pay all wages and all sums unlawfully withheld from compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS; and,

D) Restitutionary disgorgement of DEFENDANTS's ill-gotten gains into a fluid fund for restitution of the sums incidental to DEFENDANTS's violations due to PLAINTIFF and to the other members of the CALIFORNIA CLASS.

E) That the Court certify the Second, Third, Fourth, Fifth, and Sixth Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;

1. Compensatory damages, according to proof at trial, including compensatory damages for overtime compensation due PLAINTIFF and the other members of the CALIFORNIA CLASS, during the applicable CALIFORNIA CLASS PERIOD plus interest thereon at the statutory rate;

2. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226;

- 1 3. Meal and rest period compensation pursuant to California Labor Code Section
2 226.7, 512 and the applicable IWC Wage Order;
- 3 4. For liquidated damages pursuant to California Labor Code Sections 1194.2 and
4 1197; and,
- 5 2. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:
- 6 a. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General
7 Act of 2004; and
- 8 b. An award of penalties, attorneys' fees and costs of suit, as allowable under the law.
- 9 3. On all claims:
- 10 A) An award of interest, including prejudgment interest at the legal rate;
- 11 B) Such other and further relief as the Court deems just and equitable; and,
- 12 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the law,
13 including, but not limited to, pursuant to Labor Code §226, §1194, §2699 *et seq.*, and/or §2802.
- 14 D) General damages in an amount to be proved at trial;
- 15 E) Special damages in an amount to be proved at trial;
- 16 F) For punitive damages, pursuant to *Civil Code* §§3294, 52(b)(1), and 52.4(a), in amounts
17 sufficient to punish all Defendants for the wrongful conduct alleged herein and to deter such conduct in
18 the future;
- 19 G) For costs of suit, attorneys' fees, and expert witness fees pursuant to the FEHA, the Labor
20 Code, and/or any other basis;
- 21 H) For prejudgment and post judgment interest on each of the foregoing at the legal rate from
22 the date the obligation became due through the date of judgment in this matter;
- 23 I) For any other relief that is just and proper.

24

25 Dated: October 5, 2021

Respectfully Submitted,
BARVIÉ LAW, A.P.C.

26 By: Nicole Barvié
27 Nicole Barvié
28 Attorneys for PLAINTIFF

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DEMAND FOR JURY TRIAL

PLAINTIFF demands a jury trial on all issues triable to a jury.

Dated: October 5, 2021

Respectfully Submitted,
BARVIÉ LAW, A.P.C.

By: 

Nicole Barvié
Attorneys for PLAINTIFF

EXHIBIT “A”

July 14, 2021

VIA ONLINE FILING TO LWDA and CERTIFIED MAIL TO DEFENDANT

Labor & Workforce Development Agency Attn. PAGA Administrator 1515 Clay Street, Ste. 801 Oakland, CA 94612 PAGA@dir.ca.gov <i>Via Online Submission</i>	POULIN VENTURES, LLC c/o Brandon Poulin 10010 Indian School Rd, NE Albuquerque, NM 87112 <i>Via Certified Mail</i>
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Re: **Notice of Violation of California Labor Code Sections 201, 202, 203, 204, 210, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1, 1198, Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5**

Dear Sir/Madam:

Our offices represent Plaintiff PATRICK CLEGG (“Plaintiff”), and other aggrieved employees in a proposed lawsuit against POULIN VENTURES, LLC., a California Corporation (“Defendant”). Plaintiff was employed by Defendant in California between September 2019 through November 2020 as a non-exempt employee, entitled to payment of all wages and the legally required meal and rest breaks, as well as certain non-discretionary incentive payments. Defendant, however, unlawfully failed to record and pay Plaintiffs and other aggrieved employees for all of their time worked, and for all of their meal breaks and rest breaks. Defendant also failed to correctly calculate Plaintiff’s regular rate of pay for purposes of payment of overtime and sick time pay. Further, Defendant failed to timely pay Plaintiff and other aggrieved employees for earned wages. As a consequence of the aforementioned violations, Plaintiff further contends that Defendant failed to provide accurate wage statements to him, and other aggrieved employees, in violation of California Labor Code section 226(a). Said conduct, in addition to the foregoing, violates Labor Code §§ 201, 202, 203, 204, 210, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1, 1198, violates the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.





Plaintiff seeks to represent a group of aggrieved employees defined as all non-exempt and exempt employees who worked for Defendant during the relevant claim period.

A true and correct copy of the proposed Complaint by Plaintiff against Defendant, which (1) identifies the alleged violations, (2) details the facts and theories which support the alleged violations, (3) details the specific work performed by Plaintiff, (4) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (5) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporate the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2695, *et seq.* The lawsuit consists of other aggrieved employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statute of 2004 on behalf of Plaintiffs and all aggrieved California employees.

Your earliest response to this notice is appreciated. If you have any questions or concerns, please do not hesitate to contact me at the above number and address.

Sincerely,

Nicole Barvié
Attorney for Plaintiff

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ATTORNEYS FOR PLAINTIFF

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO**

PATRICK CLEGG, an individual, on behalf of
himself, and on behalf of all persons similarly
situated,

Plaintiffs,

vs.

POULIN VENTURES, LLC a California
Corporation; and DOES 1 through 50,
Inclusive;

Defendants.

Case No. _____

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq.*
3. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;

[additional causes of action continued on next page]

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6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
 7. FAILURE TO PAY WAGES WHEN DUE IN VIOLATION OF CAL. LABOR CODE §§ 201, 202 AND 203; AND
 8. VIOLATIONS OF THE PRIVATE ATTORNEY GENERAL ACT PURSUANT TO LABOR CODE SECTIONS 2698, ET SEQ.

DEMAND FOR JURY TRIAL

Plaintiff PATRICK CLEGG ("PLAINTIFF") an individual, on behalf of himself and all other similarly situated current and former employees alleges on information and belief, except for his own acts and knowledge which are based on personal knowledge, the following:

THE PARTIES

1. Defendant POULIN VENTURES, LLC. ("DEFENDANT") is a California corporation, sometimes doing business as LADYBOSS that at all relevant times mentioned herein conducted and continues to conduct substantial business in the State of California, County of San Diego. DEFENDANT promotes and sells women's health supplements and weight loss programs.

2. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently unknown to PLAINTIFF who therefore sues these defendants by such fictitious names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are ascertained. PLAINTIFF is informed and believes, and based upon that information and belief allege, that the Defendants named in this Complaint, including DOES 1 through 50, inclusive (hereinafter collectively "DEFENDANTS"), are responsible in some manner for one or more of the events and happenings that proximately caused the injuries and damages hereinafter alleged.

3. The agents, servants and/or employees of the DEFENDANTS and each of them acting on behalf of the DEFENDANT acted within the course and scope of his or its authority as the agent, servant and/or employee of the DEFENDANT, and personally participated in the conduct alleged

1 herein on behalf of the DEFENDANT with respect to the conduct alleged herein. Consequently, the
2 acts of each of the DEFENDANTS are legally attributable to the other and all DEFENDANTS are
3 jointly and severally liable to PLAINTIFF and those similarly situated, for the loss sustained as a
4 proximate result of the conduct of the DEFENDANTS' agents, servants and/or employees.

5 4. DEFENDANTS were PLAINTIFF's employers or persons acting on behalf of
6 PLAINTIFF's employer, within the meaning of California Labor Code § 558, who violated or caused
7 to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating
8 hours and days of work in any order of the Industrial Welfare Commission and, as such, are subject to
9 civil penalties for each underpaid employee, as set forth in Labor Code § 558, at all relevant times.

10 5. DEFENDANTS were PLAINTIFF's employers or persons acting on behalf of
11 PLAINTIFF's employer either individually or as an officer, agent, or employee of another person,
12 within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any employee
13 a wage less than the minimum fixed by California state law, and as such, are subject to civil penalties
14 for each underpaid employee.

15 6. PLAINTIFF has been employed by DEFENDANTS in San Diego as a non-exempt
16 employee, paid on an hourly basis and entitled to certain non-discretionary flat-sum incentive awards,
17 bonuses, overtime pay and legally compliant meal and rest periods from September 2019 to November
18 2020.

19 7. PLAINTIFF brings this Class Action on behalf of himself and on behalf of all of
20 DEFENDANT's current and former non-exempt California employees (the "CALIFORNIA CLASS")
21 at any time during the period beginning 4 years prior to the filing of the Complaint and ending on a
22 date determined by the Court (the "CLASS PERIOD"). The amount in controversy for the aggregate
23 claim of CALIFORNIA CLASS members is under five million dollars (\$5,000,000.00).

24 8. PLAINTIFF brings this Class Action on behalf of himself and on behalf of the
25 CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses
26 incurred during the CLASS PERIOD caused by DEFENDANT'S uniform policy and practice which
27 (1) failed to provide PLAINTIFF and the CALIFORNIA CLASS with legally compliant meal and rest
28 periods or an additional hour of pay at the regular rate of compensation in *lieu* thereof in violation of

1 California Labor Code Sections 226.7(c), 512(a) and the applicable Industrial Welfare Commission
2 Wage Order, (2) failed to pay PLAINTIFF and the CALIFORNIA CLASS for all hours worked in
3 violation of, *inter alia*, California Labor Code Sections 510, 1194, 1197, and 1197.1, and (3) failed to
4 provide accurate itemized wage statements in violation of California Labor Code Sections 226 and
5 226.3.

6 9. DEFENDANT'S uniform policies and practices alleged herein were unlawful, unfair and
7 deceptive business practices whereby DEFENDANT retained and continues to retain wages due
8 PLAINTIFF and the other members of the CALIFORNIA CLASS.

9 10. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction
10 enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and the other
11 members of the CALIFORNIA CLASS who have been economically injured by DEFENDANTS's past
12 and current unlawful conduct, and all other appropriate legal and equitable relief.

13 **JURISDICTION AND VENUE**

14 11. This Court has jurisdiction over this Action pursuant to California Code of Civil
15 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This action is
16 brought as a Class Action on behalf of PLAINTIFF and similarly situated employees of
17 DEFENDANTS pursuant to Cal. Code of Civ. Proc. § 382.

18 12. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections
19 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANTS, resides in this County,
20 and DEFENDANTS (i) currently maintains and at all relevant times maintained offices and facilities
21 in this County and/or conducts substantial business in this County, and (ii) committed the wrongful
22 conduct herein alleged in this County against members of the CALIFORNIA CLASS.

23 **THE CONDUCT**

24 13. In violation of the applicable sections of the California Labor Code and the requirements
25 of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a matter of company
26 policy, practice and procedure, intentionally, knowingly and systematically failed to provide legally
27 compliant meal and rest period, failed to accurately compensate PLAINTIFF and the other members of
28 the CALIFORNIA CLASS for missed meal and rest periods, failed to pay PLAINTIFF and the other

1 members of the CALIFORNIA CLASS for all time worked, and failed to issue to PLAINTIFF and the
2 members of the CALIFORNIA CLASS with accurate itemized wage statements showing, among other
3 things, all applicable hourly rates in effect during the pay periods and the corresponding amount of time
4 worked at each hourly rate. DEFENDANT'S uniform policies and practices are intended to
5 purposefully avoid the accurate and full payment for all time worked as required by California law
6 which allows DEFENDANT to illegally profit and gain an unfair advantage over competitors who
7 comply with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA
8 CLASS against DEFENDANT, the CLASS PERIOD should be adjusted accordingly.

9 **A. Meal Period Violations**

10 14. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were
11 required to pay PLAINTIFF and CALIFORNIA CLASS members for all their time worked, meaning
12 the time during which an employee is subject to the control of an employer, including all the time the
13 employee is suffered or permitted to work. From time-to-time during the CLASS PERIOD,
14 DEFENDANT required PLAINTIFF and CALIFORNIA CLASS members to work without paying
15 them for all the time they were under DEFENDANT'S control. Specifically, as a result of
16 PLAINTIFF's demanding work requirements and DEFENDANTS' under staffing, DEFENDANT
17 required PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF's off-
18 duty meal break. PLAINTIFF was from time to time interrupted by work assignments while clocked
19 out for what should have been PLAINTIFF's off-duty meal break. Indeed, there were many days where
20 PLAINTIFF did not even receive a partial lunch. As a result, the PLAINTIFF and other CALIFORNIA
21 CLASS members forfeited minimum wage and overtime wages by regularly working without their time
22 being accurately recorded and without compensation at the applicable minimum wage and overtime
23 rates. DEFENDANTS' uniform policy and practice not to pay PLAINTIFF and other CALIFORNIA
24 CLASS members for all time worked is evidenced by DEFENDANTS' business records.

25 15. From time-to-time during the CLASS PERIOD, as a result of their rigorous work
26 schedules and DEFENDANT'S inadequate staffing practices, PLAINTIFF and other CALIFORNIA
27 CLASS members were from time to time unable to take thirty (30) minute off duty meal breaks and
28 were not fully relieved of duty for their meal periods. PLAINTIFF and other CALIFORNIA CLASS

1 members were required from time to time to perform work as ordered by DEFENDANTS for more
2 than five (5) hours during some shifts without receiving a meal break. Further, DEFENDANTS from
3 time to time failed to provide PLAINTIFF and CALIFORNIA CLASS members with a second off-
4 duty meal period for some workdays in which these employees were required by DEFENDANTS to
5 work ten (10) hours of work from time to time. The nature of the work performed by the PLAINTIFF
6 and the members of the CALIFORNIA CLASS does not qualify for limited and narrowly construed
7 “on-duty” meal period exception. PLAINTIFF and other members of the CALIFORNIA CLASS
8 therefore forfeited meal breaks without additional compensation and in accordance with
9 DEFENDANTS’ strict corporate policy and practice. DEFENDANTS failed to maintain adequate
10 staffing levels while increasing the production levels for each employee at the busy airports they
11 provided services for.

12 **B. Rest Period Violations**

13 16. From time-to-time during the CLASS PERIOD, PLAINTIFF and other CALIFORNIA
14 CLASS members were also required from time to time to work in excess of four (4) hours without
15 being provided ten (10) minute rest periods as a result of their rigorous work schedule and
16 DEFENDANTS’ inadequate staffing . Further, for the same reasons these employees were denied their
17 first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours
18 from time to time, a first and second rest period of at least ten (10) minutes for some shifts worked of
19 between six (6) and eight (8) hours from time to time, and a first, second and third rest period of at least
20 ten (10) minutes for some shifts worked of ten (10) hours or more from time to time. PLAINTIFF and
21 other CALIFORNIA CLASS members were also not provided with one-hour wages in lieu thereof. As
22 a result of their rigorous work schedules and DEFENDANT’S inadequate staffing, PLAINTIFF and
23 other CALIFORNIA CLASS members were from time to time denied their proper rest periods by
24 DEFENDANT and DEFENDANT’S managers.

25 **C. Overtime Regular Rate Violation**

26 17. From time-to-time during the CLASS PERIOD, DEFENDANT failed and continues to
27 fail to accurately calculate and pay PLAINTIFF and the other CALIFORNIA CLASS members for
28 their overtime hours worked. As a result, PLAINTIFF and the other CALIFORNIA CLASS members

1 forfeited wages due them for working overtime without compensation at the correct overtime rates.
2 DEFENDANT'S uniform policy and practice to not pay the CALIFORNIA CLASS members the
3 correct overtime rate for all overtime worked in accordance with applicable law is evidenced by
4 DEFENDANT'S business records.

5 18. State law provides that employees must be paid overtime at one-and-one-half times their
6 "regular rate of pay." PLAINTIFF and other CALIFORNIA CLASS members were compensated at
7 an hourly rate plus flat-sum incentive pay that was tied to specific elements of an employee's
8 performance.

9 19. The second component of PLAINTIFF'S and other CALIFORNIA CLASS members'
10 compensation was DEFENDANT'S flat-sum non-discretionary incentive program that paid
11 PLAINTIFF and other CLASS MEMBERS flat-sum incentive wages based on their performance for
12 DEFENDANT. The flat-sum non-discretionary bonus program provided all employees paid on an
13 hourly basis with flat-sum bonus compensation when the employees met the various performance goals
14 set by DEFENDANTS. These flat-sum incentive payments are identified as "COMMISSION" and
15 "ADDITIONAL PAY" in the wage statements issued by DEFENDANTS to PLAINTIFF and the other
16 CALIFORNIA CLASS members.

17 20. However, from-time-to-time, when calculating the regular rate of pay, in those pay periods
18 where PLAINTIFF and other CALIFORNIA CLASS members worked overtime and earned this flat-
19 sum non-discretionary bonus, DEFENDANT failed to accurately include the flat-sum non-
20 discretionary bonus compensation as part of the employees' "regular rate of pay" and/or calculated all
21 hours worked rather than just all non-overtime hours worked. Management and supervisors described
22 the incentive/bonus program to potential and new employees as part of the compensation package. As
23 a matter of law, the incentive compensation received by PLAINTIFF and other CALIFORNIA CLASS
24 members must be included in the "regular rate of pay." The failure to do so has resulted in a systematic
25 underpayment of overtime compensation to PLAINTIFF and other CALIFORNIA CLASS members
26 by DEFENDANT.

27 21. In violation of the applicable sections of the California Labor Code and the requirements
28 of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a matter of company

1 policy, practice and procedure, intentionally and knowingly failed to compensate PLAINTIFF and the
2 other members of the CALIFORNIA CLASS at the correct rate of pay for all overtime worked. This
3 uniform policy and practice of DEFENDANT is intended to purposefully avoid the payment of the
4 correct overtime compensation as required by California law which allowed DEFENDANT to illegally
5 profit and gain an unfair advantage over competitors who complied with the law. To the extent
6 equitable tolling operates to toll claims by the CALIFORNIA CLASS members against DEFENDANT,
7 the CLASS PERIOD should be adjusted accordingly.

8 **D. Wage Statement Violations**

9 22. California Labor Code Section 226 requires an employer to furnish its employees an
10 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked, (3) the
11 number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net wages
12 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the
13 employee and only the last four digits of the employee's social security number or an employee
14 identification number other than a social security number, (8) the name and address of the legal entity
15 that is the employer and, (9) all applicable hourly rates in effect during the pay period and the
16 corresponding number of hours worked at each hourly rate by the employee.

17 23. From time to time during the CLASS PERIOD, when PLAINTIFF and other
18 CALIFORNIA CLASS members missed meal and rest breaks, or were paid inaccurate missed meal
19 and rest period premiums, or were paid overtime in the same pay period where they earned a non-
20 discretionary incentive award, DEFENDANT also failed to provide PLAINTIFF and the other
21 members of the CALIFORNIA CLASS with complete and accurate wage statements which failed to
22 show, among other things, all applicable hourly rates in effect during the pay period and the
23 corresponding amount of time worked at each hourly rate, correct rates of pay for penalty payments or
24 missed meal and rest periods, or the total hours worked during the pay period.

25 24. As a result, DEFENDANTS issued PLAINTIFF and the other members of the
26 CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code § 226. Further,
27 DEFENDANTS' violations are knowing and intentional, were not isolated or due to an unintentional
28 payroll error due to clerical or inadvertent mistake.

CLASS ACTION ALLEGATIONS

25. PLAINTIFF brings the First through Seventh Causes of Action as a class action pursuant to California Code of Civil Procedure § 382 on behalf of all of DEFENDANTS' current and former non-exempt California employees ("CALIFORNIA CLASS") during the period beginning 4 years prior to the filing of the complaint and ending on a date determined by the Court ("CLASS PERIOD").

26. PLAINTIFF and the other CALIFORNIA CLASS members have uniformly been deprived of wages and penalties from unpaid wages earned and due, including but not limited to unpaid minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums, illegal meal and rest period policies, failure to separately compensate rest periods, failure to separately compensate for all non-productive time, failure to provide accurate itemized wage statements, failure to maintain required records, and interest, statutory and civil penalties, attorney's fees, costs, and expenses.

27. The members of the class are so numerous that joinder of all class members is impractical.

28. Common questions of law and fact regarding DEFENDANT'S conduct, including but not limited to, the off-the-clock work, unpaid meal and rest period premiums, failure to accurately calculate the regular rate of pay for overtime compensation, failure to accurately calculate the regular rate of compensation for missed meal and rest period premiums, failing to provide legally compliant meal and rest periods, failure to provide accurate itemized wage statements accurate, and failure ensure they are paid at least minimum wage and overtime, exist as to all members of the class and predominate over any questions affecting solely any individual members of the class. Among the questions of law and fact common to the class are:

a. Whether DEFENDANT maintained legally compliant meal period policies and practices;

b. Whether DEFENDANT maintained legally compliant rest period policies and practices;

c. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS members accurate premium payments for missed meal and rest periods;

d. Whether DEFENDANT failed to pay PLAINTIFF and the

1 CALIFORNIA CLASS members accurate overtime wages.

2 e. Whether DEFENDANT failed to pay PLAINTIFF and the
3 CALIFORNIA CLASS members at least minimum wage for all hours
4 worked.

5 f. Whether DEFENDANT issued legally compliant wage statements;

6 g. Whether DEFENDANT committed an act of unfair competition by
7 systematically failing to record and pay PLAINTIFF and the other members
8 of the CALIFORNIA CLASS for all time worked;

9 h. Whether DEFENDANT committed an act of unfair competition by
10 systematically failing to record all meal and rest breaks missed by
11 PLAINTIFF and other CALIFORNIA CLASS members, even though
12 DEFENDANT enjoyed the benefit of this work, required employees to
13 perform this work and permits or suffers to permit this work;

14 i. Whether DEFENDANT committed an act of unfair competition in
15 violation of the UCL, by failing to provide the PLAINTIFF and the other
16 members of the CALIFORNIA CLASS with the legally required meal and
17 rest periods; and,

18 29. PLAINTIFF is a member of the CALIFORNIA CLASS and suffered damages as a result
19 of DEFENDANT'S conduct and actions alleged herein.

20 30. PLAINTIFF's claims are typical of the claims of the class, and PLAINTIFF has the same
21 interests as the other members of the class.

22 31. PLAINTIFF will fairly and adequately represent and protect the interests of the
23 CALIFORNIA CLASS members.

24 32. PLAINTIFF retained able class counsel with extensive experience in class action
25 litigation.

26 33. Further, PLAINTIFF's interests are coincident with, and not antagonistic to, the interests
27 of the other CALIFORNIA CLASS members.

28 34. There is a strong community of interest among PLAINTIFF and the members of the

CALIFORNIA CLASS to, *inter alia*, ensure that the combined assets of DEFENDANTS are sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries sustained;

35. The questions of law and fact common to the CALIFORNIA CLASS members predominate over any questions affecting only individual members, including legal and factual issues relating to liability and damages.

36. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because joinder of all class members is impractical. Moreover, since the damages suffered by individual members of the class may be relatively small, the expense and burden of individual litigation makes it practically impossible for the members of the class individually to redress the wrongs done to them. Without class certification and determination of declaratory, injunctive, statutory and other legal questions within the class format, prosecution of separate actions by individual members of the CALIFORNIA CLASS will create the risk of:

a. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS which would establish incompatible standards of conduct for the parties opposing the CALIFORNIA CLASS; and/or,

b. Adjudication with respect to individual members of the CALIFORNIA CLASS which would as a practical matter be dispositive of the interests of the other members not party to the adjudication or substantially impair or impeded their ability to protect their interests.

37. Class treatment provides manageable judicial treatment calculated to bring an efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of DEFENDANTS.

FIRST CAUSE OF ACTION

For Unlawful Business Practices

[Cal. Bus. And Prof. Code §§ 17200, *et seq.*]

(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)

38. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

1 39. DEFENDANTS are “person[s]” as that term is defined under Cal. Bus. and Prof. Code §
2 17021.

3 40. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines unfair
4 competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203 authorizes
5 injunctive, declaratory, and/or other equitable relief with respect to unfair competition as follows:

6 Any person who engages, has engaged, or proposes to engage in unfair
7 competition may be enjoined in any court of competent jurisdiction. The
8 court may make such orders or judgments, including the appointment of a
9 receiver, as may be necessary to prevent the use or employment by any
10 person of any practice which constitutes unfair competition, as defined in
11 this chapter, or as may be necessary to restore to any person in interest any
12 money or property, real or personal, which may have been acquired by
13 means of such unfair competition.

14 Cal. Bus. & Prof. Code § 17203.

15 41. By reason of this uniform conduct applicable to PLAINTIFF and all CALIFORNIA
16 CLASS members, during the CLASS PERIOD, DEFENDANTS commit acts of unfair competition in
17 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
18 “UCL”), by engaging and continuing to engage in business practices which violates California law,
19 including but not limited to, the applicable Industrial Wage Order(s), the California Code of Regulations
20 and the California Labor Code including Sections 201, 202, 203, 204, 210, 226, 226.7, 510, 512, 1194,
21 1197, 1197.1, 1198 & 2802, for which this Court should issue declaratory and other equitable relief
22 pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct
23 held to constitute unfair competition, including restitution of wages wrongfully withheld.

24 42. By the conduct alleged herein, DEFENDANTS’ practices were unlawful and unfair in that
25 these practices violated public policy, were immoral, unethical, oppressive, unscrupulous or
26 substantially injurious to employees, and were without valid justification or utility for which this Court
27 should issue equitable and injunctive relief pursuant to Section 17203 of the California Business &
28 Professions Code, including restitution of wages wrongfully withheld.

1 43. By the conduct alleged herein, DEFENDANTS' practices were deceptive and fraudulent
2 in that DEFENDANTS' uniform policy and practice failed to, *inter alia*, provide the legally mandated
3 meal and rest periods, the required accurate amount of compensation for missed meal and rest periods,
4 overtime and minimum wages owed, provide accurate itemized wage statements, due to a systematic
5 business practice that cannot be justified, pursuant to the applicable Cal. Lab. Code, and Industrial
6 Welfare Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this
7 Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including
8 restitution of wages wrongfully withheld.

9 44. By the conduct alleged herein, DEFENDANTS' practices were also unlawful, unfair and
10 deceptive in that DEFENDANTS' employment practices caused PLAINTIFF and the other members of
11 the CALIFORNIA CLASS to be underpaid during their employment with DEFENDANTS.

12 45. By the conduct alleged herein, DEFENDANTS' practices were also unlawful, unfair and
13 deceptive in that DEFENDANTS' uniform policies, practices and procedures failed to, *inter alia*,
14 provide the legally mandated meal and rest periods, the required accurate amount of compensation for
15 missed meal and rest periods, overtime and minimum wages owed, provide accurate itemized wage
16 statements, to PLAINTIFF and the other members of the CALIFORNIA CLASS as required by Cal.
17 Labor Code.

18 46. Therefore, PLAINTIFF demands on behalf of himself and on behalf of each
19 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty meal period
20 was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for each workday in
21 which a second off-duty meal period was not timely provided for each ten (10) hours of work.

22 47. PLAINTIFF further demands on behalf of himself and on behalf of each CALIFORNIA
23 CLASS member, one (1) hour of pay for each workday in which an off duty paid rest period was not
24 timely provided as required by law.

25 48. PLAINTIFF further demands on all wages due to PLAINTIFF and the members of the
26 CALIFORNIA CLASS as a result of working while off the clock on meal periods, inaccurately
27 calculated overtime and missed meal and rest periods premiums.

28 49. By and through the unlawful and unfair business practices described herein,

1 DEFENDANTS has obtained valuable property, money and services from PLAINTIFF and the other
2 members of the CALIFORNIA CLASS, including earned wages for all overtime worked, and has
3 deprived them of valuable rights and benefits guaranteed by law and contract, all to the detriment of
4 these employees and to the benefit of DEFENDANTS so as to allow DEFENDANTS to unfairly
5 compete against competitors who comply with the law.

6 50. All the acts described herein as violations of, among other things, the Industrial Welfare
7 Commission Wage Orders, the California Code of Regulations, and the California Labor Code, were
8 unlawful and in violation of public policy, were immoral, unethical, oppressive and unscrupulous, were
9 deceptive, and thereby constitute unlawful, unfair and deceptive business practices in violation of Cal.
10 Bus. & Prof. Code §§ 17200, *et seq.*

11 51. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to, and do,
12 seek such relief as may be necessary to restore to them the money and property which DEFENDANTS
13 has acquired, or of which PLAINTIFF and the other members of the CALIFORNIA CLASS have been
14 deprived, by means of the above described unlawful and unfair business practices, including earned but
15 unpaid wages for all overtime worked.

16 52. PLAINTIFF and the other members of the CALIFORNIA CLASS are further entitled to,
17 and do, seek a declaration that the described business practices are unlawful, unfair and deceptive, and
18 that injunctive relief should be issued restraining DEFENDANTS from engaging in any unlawful and
19 unfair business practices in the future.

20 53. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain, speedy
21 and/or adequate remedy at law that will end the unlawful and unfair business practices of
22 DEFENDANTS. Further, the practices herein alleged presently continue to occur unabated. As a result
23 of the unlawful and unfair business practices described herein, PLAINTIFF and the other members of
24 the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal and economic
25 harm unless DEFENDANTS is restrained from continuing to engage in these unlawful and unfair
26 business practices.

27 **SECOND CAUSE OF ACTION**

28 **For Failure to Pay Overtime Compensation**

1 **[Cal. Lab. Code §§ 510, *et seq.*]**

2 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

3 54. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
4 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

5 55. PLAINTIFF and the other members of the CALIFORNIA CLASS for the period between
6 July 2017 and the present ("LABOR CLASS PERIOD") bring a claim for DEFENDANTS' willful and
7 intentional violations of the California Labor Code and the Industrial Welfare Commission requirements
8 for DEFENDANTS' failure to pay these employees for all overtime worked, including, work performed
9 in excess of eight (8) hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours
10 in any workweek.

11 56. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public policy,
12 an employer must timely pay its employees for all hours worked.

13 57. Cal. Lab. Code § 510 further provides that employees in California shall not be employed
14 more than eight (8) hours per workday and/or more than forty (40) hours per workweek unless they
15 receive additional compensation beyond their regular wages in amounts specified by law.

16 58. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages, including
17 overtime compensation and interest thereon, together with the costs of suit. Cal. Lab. Code § 1198
18 further states that the employment of an employee for longer hours than those fixed by the Industrial
19 Welfare Commission is unlawful.

20 59. During the LABOR CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS members
21 were required by DEFENDANTS to work for DEFENDANTS and were not paid for all the time they
22 worked or were not accurately compensated for all overtime hours worked.

23 60. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
24 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of implementing a
25 uniform policy and practice that failed to accurately record overtime worked by PLAINTIFF and other
26 CALIFORNIA CLASS members and denied accurate compensation to PLAINTIFF and the other
27 members of the CALIFORNIA CLASS for overtime worked, including, the overtime work performed
28 in excess of eight (8) hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours

1 in any workweek.

2 61. In committing these violations of the California Labor Code, DEFENDANTS inaccurately
3 calculated the amount of overtime worked and the applicable overtime rates and consequently underpaid
4 the actual time worked by PLAINTIFF and other members of the CALIFORNIA CLASS.
5 DEFENDANTS acted in an illegal attempt to avoid the payment of all earned wages, and other benefits
6 in violation of the California Labor Code, the Industrial Welfare Commission requirements and other
7 applicable laws and regulations.

8 62. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
9 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive full compensation for
10 all overtime worked.

11 63. Cal. Lab. Code § 515 sets out various categories of employees who are exempt from the
12 overtime requirements of the law. None of these exemptions are applicable to PLAINTIFF and the other
13 members of the CALIFORNIA CLASS. Further, PLAINTIFF and the other members of the
14 CALIFORNIA CLASS are not subject to a valid collective bargaining agreement that would preclude
15 the causes of action contained herein this Complaint. Rather, the PLAINTIFF brings this Action on
16 behalf of himself and the CALIFORNIA CLASS based on DEFENDANTS' violations of non-
17 negotiable, non-waivable rights provided by the State of California.

18 64. During the LABOR CLASS PERIOD, PLAINTIFF and the other members of the
19 CALIFORNIA CLASS were paid less for time worked that they were entitled to, constituting a failure
20 to pay all earned wages.

21 65. DEFENDANTS failed to accurately pay PLAINTIFF and the other members of the
22 CALIFORNIA CLASS overtime wages for the time they worked which was in excess of the maximum
23 hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 & 1198, even though PLAINTIFF
24 and the other members of the CALIFORNIA CLASS were required to work, and did in fact work,
25 overtime as to which DEFENDANTS failed to accurately record and pay using the applicable overtime
26 rate as evidenced by DEFENDANTS' business records and witnessed by employees.

27 66. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned compensation
28 to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true time they worked,

1 PLAINTIFF and the other members of the CALIFORNIA CLASS have suffered and will continue to
2 suffer an economic injury in amounts which are presently unknown to them and which will be
3 ascertained according to proof at trial.

4 67. DEFENDANTS knew or should have known that PLAINTIFF and the other members of
5 the CALIFORNIA CLASS were under compensated for all overtime worked. DEFENDANTS
6 systematically elected, either through intentional malfeasance or gross nonfeasance, to not pay
7 employees for their labor as a matter of uniform company policy, practice and procedure, and
8 DEFENDANTS perpetrated this systematic scheme by refusing to pay PLAINTIFF and the other
9 members of the CALIFORNIA CLASS for overtime worked.

10 68. In performing the acts and practices herein alleged in violation of California labor laws,
11 and refusing to compensate the members of the CALIFORNIA CLASS for all time worked and provide
12 them with the requisite overtime compensation, DEFENDANTS acted and continues to act intentionally,
13 oppressively, and maliciously toward PLAINTIFF and the other members of the CALIFORNIA CLASS
14 with a conscious of and utter disregard for their legal rights, or the consequences to them, and with the
15 despicable intent of depriving them of their property and legal rights, and otherwise causing them injury
16 in order to increase company profits at the expense of these employees

17 69. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore request
18 recovery of all unpaid wages, including overtime wages, according to proof, interest, statutory costs, as
19 well as the assessment of any statutory penalties against DEFENDANTS, in a sum as provided by the
20 California Labor Code and/or other applicable statutes. To the extent overtime compensation is
21 determined to be owed to the CALIFORNIA CLASS members who have terminated their employment,
22 DEFENDANTS' conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals
23 are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought
24 herein on behalf of these CALIFORNIA CLASS members. DEFENDANTS' conduct as alleged herein
25 was willful, intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA CLASS
26 Members are entitled to seek and recover statutory costs.

27 ///

28 ///

1 **THIRD CAUSE OF ACTION**

2 **For Failure to Pay Minimum Wages**

3 **[Cal. Lab. Code §§ 1194, 1197 and 1197.1]**

4 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

5 70. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
6 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

7 71. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for
8 DEFENDANTS' willful and intentional violations of the California Labor Code and the Industrial
9 Welfare Commission requirements for DEFENDANTS' failure to accurately record, calculate and pay
10 minimum and reporting time wages to PLAINTIFF and CALIFORNIA CLASS members during the
11 LABOR CLASS PERIOD.

12 72. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public policy,
13 an employer must timely pay its employees for all hours worked.

14 73. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
15 commission is the minimum wage to be paid to employees, and the payment of a less wage than the
16 minimum so fixed is unlawful.

17 74. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages, including
18 minimum wage compensation and interest thereon, together with the costs of suit.

19 75. DEFENDANTS maintain a uniform wage practice of paying PLAINTIFF and the other
20 members of the CALIFORNIA CLASS without regard to the correct amount of time they work. For
21 instance, as set forth herein, DEFENDANTS maintained a uniform policy that required PLAINTIFF to
22 work while clocked out during what was supposed to be PLAINTIFF's off-duty meal break without
23 compensation. Further, as set forth herein, DEFENDANTS' uniform policy and practice was to
24 unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the other members
25 of the CALIFORNIA CLASS.

26 76. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
27 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of implementing a
28 uniform policy and practice that denies accurate compensation to PLAINTIFF and the other members

1 of the CALIFORNIA CLASS in regard to minimum wage pay.

2 77. In committing these violations of the California Labor Code, DEFENDANTS inaccurately
3 calculated the correct time worked and consequently underpaid the actual time worked by PLAINTIFF
4 and other members of the CALIFORNIA CLASS. DEFENDANTS acted in an illegal attempt to avoid
5 the payment of all earned wages, and other benefits in violation of the California Labor Code, the
6 Industrial Welfare Commission requirements and other applicable laws and regulations.

7 78. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
8 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct minimum
9 wage compensation for their time worked for DEFENDANTS.

10 79. During the LABOR CLASS PERIOD, PLAINTIFF and the other members of the
11 CALIFORNIA CLASS were paid less for time worked that they were entitled to, constituting a failure
12 to pay all earned wages.

13 80. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned compensation
14 to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true time they worked,
15 PLAINTIFF and the other members of the CALIFORNIA CLASS have suffered and will continue to
16 suffer an economic injury in amounts which are presently unknown to them and which will be
17 ascertained according to proof at trial.

18 81. DEFENDANTS knew or should have known that PLAINTIFF and the other members of
19 the CALIFORNIA CLASS were under compensated for their time worked. DEFENDANTS
20 systematically elected, either through intentional malfeasance or gross nonfeasance, to not pay
21 employees for their labor as a matter of uniform company policy, practice and procedure, and
22 DEFENDANTS perpetrated this systematic scheme by refusing to pay PLAINTIFF and the other
23 members of the CALIFORNIA CLASS the correct minimum wages for their time worked.

24 82. In performing the acts and practices herein alleged in violation of California labor laws,
25 and refusing to compensate the members of the CALIFORNIA CLASS for all time worked and provide
26 them with the requisite compensation, DEFENDANTS acted and continues to act intentionally,
27 oppressively, and maliciously toward PLAINTIFF and the other members of the CALIFORNIA CLASS
28 with a conscious and utter disregard for their legal rights, or the consequences to them, and with the

1 despicable intent of depriving them of their property and legal rights, and otherwise causing them injury
2 in order to increase company profits at the expense of these employees.

3 83. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore request
4 recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment of
5 any statutory penalties against DEFENDANTS, in a sum as provided by the California Labor Code
6 and/or other applicable statutes. To the extent minimum wage compensation is determined to be owed
7 to the CALIFORNIA CLASS members who have terminated their employment, DEFENDANTS'
8 conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled
9 to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein on behalf of
10 these CALIFORNIA CLASS members. DEFENDANTS' conduct as alleged herein was willful,
11 intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA CLASS members are
12 entitled to seek and recover statutory costs.

13 **FOURTH CAUSE OF ACTION**

14 **For Failure to Provide Required Meal Periods**

15 **[Cal. Lab. Code §§ 226.7 & 512]**

16 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

17 84. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
18 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

19 85. During the LABOR CLASS PERIOD, from time to time, DEFENDANTS failed to
20 provide all the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA
21 CLASS members as required by the applicable Wage Order and Labor Code. The nature of the work
22 performed by PLAINTIFF and CALIFORNIA CLASS members did not prevent these employees from
23 being relieved of all of their duties for the legally required off-duty meal periods. As a result of their
24 rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS members were from time to
25 time not fully relieved of duty by DEFENDANTS for their meal periods. Additionally,
26 DEFENDANTS' failure to provide PLAINTIFF and the CALIFORNIA CLASS members with legally
27 required meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANTS' business
28 records from time to time. Further, DEFENDANTS failed to provide PLAINTIFF and CALIFORNIA

1 CLASS members with a second off-duty meal period in some workdays in which these employees were
2 required by DEFENDANTS to work ten (10) hours of work. As a result, PLAINTIFF and other members
3 of the CALIFORNIA CLASS therefore forfeited meal breaks without additional compensation and in
4 accordance with DEFENDANTS' strict corporate policy and practice.

5 86. DEFENDANTS further violates California Labor Code §§ 226.7 and the applicable IWC
6 Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS Members who were not
7 provided a meal period, in accordance with the applicable Wage Order, one additional hour of
8 compensation at each employee's regular rate of compensation for each workday that a meal period was
9 not provided.

10 87. As a proximate result of the aforementioned violations, PLAINTIFF and CALIFORNIA
11 CLASS Members have been damaged in an amount according to proof at trial, and seek all wages earned
12 and due, interest, penalties, expenses and costs of suit.

13 **FIFTH CAUSE OF ACTION**

14 **For Failure to Provide Required Rest Periods**

15 **[Cal. Lab. Code §§ 226.7 & 512]**

16 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

17 88. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
18 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

19 89. During the LABOR CLASS PERIOD, PLAINTIFF and other CALIFORNIA CLASS
20 members were from time to time required to work in excess of four (4) hours without being provided
21 ten (10) minute rest periods. Further, these employees were denied their first rest periods of at least ten
22 (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest period
23 of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first,
24 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more
25 from time to time. PLAINTIFF and other CALIFORNIA CLASS members were also not provided with
26 one-hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other
27 CALIFORNIA CLASS members were periodically denied their proper rest periods by DEFENDANTS
28 and DEFENDANTS' managers.

1 90. DEFENDANTS further violated California Labor Code §§ 226.7 and the applicable IWC
2 Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS Members who were not
3 provided a rest period, in accordance with the applicable Wage Order, one additional hour of
4 compensation at each employee's regular rate of compensation for each workday that rest period was
5 not provided.

6 91. As a proximate result of the aforementioned violations, PLAINTIFF and CALIFORNIA
7 CLASS Members have been damaged in an amount according to proof at trial, and seek all wages earned
8 and due, interest, penalties, expenses and costs of suit.

9 **SIXTH CAUSE OF ACTION**

10 **For Failure to Provide Accurate Itemized Statements**

11 **[Cal. Lab. Code §§ 226 and 226.2]**

12 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS)**

13 92. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
14 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

15 93. Cal. Labor Code § 226 provides that an employer must furnish employees with an
16 "accurate itemized" statement in writing showing:

- 17 1. Gross wages earned;
- 18 2. Total hours worked by the employee, except for any employee
19 whose compensation is solely based on a salary and who is exempt from
20 payment of overtime under subdivision (a) of Section 515 or any applicable
21 order of the Industrial Welfare Commission;
- 22 3. The number of piece-rate units earned and any applicable piece rate
23 if the employee is paid on a piece-rate basis;
- 24 4. All deductions, provided that all deductions made on written orders
25 of the employee may be aggregated and shown as one item;
- 26 5. Net wages earned;
- 27 6. The inclusive dates of the period for which the employee is paid,
- 28 7. The name of the employee and his or her social security number,

1 except that by January 1, 2008, only the last four digits of his or her social
2 security number or an employee identification number other than a social
3 security number may be shown on the itemized statement,

4 8. The name and address of the legal entity that is the employer, and

5 9. All applicable hourly rates in effect during the pay period and the
6 corresponding number of hours worked at each hourly rate by the employee.

7 94. During the LABOR CLASS PERIOD, DEFENDANTS also failed to provide PLAINTIFF
8 and the other members of the CALIFORNIA CLASS with complete and accurate wage statements
9 which failed to accurately show, among other things, (1) total number of hours worked, (2) net wages
10 earned, (3) gross wages earned and (7) all applicable hourly rates in effect during the pay period and
11 the corresponding number of hours worked at each hourly rate by the employee in violation of
12 California Labor Code Section 226.

13 95. DEFENDANTS knowingly and intentionally failed to comply with Cal. Labor Code §
14 226, causing injury and damages to the PLAINTIFF and the other members of the CALIFORNIA
15 CLASS. These damages include, but are not limited to, costs expended calculating the correct rates for
16 the overtime worked and the amount of employment taxes which were not properly paid to state and
17 federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFF and the other
18 members of the CALIFORNIA CLASS may elect to recover liquidated damages of fifty dollars (\$50.00)
19 for the initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each
20 violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, and all other damages and
21 penalties available pursuant to Labor Code § 226.2(a)(6), all in an amount according to proof at the time
22 of trial (but in no event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective
23 member of the CALIFORNIA CLASS herein.

24 **SEVENTH CAUSE OF ACTION**

25 **FAILURE TO PAY WAGES WHEN DUE**

26 **(Cal Lab. Code §§201, 202, 203)**

27 **((By PLAINTIFF and the CALIFORNIA CLASS and Against All DEFENDANTS))**

28 96. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and

1 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

2 97. Cal. Lab. Code § 200 provides that:

3 As used in this article:(a) "Wages" includes all amounts for labor
4 performed by employees of every description, whether the amount
5 is fixed or ascertained by the standard of time, task, piece,
6 Commission basis, or other method of calculation. (b) "Labor"
7 includes labor, work, or service whether rendered or performed
8 under contract, subcontract, partnership, station plan, or other
9 agreement if the labor to be paid for is performed personally by the
10 person demanding payment.

11 98. Cal. Lab. Code § 201 provides, in relevant part, that "If an employer discharges an
12 employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

13 99. Cal. Lab. Code § 202 provides, in relevant part, that:

14 If an employee not having a written contract for a definite period
15 quits his or her employment, his or her wages shall become due and
16 payable not later than 72 hours thereafter, unless the employee has
17 given 72 hours previous notice of his or her intention to quit, in
18 which case the employee is entitled to his or her wages at the time
19 of quitting. Notwithstanding any other provision of law, an
20 employee who quits without providing a 72-hour notice shall be
21 entitled to receive payment by mail if he or she so requests and
22 designates a mailing address. The date of the mailing shall constitute
23 the date of payment for purposes of the requirement to provide
24 payment within 72 hours of the notice of quitting.

25 100. There was no definite term in PLAINTIFF's or any CALIFORNIA CLASS Members'
26 employment contract.

27 101. Cal. Lab. Code § 203 provides:
28

1 If an employer willfully fails to pay, without abatement or reduction,
2 in accordance with Sections 201, 201.5, 202, and 205.5, any wages
3 of an employee who is discharged or who quits, the wages of the
4 employee shall continue as a penalty from the due date thereof at the
5 same rate until paid or until an action therefor is commenced; but
6 the wages shall not continue for more than 30 days.

7 102. The employment of PLAINTIFF and many CALIFORNIA CLASS Members terminated
8 and DEFENDANTS has not tendered payment of wages, to these employees who missed meal and rest
9 breaks, as required by law.

10 103. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and the members
11 of the CALIFORNIA CLASS whose employment has, PLAINTIFF demand up to thirty days of pay as
12 penalty for not paying all wages due at time of termination for all employees who terminated
13 employment during the LABOR CLASS PERIOD, and demands an accounting and payment of all
14 wages due, plus interest and statutory costs as allowed by law.

15 **EIGHTH CAUSE OF ACTION**

16 **VIOLATION OF THE PRIVATE ATTORNEY GENERAL ACT**

17 **(Cal. Lab. Code §§2698 et seq.)**

18 **(By PLAINTIFF and CALIFORNIA CLASS and Against All DEFENDANTS)**

19 104. PLAINTIFF realleges and incorporate by this reference, as though fully set forth herein,
20 the prior paragraphs of this Complaint.

21 105. PAGA is a mechanism by which the State of California itself can enforce state labor laws
22 through the employee suing under the PAGA who does so as the proxy or agent of the state's labor law
23 enforcement agencies. An action to recover civil penalties under PAGA is fundamentally a law
24 enforcement action designed to protect the public and not to benefit private parties. The purpose of
25 the PAGA is not to recover damages or restitution, but to create a means of "deputizing" citizens as
26 private attorneys general to enforce the Labor Code. In enacting PAGA, the California Legislature
27 specified that "it was ... in the public interest to allow aggrieved employees, acting as private attorneys
28

1 general to recover civil penalties for Labor Code violations ..." (Stats. 2003, ch. 906, § 1). Accordingly,
2 PAGA claims cannot be subject to arbitration.

3 106. PLAINTIFF, and such persons that may be added from time to time who satisfy the
4 requirements and exhaust the administrative procedures under the Private Attorney General Act, bring
5 this Representative Action on behalf of the State of California with respect to himself and all individuals
6 who are or previously were employed by DEFENDANTS in California during the time period of July
7 14, 2020 until the present (the "AGGRIEVED EMPLOYEES").

8 107. On July 14, 2021, PLAINTIFF gave written notice by certified mail to the Labor and
9 Workforce Development Agency (the "Agency") and the employer of the specific provisions of
10 this code alleged to have been violated as required by Labor Code § 2699.3. See Exhibit #1, attached
11 hereto and incorporated by this reference herein. The statutory waiting period for PLAINTIFF to add
12 these allegations to the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF
13 may now commence a representative civil action under PAGA pursuant to Section 2699 as the proxy
14 of the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

15 108. The policies, acts and practices heretofore described were and are an unlawful business
16 act or practice because Defendant (a) failed to pay PLAINTIFF and other AGGRIEVED EMPLOYEES
17 minimum wages and overtime wages, (b) failed to provide PLAINTIFF and other AGGRIEVED
18 EMPLOYEES legally required meal and rest breaks, (c) failed to provide accurate itemized wage
19 statements, and (d) failed to timely pay wages, all in violation of the applicable Labor Code sections
20 listed in Labor Code §2699.5, including but not limited to Labor Code §§ 201, 202, 203, 204, 210, 226,
21 226(a), 226.2, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1, 1198, Violations of Applicable Industrial
22 Welfare Commission Wage Order(s), and pursuant to California Labor Code Section 2699.5, and
23 thereby gives rise to statutory penalties as a result of such conduct. PLAINTIFF hereby seeks recovery
24 of civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the
25 representative of the State of California for the illegal conduct perpetrated on PLAINTIFF and the other
26 AGGRIEVED EMPLOYEES.

27 109. Some or all of the conduct and violations alleged herein occurred during the PAGA
28 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect PLAINTIFF

1 during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that affected other
2 AGGRIEVED EMPLOYEES. (*Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 519; See
3 also *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751 [“PAGA allows an
4 “aggrieved employee”—a person affected by **at least one** Labor Code violation committed by an
5 employer—to pursue penalties for all the Labor Code violations committed by that employer.”],
6 Emphasis added, reh'g denied (June 13, 2018).)

7 **PRAYER FOR RELIEF**

8 WHEREFORE, PLAINTIFF prays for judgment against each DEFENDANTS, jointly and
9 severally, as follows:

10 1. On behalf of the CALIFORNIA CLASS:

11 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA CLASS as
12 a class action pursuant to Cal. Code of Civ. Proc. § 382;

13 B) An order temporarily, preliminarily and permanently enjoining and restraining
14 DEFENDANTS from engaging in similar unlawful conduct as set forth herein;

15 C) An order requiring DEFENDANTS to pay all wages and all sums unlawfully withheld
16 from compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS; and,

17 D) Restitutionary disgorgement of DEFENDANTS’s ill-gotten gains into a fluid fund for
18 restitution of the sums incidental to DEFENDANTS’s violations due to PLAINTIFF and to the other
19 members of the CALIFORNIA CLASS.

20 E) That the Court certify the Second, Third, Fourth, Fifth, and Sixth Causes of Action
21 asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;

22 1. Compensatory damages, according to proof at trial, including compensatory
23 damages for overtime compensation due PLAINTIFF and the other members of the
24 CALIFORNIA CLASS, during the applicable CALIFORNIA CLASS PERIOD plus
25 interest thereon at the statutory rate;

26 2. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
27 which a violation occurs and one hundred dollars (\$100) per each member of the
28 CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding an

1 aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation
2 of Cal. Lab. Code § 226;

3 3. Meal and rest period compensation pursuant to California Labor Code Section
4 226.7, 512 and the applicable IWC Wage Order;

5 4. For liquidated damages pursuant to California Labor Code Sections 1194.2 and
6 1197; and,

7 2. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:

8 a. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General
9 Act of 2004; and

10 b. An award of penalties, attorneys' fees and costs of suit, as allowable under the law.

11 3. On all claims:

12 A) An award of interest, including prejudgment interest at the legal rate;

13 B) Such other and further relief as the Court deems just and equitable; and,

14 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the law,

15 including, but not limited to, pursuant to Labor Code §226, §1194, §2699 *et seq.*, and/or §2802.

16
17 Dated:

Respectfully Submitted,

BARVIÉ LAW, A.P.C.

By: _____

Nicole Barvié

Attorneys for PLAINTIFF

20
21 **DEMAND FOR JURY TRIAL**

22 PLAINTIFF demands a jury trial on all issues triable to a jury.

23 Dated:

Respectfully Submitted,

BARVIÉ LAW, A.P.C.

By: _____

Nicole Barvié

Attorneys for PLAINTIFF

EXHIBIT “B”



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
<http://www.dfeh.ca.gov> | Email: contact.center@dfeh.ca.gov

October 4, 2021

RE: **Notice of Filing of Discrimination Complaint**
DFEH Matter Number: 202110-14960404
Right to Sue: Clegg / Poulin Ventures LLC et al.

To All Respondent(s):

Enclosed is a copy of a complaint of discrimination that has been filed with the Department of Fair Employment and Housing (DFEH) in accordance with Government Code section 12960. This constitutes service of the complaint pursuant to Government Code section 12962. The complainant has requested an authorization to file a lawsuit. A copy of the Notice of Case Closure and Right to Sue is enclosed for your records.

This matter may qualify for DFEH's Small Employer Family Leave Mediation pilot program. Under this program, established under Government Code section 12945.21, a small employer with 5 -19 employees, charged with violation of the California Family Rights Act, Government Code section 12945.2, has the right to participate in DFEH's free voluntary mediation service. Under this program both the employee requesting an immediate right to sue and the employer charged with the violation may request that all parties participate in DFEH's free voluntary mediation service. A request for mediation must be made within 30 days of receipt of the Notice of Case Closure and Right to Sue. If mediation is requested, the employee is prohibited from filing a civil action until mediation is complete. The employee's statute of limitations to file a civil action, including for all related claims not arising under section 12945.2, is tolled from DFEH's receipt of a mediation request under section 12945.21 until mediation is complete. To request DFEH Small Employer Family Leave Mediation, email DRDOnlineRequests@dfeh.ca.gov and include the DFEH matter number indicated on the Right to Sue notice.

Please refer to the attached complaint for a list of all respondent(s) and their contact information.

No response to DFEH is requested or required.

Sincerely,

Department of Fair Employment and Housing



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
<http://www.dfeh.ca.gov> | Email: contact.center@dfeh.ca.gov

October 4, 2021

Patrick Clegg
unknown
,

RE: Notice of Case Closure and Right to Sue
DFEH Matter Number: 202110-14960404
Right to Sue: Clegg / Poulin Ventures LLC et al.

Dear Patrick Clegg:

This letter informs you that the above-referenced complaint filed with the Department of Fair Employment and Housing (DFEH) has been closed effective October 4, 2021 because an immediate Right to Sue notice was requested.

This letter is also your Right to Sue notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

This matter may qualify for DFEH's Small Employer Family Leave Mediation pilot program. Under this program, established under Government Code section 12945.21, a small employer with 5 -19 employees, charged with violation of the California Family Rights Act, Government Code section 12945.2, has the right to participate in DFEH's free voluntary mediation service. Under this program both the employee requesting an immediate right to sue and the employer charged with the violation may request that all parties participate in DFEH's free voluntary mediation service. A request for mediation must be submitted to the DFEH within 30 days of receipt of the Notice of Case Closure and Right to Sue. If mediation is requested, the employee is prohibited from filing a civil action until mediation is complete. The employee's statute of limitations to file a civil action, including for all related claims not arising under section 12945.2, is tolled from DFEH's receipt of a mediation request under section 12945.21 until mediation is complete. To request DFEH Small Employer Family Leave Mediation, email DRDOnlineRequests@dfeh.ca.gov and include the DFEH matter number indicated on the Right to Sue notice.

To obtain a federal Right to Sue notice, you must contact the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of this DFEH Notice of Case Closure or within 300 days of the alleged discriminatory act, whichever is earlier.

Sincerely,



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758

(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711

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Department of Fair Employment and Housing

**COMPLAINT OF EMPLOYMENT DISCRIMINATION
BEFORE THE STATE OF CALIFORNIA
DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING
Under the California Fair Employment and Housing Act
(Gov. Code, § 12900 et seq.)**

In the Matter of the Complaint of

Patrick Clegg

DFEH No. 202110-14960404

Complainant,

vs.

Poulin Ventures LLC

,

Brandon Poulin

,

Beth O'Brian Wright
unknown

,

Bethany Rose
Unknown

,

Phong Unknown
unknown

,

Nikolas Elliott

,

Respondents

1. Respondent Poulin Ventures LLC is an employer subject to suit under the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.).

2. Complainant is naming Brandon Poulin individual as Co-Respondent(s).
Complainant is naming **Beth O'Brian Wright** individual as Co-Respondent(s).
Complainant is naming **Bethany Rose** individual as Co-Respondent(s).
Complainant is naming **Phong Unknown** individual as Co-Respondent(s).
Complainant is naming **Nikolas Elliott** individual as Co-Respondent(s).

1 3. Complainant **Patrick Clegg**, resides in the City of , State of .

2
3 4. Complainant alleges that on or about **October 1, 2020**, respondent took the
4 following adverse actions:

5 **Complainant was harassed** because of complainant's sex/gender, gender identity or
6 expression, age (40 and over), other, sexual harassment- hostile environment.

7 **Complainant was discriminated against** because of complainant's sex/gender, gender
8 identity or expression, age (40 and over), other, sexual harassment- hostile environment,
9 association with a member of a protected class and as a result of the discrimination was
10 terminated, denied hire or promotion, asked impermissible non-job-related questions, denied
11 any employment benefit or privilege.

12 **Complainant experienced retaliation** because complainant reported or resisted any form
13 of discrimination or harassment, participated as a witness in a discrimination or harassment
14 complaint and as a result was terminated, denied hire or promotion, asked impermissible
15 non-job-related questions, denied work opportunities or assignments.

16
17 **Additional Complaint Details:**
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1 VERIFICATION

2 I, **Nicole Barvie**, am the **Attorney** in the above-entitled complaint. I have read the
3 foregoing complaint and know the contents thereof. The matters alleged are based
4 on information and belief, which I believe to be true.

5 On October 4, 2021, I declare under penalty of perjury under the laws of the State of
6 California that the foregoing is true and correct.

7 **San Diego, California**
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