

SOLOUKI | SAVOY, LLP  
SHOHAM J. SOLOUKI (SBN 278538)  
Shoham@soloukisavoy.com  
GRANT JOSEPH SAVOY (SBN 284077)  
Grant@soloukisavoy.com  
316 W. 2nd Street, Suite 1200  
Los Angeles, California 90012  
Telephone: (213) 814-4940  
Facsimile: (213) 814-2550

Attorneys for Plaintiff, individually  
and on behalf of all others similarly situated

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

ORANGE COUNTY SUPERIOR COURT – CIVIL COMPLEX CENTER

JOSE ESCOTO, an individual and class  
representative on behalf of himself and all  
other similarly situated non-exempt former  
and current employees,

Plaintiff,

vs.

VPM MANAGEMENT, INC., a California  
corporation; and DOES 1 through 100,  
inclusive,

Defendants.

Case No.: 30-2021-01232970-CU-OE-CXC

**FIRST AMENDED CLASS ACTION  
COMPLAINT FOR:**

- 1. FAILURE TO PROVIDE REQUIRED MEAL PERIODS**
- 2. FAILURE TO PROVIDE REQUIRED REST PERIODS**
- 3. FAILURE TO PAY OVERTIME WAGES**
- 4. FAILURE TO PAY MINIMUM WAGE**
- 5. FAILURE TO TIMELY PAY WAGES**
- 6. FAILURE TO PAY ALL WAGES DUE TO DISCHARGED AND QUITTING EMPLOYEES**
- 7. FAILURE TO MAINTAIN REQUIRED RECORDS**
- 8. FAILURE TO FURNISH ACCURATE ITEMIZED STATEMENTS**
- 9. FAILURE TO INDEMNIFY EMPLOYEES FOR NECESSARY EXPENDITURES INCURRED IN DISCHARGE OF DUTIES**
- 10. UNFAIR AND UNLAWFUL BUSINESS PRACTICES**
- 11. PRIVATE ATTORNEY GENERAL ACT**

**DEMAND FOR JURY TRIAL**

1 Plaintiff JOSE ESCOTO, an individual, (“PLAINTIFF”), demanding a jury trial, on  
2 behalf of himself and all other persons similarly situated, hereby submits this First Amended  
3 Complaint and alleges as follows:

4 **JURISDICTION AND VENUE**

5 1. The Superior Court of the State of California has jurisdiction in this matter  
6 because PLAINTIFF was and is a resident of the State of California, Defendants VPM  
7 MANAGEMENT, INC., and DOES 1 through 100 (collectively, “DEFENDANTS”) are  
8 qualified to do business in California and regularly conduct business in California. Further, no  
9 federal question is at issue because the claims are based solely on California law.

10 2. Venue is proper in this judicial district and the County of Orange, California  
11 because PLAINTIFF, and other persons similarly situated, performed work for DEFENDANTS  
12 in the County of Orange, DEFENDANTS maintain offices and facilities and transact business in  
13 the County of Orange, and DEFENDANTS’ illegal payroll policies and practices, which are the  
14 subject of this action, were applied, at least in part, to PLAINTIFF, and other persons similarly  
15 situated, in the County of Orange. Further, the amount in controversy exceeds the sum of  
16 \$25,000.00, exclusive of interest and costs.

17 **PLAINTIFF**

18 3. Plaintiff JOSE ESCOTO is a resident of the State of California who was  
19 employed by DEFENDANTS as a non-exempt employee at times relevant to this Complaint.

20 4. PLAINTIFF, on behalf of himself and all other similarly situated current and  
21 former non-exempt employees of DEFENDANTS who were employed by DEFENDANTS at  
22 any time during the four (4) years preceding the filing of this complaint, and continuing while  
23 this action is pending, bring this class action to recover, among other things, wages and penalties  
24 from unpaid wages earned and due, including but not limited to unpaid minimum wages and  
25 unpaid wages, unpaid and illegally calculated overtime compensation, illegal meal and rest  
26 period policies, failure to timely pay wages, failure to pay all wages due to discharged or quitting  
27 employees, failure to maintain required records, failure to provide accurate itemized wage  
28 statements, failure to indemnify employees for necessary expenditures and/or losses incurred in

1 discharging their duties, and interest, attorneys' fees, costs, and expenses.

2 5. PLAINTIFF brings this action on behalf of himself and the following similarly  
3 situated class of individuals ("CLASS MEMBERS"): All current and former non-exempt  
4 employees of VPM MANAGEMENT, INC., and DOES 1 through 100 (collectively, "VPM")  
5 that were placed for work assignment as janitorial, custodial, and/or maintenance workers at any  
6 of VPM's various managed property locations in in the State of California at any time within the  
7 period beginning four (4) years prior to the filing of the this action, and ending at the time this  
8 action settles or proceeds to final judgment (the "CLASS PERIOD").

9 6. PLAINTIFF reserves the right to name additional class representatives.

10 **DEFENDANTS**

11 7. PLAINTIFF is informed and believes, and thereon alleges, that Defendant VPM  
12 MANAGEMENT, INC. is, and at all times relevant hereto was, a company authorized to do  
13 business in the State of California and doing business in the State of California. Specifically,  
14 upon information and belief, Defendant VPM MANAGEMENT, INC. conducts business in the  
15 County of Orange, State of California.

16 8. The true names and capacities of DOES 1 through 100, inclusive, are unknown to  
17 PLAINTIFF at this time, and PLAINTIFF therefore sues such DOE Defendants under fictitious  
18 names. PLAINTIFF is informed and believes, and thereon alleges, that each Defendant  
19 designated as a DOE is in some manner responsible for the occurrences alleged herein, and that  
20 PLAINTIFF and CLASS MEMBERS' injuries and damages, as alleged herein, were proximately  
21 caused by the conduct of such DOE Defendants. PLAINTIFF will seek leave of the court to  
22 amend this complaint to allege the true names and capacities of such DOE Defendants when  
23 ascertained.

24 9. At all relevant times herein, DEFENDANTS were the joint employers of  
25 PLAINTIFF and the CLASS MEMBERS. PLAINTIFF is informed and believes, and thereon  
26 alleges, that at all times material to this complaint DEFENDANTS, as categorized above, were  
27 the alter egos, divisions, affiliates, integrated enterprises, joint employers, subsidiaries, parents,  
28 principals, related entities, co-conspirators, authorized agents, partners, joint venturers, and/or

1 guarantors, actual or ostensible, of each other. Each DEFENDANT, as categorized above, was  
2 completely dominated by his, her or its co-DEFENDANT, and each was the alter ego of the  
3 other.

4 10. At all relevant times herein, Plaintiff and CLASS MEMBERS were employed by  
5 DEFENDANTS under employment agreements that were partly written, partly oral, and partly  
6 implied. In perpetrating the acts and omissions alleged herein, DEFENDANTS, and each of  
7 them, acted pursuant to, and in furtherance of, their policies and practices of not paying  
8 PLAINTIFF and CLASS MEMBERS all wages earned and due, through methods and schemes  
9 which include, but are not limited to, failing to pay overtime premiums; failing to provide rest  
10 and meal periods; failing to properly maintain records; failing to provide accurate itemized  
11 statements for each pay period; failing to properly compensate PLAINTIFF and CLASS  
12 MEMBERS for necessary expenditures; and requiring, permitting or suffering PLAINTIFF and  
13 CLASS MEMBERS to work off the clock, in violation of the California Labor Code and the  
14 applicable IWC Wage Order.

15 11. PLAINTIFF is informed and believes, and thereon alleges, that each and every  
16 one of the acts and omissions alleged herein was performed by, and/or attributable to, all  
17 DEFENDANTS, each acting as agents and/or employees, and/or under the direction and control  
18 of, each of the other DEFENDANTS, and that said acts and failures to act were within the course  
19 and scope of said agency, employment and/or direction and control.

20 12. As a direct and proximate result of the unlawful actions of DEFENDANTS,  
21 PLAINTIFF and CLASS MEMBERS have suffered, and continue to suffer, from loss of  
22 earnings in amounts as yet unascertained, but subject to proof at trial, and within the jurisdiction  
23 of this Court.

#### 24 **CLASS ACTION ALLEGATIONS**

25 13. This action is appropriately suited for a class action because:

26 A. The potential class is a significant number. Joinder of all current and  
27 former employees individually would be impractical.

28 B. This action involves common questions of law and fact to the potential

1 class because the action focuses on DEFENDANTS' systematic course of illegal meal and rest  
2 period practices and policies and illegal payroll practices and policies, which were applied to all  
3 non-exempt employees of DEFENDANTS' that worked at DEFENDANTS' managed properties  
4 in violation of the California Labor Code, IWC Wage Orders, and the California Business and  
5 Professions Code which prohibits unfair and unlawful business practices arising from such  
6 violations.

7 C. The claims of PLAINTIFF are typical of the class because  
8 DEFENDANTS subjected all non-exempt employees that worked at DEFENDANTS' managed  
9 properties to identical violations of the California Labor Code, the applicable IWC wage order,  
10 and the California Business and Professions Code.

11 D. PLAINTIFF is able to fairly and adequately protect the interests of all  
12 CLASS MEMBERS because it is in his best interest to prosecute the claims alleged herein to  
13 obtain full compensation due to the CLASS MEMBERS for all services rendered and hours  
14 worked.

## 15 **FIRST CAUSE OF ACTION**

### 16 **Failure to Provide Required Meal Periods**

17 **[Cal. Labor Code §§ 226.7, 510, 512, 1194, 1197; Wage Order Nos. 4-2001 and 5-2001, § 11]**

18 **(Against all DEFENDANTS)**

19  
20 14. PLAINTIFF incorporates herein by specific reference, as though fully set forth,  
21 the allegations in all preceding paragraphs.

22 15. During the CLASS PERIOD, as part of DEFENDANTS' illegal payroll policies  
23 and practices to deprive their non-exempt employees all wages earned and due, DEFENDANTS  
24 required, permitted or otherwise suffered PLAINTIFF and CLASS MEMBERS to take less than  
25 the 30-minute meal period, or to work through them, and have failed to otherwise provide the  
26 required meal periods to PLAINTIFF and CLASS MEMBERS pursuant to California Labor  
27 Code § 226.7, 512 and IWC Order No. 4-2001, § 11.

28 16. DEFENDANTS further violated California Labor Code §§ 226.7 and Wage Order

Nos. 4-2001 and 5-2001, § 11 by failing to compensate PLAINTIFF and CLASS MEMBERS who were not provided with a meal period, in accordance with the applicable wage order, one additional hour of compensation at each employee's regular rate of pay for each workday that a meal period was not provided.

17. DEFENDANTS further violated California Labor Code §§ 226.7, 510, 1194, 1197, and Wage Order Nos. 4-2001 and 5-2001 by failing to compensate PLAINTIFF and CLASS MEMBERS for all hours worked during their meal periods.

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

## **SECOND CAUSE OF ACTION**

### **Failure to Provide Required Rest Periods**

**[Cal. Labor Code §§ 226.7, 512; Wage Order Nos. 4-2001 and 5-2001, § 12]**

**(Against all DEFENDANTS)**

19. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the allegations in all preceding paragraphs.

20. At all times relevant herein, as part of DEFENDANTS' illegal payroll policies and practices to deprive their non-exempt employees all wages earned and due, DEFENDANTS failed to provide rest periods to PLAINTIFF and CLASS MEMBERS as required under California Labor Code §§ 226.7 and 512, and Wage Order Nos. 4-2001 and 5-2001, § 12.

21. DEFENDANTS further violated California Labor Code § 226.7 and Wage Order Nos. 4-2001 and 5-2001, § 12 by failing to pay PLAINTIFF and CLASS MEMBERS who were not provided with a rest period, in accordance with the applicable wage order, one additional hour of compensation at each employee's regular rate of pay for each workday that a rest period was not provided.

22. As a proximate result of the aforementioned violations, PLAINTIFF and CLASS MEMBERS have been damaged in an amount according to proof at trial, and seek all wages

1 earned and due, interest, penalties, expenses, and costs of suit.

2  
3 **THIRD CAUSE OF ACTION**

4 **Failure to Pay Overtime Wages**

5 **[Cal. Labor Code §§ 510, 1194, 1198; Wage Order Nos. 4-2001 and 5-2001, § 3]**

6 **(Against all DEFENDANTS)**

7 23. PLAINTIFF incorporates herein by specific reference, as though fully set forth,  
8 the allegations in all preceding paragraphs.

9 24. Pursuant to California Labor Code §§ 510, 1194, and Wage Order Nos. 4-2001  
10 and 5-2001, § 3, DEFENDANTS are required to compensate PLAINTIFF and CLASS  
11 MEMBERS for all overtime, which is calculated at one and one-half (1 ½) times the regular rate  
12 of pay for all hours worked in excess of eight (8) hours per day and/or forty (40) hours per week,  
13 and for the first eight (8) hours on the seventh consecutive workday, with double time for all  
14 hours worked in excess of twelve (12) hours in any workday and for all hours worked in excess  
15 of eight (8) hours on the seventh consecutive day of work in any workweek.

16 25. PLAINTIFF and CLASS MEMBERS are current and former non-exempt  
17 employees entitled to the protections of California Labor Code §§ 510, 1194, and Wage Order  
18 Nos. 4-2001 and 5-2001. During the CLASS PERIOD, DEFENDANTS failed to compensate  
19 PLAINTIFF and CLASS MEMBERS for all overtime hours worked as required under the  
20 foregoing provisions of the California Labor Code and IWC Wage Order by, among other things:  
21 failing to pay overtime at one and one-half (1 ½) or double the regular rate of pay as provided by  
22 California Labor Code §§ 510, 1194, and Wage Order Nos. 4-2001 and 5-2001, § 3; requiring,  
23 permitting or suffering PLAINTIFF and CLASS MEMBERS to work off the clock; requiring,  
24 permitting or suffering PLAINTIFF and CLASS MEMBERS to work through meal and rest  
25 breaks; illegally and inaccurately recording time in which PLAINTIFF and CLASS MEMBERS  
26 worked; illegally rounding the work hours of PLAINTIFF and CLASS MEMBERS; failing to  
27 properly maintain PLAINTIFF'S and CLASS MEMBERS' records; failing to provide accurate  
28 itemized wage statements to PLAINTIFF and CLASS MEMBERS for each pay period; and

1 other methods to be discovered.

2 26. In violation of California law, DEFENDANTS have knowingly and willfully  
3 refused to perform their obligations to compensate PLAINTIFF and CLASS MEMBERS for all  
4 wages earned and all hours worked. As a proximate result, PLAINTIFF and CLASS  
5 MEMBERS have suffered, and continue to suffer, substantial losses related to the use and  
6 enjoyment of such wages, lost interest on such wages, and expenses and attorneys' fees in  
7 seeking to compel DEFENDANTS to fully perform their obligations under state law, all to their  
8 respective damages in amounts according to proof at time of trial, and within the jurisdiction of  
9 this Court.

10 27. DEFENDANTS' conduct described herein violates California Labor Code §§  
11 510, 1194, 1198 and Wage Order Nos. 4-2001 and 5-2001, § 3. Therefore, pursuant to  
12 California Labor Code §§ 200, 203, 226, 558, 1194, 1197.1, and other applicable provisions  
13 under the California Labor Code and IWC Wage Orders, PLAINTIFF and CLASS MEMBERS  
14 are entitled to recover the unpaid balance of wages owed to them by DEFENDANTS, plus  
15 interest, penalties, attorneys' fees, expenses, and costs of suit.

16  
17 **FOURTH CAUSE OF ACTION**

18 **Failure to Pay Minimum Wages**

19 **[Cal Labor Code §§ 1194, 1197; Wage Order Nos. 4-2001 and 5-2001, § 4]**

20 **(Against all DEFENDANTS)**

21 28. PLAINTIFF incorporates herein by specific reference, as though fully set forth,  
22 the allegations in all preceding paragraphs.

23 29. Pursuant to California Labor Code §§ 1194, 1197, and Wage Order Nos. 4-2001  
24 and 5-2001, § 4, payment to an employee of less than the applicable minimum wage for all hours  
25 worked in a payroll period is unlawful.

26 30. During the CLASS PERIOD, DEFENDANTS failed to pay PLAINTIFF and  
27 CLASS MEMBERS minimum wages for all hours worked by, among other things: requiring,  
28 permitting or suffering PLAINTIFF and CLASS MEMBERS to work off the clock; requiring,

1 permitting or suffering PLAINTIFF and CLASS MEMBERS to work through meal and rest  
2 breaks; illegally and inaccurately recording time in which PLAINTIFF and CLASS MEMBERS  
3 worked; illegally rounding the work hours of PLAINTIFF and CLASS MEMBERS; failing to  
4 properly maintain PLAINTIFF'S and CLASS MEMBERS' records; failing to provide accurate  
5 itemized wage statements to PLAINTIFF and CLASS MEMBERS for each pay period; and  
6 other methods to be discovered.

7 31. DEFENDANTS' conduct described herein violates California Labor Code §§  
8 1194, 1197, and Wage Order Nos. 4-2001 and 5-2001, § 4. As a proximate result of the  
9 aforementioned violations, PLAINTIFF and CLASS MEMBERS have been damaged in an  
10 amount according to proof at trial. Therefore, pursuant to California Labor Code §§ 200, 203,  
11 226, 558, 1194, 1197.1, and other applicable provisions under the Labor Code and IWC Wage  
12 Orders, PLAINTIFF and CLASS MEMBERS are entitled to recover the unpaid balance of wages  
13 owed to them by DEFENDANTS, plus interest, penalties, attorneys' fees, expenses, and costs of  
14 suit.

15  
16 **FIFTH CAUSE OF ACTION**

17 **Failure to Timely Pay Wages During Employment**

18 **[Cal. Labor Code § 204]**

19 **(Against All DEFENDANTS)**

20 32. PLAINTIFF incorporates herein by specific reference, as though fully set forth,  
21 the allegations in all preceding paragraphs.

22 33. Pursuant to California Labor Code § 204, for all labor performed between the 1<sup>st</sup>  
23 and 15<sup>th</sup> days of any calendar month, DEFENDANTS are required to pay their nonexempt  
24 employees between the 16<sup>th</sup> and 26<sup>th</sup> day of the month during which the labor was performed.  
25 California Labor Code § 204 also provides that for all labor performed between the 16<sup>th</sup> and 26<sup>th</sup>  
26 days of any calendar month, DEFENDANTS are required to pay their nonexempt employees  
27 between the 1<sup>st</sup> and 10<sup>th</sup> day of the following calendar month. In addition, California Labor Code  
28 § 204 provides that all wages earned for labor in excess of the normal work period shall be paid

1 no later than the payday of the next regular payroll period.

2 34. During the CLASS PERIOD, DEFENDANTS knowingly and willfully failed to  
3 pay PLAINTIFF and CLASS MEMBERS all the wages they earned when due as required by  
4 California Labor Code § 204.

5 35. Pursuant to California Labor Code § 210, failure to pay the wages of each  
6 employee as provided in California Labor Code § 204 will subject DEFENDANTS to a civil  
7 penalty of: (1) one hundred dollars (\$100) for each failure to pay each employee for each initial  
8 violation; and (2) two hundred dollars (\$200) for each failure to pay each employee, plus twenty-  
9 five percent (25%) of the amount unlawfully withheld, for each subsequent violation.

10 36. DEFENDANTS' conduct described herein violates California Labor Code § 204.  
11 As a proximate result of the aforementioned violations, PLAINTIFF and CLASS MEMBERS  
12 have been damaged in an amount according to proof at trial. Therefore, pursuant to California  
13 Labor Code §§ 200, 210, 226, 558, 1194, 1197.1, 2699, and other applicable provisions under  
14 the Labor Code and IWC Wage Orders, PLAINTIFF and CLASS MEMBERS are entitled to  
15 recover the unpaid balance of wages owed to them by DEFENDANTS, plus interest, penalties,  
16 attorneys' fees, expenses, and costs of suit.

17  
18 **SIXTH CAUSE OF ACTION**

19 **Failure to Pay All Wages Due to Discharged and Quitting Employees**

20 **[Cal. Labor Code §§ 201, 202, 203]**

21 **(Against all DEFENDANTS)**

22 37. PLAINTIFF incorporates herein by specific reference, as though fully set forth,  
23 the allegations in all preceding paragraphs.

24 38. Pursuant to California Labor Code § 201, 202, and 203, DEFENDANTS are  
25 required to pay all earned and unpaid wages to an employee who is discharged. California Labor  
26 Code § 201 mandates that if an employer discharges an employee, the employee's wages accrued  
27 and unpaid at the time of discharge are due and payable immediately.

28 39. Furthermore, pursuant to California Labor Code § 202, DEFENDANTS are

1 required to pay all accrued wages due to an employee no later than 72 hours after the employee  
2 quits his or her employment, unless the employee provided 72 hours previous notice of his or her  
3 intention to quit, in which case the employee is entitled to his or wages at the time of quitting.

4 40. California Labor Code § 203 provides that if an employer willfully fails to pay, in  
5 accordance with California Labor Code §§ 201 and 202, any wages of an employee who is  
6 discharged or who quits, the employer is liable for waiting time penalties in the form of  
7 continued compensation to the employee at the same rate for up to 30 workdays.

8 41. During the CLASS PERIOD, DEFENDANTS have willfully failed to pay  
9 accrued wages and other compensation to PLAINTIFF and CLASS MEMBERS in accordance  
10 with California Labor Code §§ 201, 202, and 203.

11 42. As a result, PLAINTIFF and CLASS MEMBERS are entitled to all available  
12 statutory penalties, including the waiting time penalties provided in California Labor Code §  
13 203, together with interest thereon, as well as other available remedies.

14 43. As a proximate result of DEFENDANTS' unlawful actions and omissions,  
15 PLAINTIFF and CLASS MEMBERS have been deprived of compensation in an amount  
16 according to proof at the time of trial, but in excess of the jurisdiction of this Court, and are  
17 entitled to recovery of such amounts, plus interest thereon, and attorneys' fees and costs,  
18 pursuant to California Labor Code §§ 1194 and 2699.

19  
20 **SEVENTH CAUSE OF ACTION**

21 **Failure to Maintain Required Records**

22 **[Cal. Labor Code §§ 226, 1174; Wage Order Nos. 4-2001 and 5-2001, § 7]**

23 **(Against all DEFENDANTS)**

24 44. PLAINTIFF incorporates herein by specific reference, as though fully set forth,  
25 the allegations in all preceding paragraphs.

26 45. During the CLASS PERIOD, as part of DEFENDANTS' illegal payroll policies  
27 and practices to deprive PLAINTIFF and CLASS MEMBERS of all wages earned and due,  
28 DEFENDANTS knowingly and intentionally failed to maintain records as required under

1 California Labor Code §§ 226, 1174, and Wage Order Nos. 4-2001 and 5-2001, § 7, including  
2 but not limited to the following records: total daily hours worked by each employee; applicable  
3 rates of pay; all deductions; meal periods; time records showing when each employee begins and  
4 ends each work period; and accurate itemized statements.

5 46. As a proximate result of DEFENDANTS' unlawful actions and omissions,  
6 PLAINTIFF and CLASS MEMBERS have been damaged in an amount according to proof at  
7 trial, and are entitled to all wages earned and due, plus interest thereon. Additionally,  
8 PLAINTIFF and CLASS MEMBERS are entitled to all available statutory penalties, including  
9 but not limited to civil penalties pursuant to California Labor Code §§ 226(e), 226.3, and 1174.5,  
10 and an award of costs, expenses, and reasonable attorneys' fees, including but not limited to  
11 those provided in California Labor Code § 226(e), as well as other available remedies.

12  
13 **EIGHTH CAUSE OF ACTION**

14 **Failure to Furnish Accurate Itemized Wage Statements**

15 **[Cal. Labor Code §§ 226; Wage Order Nos. 4-2001 and 5-2001, § 7]**

16 **(Against all DEFENDANTS)**

17 47. PLAINTIFF incorporates herein by specific reference, as though fully set forth,  
18 the allegations in all preceding paragraphs.

19 48. During the CLASS PERIOD, DEFENDANTS routinely failed to provide  
20 PLAINTIFF and CLASS MEMBERS with timely, accurate, and itemized wage statements in  
21 writing showing each employee's gross wages earned, total hours worked, all deductions made,  
22 net wages earned, the inclusive dates of the period for which the employee is paid, the name and  
23 address of the legal entity or entities employing PLAINTIFF and CLASS MEMBERS, and all  
24 applicable hourly rates in effect during each pay period and the corresponding number of hours  
25 worked at each hourly rate, in violation of California Labor Code § 226 and Wage Order Nos. 4-  
26 2001 and 5-2001, § 7.

27 49. During the CLASS PERIOD, DEFENDANTS knowingly and intentionally failed  
28 to provide PLAINTIFF and CLASS MEMBERS with timely, accurate, and itemized wage

1 statements in accordance with California Labor Code § 226(a).

2 50. As a proximate result of DEFENDANTS' unlawful actions and omissions,  
3 PLAINTIFF and CLASS MEMBERS have been damaged in an amount according to proof at  
4 trial, and seek all wages earned and due, plus interest thereon. Additionally, PLAINTIFF and  
5 CLASS MEMBERS are entitled to all available statutory penalties, including but not limited to  
6 civil penalties pursuant to California Labor Code §§ 226(e), 226.3, and 1174.5, and an award of  
7 costs, expenses, and reasonable attorneys' fees, including but not limited to those provided in  
8 California Labor Code § 226(e), as well as other available remedies.

9  
10 **NINTH CAUSE OF ACTION**

11 **Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of**

12 **Duties**

13 **[Cal. Labor Code § 2802]**

14 **(Against all DEFENDANTS)**

15 51. PLAINTIFF incorporates herein by specific reference, as though fully set forth,  
16 the allegations in all preceding paragraphs.

17 52. California Labor Code § 2802(a) requires an employer to indemnify an employee  
18 for all necessary expenditures or losses incurred by the employee in direct consequence of the  
19 discharge of her his or her duties, or of his or her obedience to the directions of the employer.

20 53. During the CLASS PERIOD, DEFENDANTS knowingly and willfully failed to  
21 indemnify PLAINTIFF and CLASS MEMBERS for all business expenses and/or losses incurred  
22 in direct consequence of the discharge of their duties while working under the direction of  
23 DEFENDANTS, including but not limited to expenses for uniforms, travel expenses, cell phone  
24 usage, and other employment-related expenses, in violation of California Labor Code § 2802.

25 54. As a proximate result of DEFENDANTS' unlawful actions and omissions,  
26 PLAINTIFF and CLASS MEMBERS have been damaged in an amount according to proof at  
27 trial, and seek reimbursement of all necessary expenditures, plus interest thereon pursuant to  
28 California Labor Code § 2802(b). Additionally, PLAINTIFF and CLASS MEMBERS are

1 entitled to all available statutory penalties and an award of costs, expenses, and reasonable  
2 attorneys' fees, including those provided in California Labor Code § 2802(c), as well as other  
3 available remedies.

4  
5 **TENTH CAUSE OF ACTION**

6 **Unfair and Unlawful Business Practices**

7 **[Cal. Bus. & Prof. Code §§ 17200 et. seq.]**

8 **(Against all DEFENDANTS)**

9 55. PLAINTIFF incorporates herein by specific reference, as though fully set forth,  
10 the allegations in all preceding paragraphs.

11 56. Each and every one of DEFENDANTS' acts and omissions in violation of the  
12 California Labor Code and/or the applicable IWC Wage Order as alleged herein, including but  
13 not limited to DEFENDANTS' failure and refusal to provide required meal periods,  
14 DEFENDANTS' failure and refusal to provide required rest periods, DEFENDANTS' failure  
15 and refusal to pay overtime compensation, DEFENDANTS' failure and refusal to pay minimum  
16 wages, DEFENDANTS' failure and refusal to furnish accurate itemized wage statements;  
17 DEFENDANTS' failure and refusal to maintain required records, DEFENDANTS' failure and  
18 refusal to indemnify PLAINTIFF and CLASS MEMBERS for necessary expenditures and/or  
19 losses incurring in discharging their duties, constitutes an unfair and unlawful business practice  
20 under California Business and Professions Code § 17200 et seq.

21 57. DEFENDANTS' violations of California wage and hour laws constitute a  
22 business practice because DEFENDANTS' aforementioned acts and omissions were done  
23 repeatedly over a significant period of time, and in a systematic manner, to the detriment of  
24 PLAINTIFF and CLASS MEMBERS.

25 58. DEFENDANTS have avoided payment of wages, overtime wages, meal periods,  
26 rest periods, and other benefits as required by the California Labor Code, the California Code of  
27 Regulations, and the applicable IWC Wage Order. Further, DEFENDANTS have failed to  
28 record, report, and pay the correct sums of assessment to the state authorities under the

1 California Labor Code and other applicable regulations.

2 59. As a result of DEFENDANTS' unfair and unlawful business practices,  
3 DEFENDANTS have reaped unfair and illegal profits during the CLASS PERIOD at the  
4 expense of PLAINTIFF, CLASS MEMBERS, and members of the public. DEFENDANTS  
5 should be made to disgorge their ill-gotten gains and to restore them to PLAINTIFF and CLASS  
6 MEMBERS.

7 60. DEFENDANTS' unfair and unlawful business practices entitle PLAINTIFF and  
8 CLASS MEMBERS to seek preliminary and permanent injunctive relief, including but not  
9 limited to orders that DEFENDANTS account for, disgorge, and restore to PLAINTIFF and  
10 CLASS MEMBERS the wages and other compensation unlawfully withheld from them.  
11 PLAINTIFF and CLASS MEMBERS are entitled to restitution of all monies to be disgorged  
12 from DEFENDANTS in an amount according to proof at the time of trial, but in excess of the  
13 jurisdiction of this Court.

14  
15 **ELEVENTH CAUSE OF ACTION**

16 **PRIVATE ATTORNEYS GENERAL ACT OF 2004 ("PAGA")**

17 **[Cal. Lab. Code §2699, et seq.]**

18 **(Against All Defendants)**

19 61. PLAINTIFF incorporates herein by specific reference, as though fully set forth,  
20 the allegations in all preceding paragraphs.

21 62. PLAINTIFF and similarly situated employees are "aggrieved employees" under  
22 PAGA, as they were employed by DEFENDANTS during the applicable statutory period and  
23 suffered one or more of the Labor Code violations set forth herein. Accordingly, PLAINTIFF  
24 seeks to recover on behalf of himself and all other current and former aggrieved employees of  
25 DEFENDANTS, the civil penalties provided by PAGA, plus reasonable attorney's fees and costs.

26 63. PLAINTIFF and similarly situated employees seek to recover the PAGA civil  
27 penalties through a representative action permitted by PAGA and the California Supreme Court  
28 in *Arias v. Superior Court* (2009) 46 Cal. 4th 969. Therefore, class certification of the PAGA

1 claims is not required.

2 64. PLAINTIFF and similarly situated employees seek civil penalties pursuant to  
3 PAGA for violations of the following Labor Code provisions:

- 4 a. failure to provide prompt payment of wages to Labor Code §§ 200, 201, 202, 203;
- 5 b. failure to provide accurate itemized wage statements to employees in violation of
- 6 Labor Code §§ 226(a), 1174, and 1174.5;
- 7 c. failure to provide meal and rest periods in violation of Wage Order Nos. 4-2001 and
- 8 5-2001 and Labor Code §§ 226.7, 512, and 558;
- 9 d. failure to pay overtime wages in violation of Wage Order Nos. 4-2001 and 5-2001
- 10 and Labor Code §§ 510, 558, 1194 and 1198;
- 11 e. failure to pay minimum wages in violation of Wage Order Nos. 4-2001 and 5-2001
- 12 and Labor Code §§ 1182.12, 1194, and 1197;
- 13 f. failure to provide itemized wage statements to employees in violation of Labor Code
- 14 §§ 226(a); and failure to pay all wages twice during each calendar month on days
- 15 designated in advance by the employer as the regular paydays in violation of Labor
- 16 Code § 204;
- 17 g. Failure to Maintain Records in violation of Labor Code § 226 (c) and 1198.5.

18 65. With respect to violations of Labor Code § 226(a), Labor Code § 226.3 imposes a  
19 civil penalty in addition to any other penalty provided by law of two hundred fifty dollars (\$250)  
20 per aggrieved employee for the first violation, and one thousand dollars (\$1,000) per aggrieved  
21 employee for each subsequent violation of Labor Code § 226(a).

22 66. With respect to violations of Labor Code §§ 510, 512, Labor Code § 558 imposes  
23 a civil penalty in addition to any other penalty provided by law of fifty dollars (\$50) for initial  
24 violations for each underpaid employee for each pay period for which the employee was  
25 underpaid in addition to an amount sufficient to recover underpaid wages, and one hundred  
26 dollars (\$100) for subsequent violations for each underpaid employee for each pay period for  
27 which the employee was underpaid in addition to an amount sufficient to recover underpaid  
28 wages. Moreover, Plaintiffs seeks civil penalties in the amount of unpaid wages owed to

aggrieved employees pursuant to Labor Code § 558(a)(3).

67. With respect to violations of Labor Code § 1174, Labor Code § 1174.5 imposes a civil penalty of \$500.

68. Labor Code § 2699 et seq. imposes a civil penalty of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations, and two hundred dollars (\$200) pay period, per aggrieved employee for subsequent violations for all Labor Code provisions for which a civil penalty is not specifically provided, including Labor Code §§ 200, 201, 202, 203, 226, 226.7, 226.8, 350, 351, 1174, 1182.12, 1194, 1197, 1198, 1198.5 and 2802.

69. On November 19, 2021, PLAINTIFF gave written notice by certified mail of DEFENDANTS' violations of various provisions of the California Labor Code as alleged in this complaint to the Labor and Workforce Development Agency ("LWDA") and DEFENDANTS.

70. The LWDA did not provide notice of its intention to investigate DEFENDANTS' alleged violations after the notice sent by Plaintiff. See Cal. Lab. Code § 2699.3(a)(2)(A).

///

///

///

1 **PRAYER FOR RELIEF**

2 WHEREFORE, PLAINTIFF, individually and on behalf of all other persons similarly  
3 situated, respectfully pray for relief against DEFENDANTS and DOES 1 through 100, inclusive,  
4 and each of them, as follows:

- 5 1. For compensatory damages in an amount to be ascertained at trial;
- 6 2. For restitution of all monies due to PLAINTIFF and CLASS MEMBERS, as well  
7 as disgorged profits from the unfair and unlawful business practices of DEFENDANTS;
- 8 3. For meal and rest period compensation pursuant to California Labor Code § 226.7  
9 and Wage Order Nos. 4-2001 and 5-2001;
- 10 4. For liquidated damages pursuant to California Labor Code §§ 1194.2 and 1197.1;
- 11 5. For preliminary and permanent injunctive relief enjoining DEFENDANTS from  
12 violating the relevant provisions of the California Labor Code and the IWC Wager Orders, and  
13 from engaging in the unlawful business practices complained of herein;
- 14 6. For waiting time penalties pursuant to California Labor Code § 203;
- 15 7. For statutory and civil penalties according to proof, including but not limited to all  
16 penalties authorized by the California Labor Code §§ 210, 226.3, 226(e), 558, 1197.1, and 2699;
- 17 8. For interest on the unpaid wages at 10% per annum pursuant to California Labor  
18 Code §§ 218.6, 1194, 2802, California Civil Code §§ 3287, 3288, and/or any other applicable  
19 provision providing for pre-judgment interest;
- 20 9. For reasonable attorneys' fees and costs pursuant to California Labor Code §§  
21 218.5, 1021.5, 1194, 2699, 2802, California Civil Code § 1021.5, and/or any other applicable  
22 provisions providing for attorneys' fees and costs;
- 23 10. For declaratory relief;
- 24 11. For an order requiring and certifying the First, Second, Third, Fourth, Fifth, Sixth,  
25 Seventh, Eighth, Ninth, and Tenth Causes of Action as a class action;
- 26 12. For an order appointing PLAINTIFF as class representatives, and PLAINTIFF'S  
27 counsel as class counsel; and
- 28 13. For such further relief that the Court may deem just and proper.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

DATED: February 9, 2022

Respectfully submitted,  
**SOLOUKI | SAVOY, LLP**

By:   
\_\_\_\_\_  
SHOHAM J. SOLOUKI  
GRANT JOSEPH SAVOY  
*Attorneys for Plaintiff*  
*JOSE ESCOTO*

///  
///  
///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**DEMAND FOR JURY TRIAL**

PLAINTIFF, on behalf of himself and all others similarly situated, hereby demand a jury trial with respect to all issues triable of right by jury.

DATED: February 9, 2022

Respectfully submitted,

**SOLOUKI | SAVOY, LLP**

By:

  
\_\_\_\_\_  
SHOHAM J. SOLOUKI  
GRANT JOSEPH SAVOY  
*Attorneys for Plaintiff*  
JOSE ESCOTO