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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

EDGAR MARISCAL, 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.

ARIZONA TILE, LLC, an unknown
 business entity; and DOES 1 through
 100, inclusive,

Defendants.

Case No.: 8:20-cv-02071-JLS-KES

**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 § 1174(d) (Failure To Keep Requisite Payroll Records);
 (9) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses);
 (10) Violation of California Business & Professions Code §§ 17200, et seq.
 (11) Violation of California Labor Code § 2698, et seq. (California Labor Code Private Attorneys General Act of 2004);

DEMAND FOR JURY TRIAL

COMES NOW, Plaintiff EDGAR MARISCAL (“Plaintiff”), individually, and on behalf of other members of the general public similarly situated, and on behalf of other aggrieved employees pursuant to the Private Attorneys General Act of 2004, California Labor Code § 2698, et seq. (“PAGA”), and alleges as follows:

JURISDICTION AND VENUE

1. This class action was originally brought in the Superior Court for the County of Orange pursuant to California Code of Civil Procedure section 382.

2. This Court has asserted jurisdiction over this action pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d).

3. The Superior Court of the County of Orange had 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.

4. The Superior Court of the County of Orange had 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.

5. Venue was proper in the Superior Court of the County of Orange 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.

6. Upon information and belief, Defendant ARIZONA TILE, LLC does business in California, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this District and throughout the State of California. Upon information and belief, ARIZONA TILE, LLC maintains offices, has agents, and/or transacts business in this District.

PARTIES

7. Plaintiff EDGAR MARISCAL is an individual residing in the State of California, County of Orange.

8. Defendant ARIZONA TILE, 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.

9. At all relevant times, Defendant ARIZONA TILE, LLC was the “employer” of Plaintiff within the meaning of all applicable California laws and statutes whose employees are engaged throughout the State of California, including the County of Orange.

10. At all times herein relevant, Defendants ARIZONA TILE, 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.

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

12. Defendant ARIZONA TILE, LLC and DOES 1 through 100 will hereinafter collectively be referred to as “Defendants.”

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

CLASS ACTION ALLEGATIONS

14. Plaintiff brings this action on his own behalf and on behalf of all other members of the general public similarly situated, and, thus, seeks class certification under Rule 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure.

15. The proposed class is defined as follows:

All current and former hourly-paid or non-exempt employees who worked for any of the Defendants within the State of California at any time during the period from September 15, 2016 to final judgment and who reside in California.

(subclass A) All class members who were required to remain on premises during their breaks; and

(Subclass B) All class members who received overtime compensation at a rate lower than their respective regular rate of pay because defendant failed to include all non-discretionary compensation in the regular rate of pay calculation for overtime pay purposes.

16. Plaintiff reserves the right to establish other subclasses as appropriate.

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

a. Numerosity: The class members are so numerous that joinder of all class members is impracticable. The membership of the entire class is unknown to Plaintiff at this time; however, the class is estimated to be greater than fifty (50) individuals and the identity of such membership is readily ascertainable by inspection of Defendants' employment records.

b. Typicality: Plaintiff's claims are typical of all other class members' as demonstrated herein. Plaintiff will fairly and adequately protect the interests of the other class members with whom she has a well-defined community of interest.

c. Adequacy: Plaintiff will fairly and adequately protect the interests of each class member, with whom she has a well-

defined community of interest and typicality of claims, as demonstrated herein. Plaintiff has no interest that is antagonistic to the other class members. Plaintiff's attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement. Plaintiff has incurred, and during the pendency of this action will continue to incur, costs and attorneys' fees, that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.

- d. Superiority: A class action is superior to other available methods for the fair and efficient adjudication of this litigation because individual joinder of all class members is impractical.
- e. Public Policy Considerations: Certification of this lawsuit as a class action will advance public policy objectives. Employers of this great state violate employment and labor laws every day. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. However, class actions provide the class members who are not named in the complaint anonymity that allows for the vindication of their rights.

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

- a. Whether Defendants' failure to pay wages, without abatement or reduction, in accordance with the California Labor Code, was willful;

- b. Whether Defendants' had a corporate policy and practice of failing to pay their hourly-paid or non-exempt employees within the State of 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 failed to use all non-discretionary compensation, e.g., 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;
- e. 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;
- f. Whether Defendants failed to pay minimum wages to Plaintiff and the other class members for all hours worked;
- g. Whether Defendants failed to pay all wages due to Plaintiff

and the other class members within the required time upon their discharge or resignation;

- h. Whether Defendants failed to timely pay all wages due to Plaintiff and the other class members during their employment;
- i. Whether Defendants complied with wage reporting as required by the California Labor Code; including, *inter alia*, section 226;
- j. Whether Defendants kept complete and accurate payroll records as required by the California Labor Code, including, *inter alia*, section 1174(d);
- k. Whether Defendants failed to reimburse Plaintiff and the other class members for necessary business-related expenses and costs;
- l. Whether Defendants' conduct was willful or reckless;
- m. Whether Defendants engaged in unfair business practices in violation of California Business & Professions Code section 17200, et seq.;
- n. The appropriate amount of damages, restitution, and/or monetary penalties resulting from Defendants' violation of California law; and
- o. Whether Plaintiff and the other class members are entitled to compensatory damages pursuant to the California Labor Code.

PAGA ALLEGATIONS

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

20. At all times herein set forth, PAGA provides that any provision of law under the California Labor Code that provides for a civil penalty, including unpaid

wages and premium wages, to be assessed and collected by the California Labor & Workforce Development Agency (“LWDA”) for violations of the California Labor Code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself and other current or former employees pursuant to procedures outlined in California Labor Code section 2699.3.

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

22. 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© in that they are current or former employees of Defendants, and one or more of the alleged violations were committed against them.

23. 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.

24. On September 8, 2021, Plaintiff provided written notice by online submission to the LWDA and by certified mail to Defendant ARIZONA TILE, 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.

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

26. 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

27. 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.

28. Defendants, jointly and severally, employed Plaintiff as an hourly-paid, non-exempt employee, from approximately February 2013 to approximately July 2018, in the State of California, County of Orange.

29. 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 missed, late, short, and/or interrupted meal periods and/or rest breaks.

30. 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.

31. 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.

32. Defendants directly hired and paid wages and benefits to Plaintiff and the other class members.

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

34. Plaintiff and the other class members worked over eight (8) hours in a day, forty (40) hours in a week, and/or over six (6) days in a workweek during their employment with Defendants. For example, Plaintiff worked over eight (8) hours in a day on numerous occasions including but not limited to January 4, 2018 and April 27, 2018.

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

36. Plaintiff is informed and believes, and based thereon alleges, that 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.

37. 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 certain wages for overtime compensation and that they were not receiving accurate overtime compensation for all overtime hours worked. Defendant failed to, inter alia, compensate Plaintiff and the other class members for job duties performed before and/or after their scheduled shifts and during meal periods such as waiting in line to clock-in as ten (10) to twelve (12) other employees attempted to clock-in at the same time, receiving work instruction and answering work related questions from supervisors and managers.

38. 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. Plaintiff experienced numerous violations of this type including but not limited to: working over six (6) hours and receiving a meal break of only 28 minutes on February 12, 2018 and working over six (6) hours and receiving a meal break of only 28 minutes on March 29, 2018. Additionally individually Plaintiff worked Over six (6) hours on each of these among many other days and was not provided a second rest break.

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 to take second thirty (30) minute uninterrupted meal breaks no later than their tenth hour of work for shifts lasting more than ten

1 (10) hours.

2 40. Plaintiff is informed and believes, and based thereon alleges, that
3 Defendants knew or should have known that Plaintiff and the other class
4 members were entitled to receive all meal periods or payment of one additional
5 hour of pay at Plaintiff's and the other class member's regular rate of pay when a
6 meal period was missed, shortened, late, and/or interrupted and they did not
7 receive all meal periods or payment of one additional hour of pay at Plaintiff's
8 and the other class member's regular rate of pay when a meal period was missed,
9 shortened, late, and/or interrupted.

10 41. Plaintiff is informed and believes, and based thereon alleges, that
11 Defendants failed to provide, authorize, and permit Plaintiff and other class
12 members to take full, uninterrupted, off-duty rest periods for every shift lasting
13 three and one-half (3.5) to six (6) hours and/or two full, uninterrupted, off-duty rest
14 periods for every shift lasting six (6) to ten (10) hours, and failed to make a good
15 faith effort to authorize, permit, and provide such rest breaks in the middle of each
16 work period.

17 42. Plaintiff is informed and believes, and based thereon alleges, that
18 Defendants knew or should have known that Plaintiff and the other class
19 members were entitled to receive all rest periods or payment of one additional
20 hour of pay at Plaintiff's and the other class member's regular rate of pay when a
21 rest period was missed, shortened, late, and/or interrupted, and they did not
22 receive all rest periods or payment of one additional hour of pay at Plaintiff's and
23 the other class members' regular rate of pay when a rest period was missed,
24 shortened, late, and/or interrupted.

25 43. Plaintiff is informed and believes, and based thereon alleges, that
26 Defendants knew or should have known that Plaintiff and the other class
27 members were entitled to receive at least minimum wages for compensation and
28 that they were not receiving at least minimum wages for all hours worked.

Defendant's failure to pay minimum wages included, *inter alia*, Defendants' effective payment of zero dollars per hour for time Plaintiff and the other class members worked off the clock performing work duties as alleged herein. Plaintiff experienced this violation on numerous occasions including but not limited to January 2, 2018 and February 10, 2018. Plaintiff is informed and believes and based thereon alleges that he was not paid minimum wage for an average of at least one tenth of one hour worked, each day worked.

44. 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 wages owed to them upon discharge or resignation, including overtime and minimum wages and meal and rest period premiums, and they did not, in fact, receive all such wages owed to them at the time of their discharge or resignation. As previously alleged these unpaid wages included but were not limited to unpaid overtime and minimum wages for time worked before clocking-in, after clocking-out or performed during meal breaks, as well as unpaid premium wages for missed, short, late or interrupted meal or rest breaks.

45. 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 wages owed to them during their employment. Plaintiff and the other class members did not receive payment of all wages, including overtime and minimum wages and meal and rest period premiums as alleged herein, within any time permissible under California Labor Code section 204.

46. 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 complete and accurate wage statements in accordance with California law, but, in fact, they did not receive complete and

1 accurate wage statements from Defendants. The deficiencies included, *inter alia*,
 2 the failure to list all applicable hourly rates and to include the accurate total
 3 number of hours worked by Plaintiff and the other class members and the
 4 accurate total amount of wages earned by Plaintiff and the other class members as
 5 alleged herein. This injured Plaintiff and other class members by depriving them
 6 of records reflecting the actual wages they were owed.

7 47. Plaintiff is informed and believes, and based thereon alleges, that
 8 Defendants knew or should have known that Defendants had to keep complete
 9 and accurate payroll records for Plaintiff and the other class members in
 10 accordance with California law, but, in fact, did not keep complete and accurate
 11 payroll records. Defendants' failure included, *inter alia*, the failure to keep
 12 accurate records of the hours worked by Plaintiff and the other class members.

13 48. Plaintiff is informed and believes, and based thereon alleges, that
 14 Defendants knew or should have known that Plaintiff and the other class
 15 members were entitled to reimbursement for necessary business-related expenses.
 16 Plaintiff and other class members incurred business related expenses for, among
 17 other things, to purchase and/or maintain boots, gloves, safety glasses, and attire
 18 to comply with Defendants' dress code.

19 49. Plaintiff is informed and believes, and based thereon alleges, that
 20 Defendants knew or should have known that they had a duty to compensate
 21 Plaintiff and the other class members pursuant to California law, and that
 22 Defendants had the financial ability to pay such compensation, but willfully,
 23 knowingly, and intentionally failed to do so, and falsely represented to Plaintiff
 24 and the other class members that they were properly denied wages, all in order to
 25 increase Defendants' profits.

26 50. During the relevant time period, Defendants failed to pay overtime
 27 wages to Plaintiff and the other class members for all overtime hours worked.
 28 Plaintiff and the other class members were required to work more than eight (8)

hours per day, forty (40) hours per week, and/or six (6) consecutive days in a workweek without overtime compensation for all overtime hours worked.

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

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

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

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

55. During the relevant time period, Defendants failed to provide complete or accurate wage statements to Plaintiff and the other class members.

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

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

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

59. California Labor Code section 218 states that nothing in Article 1 of the Labor Code shall limit the right of any wage claimant to "sue directly . . . for any wages or penalty 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 ARIZONA TILE, LLC and DOES 1 through 100)

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

61. 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.

62. 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 week, 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, more than forty (40) hours in a week, or for the first eight (8) hours worked on the seventh day of work in a workweek.

63. 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.

64. 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.

65. During the relevant time period, Plaintiff and the other class members worked in excess of eight (8) hours in a day, forty (40) hours in a week, and/or six (6) consecutive days in a workweek, performing work duties off-the-clock such as waiting in line to clock-in as ten (10) to twelve (12) other employees attempted to clock-in at the same time, receiving work instruction and answering work related questions from supervisors and managers. By way of example, during the period of approximately January 2018 to February 2018, Plaintiff was not compensated at an overtime rate for all time worked in excess of eight (8) hours per day.

66. During the relevant time period, Defendants intentionally and willfully failed to pay overtime wages owed to Plaintiff and the other class members. Plaintiffs and the other class members did not receive overtime compensation at one and one-half times their regular hourly rate of pay for all hours spent performing job duties in excess of eight (8) hours in a day, forty (40) hours in a week, or for the first eight (8) hours worked on the seventh day of work.

67. 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.

68. 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 ARIZONA TILE, LLC and DOES 1 through 100)

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

70. 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.

71. 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.

72. 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 consent of both the employer and employee.

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

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

75. During the relevant time period, Plaintiff and the other class members who were scheduled to work for a period of time in excess of six (6)

hours were required to work for periods longer than five (5) hours without an uninterrupted meal period of not less than thirty (30) minutes and/or rest period.

76. During the relevant time period Plaintiff and the other class members' meal periods were missed, shortened, taken late, and/or were interrupted because Defendant required them to perform work duties including but not limited to waiting in line to clock-in as ten (10) to twelve (12) other employees attempted to clock-in at the same time, receiving work instruction and answering work related questions from supervisors and managers. Plaintiff and the other class members were instructed by Defendants when to start and end their meal periods which often resulted in late, missed, shortened, or interrupted meal periods.

77. As a result, Defendant 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 periods no later than the end of their fifth hour of work for shifts lasting at least six (6) hours, and/or to take second thirty (30) minute uninterrupted meal periods no later than their tenth hour of work for shifts lasting more than ten (10) hours.

78. 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.

79. 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.

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

81. 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 ARIZONA TILE, LLC and DOES 1 through 100)

82. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 81, and each and every part thereof with the same force and effect as though fully set forth herein.

83. 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.

84. 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.

85. 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.

86. During the relevant time period, Plaintiff and the other class members' rest periods were missed, shortened, late, and/or interrupted because Defendants required them to perform work duties including but not limited to filling orders and moving inventory around the warehouse. Plaintiff and the other class members were discouraged from taking rest breaks by Defendants, even when it resulted in late, missed, shortened, or interrupted rest periods. By way of

example, Plaintiff was not provided with an uninterrupted ten (10) minute rest period for every major fraction of four (4) hours approximately five to six times per work week during the entire time he was employed with Defendants.

87. During the relevant time period, Defendants willfully required Plaintiff and the other class members to remain on premises during rest periods and/or 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.

88. As a result, Defendant failed to provide, authorize, and/or permit Plaintiff and other class members to take full, uninterrupted, off-duty rest periods for every shift lasting three and one-half (3½) to six (6) hours and/or two full, uninterrupted, off-duty rest periods for every shift lasting six (6) to ten (10) hours, and/or three full, uninterrupted, off-duty rest periods for every shift lasting ten (10) to fourteen (14) hours and failed to make a good faith effort to authorize, permit, and provide such rest breaks in the middle of each work period.

89. 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

90. Defendants' conduct violates applicable IWC Wage Orders and California Labor Code section 226.7.

91. 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 ARIZONA TILE, LLC and DOES 1 through 100)

92. Plaintiff incorporates by reference the allegations contained in

paragraphs 1 through 91, and each and every part thereof with the same force and effect as though fully set forth herein.

93. 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.

94. During the relevant time period, Defendants failed to pay all required wages to Plaintiff and the other class members as required, pursuant to California Labor Code sections 1194, 1197, and 1197.1. Defendants' failure to pay wages included, *inter alia*, Defendants' effective payment of zero dollars per hour for time Plaintiff and the other class members worked off the clock performing work duties. For example, Defendants failed to pay Plaintiff for all overtime hours worked during the period of approximately January 2018 to February 2018.

95. Defendants' failure to pay Plaintiff and the other class members the minimum, regular, and overtime wages as required 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 their wage compensation as well as interest, costs, and attorney's fees, and liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

96. 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.

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

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FIFTH CAUSE OF ACTION

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

(Against ARIZONA TILE, LLC and DOES 1 through 100)

98. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 97, and each and every part thereof with the same force and effect as though fully set forth herein.

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

100. 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.

101. Plaintiff was not paid at the time of his discharge wages earned and unpaid throughout his employment, including but not limited to, minimum wages and overtime wages for time worked off-the-clock and meal and rest period premium payments.

102. 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.

103. 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.

104. 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 ARIZONA TILE, LLC and DOES 1 through 100)

105. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 104, and each and every part thereof with the same force and effect as though fully set forth herein.

106. 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.

107. 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.

108. 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.

109. During the relevant time period, Defendants intentionally and willfully failed to pay Plaintiff and the other class members all wages due (including but not limited to minimum wages, overtime wages and meal and rest period violation premium wages) to them, within any time period permissible

1 under California Labor Code section 204.

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

4 **SEVENTH CAUSE OF ACTION**

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

6 **(Against ARIZONA TILE, LLC and DOES 1 through 100)**

7 111. Plaintiff incorporates by reference the allegations contained in
8 paragraphs 1 through 110, and each and every part thereof with the same force
9 and effect as though fully set forth herein.

10 112. At all material times set forth herein, California Labor Code section
11 226(a) provides that every employer shall furnish each of his or her employees an
12 accurate itemized statement in writing showing (1) gross wages earned, (2) total
13 hours worked by the employee, (3) the number of piece-rate units earned and any
14 applicable piece rate if the employee is paid on a piece-rate basis, (4) all
15 deductions, provided that all deductions made on written orders of the employee
16 may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive
17 dates of the period for which the employee is paid, (7) the name of the employee
18 and his or her 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
20 period and the corresponding number of hours worked at each hourly rate by the
21 employee. The deductions made from payments of wages shall be recorded in
22 ink or other indelible form, properly dated, showing the month, day, and year,
23 and a copy of the statement or a record of the deductions shall be kept on file by
24 the employer for at least three years at the place of employment or at a central
25 location within the State of California.

26 113. Defendants have intentionally and willfully failed to provide Plaintiff
27 and the other class members with complete and accurate wage statements. The
28 deficiencies include, but are not limited to: the failure to include the accurate total

1 number of hours worked by Plaintiff and the other class members.

2 114. As a result of Defendants' violation of California Labor Code section
3 226(a), Plaintiff and the other class members have suffered injury and damage to
4 their statutorily-protected rights. Because Plaintiff and the putative class
5 members' wage statements did not reflect the accurate total number of regular and
6 hours worked, Plaintiff and the putative class members were unable to determine
7 the total amount of hours they worked, were unable to determine the total amount
8 of compensation they were owed, and were unable to verify they were paid the
9 proper amount. In order to determine how much Plaintiff and the putative class
10 members should have been paid, Plaintiff and the putative class members would
11 have had to engage in discovery and mathematical computations in order to
12 reconstruct the missing information.

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

18 116. California Labor Code section 226(e) provides that an employee
19 suffering injury as a result of a knowing and intentional failure by an employer to
20 comply with California Labor Code section 226(a) is entitled to recover the greater
21 of all actual damages or fifty dollars (\$50) for the initial pay period in which a
22 violation occurs and one hundred dollars (\$100) per employee for each violation in
23 a subsequent pay period, not to exceed an aggregate penalty of four thousand
24 dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

25 117. California Code of Civil Procedure section 338(a) provides a three
26 year statute of limitations for an action upon a liability created by statute.
27 Therefore, pursuant to California Labor Code section 226(e) Plaintiff is entitled to
28 seek his actual damages caused by Defendants' failure to comply with California

1 Labor Code section 226(a). Plaintiff's claim for damages is timely because it is
 2 brought within the three year statute of limitations.

3 118. The other class members who were employed by Defendants during
 4 the applicable statute of limitations period for Labor Code section 226(e) penalties
 5 are entitled to recover from Defendants the greater of their actual damages caused
 6 by Defendants' failure to comply with California Labor Code section 226(a), or an
 7 aggregate penalty not exceeding four thousand dollars per employee.

8 119. Plaintiff and the other class members are entitled to recover from
 9 Defendants the greater of their actual damages caused by Defendants' failure to
 10 comply with California Labor Code section 226(a), or an aggregate penalty not
 11 exceeding four thousand dollars per employee.

12 120. Plaintiff and the other class members are also entitled to injunctive
 13 relief to ensure compliance with this section, pursuant to California Labor Code
 14 section 226(h).

15 **EIGHTH CAUSE OF ACTION**

16 **(Violation of California Labor Code § 1174(d))**

17 **(Against ARIZONA TILE, LLC and DOES 1 through 100)**

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

21 122. Pursuant to California Labor Code section 1174(d), an employer
 22 shall keep, at a central location in the state or at the plants or establishments at
 23 which employees are employed, payroll records showing the hours worked daily
 24 by and the wages paid to, and the number of piece-rate units earned by and any
 25 applicable piece rate paid to, employees employed at the respective plants or
 26 establishments. These records shall be kept in accordance with rules established
 27 for this purpose by the commission, but in any case shall be kept on file for not
 28 less than two years.

123. Defendants have intentionally and willfully failed to keep accurate and complete payroll records showing the total number of hours worked daily and the wages paid, to Plaintiff and the other class members.

124. As a result of Defendants' violation of California Labor Code section 1174(d), Plaintiff and the other class members have suffered injury and damage to their statutorily-protected rights.

125. More specifically, Plaintiff and the other class members have been injured by Defendants' intentional and willful violation of California Labor Code section 1174(d) because they were denied both their legal right and protected interest, in having available, accurate and complete payroll records pursuant to California Labor Code section 1174(d).

NINTH CAUSE OF ACTION

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

(Against ARIZONA TILE, LLC and DOES 1 through 100)

126. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 125, and each and every part thereof with the same force and effect as though fully set forth herein.

127. 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.

128. Plaintiff and the other class members incurred necessary business-related expenses and costs that were not fully reimbursed by Defendants, including but not limited to the costs incurred to purchase and/or maintain boots, gloves, safety glasses, and attire to comply with Defendant's dress code, for business-related purposes.

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

1 and costs.

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

7 **TENTH CAUSE OF ACTION**

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

9 **(Against ARIZONA TILE, LLC and DOES 1 through 100)**

10 131. Plaintiff incorporates by reference the allegations contained in
 11 paragraphs 1 through 130, and each and every part thereof with the same force
 12 and effect as though fully set forth herein.

13 132. Defendants' conduct, as alleged herein, has been, and continues to
 14 be, unfair, unlawful and harmful to Plaintiff, other class members, to the general
 15 public, and Defendants' competitors. Accordingly, Plaintiff seek to enforce
 16 important rights affecting the public interest within the meaning of Code of Civil
 17 Procedure section 1021.5.

18 133. Defendants' activities as alleged herein are violations of California
 19 law, and constitute unlawful business acts and practices in violation of California
 20 Business & Professions Code section 17200, et seq.

21 134. A violation of California Business & Professions Code section
 22 17200, et seq. may be predicated on the violation of any state or federal law. In
 23 this instant case, Defendants' policies and practices of requiring employees,
 24 including Plaintiff and the other class members, to work overtime without paying
 25 them proper compensation violate California Labor Code sections 510 and 1198.
 26 Additionally, Defendants' policies and practices of requiring employees,
 27 including Plaintiff and the other class members, to work through their meal and
 28 rest periods without paying them proper compensation violate California Labor

Code sections 226.7 and 512(a). Defendants' policies and practices of failing to provide a day of rest violate California Labor Code sections 551 and 552. Defendants' policies and practices of failing to pay minimum, regular, and overtime wages violate California Labor Code sections 1194, 1197, and 1197.1. Moreover, Defendants' policies and practices of failing to timely pay wages to Plaintiff and the other class members violate California Labor Code sections 201, 202 and 204. Defendants also violated California Labor Code sections 226(a), 1174(d), 2800 and 2802.

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

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

137. Pursuant to California Business & Professions Code sections 17200, et seq., Plaintiff and the other class members are entitled to restitution of the wages withheld and retained by Defendants during a period that commences September 15, 2016; an award of attorneys' fees pursuant to California Code of Civil procedure section 1021.5 and other applicable laws; and an award of costs.

ELEVENTH CAUSE OF ACTION

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

(Against ARIZONA TILE, LLC and DOES 1 through 100)

138. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 137, and each and every part thereof with the same force and effect as though fully set forth herein.

139. 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

1 by an aggrieved employee on behalf of himself or herself, and other current or former
 2 employees.

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

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

11 **Failure to Pay Overtime**

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

15 **Failing to Provide Meal Periods**

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

20 **Failure to Provide Rest Periods**

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

24 **Failure to Pay Minimum Wages**

25 145. Defendants’ failure to pay wages required by law in violation of the Wage
 26 Orders and California Labor Code sections 1194, 1197 and 1197.1, as alleged above,
 27 constitutes unlawful and/or unfair activity prohibited by California Labor Code sections
 28 1194, 1197 and 1197.1.

Failure to Timely Pay Wages Upon Termination

146. 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

147. 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

148. 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

149. 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).

Failure to Reimburse Necessary Business-Related Expenses and Costs

150. 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.

151. 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.

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

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

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DEMAND FOR JURY TRIAL

Plaintiff, individually, and on behalf of other members of the general public similarly situated and on behalf of other aggrieved employees pursuant to PAGA, requests a trial by jury.

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 PAGA, 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 ten causes of action;
2. That Plaintiff be appointed as the representative of the Class as to the first ten 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

1 compensation owed at the time of termination of the employment of Plaintiff and
 2 the other class members no longer employed by Defendants;

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

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

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

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

12 **As to the Sixth Cause of Action**

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

17 36. For all actual, consequential, and incidental losses and damages,
 18 according to proof;

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

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

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

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

28 40. For actual, consequential and incidental losses and damages,

1 according to proof for Plaintiff and the other class members;

2 41. For statutory penalties pursuant to California Labor Code section
 3 226(e);

4 42. For injunctive relief to ensure compliance with this section, pursuant
 5 to California Labor Code section 226(h); and

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

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

9 44. That the Court declare, adjudge and decree that Defendants violated
 10 California Labor Code section 1174(d) by willfully failing to keep accurate and
 11 complete payroll records for Plaintiff and the other class members as required by
 12 California Labor Code section 1174(d);

13 45. For actual, consequential and incidental losses and damages,
 14 according to proof;

15 46. For statutory penalties pursuant to California Labor Code section
 16 1174.5; and

17 47. For such other and further relief as the Court may deem just and
 18 proper.

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

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

24 49. For actual, consequential and incidental losses and damages,
 25 according to proof;

26 50. For the imposition of civil penalties and/or statutory penalties;

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

28 52. For such other and further relief as the Court may deem just and

proper.

As to the Tenth Cause of Action

53. 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.

54. 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;

55. 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.;

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

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

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

As to the Eleventh Cause of Action

59. 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(a), 226.7, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802; and

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

Dated: February 1, 2022

LAWYERS *for* JUSTICE, PC

By: /s/ Edwin Aiwazian

Edwin Aiwazian

Attorneys for Plaintiff

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