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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

SONNY LE, individually, and on behalf of
other members of the general public similarly
situated and on behalf of other aggrieved
employees pursuant to the California Private
Attorneys General Act;

Plaintiff,

vs.

BALBOA WATER GROUP LLC, an
unknown business entity; and DOES 1
through 100, inclusive,

Defendants.

Case No.: 30-2019-01042358-CU-OE-CXC

Honorable Peter Wilson
Department CX102

**SECOND AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES &
ENFORCEMENT UNDER THE
PRIVATE ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE § 2698, ET
SEQ.**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums);
- (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums);
- (4) Violation of California Labor Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages);
- (5) Violation of California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid);
- (6) Violation of California Labor Code § 204 (Wages Not Timely Paid During Employment)
- (7) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements);
- (8) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses);
- (9) Violation of California Business & Professions Code §§ 17200, et seq.;

- (10) Violation of California Labor Code § 2698, et seq. (California Labor Code Private Attorneys General Act of 2004);
- (11) Violation of Fair Labor Standards Act 29 U.S.C. § 207 (Unpaid Overtime);
- (12) Violation of Fair Labor Standards Act 29 U.S.C. § 206 (Unpaid Minimum Wages)

COMES NOW, Plaintiff SONNY LE (“Plaintiff”), individually, and on behalf of other members of the general public similarly situated and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act (“PAGA”), alleges as follows:

JURISDICTION AND VENUE

1. This class action is brought pursuant to the California Code of Civil Procedure section 382. The monetary damages and restitution sought by Plaintiff exceeds the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial. The “amount in controversy” for the named Plaintiff, including but not limited to claims for compensatory damages, restitution, penalties, wages, premium pay, and pro rata share of attorneys’ fees, is less than seventy-five thousand dollars (\$75,000).

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

3. This Court has jurisdiction over Defendant because, upon information and belief, Defendant is a citizen of California, has sufficient minimum contacts in California, or otherwise intentionally avails itself of the California market so as to render the exercise of jurisdiction over it by California courts consistent with traditional notions of fair play and substantial justice.

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4. Venue is proper in this Court because, upon information and belief, Defendant maintains offices, has agents, employs individuals, and/or transacts business in the State of California, County of Orange. The majority of acts and omissions alleged herein relating to Plaintiff and the other class members took place in the State of California, including the County of Orange. At all relevant times, Defendant maintained its headquarters/“nerve center” within the State of California, County of Orange.

PARTIES

5. Plaintiff SONNY LE is an individual residing in the State of California, County of Orange.

6. Defendant BALBOA WATER GROUP LLC, at all times herein mentioned, was and is, upon information and belief, an employer whose employees are engaged throughout the State of California, including the County of Orange.

7. At all relevant times, Defendant BALBOA WATER GROUP LLC was the “employer” of Plaintiff within the meaning of all applicable California laws and statutes.

8. At all times herein relevant, Defendants BALBOA WATER GROUP LLC, and DOES 1 through 100, and each of them, were the agents, partners, joint venturers, joint employers, representatives, servants, employees, successors-in-interest, co-conspirators and/or assigns, each of the other, and at all times relevant hereto were acting within the course and scope of their authority as such agents, partners, joint venturers, joint employers, representatives, servants, employees, successors, co-conspirators and/or assigns, and all acts or omissions alleged herein were duly committed with the ratification, knowledge, permission, encouragement, authorization and/or consent of each defendant designated as a DOE herein.

9. The true names and capacities, whether corporate, associate, individual or otherwise, of defendants DOES 1 through 100, inclusive, are unknown to Plaintiff who sue said defendants by such fictitious names. Plaintiff is informed and believes, and based on that information and belief alleges, that each of the defendants designated as a DOE is legally responsible for the events and happenings referred to in this Complaint, and unlawfully caused the injuries and damages to Plaintiff and the other class members as alleged in this Complaint.

1 Plaintiff will seek leave of court to amend this Complaint to show the true names and
2 capacities when the same have been ascertained.

3 10. Defendant BALBOA WATER GROUP LLC and DOES 1 through 100 will
4 hereinafter collectively be referred to as “Defendants.”

5 11. Plaintiff further alleges that Defendants directly or indirectly controlled or
6 affected the working conditions, wages, working hours, and conditions of employment of
7 Plaintiff and the other class members so as to make each of said Defendants employers liable
8 under the statutory provisions set forth herein.

9 **CLASS ACTION ALLEGATIONS**

10 12. Plaintiff bring this action on his own behalf and on behalf of all other members
11 of the general public similarly situated, and, thus, seeks class certification under California
12 Code of Civil Procedure section 382.

13 13. The proposed class is defined as follows:

14 All current and former hourly-paid or non-exempt employees who worked for
15 any of the Defendants within the State of California at any time during the
16 period from January 7, 2015 to final judgment.

17 14. Plaintiff reserves the right to establish subclasses as appropriate.

18 15. The class is ascertainable and there is a well-defined community of interest in
19 the litigation:

- 20 a. Numerosity: The class members are so numerous that joinder of all class
21 members is impracticable. The membership of the entire class is
22 unknown to Plaintiff at this time; however, the class is estimated to be
23 greater than fifty (50) individuals and the identity of such membership is
24 readily ascertainable by inspection of Defendants’ employment records.
- 25 b. Typicality: Plaintiff’s claims are typical of all other class members’ as
26 demonstrated herein. Plaintiff will fairly and adequately protect the
27 interests of the other class members with whom he has a well-defined
28 community of interest.

- 1 c. Adequacy: Plaintiff will fairly and adequately protect the interests of
2 each class member, with whom he has a well-defined community of
3 interest and typicality of claims, as demonstrated herein. Plaintiff has no
4 interest that is antagonistic to the other class members. Plaintiff's
5 attorneys, the proposed class counsel, are versed in the rules governing
6 class action discovery, certification, and settlement. Plaintiff has
7 incurred, and during the pendency of this action will continue to incur,
8 costs and attorneys' fees, that have been, are, and will be necessarily
9 expended for the prosecution of this action for the substantial benefit of
10 each class member.
- 11 d. Superiority: A class action is superior to other available methods for the
12 fair and efficient adjudication of this litigation because individual joinder
13 of all class members is impractical.
- 14 e. Public Policy Considerations: Certification of this lawsuit as a class
15 action will advance public policy objectives. Employers of this great
16 state violate employment and labor laws every day. Current employees
17 are often afraid to assert their rights out of fear of direct or indirect
18 retaliation. However, class actions provide the class members who are
19 not named in the complaint anonymity that allows for the vindication of
20 their rights.

21 16. There are common questions of law and fact as to the class members that
22 predominate over questions affecting only individual members. The following common
23 questions of law or fact, among others, exist as to the members of the class:

- 24 a. Whether Defendants' failure to pay wages, without abatement or
25 reduction, in accordance with the California Labor Code, was willful;
- 26 b. Whether Defendants' had a corporate policy and practice of failing to
27 pay their hourly-paid or non-exempt employees within the State of
28 California for all hours worked and missed (short, late, interrupted,

and/or missed altogether) meal periods and rest breaks in violation of California law;

- c. Whether Defendants required Plaintiff and the other class members to work over eight (8) hours per day, over forty (40) hours per week, and/or over six (6) days per workweek and failed to pay the legally required overtime compensation to Plaintiff and the other class members;
- d. Whether Defendants engaged in an improper rounding policy during the relevant time period;
- e. Whether Defendants failed to use earned commissions, non-discretionary bonuses, non-discretionary monetary and non-monetary incentives, non-discretionary production and/or performance pay, and/or shift differentials to calculate the regular rate of pay used to calculate the overtime rate for the payment of overtime wages where Plaintiff and the other class members earned commissions, non-discretionary bonuses, non-discretionary monetary and non-monetary incentives, non-discretionary production and/or performance pay, and/or shift differentials and overtime wages in the same workweek;
- f. Whether Defendants deprived Plaintiff and the other class members of meal and/or rest periods or required Plaintiff and the other class members to work during meal and/or rest periods without compensation;
- g. Whether Defendants failed to pay minimum wages to Plaintiff and the other class members for all hours worked;
- h. Whether Defendants failed to pay all wages due to Plaintiff and the other class members within the required time upon their discharge or resignation;
- i. Whether Defendants failed to timely pay all wages due to Plaintiff and the other class members during their employment;

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- 1 j. Whether Defendants complied with wage reporting as required by the
2 California Labor Code; including, *inter alia*, section 226;
- 3 k. Whether Defendants kept complete and accurate payroll records as
4 required by the California Labor Code, including, *inter alia*, section
5 1174(d);
- 6 l. Whether Defendants failed to reimburse Plaintiff and the other class
7 members for necessary business-related expenses and costs;
- 8 m. Whether Defendants' conduct was willful or reckless;
- 9 n. Whether Defendants engaged in unfair business practices in violation of
10 California Business & Professions Code section 17200, et seq.;
- 11 o. The appropriate amount of damages, restitution, and/or monetary
12 penalties resulting from Defendants' violation of California law; and
- 13 p. Whether Plaintiff and the other class members are entitled to
14 compensatory damages pursuant to the California Labor Code.

15 **PAGA ALLEGATIONS**

16 17. At all times herein set forth, PAGA was applicable to Plaintiff's employment by
17 Defendants.

18 18. At all times herein set forth, PAGA provides that any provision of law under the
19 California Labor Code that provides for a civil penalty, including unpaid wages and premium
20 wages, to be assessed and collected by the LWDA for violations of the California Labor Code
21 may, as an alternative, be recovered through a civil action brought by an aggrieved employee
22 on behalf of himself and other current or former employees pursuant to procedures outlined in
23 California Labor Code section 2699.3.

24 19. Pursuant to PAGA, a civil action under PAGA may be brought by an "aggrieved
25 employee," who is any person that was employed by the alleged violator and against whom
26 one or more of the alleged violations was committed.

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20. Plaintiff was employed by Defendants and the alleged violations were committed against him during his time of employment and he is, therefore, an aggrieved employee. Plaintiff and the other employees are “aggrieved employees” as defined by California Labor Code section 2699(c) in that they are current or former employees of Defendants, and one or more of the alleged violations were committed against them.

21. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved employee, including Plaintiff, may pursue a civil action arising under PAGA after the following requirements have been met:

- a. The aggrieved employee shall give written notice by certified mail (hereinafter “Employee's Notice”) to the LWDA and the employer of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.
- b. The LWDA shall provide notice (hereinafter “LWDA Notice”) to the employer and the aggrieved employee by certified mail that it does not intend to investigate the alleged violation within sixty (60) calendar days of the postmark date of the Employee’s Notice. Upon receipt of the LWDA Notice, or if the LWDA Notice is not provided within sixty-five (65) calendar days of the postmark date of the Employee’s Notice, the aggrieved employee may commence a civil action pursuant to California Labor Code section 2699 to recover civil penalties in addition to any other penalties to which the employee may be entitled.

22. On September 10, 2021, Plaintiff provided written notice by online submission to the LWDA and by certified mail to Defendant BALBOA WATER GROUP LLC of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.

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23. On September 15, 2021, Plaintiff provided an additional, follow-up written notice by online submission to the LWDA and by certified mail to Defendant BALBOA WATER GROUP LLC of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.

24. Plaintiff did not receive a response from the LWDA within sixty-five (65) days of the date of the submission of Plaintiff's notice.

25. Therefore, the administrative prerequisites under California Labor Code section 2699.3(a) to recover civil penalties against Defendants, in addition to other remedies, for violations of California Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 551, 552, 558, 1174, 1194, 1197, 1197.1, 1198, 2800, and 2802 and Industrial Welfare Commission Wage Orders, have been satisfied.

GENERAL ALLEGATIONS

26. At all relevant times set forth herein, Defendants employed Plaintiff and other persons as hourly-paid or non-exempt employees within the State of California, including the County of Orange.

27. Defendants, jointly and severally, employed Plaintiff as an hourly-paid, non-exempt employee, from approximately May 2016 to approximately April 2017, in the State of California, County of Orange.

28. Defendants hired Plaintiff and the other class members, classified them as hourly-paid or non-exempt employees, and failed to compensate them for all hours worked and short, late, interrupted, or missed meal periods and/or rest breaks.

29. Defendants had the authority to hire and terminate Plaintiff and the other class members, to set work rules and conditions governing Plaintiff's and the other class members' employment, and to supervise their daily employment activities.

30. Defendants exercised sufficient authority over the terms and conditions of Plaintiff's and the other class members' employment for them to be joint employers of Plaintiff and the other class members.

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1 31. Defendants directly hired and paid wages and benefits to Plaintiff and the other
2 class members.

3 32. Defendants continue to employ hourly-paid or non-exempt employees within the
4 State of California.

5 33. Plaintiff and the other class members worked over eight (8) hours in a day, forty
6 (40) hours in a week, and/or over six (6) days in a workweek during their employment with
7 Defendants.

8 34. Plaintiff is informed and believes, and based thereon alleges, that Defendants
9 engaged in a pattern and practice of wage abuse against their hourly-paid or non-exempt
10 employees within the State of California. This pattern and practice involved, *inter alia*, failing
11 to pay them for all regular and/or overtime wages earned and for short, late, interrupted, or
12 missed meal periods and rest breaks in violation of California law.

13 35. Plaintiff is informed and believes, and based thereon alleges, that Defendants
14 knew or should have known that Plaintiff and the other class members were entitled to receive
15 certain wages for overtime compensation and that they were not receiving accurate overtime
16 compensation for all overtime hours worked as a result of, *inter alia*, Defendants' requiring
17 Plaintiff and the other class members to perform work off-the-clock and engaging in an
18 improper rounding policy.

19 36. Plaintiff is informed and believes, and based thereon alleges, that Defendants
20 failed to use earned commissions, non-discretionary bonuses, non-discretionary monetary and
21 non-monetary incentives, non-discretionary production and/or performance pay, and/or shift
22 differentials to calculate the regular rate of pay used to calculate the overtime rate for the
23 payment of overtime wages where Plaintiff and the other class members earned commissions,
24 non-discretionary bonuses, non-discretionary monetary and non-monetary incentives, non-
25 discretionary production and/or performance pay, and/or shift differentials and overtime wages
26 in the same workweek.

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37. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed to provide Plaintiff and the other class members all required rest and meal periods during the relevant time period as required under the Industrial Welfare Commission Wage Orders and thus they are entitled to any and all applicable penalties.

38. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff and the other class members were entitled to receive all meal periods or payment of one additional hour of pay at Plaintiff's and the other class member's regular rate of pay when a meal period was short, late, interrupted, or missed, and they did not receive all meal periods or payment of one additional hour of pay at Plaintiff's and the other class member's regular rate of pay when a meal period was short, late, interrupted, or missed.

39. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed to relieve Plaintiff and the other class members of all duties, failed to relinquish control over Plaintiff and the other class members' activities, failed to permit Plaintiff and the other class members a reasonable opportunity to take, and impeded or discouraged them from taking thirty (30) minute uninterrupted meal breaks no later than the end of their fifth hour of work for shifts lasting at least six (6) hours, and/or take second thirty (30) minute interrupted meal breaks no later than their tenth hour of work for shifts lasting more than ten (10) hours.

40. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff and the other class members were entitled to receive all rest periods or payment of one additional hour of pay at Plaintiff's and the other class member's regular rate of pay when a rest period was short, late, interrupted, or missed, and they did not receive all rest periods or payment of one additional hour of pay at Plaintiff's and the other class members' regular rate of pay when a rest period was short, late, interrupted, or missed.

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1 41. Plaintiff is informed and believes, and based thereon alleges, that Defendants
2 knew or should have known that Plaintiff and the other class members were entitled to receive
3 at least minimum wages for compensation and that they were not receiving at least minimum
4 wages for all hours worked. Defendants' failure to pay minimum wages included, *inter alia*,
5 Defendants' effective payment of zero dollars per hour for hours Plaintiff and the other class
6 members worked off-the-clock performing work duties and Defendants' implementation of an
7 improper rounding procedure.

8 42. Plaintiff is informed and believes, and based thereon alleges, that Defendants
9 knew or should have known that Plaintiff and the other class members were entitled to receive
10 all wages owed to them upon discharge or resignation, including overtime and minimum wages
11 and meal and rest period premiums, and they did not, in fact, receive all such wages owed to
12 them at the time of their discharge or resignation.

13 43. Plaintiff is informed and believes, and based thereon alleges, that Defendants
14 knew or should have known that Plaintiff and the other class members were entitled to receive
15 all wages owed to them during their employment. Plaintiff and the other class members did
16 not receive payment of all wages, including overtime and minimum wages and meal and rest
17 period premiums, within any time permissible under California Labor Code section 204.

18 44. Plaintiff is informed and believes, and based thereon alleges, that Defendants
19 knew or should have known that Plaintiff and the other class members were entitled to receive
20 complete and accurate wage statements in accordance with California law, but, in fact, they did
21 not receive complete and accurate wage statements from Defendants. The deficiencies
22 included, *inter alia*, the failure to include the total number of hours worked by Plaintiff and the
23 other class members, including work performed off-the-clock, and the failure to list all
24 applicable hourly rates in effect during the pay period and the corresponding number of hours
25 worked at each hourly rate of pay.

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1 45. Plaintiff is informed and believes, and based thereon alleges, that Defendants
2 knew or should have known that Defendants had to keep complete and accurate payroll records
3 for Plaintiff and the other class members in accordance with California law, but, in fact, did
4 not keep complete and accurate payroll records.

5 46. Plaintiff is informed and believes, and based thereon alleges, that Defendants
6 knew or should have known that Plaintiff and the other class members were entitled to
7 reimbursement for necessary business-related expenses, including, *inter alia*, for use of
8 personal phones, expenses associated with purchasing and/or maintaining required attire,
9 footwear, protective gear, and tools, and use of vehicles and/or mileage.

10 47. Plaintiff is informed and believes, and based thereon alleges, that Defendants
11 knew or should have known that they had a duty to compensate Plaintiff and the other class
12 members pursuant to California law, and that Defendants had the financial ability to pay such
13 compensation, but willfully, knowingly, and intentionally failed to do so, and falsely
14 represented to Plaintiff and the other class members that they were properly denied wages, all
15 in order to increase Defendants' profits.

16 48. During the relevant time period, Defendants failed to pay overtime wages to
17 Plaintiff and the other class members for all overtime hours worked. Plaintiff and the other
18 class members were required to work more than eight (8) hours per day, forty (40) hours per
19 week, and/or more than six (6) consecutive days in a workweek without overtime
20 compensation for all overtime hours worked.

21 49. During the relevant time period, Defendants failed to use earned commissions,
22 non-discretionary bonuses, non-discretionary monetary and non-monetary incentives, non-
23 discretionary production and/or performance pay, and/or shift differentials to calculate the
24 regular rate of pay used to calculate the overtime rate for the payment of overtime wages where
25 Plaintiff and the other class members earned commissions, non-discretionary bonuses, non-
26 discretionary monetary and non-monetary incentives, non-discretionary production and/or
27 performance pay, and/or shift differentials and overtime wages in the same workweek.

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1 50. During the relevant time period, Defendants failed to provide all requisite
2 uninterrupted meal and rest periods to Plaintiff and the other class members.

3 51. During the relevant time period, Defendants failed to pay Plaintiff and the other
4 class members at least minimum wages for all hours worked.

5 52. During the relevant time period, Defendants failed to pay Plaintiff and the other
6 class members all wages owed to them upon discharge or resignation.

7 53. During the relevant time period, Defendants failed to pay Plaintiff and the other
8 class members all wages within any time permissible under California law, including, *inter*
9 *alia*, California Labor Code section 204.

10 54. During the relevant time period, Defendants failed to provide complete or
11 accurate wage statements to Plaintiff and the other class members. The deficiencies included,
12 *inter alia*, the failure to include the total number of hours worked by Plaintiff and the other
13 class members, including work performed off-the-clock, and the failure to list all applicable
14 hourly rates in effect during the pay period and the corresponding number of hours worked at
15 each hourly rate of pay.

16 55. During the relevant time period, Defendants failed to keep complete or accurate
17 payroll records for Plaintiff and the other class members.

18 56. During the relevant time period, Defendants failed to reimburse Plaintiff and the
19 other class members for all necessary business-related expenses and costs.

20 57. During the relevant time period, Defendants failed to properly compensate
21 Plaintiff and the other class members pursuant to California law in order to increase
22 Defendants' profits.

23 58. California Labor Code section 218 states that nothing in Article 1 of the Labor
24 Code shall limit the right of any wage claimant to "sue directly . . . for any wages or penalty
25 due to him [or her] under this article."

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FIRST CAUSE OF ACTION

(Violation of California Labor Code §§ 510 and 1198)

(Against BALBOA WATER GROUP LLC and DOES 1 through 100)

59. Plaintiff incorporates by reference the allegations contained in Paragraphs 1 through 58, and each and every part thereof with the same force and effect as though fully set forth herein.

60. California Labor Code section 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order provide that it is unlawful to employ persons without compensating them at a rate of pay either time-and-one-half or two-times that person’s regular rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

61. Specifically, the applicable IWC Wage Order provides that Defendants are and were required to pay Plaintiff and the other class members employed by Defendants, and working more than eight (8) hours in a day, more than forty (40) hours in a workweek, and/or more than six (6) consecutive days in a workweek, at the rate of time-and-one-half for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek, or for the first eight (8) hours worked on the seventh day of work in a workweek.

62. The applicable IWC Wage Order further provides that Defendants are and were required to pay Plaintiff and the other class members overtime compensation at a rate of two times their regular rate of pay for all hours worked in excess of twelve (12) hours in a day.

63. California Labor Code section 510 codifies the right to overtime compensation at one-and-one-half times the regular hourly rate for hours worked in excess of eight (8) hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh day of work, and to overtime compensation at twice the regular hourly rate for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day of work.

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64. During the relevant time period, Plaintiff and the other class members worked in excess of eight (8) hours in a day, in excess of forty (40) hours in a week, and/or in excess of six (6) consecutive days in a workweek.

65. During the relevant time period, Defendants intentionally and willfully failed to pay overtime wages owed to Plaintiff and the other class members.

66. Defendants' failure to pay Plaintiff and the other class members the unpaid balance of overtime compensation, as required by California laws, violates the provisions of California Labor Code sections 510 and 1198, and is therefore unlawful.

67. Pursuant to California Labor Code section 1194, Plaintiff and the other class members are entitled to recover unpaid overtime compensation, as well as interest, costs, and attorneys' fees.

SECOND CAUSE OF ACTION

(Violation of California Labor Code §§ 226.7 and 512(a))

(Against BALBOA WATER GROUP LLC and DOES 1 through 100)

68. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 67, and each and every part thereof with the same force and effect as though fully set forth herein.

69. At all relevant times, the IWC Order and California Labor Code sections 226.7 and 512(a) were applicable to Plaintiff's and the other class members' employment by Defendants.

70. At all relevant times, California Labor Code section 226.7 provides that no employer shall require an employee to work during any meal or rest period mandated by an applicable order of the California IWC.

71. At all relevant times, the applicable IWC Wage Order and California Labor Code section 512(a) provide that an employer may not require, cause or permit an employee to work for a work period of more than five (5) hours per day without providing the employee with a meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is no more than six (6) hours, the meal period may be waived by mutual

1 consent of both the employer and employee.

2 72. At all relevant times, the applicable IWC Wage Order and California Labor
3 Code section 512(a) further provide that an employer may not require, cause or permit an
4 employee to work for a work period of more than ten (10) hours per day without providing the
5 employee with a second uninterrupted meal period of not less than thirty (30) minutes, except
6 that if the total hours worked is no more than twelve (12) hours, the second meal period may
7 be waived by mutual consent of the employer and the employee only if the first meal period
8 was not waived.

9 73. During the relevant time period, Defendants failed to relieve Plaintiff and the
10 other class members of all duties, failed to relinquish control over Plaintiff and the other class
11 members' activities, failed to permit Plaintiff and the other class members a reasonable
12 opportunity to take, and impeded or discouraged them from taking thirty (30) minute
13 uninterrupted meal breaks no later than the end of their fifth hour of work for shifts lasting at
14 least six (6) hours, and/or take second thirty (30) minute interrupted meal breaks no later than
15 their tenth hour of work for shifts lasting more than ten (10) hours. Defendants also engaged in
16 an improper practice and policy of rounding meal periods, which resulted in recorded meal
17 periods being modified to reflect as though they were facially complaint (when they were in fact
18 not, and a premium was due and should have been paid but was not), during the relevant time
19 period.

20 74. During the relevant time period, Plaintiff and the other class members who were
21 scheduled to work for a period of time no longer than six (6) hours, and who did not waive
22 their legally-mandated meal periods by mutual consent, were required to work for periods
23 longer than five (5) hours without an uninterrupted meal period of not less than thirty (30)
24 minutes and/or rest period.

25 75. During the relevant time period, Plaintiff and the other class members who were
26 scheduled to work for a period of time in excess of six (6) hours were required to work for
27 periods longer than five (5) hours without an uninterrupted meal period of not less than thirty
28 (30) minutes and/or rest period.

76. During the relevant time period, Defendants intentionally and willfully required Plaintiff and the other class members to work during meal periods and failed to compensate Plaintiff and the other class members the full meal period premium for work performed during meal periods.

77. During the relevant time period, Defendants failed to pay Plaintiff and the other class members the full meal period premium due pursuant to California Labor Code section 226.7.

78. Defendants' conduct violates applicable IWC Wage Order and California Labor Code sections 226.7 and 512(a).

79. Pursuant to applicable IWC Wage Order and California Labor Code section 226.7(b), Plaintiff and the other class members are entitled to recover from Defendants one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

THIRD CAUSE OF ACTION

(Violation of California Labor Code § 226.7)

(Against BALBOA WATER GROUP LLC and DOES 1 through 100)

80. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 79, and each and every part thereof with the same force and effect as though fully set forth herein.

81. At all times herein set forth, the applicable IWC Wage Order and California Labor Code section 226.7 were applicable to Plaintiff's and the other class members' employment by Defendants.

82. At all relevant times, California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC.

83. At all relevant times, the applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be

based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof” unless the total daily work time is less than three and one-half (3 ½) hours.

84. During the relevant time period, Defendants required Plaintiff and other class members to work four (4) or more hours without authorizing or permitting a ten (10) minute rest period per each four (4) hour period worked.

85. During the relevant time period, Defendants willfully required Plaintiff and the other class members to work during rest periods and failed to pay Plaintiff and the other class members the full rest period premium for work performed during rest periods.

86. During the relevant time period, Defendants failed to pay Plaintiff and the other class members the full rest period premium due pursuant to California Labor Code section 226.7

87. Defendants’ conduct violates applicable IWC Wage Orders and California Labor Code section 226.7.

88. Pursuant to the applicable IWC Wage Orders and California Labor Code section 226.7(c), Plaintiff and the other class members are entitled to recover from Defendants one additional hour of pay at the employees’ regular hourly rate of compensation for each work day that the rest period was not provided.

FOURTH CAUSE OF ACTION

(Violation of California Labor Code §§ 1194, 1197, and 1197.1)

(Against BALBOA WATER GROUP LLC and DOES 1 through 100)

89. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 88, and each and every part thereof with the same force and effect as though fully set forth herein.

90. At all relevant times, California Labor Code sections 1194, 1197, and 1197.1 provide that the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful.

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92. Defendants' failure to pay Plaintiff and the other class members the minimum wages as required by law, violates California Labor Code sections 1194, 1197, and 1197.1. Pursuant to those sections Plaintiff and the other class members are entitled to recover the unpaid balance of wages due by law as well as interest, costs, and attorney's fees, and liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

93. Pursuant to California Labor Code section 1197.1, Plaintiff and the other class members are entitled to recover a penalty of \$100.00 for the initial failure to timely pay each employee minimum wages, and \$250.00 for each subsequent failure to pay each employee minimum wages.

14 94. Pursuant to California Labor Code section 1194.2, Plaintiff and the other class
15 members are entitled to recover liquidated damages in an amount equal to the wages
16 unlawfully unpaid and interest thereon.

(Violation of California Labor Code §§ 201 and 202)

20 95. Plaintiff incorporates by reference the allegations contained in paragraphs 1
21 through 94, and each and every part thereof with the same force and effect as though fully set
22 forth herein.

23 96. At all relevant times herein set forth, California Labor Code sections 201 and
24 202 provide that if an employer discharges an employee, the wages earned and unpaid at the
25 time of discharge are due and payable immediately, and if an employee quits his or her
26 employment, his or her wages shall become due and payable not later than seventy-two (72)
27 hours thereafter, unless the employee has given seventy-two (72) hours' notice of his or her
28 intention to quit, in which case the employee is entitled to his or her wages at the time of

quitting.

97. During the relevant time period, Defendants intentionally and willfully failed to pay Plaintiff and the other class members who are no longer employed by Defendants their wages, earned and unpaid, within seventy-two (72) hours of their leaving Defendants' employ. Plaintiff and other class members were not paid at the time of their discharge wages earned and unpaid throughout their employment, including, but not limited to, wages for off-the-clock work, wages lost due to rounding, overtime wages, and meal and rest period premiums.

98. Defendants' failure to pay Plaintiff and the other class members who are no longer employed by Defendants' their wages, earned and unpaid, within seventy-two (72) hours of their leaving Defendants' employ, is in violation of California Labor Code sections 201 and 202.

99. California Labor Code section 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

100. Plaintiff and the other class members are entitled to recover from Defendants the statutory penalty wages for each day they were not paid, up to a thirty (30) day maximum pursuant to California Labor Code section 203.

SIXTH CAUSE OF ACTION

(Violation of California Labor Code § 204)

(Against BALBOA WATER GROUP LLC and DOES 1 through 100)

101. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 100, and each and every part thereof with the same force and effect as though fully set forth herein.

102. At all times herein set forth, California Labor Code section 204 provides that all wages earned by any person in any employment between the 1st and 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was

performed.

103. At all times herein set forth, California Labor Code section 204 provides that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month.

104. At all times herein set forth, California Labor Code section 204 provides that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

105. During the relevant time period, Defendants intentionally and willfully failed to pay Plaintiff and the other class members all wages due to them, within any time period permissible under California Labor Code section 204.

106. Plaintiff and the other class members are entitled to recover all remedies available for violations of California Labor Code section 204.

SEVENTH CAUSE OF ACTION

(Violation of California Labor Code § 226(a))

(Against BALBOA WATER GROUP LLC and DOES 1 through 100)

107. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 106, and each and every part thereof with the same force and effect as though fully set forth herein.

108. At all material times set forth herein, California Labor Code section 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate 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, (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

1 corresponding number of hours worked at each hourly rate by the employee. The deductions
2 made from payments of wages shall be recorded in ink or other indelible form, properly dated,
3 showing the month, day, and year, and a copy of the statement or a record of the deductions
4 shall be kept on file by the employer for at least three years at the place of employment or at a
5 central location within the State of California.

6 109. Defendants have intentionally and willfully failed to provide Plaintiff and the
7 other class members with complete and accurate wage statements. The deficiencies include,
8 but are not limited to: the failure to include the total number of hours worked by Plaintiff and
9 the other class members, including work performed off-the-clock, and the failure to list all
10 applicable hourly rates in effect during the pay period and the corresponding number of hours
11 worked at each hourly rate of pay.

12 110. As a result of Defendants' violation of California Labor Code section 226(a),
13 Plaintiff and the other class members have suffered injury and damage to their statutorily-
14 protected rights.

15 111. More specifically, Plaintiff and the other class members have been injured by
16 Defendants' intentional and willful violation of California Labor Code section 226(a) because
17 they were denied both their legal right to receive, and their protected interest in receiving,
18 accurate and itemized wage statements pursuant to California Labor Code section 226(a).

19 112. Plaintiff is entitled to recover from Defendants his actual damages caused by
20 Defendants' failure to comply with California Labor Code section 226(a).

21 113. The other class members are entitled to recover from Defendants the greater of
22 their actual damages caused by Defendants' failure to comply with California Labor Code
23 section 226(a), or an aggregate penalty not exceeding four thousand dollars per employee.

24 114. Plaintiff and the other class members are also entitled to injunctive relief to
25 ensure compliance with this section, pursuant to California Labor Code section 226(h).

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EIGHTH CAUSE OF ACTION

(Violation of California Labor Code §§ 2800 and 2802)

(Against BALBOA WATER GROUP LLC and DOES 1 through 100)

115. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 114, and each and every part thereof with the same force and effect as though fully set forth herein.

116. Pursuant to California Labor Code sections 2800 and 2802, an employer must reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer.

117. Plaintiff and the other class members incurred necessary business-related expenses and costs that were not fully reimbursed by Defendants, including for use of personal phones, expenses associated with purchasing and/or maintaining required attire, footwear, protective gear, and tools, and use of vehicles and/or mileage for business-related matters.

118. Defendants have intentionally and willfully failed to reimburse Plaintiff and the other class members for all necessary business-related expenses and costs.

119. Plaintiff and the other class members are entitled to recover from Defendants their business-related expenses and costs incurred during the course and scope of their employment, plus interest accrued from the date on which the employee incurred the necessary expenditures at the same rate as judgments in civil actions in the State of California.

NINTH CAUSE OF ACTION

(Violation of California Business & Professions Code §§ 17200, et seq.)

(Against BALBOA WATER GROUP LLC and DOES 1 through 100)

120. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 119, and each and every part thereof with the same force and effect as though fully set forth herein.

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1 121. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
2 unlawful and harmful to Plaintiff, other class members, to the general public, and Defendants'
3 competitors. Accordingly, Plaintiff seek to enforce important rights affecting the public
4 interest within the meaning of Code of Civil Procedure section 1021.5.

5 122. Defendants' activities as alleged herein are violations of California law, and
6 constitute unlawful business acts and practices in violation of California Business &
7 Professions Code section 17200, et seq.

8 123. A violation of California Business & Professions Code section 17200, et seq.
9 may be predicated on the violation of any state or federal law. In this instant case, Defendants'
10 policies and practices of requiring employees, including Plaintiff and the other class members,
11 to work overtime without paying them proper compensation violate California Labor Code
12 sections 510 and 1198. Additionally, Defendants' policies and practices of requiring
13 employees, including Plaintiff and the other class members, to work through their meal and
14 rest periods without paying them proper compensation violate California Labor Code sections
15 226.7 and 512(a). Defendants' policies and practices of failing to pay wages violate California
16 Labor Code sections 1194, 1197, and 1197.1. Moreover, Defendants' policies and practices of
17 failing to timely pay wages to Plaintiff and the other class members violate California Labor
18 Code sections 201-204. Defendants also violated California Labor Code sections 226(a),
19 1174(d), 2800 and 2802.

20 124. As a result of the herein described violations of California law, Defendants
21 unlawfully gained an unfair advantage over other businesses.

22 125. Plaintiff and the other class members have been personally injured by
23 Defendants' unlawful business acts and practices as alleged herein, including but not
24 necessarily limited to the loss of money and/or property.

25 126. Pursuant to California Business & Professions Code sections 17200, et seq.,
26 Plaintiff and the other class members are entitled to restitution of the wages withheld and
27 retained by Defendants during a period that commences January 7, 2015; an award of
28 attorneys' fees pursuant to California Code of Civil procedure section 1021.5 and other

applicable laws; and an award of costs.

TENTH CAUSE OF ACTION

(Violation of California Labor Code § 2698, et seq.)

(Against BALBOA WATER GROUP LLC and DOES 1 through 100)

127. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 126, and each and every part thereof with the same force and effect as though fully set forth herein.

128. PAGA expressly establishes that any provision of the California Labor Code which provides for a civil penalty to be assessed and collected by the LWDA, or any of its departments, divisions, commissions, boards, agencies or employees for a violation of the California Labor Code, may be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself, and other current or former employees.

129. Whenever the LWDA, or any of its departments, divisions, commissions, boards, agencies, or employees has discretion to assess a civil penalty, a court in a civil action is authorized to exercise the same discretion, subject to the same limitations and conditions, to assess a civil penalty.

130. Plaintiff and the other hourly-paid or non-exempt employees, are “aggrieved employees” as defined by California Labor Code section 2699(c) in that they are all current or former employees of Defendants, and one or more of the alleged violations was committed against them.

Failure to Pay Overtime

131. Defendants’ failure to pay overtime in violation of the Wage Orders and California Labor Code sections 510 and 1198, as alleged above, constitutes unlawful and/or unfair activity prohibited by California Labor Code sections 510 and 1198.

Failing to Provide Meal Periods

132. Defendants’ failure to provide legally required meal periods in violation of the Wage Orders and California Labor Code sections 226.7 and 512(a), as alleged above, constitutes unlawful and/or unfair activity prohibited by California Labor Code sections 226.7

and 512(a).

Failure to Provide Rest Periods

133. Defendants' failure to provide legally required rest periods in violation of the Wage Orders and California Labor Code section 226.7, as alleged above, constitutes unlawful and/or unfair activity prohibited by California Labor Code section 226.7.

Failure to Pay Minimum Wages

134. Defendants' failure to pay wages required by law in violation of the Wage Orders and California Labor Code sections 1194, 1197 and 1197.1, as alleged above, constitutes unlawful and/or unfair activity prohibited by California Labor Code sections 1194, 1197 and 1197.1.

Failure to Timely Pay Wages Upon Termination

135. Defendants' failure to timely pay wages upon termination in violation of California Labor Code sections 201 and 202, as alleged above, constitutes unlawful and/or unfair activity prohibited by California Labor Code sections 201 and 202.

Failure to Timely Pay Wages During Employment

136. Defendants' failure to timely pay wages during employment in violation of California Labor Code section 204, as alleged above, constitutes unlawful and/or unfair activity prohibited by California Labor Code section 204.

Failure to Provide Compliant Wage Statements

137. Defendants' failure to provide compliant wage statements in violation of California Labor Code section 226(a), as alleged above, constitutes unlawful and/or unfair activity prohibited by California Labor Code section 226(a).

Failure to Keep Complete or Accurate Payroll Records

138. Defendants' failure to keep complete or accurate payroll records in violation of California Labor Code section 1174(d), as alleged above, constitutes unlawful and/or unfair activity prohibited by California Labor Code section 1174(d).

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Failure to Reimburse Necessary Business Expenses

139. Defendants' failure to reimburse all necessary business-related expenses and costs in violation of California Labor Code sections 2800 and 2802, as alleged above, constitutes unlawful and/or unfair activity prohibited by California Labor Code sections 2800 and 2802.

140. Pursuant to California Labor Code section 2699, Plaintiff, individually, and on behalf of all aggrieved employees, requests and is entitled to recover from Defendants and each of them, business expenses, unpaid wages, and/or untimely wages according to proof, interest, attorneys' fees and costs pursuant to California Labor Code section 218.5, as well as all penalties against Defendants, and each of them, including but not limited to:

- a. Penalties under California Labor Code section 2699 in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation;
- b. Penalties under California Code of Regulations Title 8 section 11010, *et seq.* in the amount of fifty dollars (\$50) for each aggrieved employee per pay period for the initial violation, and one hundred dollars (\$100) for each aggrieved employee per pay period for each subsequent violation;
- c. Penalties under California Labor Code section 210 in addition to, and entirely independent and apart from, any other penalty provided in the California Labor Code in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation; and
- d. Any and all additional penalties and sums as provided by the California Labor Code and/or other statutes.

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1 141. Pursuant to California Labor Code section 2699(i), civil penalties recovered by
2 aggrieved employees shall be distributed as follows: seventy-five percent (75%) to the Labor and
3 Workforce Development Agency for the enforcement of labor laws and education of employers
4 and employees about their rights and responsibilities and twenty-five percent (25%) to the
5 aggrieved employees.

6 142. Further, Plaintiff is entitled to seek and recover reasonable attorneys' fees and
7 costs pursuant to California Labor Code sections 210, 218.5 and 2699 and any other applicable
8 statute.

9 **ELEVENTH CAUSE OF ACTION**

10 **(Violation of Fair Standards Act, 29 U.S.C § 207)**

11 **(Against BALBOA WATER GROUP LLC and DOES 1 through 100)**

12 143. Plaintiff incorporates by reference the allegations contained in paragraphs 1
13 through 142, and each and every part thereof with the same force and effect as though fully set
14 forth herein.

15 144. The FLSA, 29 U.S.C. § 207(a)(1), provides in relevant part:

16 Except as otherwise provided in this section, no employer shall employ any of his
17 employees, who in any workweek is employed in an enterprise engaged in commerce or in the
18 production of goods for commerce, for a workweek longer than forty hours unless such
19 employee receives compensation for his employment in excess of the hours above specified at
20 a rate not less than one and one-half times the regular rate at which he is employed.

21 145. Plaintiff is informed and believes, and based thereon alleges, that Defendants
22 failed to use earned commissions, non-discretionary bonuses, non-discretionary monetary and
23 non-monetary incentives, non-discretionary production and/or performance pay, and/or shift
24 differentials to calculate the regular rate of pay used to calculate the overtime rate for the
25 payment of overtime wages where Plaintiff and the other class members earned commissions,
26 non-discretionary bonuses, non-discretionary monetary and non-monetary incentives, non-
27 discretionary production and/or performance pay, and/or shift differentials and overtime wages
28 in the same workweek.

1 146. At all material times set forth herein, Plaintiff and the other class members
2 sometimes worked in excess of forty (40) hours in a workweek; however, no overtime
3 compensation was paid by Defendants and to the extent overtime compensation was paid, the
4 overtime rate of pay was improperly calculated by Defendants. As such, Defendants owe
5 Plaintiff and the other class members overtime compensation.

6 147. At all material times set forth herein, Defendants' failure to pay Plaintiff and the
7 other class members the unpaid balance of overtime compensation, as required by the FLSA,
8 violated the provisions of the FLSA and was therefore unlawful. Moreover, Defendants' failure
9 to pay Plaintiff and the other class members overtime compensation was and is a result of a
10 uniform policy or practice to deny overtime compensation to them.

11 148. At all material times Defendants' failure to pay Plaintiffs and the other class
12 members was the result of Defendants' willful, knowing, and intentional violation of the
13 provisions of the FLSA, or alternatively Defendants' reckless disregard for the requirements of
14 those provisions. At all relevant times set forth, Defendants were aware that their uniform
15 policies and practices are illegal and that Plaintiff and the other class members must be
16 compensated at the correct overtime rate for work performed in excess of forty (40) hours
17 pursuant to these uniform policies and practices. Therefore, the foregoing Defendants' conduct,
18 as alleged, constitutes willful violation of the FLSA, within the meaning of 29 U.S.C. § 255(a).

19 149. Pursuant to the FLSA, 29 U.S.C. § 216(b), Plaintiff and the other class members
20 are entitled to recover their unpaid overtime compensation as well as liquidated damages equal to
21 the amount of unpaid compensation, interest, costs, and attorneys' fees.

22 **TWELFTH CAUSE OF ACTION**

23 **(Violation of Fair Labor Standards Act, 29 U.S.C. § 206)**

24 **(Against BALBOA WATER GROUP LLC and DOES 1 through 100)**

25 150. Plaintiff incorporates by reference the allegations contained in paragraphs 1
26 through 149, and each and every part thereof with the same force and effect as though fully set
27 forth herein.

28 151. Pursuant to the FLSA, 29 U.S.C. § 206, Plaintiff and the other class members

were entitled to receive minimum wages for all hours worked.

152. At all material times set forth herein, Defendants failed to pay Plaintiff and the other class members for all hours worked. This work was and is performed for the sole benefit of Defendants, and was and is a uniform practice and policy in all Defendants' locations. This work resulted and continues to result in Plaintiff and the other class members working without any compensation. As such, Defendants owe Plaintiffs and the other class members compensation for this work at least at a minimum wage rate.

153. At all material times set forth herein, Defendants' failure to pay Plaintiff and the other class members minimum wages for all hours worked, as required by the FLSA, violated the provisions of the FLSA and was therefore unlawful. Moreover, Defendants' failure to pay Plaintiffs and the other class members' minimum wages was and is a result of a uniform policy or practice to deny them compensation at least at a minimum wage rate.

154. At all material times, Defendants' failure to pay Plaintiffs and the other class members was the result of Defendants' willful, knowing, and intentional violation of the provisions of the FLSA, or alternatively, Defendants' reckless disregard for the requirements of those provisions. At all relevant times set forth, Defendants were aware that their uniform policies and practices are illegal and that Plaintiffs and the other class members must be compensated for the work activities performed pursuant to these uniform policies and practices. Therefore, the foregoing Defendants' conduct, as alleged, constitutes willful violation of the FLSA, within the meaning of 29 U.S.C. § 255(a).

155. As a result of Defendants' unlawful conduct, Plaintiff and the other class members have suffered damages in an amount, subject to proof, to the extent they were not paid minimum wages for all hours actually worked.

156. Pursuant to the FLSA, 29 U.S.C. § 216(b), Plaintiff and the other class members are entitled to recover the full amount of unpaid minimum wages as well as liquidated damages equal to the amount of unpaid compensation, interest, costs, and attorneys' fees.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually, and on behalf of other members of the general public similarly situated and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act, prays for relief and judgment against Defendants, jointly and severally, as follows:

Class Certification

1. That this action be certified as a class action as to the first nine causes of action;
2. That Plaintiff be appointed as the representative of the Class as to the first nine causes of action;
3. That counsel for Plaintiff be appointed as Class Counsel; and
4. That Defendants provide to Class Counsel immediately the names and most current/last known contact information (address, e-mail and telephone numbers) of all class members.

As to the First Cause of Action

5. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all overtime wages due to Plaintiff and the other class members;
6. For general unpaid wages at overtime wage rates and such general and special damages as may be appropriate;
7. For pre-judgment interest on any unpaid overtime compensation commencing from the date such amounts were due;
8. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Labor Code section 1194; and
9. For such other and further relief as the Court may deem just and proper.

As to the Second Cause of Action

10. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7 and 512 and applicable IWC Wage Orders by willfully failing to provide all meal periods (including second meal periods) to Plaintiff and the other class members;

11. That the Court make an award to Plaintiff and the other class members of one (1) hour of pay at each employee's regular rate of compensation for each workday that a meal period was not provided;

12. For all actual, consequential, and incidental losses and damages, according to proof;

13. For premium wages pursuant to California Labor Code section 226.7(c);

14. For pre-judgment interest on any unpaid wages from the date such amounts were due;

15. For reasonable attorneys' fees and costs of suit incurred herein; and

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

As to the Third Cause of Action

17. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 226.7 and applicable IWC Wage Orders by willfully failing to provide all rest periods to Plaintiff and the other class members;

18. That the Court make an award to Plaintiff and the other class members of one (1) hour of pay at each employee's regular rate of compensation for each workday that a rest period was not provided;

19. For all actual, consequential, and incidental losses and damages, according to proof;

20. For premium wages pursuant to California Labor Code section 226.7(c);

21. For pre-judgment interest on any unpaid wages from the date such amounts were due; and

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

As to the Fourth Cause of Action

23. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 1194, 1197, and 1197.1 by willfully failing to pay minimum wages to Plaintiff and the other class members;

24. For general unpaid wages and such general and special damages as may be

appropriate;

25. For statutory wage penalties pursuant to California Labor Code section 1197.1 for Plaintiff and the other class members in the amount as may be established according to proof at trial;

26. For pre-judgment interest on any unpaid compensation from the date such amounts were due;

27. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Labor Code section 1194(a);

28. For liquidated damages pursuant to California Labor Code section 1194.2; and

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

As to the Fifth Cause of Action

30. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 201, 202, and 203 by willfully failing to pay all compensation owed at the time of termination of the employment of Plaintiff and the other class members no longer employed by Defendants;

31. For all actual, consequential, and incidental losses and damages, according to proof;

32. For statutory wage penalties pursuant to California Labor Code section 203 for Plaintiff and the other class members who have left Defendants' employ;

33. For pre-judgment interest on any unpaid compensation from the date such amounts were due; and

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

As to the Sixth Cause of Action

35. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 204 by willfully failing to pay all compensation owed at the time required by California Labor Code section 204 to Plaintiff and the other class members;

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36. For all actual, consequential, and incidental losses and damages, according to

1 proof;

2 37. For pre-judgment interest on any unpaid compensation from the date such
3 amounts were due;

4 38. For civil penalties pursuant to California Labor Code sections 2699(a), (f), and
5 (g); and

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

7 **As to the Seventh Cause of Action**

8 40. That the Court declare, adjudge and decree that Defendants violated the record
9 keeping provisions of California Labor Code section 226(a) and applicable IWC Wage Orders as
10 to Plaintiff and the other class members, and willfully failed to provide accurate itemized wage
11 statements thereto;

12 41. For actual, consequential and incidental losses and damages, according to proof;

13 42. For statutory penalties pursuant to California Labor Code section 226(e);

14 43. For injunctive relief to ensure compliance with this section, pursuant to California
15 Labor Code section 226(h); and

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

17 **As to the Eighth Cause of Action**

18 45. That the Court declare, adjudge and decree that Defendants violated California
19 Labor Code sections 2800 and 2802 by willfully failing to reimburse Plaintiff and the other class
20 members for all necessary business-related expenses as required by California Labor Code
21 sections 2800 and 2802;

22 46. For actual, consequential and incidental losses and damages, according to proof;

23 47. For the imposition of civil penalties and/or statutory penalties;

24 48. For reasonable attorneys' fees and costs of suit incurred herein; and

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

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28 **As to the Ninth Cause of Action**

50. That the Court decree, adjudge and decree that Defendants violated California Business and Professions Code sections 17200, et seq. by failing to provide Plaintiff and the other class members all overtime compensation due to them, failing to provide all meal and rest periods to Plaintiff and the other class members, failing to pay at least minimum wages to Plaintiff and the other class members, failing to pay Plaintiff's and the other class members' wages timely as required by California Labor Code section 201, 202 and 204 and by violating California Labor Code sections 226(a), 1174(d), 2800 and 2802.

51. For restitution of unpaid wages to Plaintiff and all the other class members and all pre-judgment interest from the day such amounts were due and payable;

52. For the appointment of a receiver to receive, manage and distribute any and all funds disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result of violation of California Business and Professions Code sections 17200, et seq.;

53. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Code of Civil Procedure section 1021.5;

54. For injunctive relief to ensure compliance with this section, pursuant to California Business and Professions Code sections 17200, et seq.; and

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

As to the Tenth Cause of Action

56. For civil penalties and wages pursuant to California Labor Code sections 2699(a), (f) and (g) plus costs and attorneys' fees for violation of California Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 551, 552, 558, 1174, 1194, 1197, 1197.1, 1198, 2800, and 2802; and

57. For such other and further relief as the Court may deem equitable and appropriate.

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As to the Eleventh Cause of Action

- 1 58. For general and unpaid wages at overtime wage rates;
- 2 59. For liquidated damages equal to the amount of unpaid compensation;
- 3 60. For pre-judgment interest on any unpaid overtime compensation from the date
- 4 such amounts were due;
- 5 61. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to the
- 6 FLSA, 29 U.S.C. § 216(b); and
- 7 62. For such other and further relief as the Court may deem appropriate.
- 8 **As to the Twelfth Cause of Action**
- 9 63. For general unpaid minimum wages;
- 10 64. For liquidated damages equal to the amount of unpaid compensation;
- 11 65. For pre-judgment interest on any unpaid minimum wages from the date such
- 12 amounts were due;
- 13 66. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to the
- 14 FLSA, 29 U.S.C. § 216(b); and
- 15 67. For such other and further relief as the Court may deem appropriate.

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18 Date: December 21, 2021

LAWYERS for JUSTICE, PC

19 By: /s/ Edwin Aiwarzian

20 Edwin Aiwarzian

21 Attorneys for Plaintiff

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 410 West Arden Avenue, Suite 203, Glendale, California 91203.

On December 30, 2021, I served the foregoing document described as: **SECOND AMENDED CLASS ACTION COMPLAINT FOR DAMAGES & ENFORCEMENT UNDER THE PRIVATE ATTORNEYS GENERAL ACT, CALIFORNIA LABOR CODE § 2698, ET SEQ.** on interested parties as follows:

Michael S. Kun (MKun@ebglaw.com)
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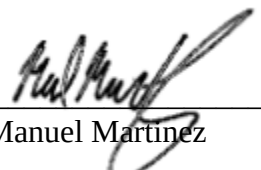
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I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on December 30, 2021, at Glendale, California.


Manuel Martinez