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MIGUEL ARROYO SOTO, on behalf of himself and all others similarly situated,

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

MIGUEL ARROYO SOTO, WILMER ZELAYA
on behalf of themselves and all others similarly
situated;

Plaintiffs,

v.

MACROCONS, INC. a California Corporation,
and DOES 1 through 50 inclusive,

Defendants.

Case No.: 21STCV33241
Consolidated with Case No.: 22STCV08972

Assigned for All Purposes to:
The Hon. Kenneth R. Freeman
Dept.: SSC-14

CLASS ACTION

**CONSOLIDATED CLASS ACTION
COMPLAINT FOR DAMAGES**

1. Failure to Pay All Wages
2. Failure to Pay Minimum Wage and Overtime Wages;
3. Failure to Provide Meal Periods or Compensation in Lieu Thereof;
4. Failure to Provide Rest Periods or Compensation in Lieu Thereof;
5. Failure to Provide Accurate Wage Statements;
6. Failure to Pay Wages Upon Ending Employment;
7. Failure to Reimburse Business Expenses;
8. Unfair Competition (Business and Professions Code § 17200 et seq.); and
9. Violation of Labor Code § 2698, et seq.

DEMAND FOR JURY TRIAL

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9 Attorneys for Plaintiff WILMER ZELAYA, and all others similarly situated
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1 Plaintiff MIGUEL ARROYO SOTO (“Plaintiff Arroyo”) and Plaintiff WILMER ZELAYA
2 (“Plaintiff Zelaya”) (collectively, “Plaintiffs”) on behalf of themselves and all others similarly situated,
3 complain and alleges as follows:

4 I.

5 **INTRODUCTION**

6 1. This is a consolidated class action brought on behalf of Plaintiffs employed by or formerly
7 employed by Defendant MACROCONS, INC. (“Defendant”) and DOES 1 through 50 (collectively,
8 “Defendants”). The Plaintiff Class consists of all non-exempt employees employed by or formerly
9 employed by Defendant within the State of California who are California Citizens at the time of the filing
10 of this Complaint. The “Class Period” is defined as the four (4) years prior to the filing of the Complaint
11 through the date final judgment is entered, unless other specified herein. The “Class Period” for the
12 following claims is defined as the four (4) year prior to the filing of the action entitled *Zelaya v.*
13 *Macrocons, Inc.*, Case No. 22STCV08972 on March 14, 2022: 1) Failure to Pay all Wages; 2) Failure to
14 Provide Meal Periods or Compensation in Lieu Thereof; 3) Failure to Provide Rest Periods or
15 Compensation in Lieu Thereof; 4) Failure to Reimburse Business Expenses, unless the claim is already
16 encompassed in the prior filing of the Complaint in this Action. Plaintiffs reserve the right to amend
17 this Complaint to reflect a different “Class Period” as further discovery is conducted.

18 2. Plaintiffs individually, and on behalf the class they seek to represent, seek relief against
19 Defendants for (1) failure to pay all wages; (2) failure to pay all wages due, including minimum, regular,
20 and overtime wages as a result of Defendants’ policy of improperly paying its non-exempt hourly
21 employees; (3) failure to provide meal periods or compensation in lieu thereof; (4) failure to provide
22 rest periods or compensation in lieu thereof; (5) failure to provide accurate wage statements; (6) failure
23 to pay wages upon ending employment; (7) failure to reimburse business expenses; (8) unfair
24 competition; and (9) violations of Labor Code § 2698, *et seq.* Plaintiffs further seeks equitable remedies
25 in the form of declaratory relief and relief under Business and Professions Code section 17200 *et seq.*
26 for unfair business practices.
27
28

3. At all relevant times herein, Defendants, have consistently maintained and enforced against Plaintiff Class the unlawful practices and policies described herein.

II.

JURISDICTION AND VENUE

4. Venue is proper in this Judicial district and the County of Los Angeles, because the Defendants maintained its location and transacts business in this county, the obligations and liability arise in this county, and work was performed by Plaintiffs and members of the proposed class made the subject of this action in the County of Los Angeles, California.

5. The California Superior Court has jurisdiction in the matter because the individual claims are under the Seventy-Five Thousand Dollar (\$75,000.00) jurisdictional threshold for Federal Court and upon information and belief Plaintiffs are a resident of and/or domiciled in the State of California.

6. Further, there is no federal question at issue as the issues herein is based solely on California Statutes and law including the California Labor Code, Industrial Welfare Commission Wage Orders, *Code of Civil Procedure*, *Rule of Court*, and *Business and Professions Code*.

III.

THE PARTIES

A. The Plaintiffs

7. Plaintiff Arroyo at various relevant times herein, was an employee of the Defendant and entitled to compensation for all hours worked, minimum and overtime compensation and penalties from Defendant. Plaintiff Arroyo was employed by the Defendant from on or about February 2020 through his termination on September 9, 2020, in the County of Los Angeles at various times herein relevant. Plaintiff Arroyo was employed by the Defendant during the Class Period in a non-exempt hourly position as a framer, drywaller, and general laborer. Each of the Plaintiff Class members are identifiable, current and/or formerly similarly situated persons who were employed in non-exempt hourly positions in California for the Defendant during the Class Period.

8. Plaintiff Zelaya resides in the County of Los Angeles in the State of California. Plaintiff Zelaya performed work for Defendants as a non-exempt employee between May 2018 to December 2019,

1 when he suffered a work injury and was informed the company does not have any more work for him.
2 Plaintiff Zelaya did not receive formal termination paperwork, or notification that his employment ended.

3 **B. The Defendants**

4 9. Plaintiffs are informed and believes, and based thereon alleges that, MACROCONS,
5 INC., is a California Corporation doing business in the state of California and is and/or was the employer
6 of the Plaintiffs and Plaintiff Class during the Class Period. During the liability period, Defendants
7 employed Plaintiffs and similarly situated persons and failed to pay Plaintiffs and Plaintiff Class for all
8 hours worked including minimum and regular wages, overtime and double time premium for overtime
9 hours worked, failed to provide accurate itemized wage statements, failed to provide meal periods or
10 compensation in lieu thereof, failed to authorize rest periods or compensation in lieu thereof, failure to
11 reimburse business expenses, and failed to pay due and owing wages upon ending of employment for
12 employees within California. On information and belief and based thereon alleges that Defendants are
13 conducting business in good standing in California.
14

15 10. Plaintiffs is ignorant of the true names, capacities, relationships and extent of participation
16 in the conduct herein alleged, of the Defendants sued herein as DOES 1 through 50, inclusive, but on
17 information and belief allege that said Defendants are legally responsible for (1) failure to pay all wages;
18 (2) failure to pay all wages due, including minimum, regular, and overtime wages as a result of
19 Defendants' policy of improperly paying its non-exempt hourly employees; (3) failure to provide meal
20 periods or compensation in lieu thereof; (4) failure to provide rest periods or compensation in lieu thereof;
21 (5) failure to provide accurate wage statements; (6) failure to pay wages upon ending employment; (7)
22 failure to reimburse business expenses; (8) unfair competition; and (9) violations of Labor Code § 2698,
23 *et seq.* to Plaintiffs and the Plaintiff Class members by virtue of their unlawful practices, and therefore
24 sue these Defendants by such fictitious names. Plaintiffs will amend this complaint to allege the true
25 names and capacities of the DOE Defendant when ascertained.
26

27 11. Plaintiffs are informed and believe, and based thereon allege, that each Defendant acted
28 in all respects pertinent to this action as the agent of the other Defendant, carried out a joint scheme,

business plain or policy in all respects pertinent hereto, and the acts of each Defendant legally attributable to the other Defendant.

IV.

GENERAL ALLEGATIONS

12. California *Labor Code* § 1194 provides that notwithstanding any agreement to work for a lesser wage, an employee receiving less than the legal overtime compensation is entitled to recover in a civil action the unpaid balance of their overtime compensation, including interest thereon, reasonable attorneys' fees, and costs of suit.

13. Further, *Business and Professions Code* § 17203 provides that any person who engages in unfair competition may be enjoined in any court of competent jurisdiction. *Business and Professions Code* § 17204 provides that any person who has suffered actual injury and has lost money or property as a result of the unfair competition may bring an action in a court of competent jurisdiction.

14. During all, or a portion of the Class Period, Plaintiffs and each member of the Plaintiff Class was employed by Defendants and each of them, in the State of California. Plaintiffs and each of the Plaintiff Class members were non-exempt employees covered under one or more Industrial Welfare Commission (IWC) Wage Orders, and *Labor Code* § 510, and/or other applicable wage orders, regulations and statutes, and each Plaintiff Class member was not subject to an exemption for executive, administrative and professional employees, which imposed obligations on the part of the Defendants to pay Plaintiffs and Plaintiff Class members lawful overtime compensation.

15. During the Class Period, Defendants were obligated to pay Plaintiffs and Plaintiff Class Members for all hours worked. Defendants were obligated to pay Plaintiffs and Plaintiff Class Members minimum and regular wages and overtime compensation for all hours worked over eight (8) hours of work in one (1) day or forty (40) hours in one (1) week and double-time for hours worked in excess of twelve (12) in one day.

16. Plaintiffs and each Class Member primarily performed non-exempt work in excess of the maximum regular rate hours set by the IWC in the applicable Wage Orders, regulations or statutes, and therefore entitled the Plaintiffs and Plaintiff Class members to overtime compensation at time and a half

1 rate, and when applicable, double time rates as set forth by the applicable Wage Orders, regulations
2 and/or statutes.

3 17. During the Class Period, the Defendants and each of them, required the Plaintiffs and
4 Class members to work under a “Rounding Policy” that is not fair and neutral and resulted, over a period
5 of time, in failure to compensate the employees properly for all the time they have actually worked, in
6 violation of the various applicable Wage Orders, regulations and statutes, and the Defendants: (1)
7 willfully failed and refused, and continues to fail and refuse to pay compensation for all hours worked,
8 including minimum and regular wages and lawful overtime compensation to the Plaintiff Class Members;
9 and (2) willfully failed and refused, and continues to fail and refuse to pay due and owing wages promptly
10 upon termination of employment to Plaintiffs and Plaintiff Class Members.

11 18. During the Class Period, the Defendants and each of them, as a result of Defendants’
12 failure to provide Plaintiffs and Plaintiff Class with all wages earned as described herein, also failed to
13 provide Plaintiffs and Plaintiffs with accurate itemized wage statements listing the accurate net and gross
14 wages earned, total hours worked, and all applicable hourly rates and the corresponding number of hours
15 worked at each hourly rate by the employee. Plaintiff and Plaintiff Class were not reimbursed for
16 business expenses, including boots, glasses, vests, and helmets.

17 19. Because Defendants failed to properly calculate overtime rates and pay proper overtime
18 wages, Plaintiff and Plaintiff Class did not receive payment of all wages earned and unpaid immediately
19 upon termination or resignation of their employment.

20 20. Furthermore, Defendants failed and/or refused to pay Plaintiff Class one (1) hour’s pay at
21 the employees’ regular rate of pay as premium compensation for failure to provide full rest and/or meal
22 periods or failure to provide such rest and/or meal periods within the statutory time frame, as a result of
23 their company-wide improper meal period and rest break policies

24 21. Class Members who ended their employment during the Class Period but were not paid
25 the above due compensation for all hours worked, overtime compensation timely upon the termination
26 of their employment as required by *Labor Code* §§ 201-203 and are entitled to penalties as provided by
27 *Labor Code* § 203.
28

22. Further, Business and Professions Code section 17203 provides that any person who engages in unfair competition may be enjoined in any court of competent jurisdiction. Business and Professions Code section 17204 provides that any person who has suffered actual injury and has lost money or property as a result of the unfair competition may bring an action in a court of competent jurisdiction.

V.

ADMINISTRATIVE PREREQUISITE

23. Prior to filing this Complaint, On September 8, 2020, Plaintiff Arroyo gave written notice by electronic filing to the Labor Workforce Development Agency (“LWDA”) (LWDA Case No. LWDA-CM-843871-21) and by certified mail to Defendant of the specified provisions alleged to have been violated, including the facts and theories to support the alleged violations as required by Labor Code section 2699.3.

24. A true and correct copy of Plaintiff Arroyo’s letter sent to the LWDA and Defendant, dated March 6, 2020, is attached hereto as “**Exhibit A.**” As of the filing of this complaint, LWDA has not responded.

25. Under Labor Code Section 2699.3(a), a plaintiff may bring a cause of action under PAGA only after giving notice to the Labor Workforce Development Agency (“LWDA”) and the employer of the Labor Code sections alleged to have been violated, and after receiving notice from the LWDA of its intention not to investigate, or after 65 days have passed without notice.

26. Under Labor Code Section 2699.3(a)(2)(C), “Notwithstanding any other provision of law, a plaintiff may as a matter of right amend an existing complaint to add a cause of action arising under this part at any time within 60 days of the time periods specified in this part.”

27. Plaintiff Arroyo hereby gives notice of his intent to file an Amended Complaint to include claims under PAGA (Labor Code Section 2699.3 *et seq.*) within sixty (60) days of November 10, 2021, if the LWDA fails to respond to Plaintiff's notice to the LWDA of Defendant's labor code violations under PAGA.

28. On or about April 13, 2022 Plaintiff Zelaya provided written notice via online submission

1 to the Labor and Workforce Development Agency and via written notice via certified mail to Defendant
2 of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories
3 to support the alleged violations. A true and correct copy of Plaintiff Zelaya's letter sent to the LWDA
4 and Defendant, dated April 13, 2022, is attached hereto as "**Exhibit B.**"

5 29. Following the 60-day response period, Plaintiff Zelaya and his counsel did not receive
6 notice from the Labor and Workforce Development Agency that it would be investigating the claimed
7 Labor Code violations. Thus, Plaintiff Zelaya has fully complied with the notice requirements set forth
8 in California Labor Code § 2699.3 in order to commence a civil action against an employer pursuant
9 to Labor Code § 2699.

10 VI.

11 CLASS ALLEGATIONS

12 30. Plaintiffs bring this action on behalf of themselves and all other similarly situated
13 persons, as a class action pursuant to California Civil Code of Procedure section 382 on behalf of
14 themselves and all other similarly situated persons in the Class, which is composed of and defined as
15 follows:
16

17 a. **Class:**

18 All non-exempt hourly employees employed by Defendants in the State of California
19 during the liability period;

20 b. **Sub-Class 1: "Failure to Pay All Wages Due to Unlawful Rounding Policy"**

21 All current and former California hourly non-exempt employees who work or worked
22 for Defendant during the Class Period to be determined and who were not paid all
23 wages due to them, including but not limited to minimum and/or overtime wages as
24 a result of Defendant requiring Plaintiff and Plaintiff Class under a "Rounding
25 Policy" that is not fair and neutral and resulted, over a period of time, in failure to
26 compensate non-exempt employees properly for all the time they have actually
27 worked, thereby causing non-exempt employees to work without compensation for
28 regular and overtime wages;

c. **Sub-Class 2: "Failure to Pay All Wages"**

All non-exempt hourly employees employed by Defendants in the State of California
during the liability period, and who were not paid all wages due them, including but
not limited to overtime and double overtime wages;

d. **Sub-Class 3: "Failure to Provide Meal Periods"**

All non-exempt hourly employees employed by Defendants in the State of California during the liability period, and who were not provided with proper meal periods, or meal period premiums;

e. Sub-Class 4: "Failure to Provide Rest Breaks"

All non-exempt hourly employees employed by Defendants in the State of California during the liability period, and who were not provided legally compliant rest periods, or rest period premiums;

f. Sub-Class 5: "Waiting Time Class"

All current and former California hourly non-exempt employees who worked for Defendant during the Class Period, who have been terminated or resigned, and have not been paid wages pursuant to Labor Code section 203 and are owed restitution for waiting time penalties deriving from wages;

g. Sub-Class 6: "Failure to Furnish Accurate Itemized Wage Statements"

All current and former California hourly non-exempt employees who work or worked for Defendant during the Class Period to be determined and who were not provided pay stubs that complied with Labor Code section 226;

h. Sub-Class 7: "UCL Class"

All non-exempt hourly employees employed by Defendants in the State of California during the liability period, and who suffered injury, including lost money, as a result of Defendants' unfair competition, including but not limited to their policy of willfully failing to provide proper meal and rest periods, failing to compensate for all wages earned, including overtime and double overtime wages, and failing to provide properly itemized wage statements; and

i. Sub-Class 8: "Reimbursement Class"

All non-exempt hourly employees employed by Defendants in the State of California during the liability period, and who were not reimbursed business expenses, including boots, glasses, vests, helmets and other equipment.

31. Plaintiffs reserve the right under Rule 3.765, California Rules of Court, to amend or modify the Class description with greater specificity or further division into subclasses or limitation to particular issues.

32. This action has been brought and may be maintained as a class action pursuant to Code of Civil Procedure section 382 because there is a well-defined common interest of many persons and it is impractical to bring them all before the Court.

33. This Court should permit this action to be maintained as a class action pursuant to California Code of Civil Procedure section 382 because:

- a) The questions of law and fact common to the Plaintiff Class predominate over any question affecting only individual members;

- b) A class action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the Plaintiff Class;
- c) The Plaintiff Class is so numerous that it is impractical to bring all member of the Class before the Court;
- d) Plaintiff and the other members of the Plaintiff Class will not be able to obtain effective and economic legal redress unless the action is maintained as a class action;
- e) There is a community of interest in obtaining appropriate legal and equitable relief for the common law and statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which Defendant's actions have inflicted upon the Plaintiff Class;
- f) There is a community of interest in ensuring that the combined assets and available insurance of the Defendant is sufficient to adequately compensate members of the Plaintiff Class for the injuries sustained;
- g) Without class certification, the prosecution of separate actions by individual members of the Plaintiff Class would create a risk of:
- 1) Inconsistent or varying adjudications with respect to individual members of the Plaintiff Class which would establish incompatible standard of conduct for the Defendant; and/or
 - 2) Adjudications with respect to the individual members which would, as a practical matter, be dispositive of the interests of other members not parties to the adjudications, or would substantially impair or impede their ability to protect their interests, including but not limited to the potential for exhausting the funds available from those parties who are, or may be, responsible for Defendant; and
- h) Defendant has acted or refused to act on grounds generally applicable to the Plaintiff Class, thereby making final injunctive relief appropriate with respect to the Class as a whole.

VII.

FIRST CAUSE ACTION

1 **FAILURE TO PAY ALL WAGES**

2 **(Plaintiffs and Plaintiff Class against Defendants)**

3 34. Plaintiffs, individually, and on behalf of Plaintiff Class, hereby reallege and incorporate
4 by reference each and every one of the allegations contained in the preceding and foregoing paragraphs
5 of this Complaint as if fully set forth herein.

6 35. Defendants have had a consistent policy and practice of failing to pay all wages due,
7 including regular, overtime, and double overtime wages.

8 36. Defendants' pattern, practice and uniform administration of corporate policy regarding
9 illegal employee compensation as described herein is unlawful and creates an entitlement, pursuant to
10 Labor Code §218, to recovery by Plaintiff and the members of the Failure to Pay All Wages Class, in a
11 civil action, of the unpaid balance of the full amount of wages owing, calculated at the appropriate rate.

12 37. Pursuant to Labor Code §218.6 and CCP §3287, the members of the Failure to Pay All
13 Wages Class seek recovery of pre-judgment interest on all amounts recovered herein.

14 38. Pursuant to Labor Code §218.5, the members of the Failure to Pay All Wages Class
15 request that the Court award reasonable attorneys' fees and costs incurred by them in this action.

16 **SECOND CAUSE OF ACTION**

17 **FAILURE TO PAY MINIMUM WAGE AND OVERTIME WAGES**

18 **(Plaintiffs and Plaintiff Class against Defendants)**

19 39. Plaintiffs and Plaintiff Class re-allege and incorporate by reference the allegations in the
20 preceding paragraphs.

21 40. Plaintiffs and Plaintiff Class members regularly worked over eight (8) hours per day and
22 forty (40) hours per week. Defendants failed to pay Plaintiff, and Plaintiff Class members minimum wage
23 for all hours worked and overtime premium for hours worked in excess of over eight (8) hours per day
24 and forty (40) hours per week for work performed for the Defendant. Defendants willfully violated the
25 Labor Code when Defendants failed to pay Plaintiffs and Plaintiff Class the legally mandated wage rates
26 for all hours worked. Instead, Defendants paid Plaintiffs and Plaintiff Class under a "Rounding Policy"
27 that is not fair and neutral and resulted, over a period of time, in failure to compensate the employees
28 properly for all the time they have actually worked, thereby causing Plaintiffs and Plaintiff Class

1 members to work in excess of eight (8) hours per day and/or forty (40) hours per week. As such Plaintiffs
2 and Plaintiff Class seek overtime in an amount according to proof. Pursuant to *Labor Code* § 1194, the
3 Class members seek the payment of all overtime compensation which they earned and accrued four (4)
4 years prior to filing this complaint, according to proof.

5 41. Additionally, Plaintiffs and Plaintiff Class members are entitled to attorneys' fees, costs,
6 pursuant to California *Labor Code* § 1194 and prejudgment interest.

7 **THIRD CAUSE OF ACTION**

8 **FAILURE TO PROVIDE OFF-DUTY MEAL PERIODS OR COMPENSATION IN LIEU OF** 9 **(Plaintiff Zelaya and Plaintiff Class against Defendants)**

10 42. Plaintiff Zelaya, individually, and on behalf of Plaintiff Class, hereby reallege and
11 incorporate by reference each and every one of the allegations contained in the preceding and foregoing
12 paragraphs of this Complaint as if fully set forth herein.

13 43. Labor Code §226.7(b) provides that, "[a]n employer shall not require an employee to work
14 during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
15 regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health
16 Standards Board, or the Division of Occupational Safety and Health."

17 44. Labor Code §512 provides that, "[a]n employer may not employ an employee for a work
18 period of more than five hours per day without providing the employee with a meal period of not less
19 than 30 minutes, except that if the total work period per day of the employee is no more than six hours,
20 the meal period may be waived by mutual consent of both the employer and employee. An employer
21 may not employ an employee for a work period of more than 10 hours per day without providing the
22 employee with a second meal period of not less than 30 minutes, except that if the total hours worked is
23 no more than 12 hours, the second period may be waived by mutual consent of the employer and the
24 employee only if the first meal period was not waived."

25 45. Labor Code §516 provides that the Industrial Welfare Commission "may adopt or amend
26 working condition orders with respect to break period, meal periods, and days of rest for any workers in
27 California consistent with the health and welfare of those workers."
28

1 46. Section 11(A) of the IWC Wage Order(s) provides that, “[u]nless the employee is relieved
2 of all duty during a 30 minute meal period, the meal period shall be considered an ‘on duty’ meal period
3 and counted as time worked. An ‘on duty’ meal period shall be permitted only when the nature of the
4 work prevents an employee from being relieved of all duty and when by written agreement between the
5 parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee
6 may, in writing, revoke the agreement at any time.”

7 47. Section 11(B) of the IWC Wage Order(s) provides that, “[i]f an employer fails to provide
8 an employee a meal period in accordance with the applicable provisions of this order, the employer shall
9 pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday
10 and that the meal period is not provided.”

11 48. On one or more occasions, Plaintiff Zelaya and Plaintiff Class worked over five (5) hours
12 per shift and therefore were entitled to a meal period of not less than thirty (30) minutes prior to exceeding
13 five (5) hours of employment.

14 49. Further, on one more occasions, Plaintiff Zelaya and Plaintiff Class worked over ten (10)
15 hours per shift and therefore were entitled to a second meal period of not less than thirty (30) minutes.

16 50. Plaintiffs and Plaintiff Class did not validly or legally waive their meal periods, by mutual
17 consent with Defendants or otherwise.

18 51. Plaintiffs and Plaintiff Class did not enter into any written agreement with Defendants
19 agreeing to an on-the-job paid meal period.

20 52. As a matter of Defendants’ established company policy, Defendants failed to always
21 comply with the meal period requirements established by Labor Code §§226.7, 512 and 516, and
22 Section 11 of the IWC Wage Order(s) by failing to always provide Plaintiffs and Plaintiff Class with a
23 first and in some cases a second legally compliant meal period.

24 53. Pursuant to Section 11(B) of the IWC Wage Order(s) and Labor Code §226.7(c) which
25 states, “[i]f an employer fails to provide an employee a meal or rest or recovery period in accordance
26 with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or
27 order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the
28

1 Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of
2 pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery
3 period is not provided," Plaintiff and Plaintiff Class are entitled to damages in an amount equal to one
4 (1) additional hour of pay at each employee's regular rate of compensation for each work day that the
5 meal period was not provided, in a sum to be proven at trial.

6 **FOURTH CAUSE OF ACTION**

7 **FAILURE TO PROVIDE REST BREAKS OR COMPENSATION IN LIEU OF** 8 **(Plaintiff Zelaya and Plaintiff Class against Defendants)**

9 54. Plaintiff Zelaya, individually, and on behalf of the Plaintiff Class, hereby reallege and
10 incorporate by reference each and every one of the allegations contained in the preceding and foregoing
11 paragraphs of this Complaint as if fully set forth herein.

12 55. Labor Code §226.7 requires employers to authorize and permit all employees to take a
13 paid ten (10) minute rest break for every four (4) work hours, or major fraction thereof.

14 56. Labor Code §226.7(b) provides that if an employer fails to provide an employee rest
15 breaks in accordance with this section, the employer shall pay the employee one (1) hour of pay at the
16 employee's regular rate of compensation for each workday that the rest break is not provided.

17 57. Defendants, and each of them, failed and or refused to implement a relief system by which
18 Plaintiffs and Plaintiff Class could receive rest breaks and/or work free rest breaks. Furthermore, due to
19 Defendants' relief system, Plaintiffs and Plaintiff Class did not receive their rest breaks within the
20 required statutory time frame. By and through their actions, Defendants intentionally and improperly
21 denied rest periods to the Plaintiff and Plaintiff Class in violation of Labor Code §§226.7 and 512.

22 58. At all times relevant hereto, Plaintiffs and Plaintiff Class have worked more than four (4)
23 hours in a workday.

24 59. Pursuant to Section 11(B) of the IWC Wage Order(s) and Labor Code §226.7(c) which
25 states, "[i]f an employer fails to provide an employee a meal or rest or recovery period in accordance
26 with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or
27 order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the
28

1 Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of
2 pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery
3 period is not provided," Plaintiff Zelaya and Plaintiff Class are entitled to damages in an amount equal
4 to one (1) additional hour of pay at each employee's regular rate of compensation for each work day that
5 the rest break was not provided, in a sum to be proven at trial.

6 **FIFTH CAUSE OF ACTION**

7 **FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS**

8 **(Plaintiffs and Plaintiff Class against Defendants)**

9 60. Plaintiffs and Plaintiff Class re-allege and incorporate by reference the allegations in the
10 preceding paragraphs.

11 61. Labor Code sections 226, 226.3, 1174 and 1174.5 and applicable IWC Wage Order
12 provides that employers must keep records and provide employees with itemized wage statements
13 showing total hours worked and each applicable rate of pay in effect during the pay period with the
14 corresponding number of hours worked at each hourly rate.

15 62. Labor Code section 226, subdivision (a), requires an employer provide employees-either
16 as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when
17 wages are paid by personal check or cash-an accurate itemized wage statement in writing showing: "(1)
18 gross wages earned, (2) total hours worked by the employee, (4) all deductions, (5) net wages, (6) the
19 inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the
20 last four digits of his or her social security number or an employee identification number other than a
21 social security number, (8) the name and address of the legal entity that is the employer, and (9) all
22 applicable hourly rates in effect during the pay period and corresponding number of hours worked at
23 each hourly rate by the employee"

24 63. Labor Code section 226.2, subdivision (a)(2), requires the itemized statements required
25 by subdivision (a) of section 226 shall, in addition to the other items specified in that subdivision, state
26 the following: total hours of compensable hours, the rate of compensation, and the gross wages paid for
27 those periods during the pay period.
28

64. Defendants willfully violated Labor Code section 226(a) by failing to provide Plaintiffs and Plaintiff's Class with wage statements that accurately reflect the total hours worked, and the rate of pay for each hour worked, and net and gross wages earned. Further, Defendants failed to list its's legal address as listed on its Statement of Information filed with the State of California, which is 370 Convention Way, Redwood City, CA 94063, and instead listed the address as 1010 Wilshire Blvd. Ste. 100, Los Angeles, CA 90017

65. Lab. Code, § 226, subdivision (a) states that, "every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing ..."

66. IWC Wage Order Number 16-2001, paragraph 6(A) requires that every employer shall keep accurate information with respect to each employee, including time records showing when each employee begins and ends each work period, the total daily hours worked by each employee and the total hours worked in each payroll period, applicable rates of pay, and net and gross wages earned.

67. Plaintiffs are informed, and believe that Defendants willfully and intentionally failed to make and/or keep records which accurately reflect the hours worked by Plaintiffs and Plaintiff Class. Specifically, Plaintiffs believes that Defendants' records do not accurately reflect the start and end times Plaintiffs and Plaintiff Class were required to work due to Defendants' "Rounding Policy" that is not fair and neutral and resulted, over a period of time, in failure to compensate the employees properly for all the time they have actually worked.

68. Plaintiffs are informed, and believe that Defendants' failure to keep accurate payroll records, as described above, violated Lab. Code, § 1174, subdivision (d) and the applicable wage order. Plaintiffs and the Plaintiff Class are entitled to penalties of one hundred dollars (\$100.00) for the initial violation and two hundred dollars (\$200.00) for each subsequent violation for every pay period during which these records and information was not kept by Defendant.

69. An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with Lab. Code, § 1174, subdivision (a) is entitled to recover the greater of all actual

1 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred
2 dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate
3 penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's
4 fees.

5 70. Plaintiffs are informed and believe that Defendant's failure to keep and maintain accurate
6 records and information, as described above, were willful, and Plaintiffs and Plaintiff Class are entitled
7 to a statutory penalty of five hundred dollars (\$500.00) for Plaintiffs and each member of Plaintiff Class
8 pursuant to Lab. Code, § 1174.5.

9 **SIXTH CAUSE OF ACTION**

10 **FAILURE TO PAY WAGES UPON ENDING EMPLOYMENT**

11 **(Plaintiffs and Plaintiff Class against Defendants)**

12 71. Plaintiffs and Plaintiff Class re-allege and incorporate by reference, as though fully set
13 forth herein, the above paragraphs in their entirety as if fully alleged herein.

14 72. Plaintiffs and certain members of the Plaintiff Class who ended their employment with
15 Defendants during the Class Period, were entitled to be promptly paid both minimum wage and lawful
16 overtime compensation and other premiums, as required by *Labor Code* §§ 201-203. Defendants refused
17 and/or failed to promptly compensate Plaintiff and Plaintiff Class wages owed as a result of their failure
18 to pay Plaintiffs and Plaintiff Class both minimum wage, overtime, and premium compensations.
19 Pursuant to *Labor Code* § 203, such Plaintiffs and Plaintiff Class seek the payment of penalties pursuant
20 to *Labor Code* § 203, according to proof.

21 **SEVENTH CAUSE OF ACTION**

22 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

23 **(Plaintiff Zelaya and Plaintiff Class against Defendants)**

24 73. Plaintiff Zelaya, on behalf of himself and all class members, hereby incorporate the
25 preceding paragraphs as though fully set forth herein.

26 74. Labor Code § 2802(a) provides:
27 An employer shall indemnify his or her employee for all necessary expenditures or losses
28 incurred by the employee in direct consequence of the discharge of his or her duties, or of

1 his or her obedience to the directions of the employer, even though unlawful, unless the
2 employee, at the time of obeying the directions, believed them to be unlawful.

3 75. Within the last four years of the filing of this Complaint, Defendants, by virtue of
4 their reimbursement policies and practices, failed to indemnify Plaintiff Zelaya and the Business
5 Reimbursement subclass appropriately for all necessary expenses that Plaintiff and the Business
6 Reimbursement subclass incurred while performing work for Defendants, including boots, glasses, vests,
7 and helmets.

8 76. Plaintiff Zelaya and the Business Reimbursement subclass incurred substantial out-of-
9 pocket losses because of Defendants' failure to reimburse Plaintiff Zelaya and the Business
10 Reimbursement subclass appropriately for all necessary, expenses that Plaintiff and the Business
11 Reimbursement subclass incurred while performing work for Defendants. To date, Defendants have
12 failed to indemnify Plaintiff Zelaya and the Business Reimbursement subclass for these out-of-pocket
13 losses.

14 77. Under Labor Code § 2802(c), Plaintiff Zelaya and the Business Reimbursement subclass
15 are entitled to recover all reasonable costs, including attorney's fees, incurred in enforcing their rights
16 granted by Labor Code § 2802.

17 **EIGHTH CAUSE OF ACTION**

18 **UNFAIR COMPETITION LAW**

19 **(Plaintiffs and Plaintiff Class against Defendants)**

20 78. Plaintiffs and Plaintiff Class re-allege and incorporate by reference, as though fully set
21 forth herein, the above paragraphs in their entirety.

22 79. *California Business and Professions Code* § 17200 et. seq. (also referred to herein as the
23 "Unfair Business Practices Act" or "Unfair Competition Law") prohibit unfair competition in the form
24 of any unlawful, unfair or fraudulent business act or practice.

25 80. *California Business and Professions Code* § 17204 allows "any person who has suffered
26 injury in fact and has lost money or property as a result of such unfair competition" to prosecute a civil
27 action for violation of the Unfair Competition Law ("UCL").

28 81. *Labor Code* § 90.5(a) states that it is the public policy of California to vigorously enforce
minimum labor standards in order to ensure employees are not required to work under substandard and

1 unlawful conditions, and to protect employers who comply with the law from those who attempt to gain
2 competitive advantage at the expense of their workers by failing to comply with minimum labor
3 standards.

4 82. Beginning at an exact date unknown to Plaintiffs, but at least four years prior to the filing
5 of this lawsuit, Defendant has committed acts of unfair competition as defined by the Unfair Business
6 Practices Act, by engaging in the unlawful, unfair and fraudulent business practices and acts described
7 in this Complaint including but not limited to violations of *Labor Code* §§ 510, 226.7, 226, 2802, 1194,
8 1197, 1198 as well as other statutes.

9 83. The violations of these laws and regulations, as well as of the fundamental California
10 public policies protecting workers, serve as unlawful predicate acts and practices for purposes of *Business*
11 *and Professions Code* § 17200 et. seq.

12 84. The acts and practices described above constitute unfair, unlawful and fraudulent
13 Business Practices, and unfair competition, within the meaning of *Business and Professions Code* §
14 17200 et. seq. Among other things, the acts and practices have forced Plaintiff and other similarly
15 situated employees to labor for many hours without receiving the both minim wage and overtime
16 compensation, to forgo lawful meal and rest periods or compensation in lieu thereof, and to forgo
17 reimbursement of necessary business expenditures, to which they are entitled by law, while enabling
18 Defendant to gain an unfair competitive advantage over law-abiding employers and competitors.

19 85. As a result of Defendants' acts, Plaintiffs and Plaintiff Class have suffered injury in fact
20 in being denied their statutorily entitled full compensation for hours of labor and not indemnified for
21 necessary business-related expenses. As a direct and proximate result of Defendant's unlawful acts of
22 unfair competition, Plaintiffs and Plaintiff Class have lost money and property in the form of a loss of
23 wages in an amount to be proven at trial.

24 86. *Business and Professions Code* § 17203 provides that a court may make such orders or
25 judgments as may be necessary to prevent the use or employment by any person of any practice which
26 constitutes unfair competition.
27
28

1 87. *Business and Professions Code* § 17203 provides that the Court may restore to any person
2 in interest any money or property that may have been acquired by means of such unfair competition.
3 Plaintiff and Plaintiff Class are entitled to restitution pursuant to *Business and Professions Code* § 17203
4 for all wages and payments unlawfully withheld from employees, including the cost of necessary job-
5 related expenses not reimbursed, during the four-year period prior to the filing of this Complaint.

6 88. *Business and Professions Code* §17202 provides, "Notwithstanding section 3369 of the
7 *Civil Code*, specific or preventative relief may be granted to enforce a penalty, forfeiture, or penal law in
8 a case of unfair competition." Plaintiffs and Plaintiff Class are entitled to enforce all applicable penalty
9 provisions of the *Labor Code* pursuant to *Business and Professions Code* § 17202.

10 89. Plaintiffs' success in this action will enforce important rights affecting public interest,
11 and in that regard, Plaintiff sues on behalf of the general public, as well as himself and other similarly
12 situated employees. Plaintiffs and Plaintiff Class seek and are entitled to restitution, civil penalties,
13 declaratory relief, and all other equitable remedies owing them.

14 90. Plaintiffs herein takes upon himself enforcement of these laws and lawful claims. There
15 is a financial burden involved in pursuing this action, the action is seeking to vindicate a public right, and
16 it would be against the interests of justice to penalize Plaintiffs by forcing her to pay attorney's fees from
17 the recovery in this action. Attorney's fees are appropriate pursuant to *Code of Civil Procedure* § 1021.5
18 and otherwise.

19
20 **SEVENTH CAUSE OF ACTION**
21 **VIOLATION OF LABOR CODE § 2699, ET SEQ.**
22 **(Plaintiffs against Defendant)**

23 91. Plaintiffs, on behalf of himself and certain members of Plaintiff Class, hereby incorporate
24 the preceding paragraphs as though fully set forth herein.

25 92. Plaintiffs are aggrieved employees as defined in Labor Code § 2699 (c), and related Labor
26 Code provisions. Plaintiffs bring this cause of action on behalf of themselves, members of all classes,
27 and other current and former employees affected by the labor law violations alleged herein.

28 93. Defendants committed numerous violations of the California Labor Code and IWC Wage

1 Orders against Plaintiff and, on information and belief, against members of all classes described herein
2 while they were employed by Defendants, as described in this Complaint.

3 94. Pursuant to Labor Code § 2699, Plaintiffs, certain members of the Classes, and all other
4 aggrieved current and former employees seek to recover civil penalties, as otherwise provided by statute
5 and wage order, for which Defendants are liable as a result of their violations of the California Labor
6 Code and applicable wage order(s) in an amount to be proven at trial. These penalties include, but are not
7 limited to, those provided by Labor Code §§ 201, 202, 203, 226.3, 226.7, 256, 510, 512, 558, 1194
8 and 2699, and IWC Wage Orders, including but not limited to the applicable Wage Order No. Plaintiff
9 and aggrieved current and former employees further seek an award of reasonable attorney fees and costs
10 pursuant to this section.

11 **XIII.**

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiffs and Plaintiff Class pray for judgment as follows:

- 14 1. For nominal damages;
- 15 2. For compensatory damages;
- 16 3. For restitution of all monies due to Plaintiff and Plaintiff Class, and disgorged profits from
17 the unlawful business practices of Defendant;
- 18 4. For waiting time penalties pursuant to *Labor Code* § 203, on behalf of the terminated or
19 resigned employees;
- 20 5. For penalties pursuant to *Labor Code* §§ 226, 226(e), 512 and 1194;
- 21 6. For interest accrued to date;
- 22 7. An award to Plaintiffs and Plaintiff Class in the amount of unpaid wages, including but not
23 limited to proper overtime compensation, meal period and rest break premiums, including
24 interest thereon, subject to proof at trial;
- 25 8. Declaratory relief, enjoining Defendant's practices as being unlawful and unfair business
26 practices within the meaning of *Bus. & Prof. Code* §§ 17200, et seq., and declaring Defendant
27 has unlawfully treated Plaintiff and Plaintiff Class, failed to pay all wages, premium, regular,
28 and overtime compensation in violation of California law, failed to pay wages to former

employees Plaintiff and other certain members of Plaintiff Class, failed to provide Plaintiff and Plaintiff Class accurate itemized wage statements upon payment of wages, , and declaring the amounts of damages, penalties, equitable relief, costs, and attorney's fees Plaintiff and Plaintiff Class are entitled to;

9. For costs of suit and expenses incurred herein pursuant to Code of Civil Procedure § 1021.5, *Labor Code* §§ 226, 2802, and 1194;

10. For reasonable attorneys' fees pursuant to Code of Civil Procedure § 1021.5, *Labor Code* §§ 218.5, 226, 2802, and 1194, and;

11. For an order imposing all statutory and/or civil penalties provided by law, including an order awarding each Plaintiff and each aggrieved employee amounts and penalties pursuant to *Labor Code* § 2699; and

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

Dated: July 20, 2022

LAW OFFICES OF JAKE D. FINKEL

By: _____

Jake D. Finkel, Esq.
Attorneys for Plaintiff MIGUEL ARROYO SOTO
and on behalf of all employees similarly situated

Dated: July 20, 2022

VERUM LAW GROUP, APC

By: _____

Sam Kim
Yoonis Han
Attorneys for Plaintiff WILMER ZELAYA, and all
others similarly situated

1 **DEMAND FOR JURY TRIAL**

2 Plaintiff MIGUEL ARROYO SOTO hereby requests a jury trial on all issues so triable.

3
4 Dated: July 20, 2022

LAW OFFICES OF JAKE D. FINKEL

5
6 By: _____

Jake D. Finkel, Esq.

7 Attorneys for Plaintiff MIGUEL ARROYO SOTO
8 and on behalf of all employees similarly situated

9 Dated: July 20, 2022

VERUM LAW GROUP, APC

10
11 By: _____

12 Sam Kim

Yoonis Han

13 Attorneys for Plaintiff WILMER ZELAYA, and all
14 others similarly situated