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SUPERIOR COURT OF CALIFORNIA

COUNTY OF RIVERSIDE

WAYNE DOUGLASS GILLETTE, on behalf
of himself and all others similarly situated,

Plaintiff,

vs.

COPAN DIAGNOSTICS, INC., and DOES 1-
100, inclusive,

Defendants.

Case No.: CVRI-2105284

CLASS AND REPRESENTATIVE ACTION

**STIPULATION AND [PROPOSED]
ORDER GRANTING PLAINTIFF LEAVE
TO FILE SECOND AMENDED
COMPLAINT (in conjunction with Motion
for Preliminary Approval of Class and
PAGA Settlement)**

[Assigned to the Honorable Harold Hopp,
Dept. 10, Historic Court House, 4050 Main St.,
Riverside CA 92501]

Date: March 22, 2023

Time: 8:30 a.m.

Location: Dept. 10 (Hon. Harold Hopp)

Reservation ID#: 020396507092

IT IS HEREBY STIPULATED AND AGREED by and between Plaintiff Wayne
Douglas Gillette (“Plaintiff”) and Defendant Copan Diagnostics, Inc. (“Copan” or “Defendant”)
(Plaintiff and Defendant each a “Party” and collectively the “Parties”) that the following Order be
entered in the above-captioned matter as follows:

I. November 19, 2021 - Original Complaint Filed: WHEREAS, on November 19,
2021, Plaintiff filed a class action Complaint, captioned *Gillette v. Copan Diagnostics, Inc.*,
Riverside., Case No. CVRI-2105284, in the Riverside County Superior Court (the “Complaint” or
the “Action”).

1 **II. November 19, 2021 - Original PAGA Notice Sent:** WHEREAS, on November
2 19, 2022 (the same date the original complaint was filed), Plaintiff electronically filed with the
3 California Labor Workforce and Development Agency (“LWDA”) a notice letter pursuant to the
4 California Labor Code Private Attorney General Act of 2004, California Labor Code § 2698, et.
5 seq. (“PAGA”), and sent a copy of the PAGA notice letter to Defendant. Plaintiff contends this
6 letter included factual and legal allegations to support Plaintiff’s PAGA allegations and, as an
7 attachment to the PAGA notice letter, Plaintiff provided a copy of a draft First Amended
8 Complaint (“FAC”), which included an additional cause of action for alleged violations of
9 PAGA.

10 **III. January 28, 2022 - First Amended Complaint (“FAC”) Filed and Served:**
11 WHEREAS, on January 28, 2022, Plaintiff filed and served his First Amended Complaint
12 (“FAC”) with 6 causes of action including for alleged: (1) failure to pay overtime wages; (2)
13 failure to pay minimum wage; (3) failure to provide timely and accurate wage statements; (4)
14 failure to pay all wages due at termination – waiting time penalties; (5) unlawful and/or unfair
15 business practices (“UCL”); and (6) violation of the Private Attorney General Act (“PAGA”).

16 **IV. Parties Agree to Early Class Mediation:** WHEREAS, the Parties agreed to
17 participate in an early mediation with experienced JAMS mediator Michael Loeb
18 (<https://www.jamsadr.com/loeb/>), a well-respected mediator with significant experience
19 mediating employment wage-and-hour class action. The Parties also engaged in formal and
20 informal discovery, including the exchange of documents and Class data, including without
21 limitation information regarding all shifts worked by, and amounts paid to, Class Members during
22 the relevant period, for purposes of mediation and settlement discussions.

23 **V. August 2, 2022 - Mediation Successful:** WHEREAS, on August 2, 2022, the
24 Parties participated in an all-day mediation with mediator Michael Loeb. After the mediation, the
25 Parties executed a confidential memorandum of understanding (“MOU”) regarding the material
26 settlement terms. The Parties later negotiated and executed a long form settlement agreement in
27 the form of a Joint Stipulation of Class Action Settlement Agreement and Release (“Settlement
28 Agreement”).

1 **VI. Preliminary Approval Hearing Set for March 22, 2023:** WHEREAS, the
2 Parties and the Court have scheduled the hearing on Plaintiff’s Motion for Preliminary Approval
3 on March 22, 2023 at 8:30 a.m. in this Court (Department 10 [Hon. Harold Hopp], Riverside
4 County Superior Court - Historic Court House, 4050 Main St., Riverside CA 92501.)

5 **VII. Addition of California Labor Code and FLSA Claims for Settlement Purposes**
6 **Only:** WHEREAS in accord with the Settlement Agreement the Parties have agreed that Plaintiff
7 may file a Second Amended Complaint (“SAC”), (in conjunction with and at the same time as the
8 Motion for Preliminary Approval) which include allegations regarding (1) meal and rest break
9 violations [Labor Code §§226.7, 512] , (2) failure to reimburse necessary business expenses
10 [Labor Code §2802]; and (3) violations of the Fair Labor Standards Act, 29 U.S.C. § 201 et seq.
11 (“FLSA”). This is done so that said claims, based on the same allegations, may be settled and
12 waived as part of the proposed California class settlement per *Amaro v. Anaheim Arena*
13 *Management, LLC* (2021) 69 Cal.App.5th 521, 540, “[N]othing in the statute suggests it applies
14 to a class settlement of state law claims that also releases potential FLSA claims based on the
15 same allegations” “[E]ven when the court does not have power to adjudicate a claim, it may still
16 “approve release of that claim as a condition of settlement of [an] action [before it].” ’ ’ ”
17 (*Villacres*, supra, 189 Cal.App.4th at p. 586, 117 Cal.Rptr.3d 398; *Cotter v. Lyft, Inc.* (N.D. Cal.,
18 Mar. 16, 2017, No. 13-cv-04065-VC), 2017 WL 1033527, at p. *1 [the FLSA's opt-in
19 requirement “speaks only to the circumstances in which a plaintiff will be allowed to participate
20 in an FLSA action, not to circumstances in which a plaintiff who is not participating in an FLSA
21 action will be allowed to release potential FLSA claims”].)” In the *Gillette* action, the Parties
22 agree this is an “opt-out” action under the California Code of Civil Procedure that does not
23 require an “opt-in” procedure to bind Class Members to the terms of the Settlement. (See
24 attached and proposed SAC).

25 **VIII. At the time of the Preliminary Approval Hearing the Parties Request that the**
26 **Court Grant Plaintiff Leave to File the SAC and Deem the SAC Filed/Served for Settlement**
27 **Purposes Only:** WHEREAS, for settlement purposes only, and in conjunction with the filing
28 and hearing of Plaintiff’s Motion for Preliminary Approval of Class Settlement, the Parties have

1 agreed to stipulate to Plaintiff's seeking leave to file the SAC, which includes the new class
2 definition as described above.

3 Liberal Pleading Standards: Plaintiff contends that amendment is proper under California
4 authority. Courts "exercise liberality" in permitting amendments at any stage of the proceeding.
5 See Code of Civ. Proc. § 473, *Klopstock v. Superior Court*, 17 Cal.2d 13, 19 (1941); *Ramos v.*
6 *City of Santa Clara*, 35 Cal.App.3d 93, 95 (1973) (liberal amendment "of any pleading at any
7 stage of the proceedings").

8 Second Amended Complaint ("SAC"): The Parties agree that permitting Plaintiff to file
9 and serve his SAC without motion practice promotes judicial economy; facilitates the proposed
10 class and PAGA settlement; and should not affect the Court's schedule or the calendar in this
11 matter. For purposes of settlement only, Defendant does not oppose the filing of the amendment
12 but Defendant does not stipulate to and in fact disputes and denies the allegations in the SAC. A
13 red-lined copy of the SAC, showing the proposed amendments, has previously been provided to
14 Defendant prior to the filing of this Stipulation and [Proposed] Order. A copy of the draft SAC is
15 attached as **Exhibit A - Second Amended Complaint** to the long form Settlement Agreement
16 and again attached to this Stipulation and [Proposed] Order, also as **Exhibit A: Second**
17 **Amended Complaint**

18 Stipulation Dependent on Court Approval of Motion for Preliminary Approval of
19 Settlement: If the Court does not approve the Motion for Preliminary Approval or the Settlement
20 Agreement is not approved or does not become final for any reason stated in the Settlement
21 Agreement, the Parties agree that this Stipulation will be null and void, as the purpose of this
22 Stipulation is to facilitate the proposed Class and PAGA settlement that is the subject of
23 Plaintiff's Motion for Preliminary Approval.

24 **STIPULATION:** Accordingly, the Parties, by and through their counsel of record,
25 hereby stipulate and request that the Court order:

26 1. Plaintiff be permitted to file the attached Second Amended Complaint ("SAC")
27 (**Exhibit A: Second Amended Complaint**) in connection with the Court's ruling on Plaintiff's
28 Motion for Preliminary Approval; and

1 2. The attached Second Amended Complaint be deemed filed with this Court and
2 served on Defendant as of the date the Court signs the attached order;

3 3. As per the Motion for Preliminary Approval, if the proposed Settlement
4 Agreement is preliminarily approved, the action is stayed and suspended until further notice from
5 the Court as to all discovery and pretrial proceedings and deadlines except for such actions as are
6 necessary to implement the Settlement Agreement and the Preliminary and Final Approval
7 Orders. Therefore, Defendant need not answer or otherwise respond to the SAC unless and until
8 such time that stay is lifted. If and when the stay is lifted Defendant will have 30 days from that
9 date to file a responsive pleading to the SAC.

10 **IT IS SO STIPULATED.**

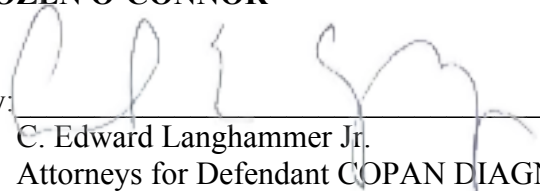
11
12 **DATED:** February 23, 2023

12 **DA VEGA | FISHER | MECHTENBERG LLP**

13
14 By: 
15 Matthew S. Da Vega
16 Attorneys for Plaintiff and Class

16 **DATED:** February 23, 2023

16 **COZEN O'CONNOR**

17
18 By: 
19 C. Edward Langhammer Jr.
20 Attorneys for Defendant COPAN DIAGNOSTICS, INC.

1 **[PROPOSED] ORDER**

2 **RE**

3 **LEAVE TO FILE SECOND AMENDED COMPLAINT**

4 **(in conjunction with Motion for Preliminary Approval of Class and PAGA Settlement)**

5 For good cause appearing the Court hereby ORDERS the following:

6 1. Plaintiff is granted leave to file his Second Amended Complaint (“SAC”);

7 2. The attached Second Amended Complaint shall be deemed filed with this Court
8 and served on Defendant as of the date the Court signs the this Order;

9 2. The action is stayed and suspended until further notice from the Court, as to all
10 discovery and pretrial proceedings and deadlines except for such actions as are necessary to
11 implement the Settlement Agreement and the Preliminary and Final Approval Orders. Therefore,
12 Defendant need not answer or otherwise respond to the SAC unless and until such time the stay is
13 lifted. If and when the stay is lifted, Defendant will have 30 days from that date to file a
14 responsive pleading to the SAC.

15
16 **IT IS SO ORDERED.**

17
18 Dated: _____, 2023

19 _____
20 Riverside County Superior Court Judge

Gillette v. Copan Diagnostics, Inc.
Case No. CVRI-2105284

EXHIBIT A
(Second Amended Complaint)

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Attorneys for Plaintiff and the Proposed Plaintiff Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE

WAYNE DOUGLAS GILLETTE, on
behalf of himself and all others similarly
situated,

Plaintiff,

v.

COPAN DIAGNOSTICS, INC., and DOES
1-100, inclusive,

Defendants.

Case No. CVRI-2105284

**SECOND AMENDED CLASS and
REPRESENTATIVE ACTION**

COMPLAINT FOR:

- (1) FAILURE TO PAY OVERTIME
WAGES (CAL. LABOR CODE §§ 204,
510, 1194);**
- (2) FAILURE TO PAY MINIMUM WAGE
(CAL. LABOR CODE §§ 1182.12, 1194,
1197, 1197.1;);**
- (3) FAILURE TO FURNISH
TIMELY/ACCURATE WAGE
STATEMENTS (RECORD-KEEPING
VIOLATIONS) (CAL LABOR CODE §§
226, 1174);**
- (4) FAILURE TO PAY ALL WAGES DUE
AT DISCHARGE IN TIMELY MANNER
- “WAITING TIME PENALTIES”
(CAL. LABOR CODE §§ 201-203);**
- (5) UNLAWFUL AND/OR UNFAIR
BUSINESS PRACTICES (CAL. BUS. &
PROF. CODE §§ 17200, *et seq.*)(“UCL”);**
- (6) VIOLATION OF PRIVATE ATTORNEY
GENERAL ACT OF 2004
(“PAGA”)(LAB. CODE § 2698, *et seq.*;**
- (7) FAILURE TO PROVIDE MEAL
BREAKS (CAL. LABOR CODE §§
226.7, 512);**

- 1 (8) **FAILURE TO PROVIDE REST**
2 **BREAKS (CAL. LABOR CODE §**
3 **226.7);**
4 (9) **FAILURE TO REIMBURSE**
5 **NECESSARY BUSINESS EXPENSES**
6 **(CAL. LABOR CODE § 2802);**
7 (10) **VIOLATION OF THE FAIR LABOR**
8 **STANDARDS ACT (29 U.S.C. §§ 201, et**
9 **seq.)**

10 **DEMAND FOR JURY TRIAL**

11 Plaintiff Wayne Douglas Gillette (“Gillette” or “Plaintiff”), brings this action on behalf of
12 himself, and all others similarly situated (“Class Members”), and on information and belief
13 alleges against Defendants Copan Diagnostics, Inc. (“Copan” or “Defendant”), and Does 1-100
14 (collectively “Defendants”) the following:

15 **NATURE OF THE CASE**

16 1. This case is brought as a class action under California Code of Civil Procedure
17 (“CCP”) §382 to address Defendants’ violations of various California Labor Codes, Industrial
18 Welfare Commission (“IWC”) wage orders, and Unfair Competition Law (“UCL”). This Second
19 Amended Complaint adds a seventh cause of action (alleged meal period violations), an eighth
20 cause of action (alleged rest period violations), a ninth cause of action (alleged failure to
21 reimburse business expenses), and a tenth cause of action (alleged FLSA violations) for the
22 purposes of Class/PAGA settlement. Although Plaintiff has included a the Fair Labor Standards
23 Act (“FLSA”) cause of action, this is not an “FLSA action” under 29 U.S.C. § 216(b). The
24 purpose of these additional cause of action including the FLSA cause of action is to meet the
25 requirements of *Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, to
26 “ensure that class releases do not extend to claims that are beyond the scope of the allegations in
27 the complaint”. The settling plaintiff may release FLSA claims arising from the same facts even
28 though the settlement adopts California’s “opt-out” class procedure rather than the FLSA’s “opt-
in” procedure. The FLSA’s procedure governs who can be a Plaintiff not the scope of a
permissible release. *Amaro* at 539-540. This case is also brought as a representative action for

1 recovery of penalties under the California Labor Code Private Attorney General Act of 2004
2 (“PAGA”), Cal. Lab. Code § 2698, *et seq.* Plaintiff alleges Defendants have engaged in, among
3 other things a system of willful violations of the California Labor Code, applicable IWC wage
4 orders, and UCL for the work performed by Class Members in and outside California.

5 2. Plaintiff and Class Members are “Field Service Engineers” for Copan: Plaintiff
6 was employed as a Field Service Engineer in the Field Service Department of Copan Diagnostics
7 which is headquartered in Murrieta, CA in Riverside County. Plaintiff and other Field Service
8 Engineers (“Class Members”) were misclassified as exempt from overtime/salaried employees by
9 Defendants and not paid overtime wages for overtime hours worked despite typically working in
10 excess of 8 hours a day and/or 40 hours a week while performing work in and outside California.
11 Plaintiff and Class Members worked for Defendant Copan by traveling to/from various client’s
12 and customer’s facilities, including in/at physical locations in and outside California. Despite
13 being given the misleading job title of “Field Service Engineer” the Plaintiff and Class Members
14 are/were not engineers and their job duties/work are/were largely manual labor including the
15 inspections and repairs of Copan’s diagnostic equipment (automated microbiology equipment).

16 3. Misclassification of “Field Service Engineers” as Exempt Employees: Defendants
17 acted intentionally and with deliberate indifference and conscious disregard for the rights of
18 Plaintiff and Class Members by intentionally misclassifying Field Service Engineers as Exempt
19 from overtime/salaried employees. During the Class Period Class Members performed physical
20 repair work in and outside the state of California including:

21 (a) Class Members who lived in California and performed daily manual labor work in
22 and outside California, and

23 (b) Class Members who lived outside of California and performed work outside of
24 California, but would often traveled to/from California at the direction of Defendants to perform
25 manual labor work within the state of California (i.e. Plaintiff although based in North Carolina
26 came to California approximately 1 time every 2 months [6x a year] to perform manual repair
27 work, while often working/staying in California for approximately a week at a time).

1 These Class Members were not paid overtime wages for overtime work performed in or
2 outside California (work over 8 hours a day and/or 40 hours in a week), not paid a minimum
3 wage for said work in and outside California, not provided timely/accurate wage statements
4 reflecting those overtime hours in and outside California, not paid meal/rest period premiums for
5 duty-filled meal/rest periods, not reimbursed necessary business expenses, and not paid waiting
6 time penalties upon separation from the Company for the work performed in California.

7 4. Failure to Pay Overtime, Failure to Pay Overtime at the Correct Overtime Rates,
8 Failure to Pay Minimum Wage, Failure to Provide Timely/Accurate Wage Statements, Meal/Rest
9 Period Violations, Reimbursement of Necessary Business Expenses, and Waiting Time Penalties:

10 Defendants intentionally misclassified Plaintiff and Class Members as exempt. As a result,
11 Defendants intentionally failed to pay Plaintiff and Class Members for all wages earned for work
12 performed in and outside California including failing to pay them for any overtime hours worked,
13 for overtime hours at the appropriate rate, minimum wage for hours worked, failing to keep and
14 provide accurate and timely records of wages earned and other legally mandated records, failing
15 to pay meal/rest period violation premiums, failing to reimburse necessary business expenses, and
16 failing to pay Plaintiff and Class Members whose employment has terminated (voluntarily
17 resigned or were terminated) a final payment of his or her wages in a prompt and timely manner
18 in conformity with Labor Codes §§ 201, 202, 203, 204, 216, 226, 226.3, 226.7, 510, 512, 1174,
19 1174.5, 1182.12, 1194, 1194.2, 1194.5, 1197, 1197.1, 1198, 1199, 2802, and other unfair and
20 unlawful conduct in violation of the Business & Professional Code §17200, *et seq.* The policies,
21 practices and customs of Defendants described herein are also violations of California Industrial
22 Welfare Commission (I.W.C.) Wage Order 1 and Order 4 (“I.W.C. Wage Orders) and FLSA.

23 5. The policies, practices and customs of Defendants described herein have resulted
24 in unjust enrichment of Defendants and an unfair business advantage over businesses that
25 routinely adhere to the strictures of the California Labor Code and IWC wage orders, and thus
26 violate the UCL.

27 6. The “Class Period”: The Class Period is designated as the time from November
28 19, 2017 (4 years prior to the filing date of the original complaint), through the entry of judgment,

1 based on the allegation that the violations of California's wage and hour laws and UCL, as
2 described herein, have been ongoing for at least the four (4) years prior to the filing of the
3 original Complaint and are continuing.

4 7. During the relevant Class Period, Defendants have had a standard and uniform
5 policies that violate California's Labor Codes, I.W.C. Wage orders, and UCL as follows:

- 6 a. Defendants intentionally misclassified Plaintiff and Class Members (Field
7 Service Engineers who performed work in and outside California) as
8 Exempt/Salaried Employees in violation of Labor Codes §§ 510, 515 and
9 FLSA;
- 10 b. Defendants required Plaintiff and Class Members working for Defendants
11 in and outside California to perform work without full compensation
12 during overtime hours, and/or paid minimum wage for said hours worked
13 in and outside California. On a daily basis Field Service Engineers
14 are/were required to perform work in and outside California for which they
15 were not lawfully compensated in violation of Labor Code §§ 204, 510,
16 1182.11, 1182.12, 1194, 1197, 1197.1, 1198, and 1199 (and I.W.C. Orders)
17 and FLSA;
- 18 c. Defendants failed to provide Plaintiff and Class Members, with accurate
19 and timely pay stubs (accurate, semi-monthly, itemized statements of the
20 total number of hours each of them worked, applicable hourly rate of pay,
21 and/or wages earned) --- in violation of Labor Code § 226; and
- 22 d. Defendants have willfully failed to pay Plaintiff and Class Members whose
23 employment has terminated (voluntarily resigned or were terminated) a
24 final payment of his or her total wages in a prompt and timely manner ----
25 in violation of Labor Codes §§ 201 - 203.

26 8. Plaintiff, on behalf of himself and the proposed Class, seeks unpaid compensation
27 (including unpaid/underpaid regular hours, overtime hours, minimum wages), interest thereon,
28 waiting time penalties, penalties and relief for failure to provide accurate and timely itemized

1 statements of total hours worked/wages earned, and reasonable attorneys' fees and costs, under
2 Labor Code §§ 201, 202, 203, 204, 218.5, 218.6, 226, 510, 1174, 1194, 1197.1, 1199, 2699.3,
3 2699.5, C.C.P. § 1021.5, California common law, (and I.W.C. Wage orders) and FLSA.

4 9. Under California Business & Professions Code ("Cal. Bus. & Prof. Code")
5 §§ 17200, *et seq.* ("UCL"), and pursuant to class action procedures provided for in these statutes,
6 Plaintiff, on behalf of himself and all others similarly situated also seeks injunctive relief and
7 restitution of all benefits the Defendants have received from their violations, as described herein,
8 during the relevant Class Period.

9 **JURISDICTION AND VENUE**

10 10. **Jurisdiction:** This Court has jurisdiction over this matter pursuant to the laws of
11 the State of California including Code of Civil Procedure § 410.10. Defendants own and/or lease
12 property in Riverside County. Defendants regularly do business in Riverside County.
13 Defendant's headquarters are located at 26055 Jefferson Avenue, Murrieta, CA 92562 in
14 Riverside County. Defendants employ and/or employed approximately 25 (twenty-five) Field
15 Service Engineers during the Class Period who have performed work in and outside California
16 and have obtained the benefits of the laws of the State of California and the California labor
17 market. This Court has jurisdiction over Plaintiff's and Class Members' claims for: intentional
18 misclassification of Field Service Engineers as exempt from overtime pay; failure to pay overtime
19 and minimum wages; penalties for failure to provide itemized statements of hours worked and all
20 applicable hourly rates; penalties for failure to pay wages of discharged employees; and
21 injunctive relief and restitution of ill-gotten benefits arising from Defendants' unlawful business
22 practices.

23 11. **Venue:** Venue is proper in this county pursuant to California Code of Civil
24 Procedure §§395(a) and/or 395.5. Defendants transact business and may be found within
25 Riverside County. The unlawful acts, as well as the course of conduct alleged herein, occurred in
26 Riverside County. Defendants maintain offices, transact business, have agents, and employ
27 numerous Class Members in Riverside County and/or California, and are otherwise within this
28 Court's jurisdiction for purposes of service of process. The unlawful acts alleged herein have had

1 a direct effect on Plaintiff and those similarly situated within the State of California and within
2 Riverside County.

3 12. **PAGA Notice (November 19, 2021):** California Labor Code §§ 2699 et seq., the
4 "Labor Code Private Attorneys Generals Act" ("PAGA"), authorizes aggrieved employees to sue
5 directly for various civil penalties under the California Labor Code. On November 19, 2021 (the
6 same date of the original filing of the Complaint in this matter) Plaintiff provided written notice
7 ("PAGA Notice") and a draft copy of a First Amended Complaint ("FAC"), which included the
8 additional cause of action for alleged PAGA violations, by certified mail and electronic filing to
9 the California Labor and Workforce Development Agency ("LWDA"), via the LWDA website,
10 and to the Defendants with the specific provisions of the California Labor Code alleged to have
11 been violated, including the facts and theories to support the alleged violations, pursuant to
12 California Labor Code §2699.3. A true and correct copy of the PAGA Notice showing
13 compliance with Labor Code §2699.3 is attached hereto as **Exhibit A**. No notice of cure by
14 Defendants was provided and the LWDA has not provided Plaintiff with notice that it intends to
15 investigate this violation, although more than 65 days elapsed (as of January 24, 2022) since the
16 postmark date of Plaintiff's PAGA Notice.

17 **THE PARTIES**

18 13. **Plaintiff Wayne Douglas Gillette ("Gillette"):** Gillette is a single 37 year old
19 adult male and father of three. He is currently a resident and citizen of Raleigh, North Carolina.
20 He was employed by Copan Diagnostics from April 20, 2015 until October 15, 2021 (6 years and
21 5 months or 338.57 weeks), as Field Service Engineer. He was initially hired at a salary of
22 \$55,000/year + bonus (approximately \$5,000 in 2017) but at the time of his termination his salary
23 was \$69,000/year + bonus (approx. \$4,000 to \$5,000 in 2020) for a total \$73,000). As a Field
24 Service Engineer his job was performing manual repairs and administering manual preventive
25 maintenance, calibration, and electrical safety testing (EST) on automated microbiology
26 equipment like Copan's WASP [Walk Away Special Processor] and WASPLabs for automated
27 specimen processing (i.e. urine, stool, sputum and swab sample processing). He and Class
28 Members were, despite the job title, a field mechanic performing mostly manual labor/repairs,

1 monitor work order requests, complete said repairs, perform equipment inspections and
2 preventive maintenance, and documenting all service activities. Plaintiff estimates that 80%+ of
3 his and Class Members work is manual mechanical repairs versus 20% downloading/updating
4 software or hard drives on the equipment. Plaintiff alleges that he and other Class Members
5 typically worked 50+ hours a week but were not paid for any of the overtime hours work.
6 Defendants also did not provide compliant itemized wage statement in writing showing gross
7 wages, total hours worked, all deductions, net wages, applicable hourly rates, etc.

8 14. **Defendant Copan Diagnostics, Inc. (“Copan”)**: At all relevant times, Defendant
9 Copan was and is a corporation organized under the laws of the State of New York, and
10 authorized and qualified to do business in California and Riverside County. Copan was founded
11 in 1979. COPAN stands for “Collection and Preservation for Analysis”. Copan is headquartered
12 at 26055 Jefferson Avenue, Murrieta, CA 92562 in Riverside County. Copan is a California
13 based manufacturer of laboratory products including bacteriology transport swabs, viral transport
14 media, transfer pipets, inoculation loops and needles, spreaders, and molecular systems. It has
15 manufactured the WASP: Walk-Away Specimen Processor, a modular open platform system
16 which enables the automatic planting and streaking of all types of bacteriological samples for
17 processing (See - <https://www.youtube.com/watch?v=Q6rKoPJ8RPw&t=262s>). Copan,
18 employs/employed Field Service Engineers in and outside California during the Class Period, and
19 has intentionally misclassified them as exempt employees. Plaintiff alleges that the practices and
20 policies that are complained of in this Complaint have been occurring throughout the Class Period
21 and are currently applied by Copan in and outside California. Copan is, and at all relevant times
22 has been, an employer subject to the California Labor Code.

23 **FICTITIOUS DEFENDANTS**

24 15. Defendants Does 1-100, inclusive, are sued herein under fictitious names. Their
25 true names and capacities are unknown to Plaintiff at this time. When their true names and
26 capacities are ascertained, Plaintiff will amend this Complaint by inserting their true names and
27 capacities. Plaintiff is informed and believe, and thereon allege that each of the fictitiously-
28 named Defendants is responsible in some manner for the occurrences alleged herein and that

1 Plaintiff's' and the proposed Class Members' damages and penalties alleged herein were
2 proximately caused by such Defendants.

3 **AGENCY**

4 16. Plaintiff is informed, believe, and thereon allege that each of the Defendants herein
5 was, at all times relevant in this action, the agent, employee, representing partner, and/or joint
6 venture of the remaining Defendants and was acting within the course and scope of that
7 relationship. Plaintiff is further informed, believe, and thereon allege that each of the Defendants
8 herein gave consent to, ratified, and authorized the acts alleged herein to the remaining
9 Defendants.

10 **CLASS ACTION ALLEGATIONS**

11 17. Plaintiff brings this action individually and as a class action on behalf of opt-out
12 classes (the "Class") defined as follows:

13 **All current and former Field Service Engineer employees who**
14 **physically performed work for Defendants in and outside the**
15 **state of California from November 19, 2017 until the entry of**
16 **judgment.**

17 18. Plaintiff is a member of the proposed class and representative of other Field
18 Service Engineer employees and are acting on behalf of their interests. Plaintiff believes this
19 includes, but is not limited to Defendants' Field Service Engineer employees misclassified as
20 exempt (collectively "Field Service Engineers") and other related job titles as their specific titles
21 may have changed over time. Plaintiff reserves the right under Rule 3.765(b), California Rules of
22 Court, to amend or modify the class description with greater specificity or further division into a
23 subclasses or limitations to particular issues.

24 19. The Plaintiff and Class Members assert the following claims:

- 25 a. Plaintiff and Class Members were intentionally misclassified as exempt in
26 violation of Labor Codes §§510, 515 and FLSA;
27 b. Plaintiff and Class Members were not paid all wages owed for all hours
28 work including regular hours, overtime hours, and/or minimum wage for
said hours worked as required by California Labor Code §§ 204, 510,

1182.11, 1182.12, 1194, 1197, 1197.1, 1198, and 1199 and I.W.C. Orders and FLSA;

- c. Plaintiff and Class members were not paid all wages due them upon their separation from employment with Defendants as required by Labor Code §§ 201 - 203;
- d. Plaintiff and Class members did not receive pay stubs in conformity with Labor Code §226;
- e. Plaintiff and Class members were not provided duty-free meal periods (or paid in lieu thereof) as required by Labor Code §§ 226.7, 512;
- f. Plaintiff and Class members were not provided duty-free rest periods (or paid in lieu thereof) as required by Labor Code §§ 226.7;
- g. Plaintiff and Class members were not reimbursed for necessary business expenses;

20. This action is brought, and may properly be maintained, as a class action pursuant to California Code of Civil Procedure §382 (and the analogous provisions of Federal Rules of Civil Procedure 23(a)(1)-(4) and 23(b)) as to violations of California Labor Codes, I.W.C. Wage Orders, and UCL and FLSA for unpaid regular hours worked, overtime hours worked, and/or minimum pay for said hours, waiting time penalties, failure to furnish timely, itemized wage statements, meal/rest period violations, unreimbursed business expenses, and attorneys' fees and costs. The similarly situated employees are known to Defendants and are readily identifiable and locatable through Defendants' own employment records. There is a well-defined community of interest in the litigation, and the proposed class is easily ascertainable. As described below, this action also satisfies the numerosity, commonality, predominance, typicality, adequacy, and superiority requirements of these provisions.

21. **Numerosity:** A class action is the only available method for the fair and efficient adjudication of this controversy. Although the exact number and identities of all Class Members are unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff is informed and believe that the Class includes over 50 persons. On information and

1 belief, therefore, Plaintiff alleges that the members of the Class are so numerous that joinder of all
2 members is impractical, if not impossible. Membership in the Class will be determined upon
3 analysis of, *inter alia*, records maintained by Defendants.

4 22. **Commonality and Predominance:** The Plaintiff and the Class share a
5 community of interest because there are numerous common issues of fact and law that
6 predominate over any questions and issues solely affecting individual members. Such common
7 factual and legal issues include, but are not limited to, the following:

- 8 a. Whether Plaintiff and Class Members served Defendants as exempt or non-
9 exempt employees under California law and FLSA;
- 10 b. Whether Defendants knowingly and willfully violated Labor Code §§ 204,
11 510, 1182.11, 1182.12, 1194, 1197, 1197.1, 1198, and 1199, and FLSA by
12 failing to pay all wages for regular hours worked, overtime hours worked,
13 and/or minimum wage for said hours, to Plaintiff and Class Members;
- 14 c. Whether Defendants violated Labor Code §§226 and 1174 by failing to
15 keep or provide accurate records of Plaintiff's and Class Members' gross
16 wages, total hours worked, deductions, net wages, dates of the pay period,
17 hourly rates, etc.;
- 18 d. Whether Defendants violated Labor Code §§201, 202, 203 by failing to
19 pay all wages due and owing at the time that Plaintiff's and Class
20 Members' employment with Defendants terminated;
- 21 e. Whether former employees are entitled to "waiting time" penalties
22 pursuant to Labor Code §203;
- 23 f. Whether Defendants knowingly and willfully violated the above wage and
24 hour laws; and
- 25 g. Whether Defendants various violation of the Labor Code, described above,
26 serve as a predicate violations of Business & Professions Code §§17200, *et*
27 *seq.* ("UCL").

1 23. **Typicality:** Plaintiff's claims are typical of the claims of the Class. Plaintiff and
2 all members of the Class sustained injuries and damages arising out of, and caused by,
3 Defendants' common course of conduct in violation of law as alleged herein.

4 24. **Adequacy of Representation:** Plaintiff is an adequate representative of the Class
5 in that Plaintiff have the same interests in the litigation of this case as the Class Members as they
6 include current and former Field Service Engineers working for Defendants. Plaintiff is
7 committed to vigorous prosecution of this case and have retained competent counsel who are
8 experienced in class actions and wage and hour litigation of this nature. Plaintiff is not subject to
9 any individual defenses different from those conceivably applicable to the Class as a whole.

10 25. **Superiority of Class Action:** A class action is superior to other available
11 methods for the fair and efficient adjudication of this controversy because individual litigation of
12 the claims of all Class Members is impractical.

13 26. The California Labor Code and Wage Order provisions upon which Plaintiff and
14 Class Members assert these claims are broadly remedial in nature. These laws and labor standards
15 serve an important public interest in establishing minimum working conditions and standards in
16 California. These laws and labor standards protect the average working employee from
17 exploitation by employers who may seek to take advantage of superior economic and bargaining
18 power in setting onerous terms and conditions of employment.

19 27. The nature of this action and the format of laws available to Plaintiff and members
20 of the class identified herein make the class action format a particularly efficient and appropriate
21 procedure to redress the wrongs alleged herein. If each employee were required to file an
22 individual lawsuit, the corporate Defendants would necessarily gain an unconscionable advantage
23 since they would be able to exploit and overwhelm the limited resources of each individual class
24 member with their vastly superior financial and legal resources. Requiring each class member to
25 pursue an individual remedy would also discourage the assertion of lawful claims by employees
26 who would be disinclined to file an action against their current or former employer for real and
27 justifiable fear of retaliation and permanent damage to their careers at subsequent employment.
28

1 28. Even if every Class Member could afford individual litigation, the court system
2 could not. It would be unduly burdensome to the courts in which individual litigation of
3 numerous cases would proceed. Individualized litigation would also present the potential for
4 varying, inconsistent, or contradictory judgments and would magnify the delay and expense to all
5 parties and to the court system resulting from multiple trials of the same complex factual issues.
6 By contrast, the conduct of this action as a class action, with respect to some or all of the issues
7 presented herein, presents fewer management difficulties, conserves the resources of the parties
8 and the court system, and protects the rights of each Class Member. Plaintiff anticipate no
9 management difficulties in this litigation.

10 29. Further, the Defendants have also acted, or have refused to act, in respects
11 generally applicable to the Class, thereby making appropriate relief with regard to the members of
12 the Class as a whole, as requested herein.

13 **COMMON FACTUAL ALLEGATIONS**

14 30. Plaintiff is informed and believes and based thereon allege the following:

15 31. Field Service Engineers and WASP Systems: Copan provides its WASP systems
16 nationwide to various labs and medical facilities. In order to install, operate, and repair these
17 WASP systems Copan employs “Field Service Engineers” throughout the Country, including
18 many who live and work in and outside California. Field Service Engineers’ job duties involve
19 traveling to various job sites each day, then inspecting, installing, and/or repairing WASP
20 equipment, performing maintenance and troubleshooting on the equipment, and operating the
21 equipment with the customer. (see picture of WASP system, below).
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32. Field Service Engineers' Essential Job Functions: Field Service Engineers' essential job functions, as articulated in its own materials, including: "the installation, maintenance, repair, troubleshooting and assembly of automated microbiology equipment ..."; "Achieves performance measures associated with the maintenance of equipment ..."; "Complete all necessary documentation of activities involving the servicing of equipment in accordance with manufacturer requirements"; "Serves as a resource for the proper operation and maintenance of equipment.", "Adheres to quality customer service while addressing customer concerns and requests." The manual labor duties performed by Plaintiff and the other Field Service Engineers is non-exempt work.

33. Basic Tools: The majority of their work is manual in nature, using hand tools and carrying heavy equipment (See picture below of Plaintiff's tools used to work on WASP systems).



34. Compensation as Misclassified Exempt Employees: Copan pays all of its Field Service Engineers under a uniform compensation policy. Field Service Engineers receive a salary and job bonus, regardless of the number of hours worked. Regardless of location, all Field Service Engineers were treated the same and denied overtime pay.

35. Long Unpaid Overtime Hours: Field Service Engineers work long and hard hours in the field (i.e. typically 50+ hours a week). However, Copan does not pay Field Service Engineers overtime wages.

36. Copan's Control Over and Policies Re Field Service Engineers: Beyond being manual in nature, every aspect of a Field Service Engineers' job is predetermined for them. Copan trains its Field Service Engineer employees on how to inspect, trouble shoot, and repair the WASP equipment. Field Service Engineers are instructed to contact their manager(s) or other Field Service Engineers in group communications for additional help, if needed. Field Service Engineers are not allowed to act on his or her own in the inspection, operation, or

1 maintenance/troubleshooting of issues. Field Service Engineers must comply with Copan strict
2 policies and procedures governing each issue that arises throughout the job.

3 37. No Higher Degree Required and Copan Training: No degree, no specific degree,
4 nor any advanced degree is required to be a Field Service Engineer for Copan. Plaintiff and
5 Class Members offer letters indicate only that, a “Bachelor’s Degree or equivalent formal related
6 training required” and “mininum 3-5 years laboratory technology experience” are required.
7 Copan provides all the training necessary to perform the job indicating that employee upon hire,
8 “Must be available to train for up to 4 weeks in Europe”.

9 38. Defendants have for years intentionally misclassified Plaintiff and Class Members
10 as Exempt in violation of Labor Code §§ 510, 515, and FLSA and, in so doing, have denied them
11 the benefits and protections of California employment law.

12 39. Defendants failed to: 1) pay Class Members all wages due for work performed
13 including regular hours, overtime hours, and/or minimum wage for said hours worked; 2) provide
14 Class Members accurate and timely wage statements; and 3) pay all wages due upon termination;
15 thereby enjoying a significant competitive edge over their competitors. Defendants have and had
16 a consistent and uniform policy, practice and procedure of willfully failing to comply with
17 California’s wage and hour laws, I.W.C orders and UCL and FLSA as described herein.

18 40. **Misclassification as Exempt:** Plaintiff and Class Members are current and former
19 persons employed by Defendants as Field Service Engineers providing services for Defendants’
20 clients (i.e. labs/health care facilities who purchases the WASP system). By intentionally
21 misclassifying Plaintiff and Class Members as exempt in violation of Defendants purposely and
22 willfully attempted to avoid their obligations under California labor law and FLSA. The United
23 States Department of Labor has issued two Opinion Letters addressing the exempt status of field
24 service engineers and technicians.

25 (1) Opinion Letter, 1985 DOLWH LEXIS 69 (July 11, 1985). That letter
26 states, in part, “ It is our position that work which consists of the performance of installation
27 repair, and/or operation of electronic or industrial equipment does not involve the use of
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1 discretion and independent judgment within the meaning of the regulations. The fact that the field
2 service engineers may demonstrate such techniques to customers of the manufacturer does not
3 change this conclusion.” and “It is also our view that the above employees would not qualify for
4 exemption as bona fide professional employees since their primary duty does not consist of the
5 performance of work requiring knowledge of an advance type in a field of science or learning
6 customarily acquired by a prolonged course of specialized intellectual instruction and study ...”
7 “A ‘prolonged course of . . . study’ has generally been defined to mean at least a baccalaureate
8 degree or equivalent which includes a longer intellectual discipline in a particular course of study
9 as distinguished from a general academic course otherwise required for a baccalaureate degree.”
10 “It is our opinion that the above employees are best characterized as highly skilled technicians
11 who are nonexempt under section 13(a)(1) of the FLSA. Therefore, all of the employees must be
12 paid in accordance with the minimum wage and overtime pay provisions of the Act”

13 (2) Opinion Letter, 2000 WL 34444354 (July 14, 2000). That letter states, in
14 part, ““It has been our long-standing position that service employees and repair technicians, such
15 as the field service technicians, do not qualify for exemption as bona fide administrative
16 employees. Work which consists of the installation, diagnosis, and repair of equipment would
17 not involve the use of discretion and independent judgment within the meaning of the
18 regulations. Such employees are using skills and procedures or techniques acquired by special
19 training or experience. Their duties do not involve, with respect to matters of significance, the
20 comparison and evaluation of possible courses of conduct and the making of decisions after the
21 various possibilities have been considered. It is our opinion that the field service technicians are
22 best characterized as highly skilled technicians and would not qualify as exempt administrative
23 employees within the meaning of the regulations.”

24 These letters explain that field service engineers and technicians are not exempt (i.e. they
25 are entitled to overtime pay) either under what is known as the administrative or professional
26 exemptions.

27 41. **Regular Time, Overtime, and Minimum Wage Violations:** Specifically, as
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1 alleged above, Defendants failed to compensate Plaintiff and Class Members all wages owed for
2 all hours worked including failing to pay minimum wages, regular wages, and overtime wages.
3 Therefore, Plaintiff and Class Members are entitled to recover wages and/or penalties as provided
4 by Labor Code §§ 204, 510, 1182.11, 1182.12, 1194, 1197, 1197.1, 1198, and 1199 and
5 applicable IWC Wage Orders and FLSA.

6 **42. Wage Statement Violations:** Defendants' practices and policies, as described
7 above, resulted in the systemic and uniform failure to provide timely and/or accurate wage
8 statements in violation of Labor Code §§ 226, 226.3, and 1174. Despite knowledge of Plaintiff's
9 and Class Members' entitlement to additional pay for hours worked (including overtime hours,
10 and minimum wage), Defendants have violated California Labor Code §1174 by failing to
11 provide or require the use, maintenance, or submission of accurate time records by members of
12 the Class. Defendants failed to take appropriate steps to correct its mistakes. As described above,
13 Class Members' were not provided accurate paystubs and timely ones, in part due to being
14 misclassified as exempt employees. The payments received by Class Members did not accurately
15 reflect all of the hours worked or correct pay rates, and Defendants did not provide its Field
16 Service Engineers payment for additional overtime hour(s) of work at the Class Member's
17 appropriate overtime rates. Defendants' failure to provide Plaintiff and Class Members with
18 timely and/or accurate, semi-monthly itemized statements was done knowingly and intentionally.

19 **43. Wages Owed Upon Separation/Termination Violations:** Defendants' practices
20 and policies resulted in the systemic and uniform failure to provide Plaintiff and Class Members,
21 upon termination or separation, the total wages they were owed. Plaintiff and Class Member's
22 employees who quit, were laid off, or were terminated were not paid the wages owed them in
23 accord with Labor Code §§ 201, 202, 203, 206, and 1174.

24 **44.** As a direct and proximate result of Defendants' unlawful conduct, as set forth
25 herein, Plaintiff and the Class Members have sustained damages, including for the lack of pay for
26 all hours worked (including regular hours, overtime hours, and/or minimum wage for said hours)
27 and loss of interest on those wages, in an amount to be established at trial. As a further direct and
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1 proximate result of Defendants' unlawful conduct, as set forth herein, many Class Members
2 herein are entitled to recover "waiting time" penalties and penalties for failure to provide accurate
3 and timely semi-monthly statements, all in amounts to be established at trial. Plaintiff and the
4 Class Members are also entitled to recover prejudgment interest, attorneys' fees and costs,
5 pursuant to statute.

6 45. **PAGA Notice:** At all times herein set forth, PAGA was applicable to the
7 Plaintiff's employment by Defendants. Pursuant to PAGA, a civil action under PAGA may be
8 brought by an "aggrieved employee," who is any person that was employed by the alleged
9 violator and against whom one or more of the alleged violations was committed.

10 46. Plaintiff was employed by Defendants and the Labor Code violations alleged
11 herein were committed against him and other employees during their time of employment, and
12 they are therefore aggrieved employees. Plaintiff and other Class Members are "aggrieved
13 employees" as defined by California Labor Code §2699(c) in that they are all current or former
14 employees of Defendants, and one or more of the Labor Code violations alleged herein were
15 committed against them.

16 47. Pursuant to California Labor Code §§ 2699.3 and 2699.5, an aggrieved employee,
17 may pursue a civil action arising under PAGA after the following requirements have been met:

18 48. The aggrieved employees shall give written notice by certified mail/electronic
19 filing on website (hereinafter "PAGA Notice") to the California Labor and Workforce
20 Development Agency ("LWDA") and the employer(s) of the specific provisions of the California
21 Labor Code alleged to have been violated, including the facts and theories to support the alleged
22 violations.

23 49. The LWDA shall provide notice (hereinafter "LWDA Notice") to the employer
24 and the aggrieved employee by certified mail that it does not intend to investigate the alleged
25 violation within sixty (60) calendar days of the postmark date of the PAGA Notice. Upon receipt
26 of the LWDA Notice, or if the LWDA Notice is not provided within sixty-five (65) calendar days
27 of the postmark date of the employees' PAGA Notice, the aggrieved employee may commence a
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1 civil action pursuant to California Labor Code § 2699 to recover civil penalties in addition to any
2 other penalties to which the employee may be entitled.

3 50. On **November 19, 2021** Plaintiff provided a written PAGA Notice and draft copy
4 of the First Amended Complaint by certified mail, and via the LWDA website, to the LWDA and
5 to the employer Defendants, of the specific provisions of the California Labor Code alleged to
6 have been violated, including the facts and theories to support the alleged violations, pursuant to
7 California Labor Code §2699.3. No notice of cure by Defendants was provided and
8 the LWDA has not provided Plaintiff with any LWDA Notice that it intends to investigate these
9 violations, although more than 65 days have elapsed since the postmark date of the Employee's
10 Notice

11 51. Therefore, Plaintiff has complied with the PAGA written notice requirements set
12 forth in California Labor Code §2699.3(a), and as of **January 24, 2022**, (66 calendar days post
13 PAGA notice) will be able to/and did file his First Amended Complaint with the additional
14 representative PAGA violations cause of action.

15 **CAUSES OF ACTION**

16 **FIRST CAUSE OF ACTION**

17 **FAILURE TO PAY OVERTIME WAGES** 18 **(Labor Code §§ 204, 510, 1194, 1199)** 19 **(Plaintiff Against All Defendants and Does 1-100)**

20 52. Plaintiff incorporates by reference in this cause of action each allegation of all of
21 the foregoing paragraphs as if fully restated herein, and further allege against Defendants and
22 Does 1-100, and each of them, as follows:

23 53. During the Class Period Plaintiff and Class Members often worked in excess of 8
24 hours in a work day and/or 40 hours in a workweek without compensation in violation of Labor
25 Code §510. The precise number of hours will be proven at trial.

26 54. On information and belief, at all relative times, Defendants were aware of, and
27 were under a duty to comply with, various provisions of the California Labor Code. These
28 provisions include

a. Labor Code § 510: "Eight hours of labor constitutes a day's work. Any

1 work in excess of eight hours in one workday and any work in excess of 40 hours in any one
2 workweek and the first eight hours worked on the seventh day or work in any one workweek shall
3 be compensated at the rate of no less than one and one-half times the regular rate of pay for an
4 employee . . .”

5 b. Labor Code § 1194: “Notwithstanding any agreement to work for a lesser
6 wage, any employee receiving less than . . . the legal overtime compensation applicable to the
7 employee is entitled to recover in a civil action the unpaid balance of the full amount of this . . .
8 overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.”

9 c. Labor Code § 1198: “The maximum hours of work and the standard
10 conditions of labor fixed by the commission shall be the maximum hours of work and the
11 standard conditions of labor for employees. The employment of any employee for longer hours
12 than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

13 d. Labor Code § 1199: “Every employer or other person acting either
14 individually or as an officer, agent, or employee of another person is guilty of a misdemeanor and
15 is punishable by a fine of not less than one hundred dollars (\$100) or by imprisonment for not less
16 than 30 days, or by both, who does any of the following: (a) Requires or causes any employee to
17 work for longer hours than those fixed, or under conditions of labor prohibited by an order of the
18 commission . . . [or] (c) Violates or refuses or neglects to comply with any provision of this
19 chapter or any order of the commission.”

20 55. By refusing to compensate Plaintiff and the Class Members for overtime wages
21 earned, Defendants violated and continue to violate those California Labor Codes and I.W.C.
22 wage orders, including Labor Code §§ 204, 510, 1194, 1198, 1199).

23 56. As a direct and proximate result of Defendants’ unlawful conduct, as set forth
24 herein, Plaintiff and the Class Members have sustained damages, including loss of earnings for
25 unpaid hours of overtime worked on behalf of Defendants in an amount to be established at trial.
26 As a further direct and proximate result of Defendants’ unlawful conduct, as set forth herein,
27 Plaintiff and Class Members are entitled to recover interest on the overtime wages earned but not
28

1 paid, at a rate of 10% per year, as well as attorneys' fees and costs per Labor Code §§218.5,
2 218.6, and 1194, and the assessment of any other statutory penalties provided by the Labor Code.

3
4 **SECOND CAUSE OF ACTION**
5 **FAILURE TO PAY MINIMUM WAGE**
6 **(Labor Code §§ 1182.12, 1194, 1197, 1197.1)**
7 **(Plaintiff Against All Defendants and Does 1-100)**

8 57. Plaintiff incorporates by reference in this cause of action each allegation of all of
9 the foregoing paragraphs as if fully restated herein, and further allege against Defendants and
10 Does 1-100, and each of them, as follows:

11 58. Labor Code §§ 1182.12, 1194, 1197 and 1197.1 (and I.W.C. Wage Orders),
12 establish and protect the right of employees in California to receive minimum wages for their
13 work, in amounts set by California law. The applicable minimum wage in California during the
14 Class Period for employers with 26 employees or more, has been \$10.50/hr. from the beginning
15 of Class Period (November 19, 2017) until December 31, 2017; \$11/hr. from January 1, 2018 to
16 December 31, 2018; \$12/hr from January 1, 2019 to December 31, 2019; \$13/hr from January 1,
17 2020 to December 31, 2020; \$14/hr from January 1, 2021 to December 31, 2021.

18 59. At all relevant times, Defendants failed to pay Plaintiff and Class Members the
19 applicable minimum wage for all hours worked due to its failure to compensate Plaintiff and
20 Class Members for all work performed, specifically for work performed after/before scheduled
21 shifts and/or over 8 hours a day and/or 40 hours a week because they were misclassified as
22 exempt.

23 60. As a direct and proximate result of the Defendant's unlawful conduct, Plaintiff and
24 Class Members have been deprived of their minimum wages in an amount to be proven at trial,
25 and are entitled to recover such amounts, plus interest and penalties thereon, attorney's fees and
26 costs, under Labor Code §§ 218.5, 218.6, 558, 1182.12, 1194, 1194.2, 1197.1, I.W.C. Wage
27 Orders , and are entitled to injunctive relief.
28

THIRD CAUSE OF ACTION
FAILURE TO PROVIDE TIMELY AND ACCURATE WAGE STATEMENTS
(Labor Code § 226)
(Plaintiff Against All Defendants and Does 1-100)

61. Plaintiff incorporates by reference in this cause of action each allegation of all of the foregoing paragraphs as if fully restated herein, and further allege against Defendants and Does 1-100, and each of them, as follows:

62. Labor Code § 226(a) provides as follows:

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 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee . . . (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions . . . , (5) net wages earned . . . and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

63. Labor Code § 226(e) provides as follows:

An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) shall be entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and shall be entitled to an award of costs and reasonable attorney fees.

64. During the relevant time period, Defendants failed to provide Plaintiff sand Class Members with accurate, semi-monthly itemized statements of the total hours worked, all applicable hourly rates in effect, and all gross and net wages earned during the pay period. On information and belief, this was the direct and proximate result of a willful refusal by Defendants to provide such accurate statements.

65. Defendants knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Plaintiff and Class Members in accordance with Labor Code § 226(a). The statements provided to Plaintiff and Class Members have not accurately reflected the total hours worked, all applicable hourly rates in effect, and all gross and net wages earned during the pay period.

1 66. As a direct and proximate result of Defendants' unlawful conduct in failing to
2 provide accurate itemized wages statements, Plaintiff and Class Members suffered actual
3 damages and harm by being unable to determine their applicable hourly rate or the amount of
4 regular time or overtime worked each pay period, which prevented them from becoming aware of
5 these violations and asserting their statutory protections under California law. Plaintiff and Class
6 Members are entitled to recover the greater of all actual damages or fifty dollars (\$50.00) for the
7 initial pay period in which a violation occurs and one hundred dollars (\$100.00) per employee for
8 each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand
9 dollars (\$4,000.00). Plaintiff and Class Members are entitled to seek penalties, and attorneys' fees
10 and costs as provided by Labor Code §§ 226(e), 226(h), 226.3, and 1174.5.
11

12 **FOURTH CAUSE OF ACTION**
13 **FAILURE TO PAY ALL WAGES DUE AT TERMINATION –**
14 **WAITING TIME PENALTIES**
15 **(Labor Code §§ 201, 202, 203)**
16 **(Plaintiff Against All Defendants and Does 1-100)**

17 67. Plaintiff incorporates by reference in this cause of action each allegation of all of
18 the foregoing paragraphs as if fully restated herein, and further allege against Defendants and
19 Does 1-100, and each of them, as follows:

20 68. California Labor Code § 201 requires Defendants to pay its discharged employees
21 all wages due immediately upon discharge or termination of employment.

22 69. California Labor Code § 202 requires that if an employee quits his or her
23 employment, "his or her wages shall become due and payable not later than 72 hours thereafter,
24 unless the employee has given 72 hours previous notice of his or her intention to quit, in which
25 case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any
26 other provision of law, an employee who quits without providing a 72-hour notice shall be
27 entitled to receive payment by mail if he or she so requests and designates a mailing address."

28 70. California Labor Code § 203 provides that if an employer willfully fails to timely
pay any wages that are due to an employee who quits or is discharged, the employer must, as a
penalty, continue to pay the employees' wages until the back wages are paid in full or an action is

1 commenced. The penalty accrues for up to 30 days of wages. To this end, Labor Code § 203
2 provides as follows:

3 If an employer willfully fails to pay, without abatement or
4 reduction, in accordance with Sections 201, 201.5, 202 and 205.5,
5 any wages of an employee who is discharged or who quits, the
6 wages of the employee shall continue as a penalty from the due date
7 thereof at the same rate until paid or until an action therefore is
8 commenced; but the wages shall not continue for more than
9 30 days.

10 71. Plaintiff and Class Members who have been discharged or who have quit are
11 entitled to unpaid compensation, pursuant to Labor Code § 203, but to date have not received
12 such compensation.

13 72. During the relevant time period, Plaintiff and many Class Members were
14 employed by Defendants and were thereafter terminated or resigned from their positions with
15 Defendants. Defendants, however, did not pay such Plaintiff and Class Members all wages due
16 upon their termination or within 72 hours of their resignation of employment. On information
17 and belief, Plaintiff alleges that such non-payment was the direct and proximate result of a willful
18 refusal to do so by Defendants.

19 73. As a direct and proximate result of Defendants' unlawful and willful conduct in
20 not paying compensation for all hours worked, many Class Members are entitled to up to 30 days
21 wages as a penalty ("waiting time penalty") under Labor Code § 203, together with reasonable
22 attorneys' fees and costs.

23 **FIFTH CAUSE OF ACTION**
24 **UNFAIR PRACTICE UNDER THE UNFAIR COMPETITION ACT**
25 **(California Business & Professions Code §§ 17200-17208)**
26 **(Plaintiff Against All Defendants and Does 1-100)**

27 74. Plaintiff incorporates by reference in this cause of action each allegation of all of
28 the foregoing paragraphs as if fully restated herein, and further allege against Defendants and
Does 1-100, and each of them, as follows:

75. Plaintiff brings this cause of action on behalf of himself and the Class as well as on
behalf of the general public, seeking equitable and statutory relief to stop the misconduct of

1 Defendants, as complained of herein, and to compel disgorgement of all profits obtained by
2 Defendants through the unfair, unlawful, and/or fraudulent business practices described herein.

3 76. The conduct of Defendants, as alleged herein, constitutes an unlawful business
4 practice as set forth in Business and Professions Code §§ 17200, *et seq.*

5 77. Specifically, Defendants conducted business activities while failing to comply
6 with California Labor Codes and IWC wage orders as described in this Complaint. Defendants,
7 and each of them, have intentionally and improperly failed to pay Class Members for all hours
8 worked including regular hours, overtime hours, and/or minimum wage for said hours; and failed
9 to provide other benefits in violation of the California Labor Code and IWC wage orders. Section
10 17200 of the Business and Professions Code prohibits unfair competition by prohibiting unlawful,
11 unfair, or fraudulent business practices or acts. Defendants' failure to adopt policies in
12 accordance and/or adherence with these laws, all of which are binding upon and burdensome to
13 Defendants' competitors, engenders an unfair competitive advantage for Defendants, thereby
14 constituting an unfair business practice, as set forth in California Business and Professions Code
15 §§ 17200, *et seq.*

16 78. Furthermore, Defendants has under-reported to federal and state authorities the
17 wages earned by their employees and, therefore, have underpaid state and federal taxes, employer
18 matching funds, unemployment premiums, Social Security, Medicare, and Workers'
19 Compensation premiums.

20 79. Defendants' conduct as alleged herein has damaged Plaintiff and the Class
21 Members by wrongfully denying them earned wages, failing to pay them all wages due upon
22 termination of employment, and failing to provide accurate and timely itemized wage statements.
23 Such conduct was substantially injurious to Plaintiff and the Class.

24 80. Under the circumstances alleged herein, it would be inequitable and result in a
25 miscarriage of justice for Defendants to continue to retain the property of Plaintiff and the Class
26 Members, entitling Plaintiff and the Class Members to restitution of the unfair benefits obtained
27 and disgorgement of Defendants' ill-gotten gains.
28

1 81. As a direct and proximate result of Defendants' unlawful and unfair business
2 practices, Plaintiff and Class Members are entitled to, and hereby do, seek restitution and
3 disgorgement of these ill-gotten gains, including but not limited to, restitution of all unpaid
4 wages, plus interest thereon, as well as attorney's fees and costs, and other appropriate injunctive
5 and other relief available under California Business and Professions Code §§ 17200, *et seq.*

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7 **SIXTH CAUSE OF ACTION**
8 **VIOLATION OF THE PRIVATE ATTORNEY GENERAL ACT ("PAGA")**
9 **(California Labor Code §§ 2698, *et. seq.*)**
10 **(Plaintiff Against All Defendants and Does 1-100)**

11 82. Plaintiff incorporates by reference in this cause of action each allegation of all of
12 the foregoing paragraphs as if fully restated herein, and further allege against Defendants and
13 Does 1-100, and each of them, as follows:

14 83. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover civil
15 penalties for the violation(s) of the Labor Code sections enumerated in Labor Code § 2699.5.

16 84. PAGA provides as follows, "[n]otwithstanding any other provision of law, a
17 Plaintiff may as a matter of right amend an existing complaint to add a cause of action arising
18 under this part at any time within 60 days of the time periods specified in this part."

19 85. Defendants' conduct, as alleged herein, violates numerous sections of the
20 California Labor Code and I.W.C. Wage Orders, including, but not limited to, the following:
21 violation of Labor Code § 510 and/or § 515 for misclassifying Class Members as exempt from
22 overtime/salaried employees; violation of Labor Code §§ 204, 510, 1182.11, 1182.12, 1194,
23 1197, 1197.1, 1198, and 1199 (for failure to pay wages for all hours worked including regular
24 hours, overtime hours, and/or paid minimum wage for said hours); violation of Labor Code §
25 226(a) (for failure to provide accurate wage statements as herein alleged); and violation of Labor
26 Code §§ 201, 202, and 203 (for failure to timely pay all earned wages upon discharge).

27 86. California Labor Code § 1198 makes it illegal to employ an employee under
28 conditions of labor that are prohibited by the applicable wage order. California Labor Code §1198
requires that, " ... the standard conditions of labor fixed by the commission shall be the ...

1 standard conditions of labor for employees. The employment of any employee ... under
2 conditions of labor prohibited by the order is unlawful."

3 87. California Labor Code § 204 requires that all wages earned by any person in any
4 employment between the 1st and the 15th days, inclusive, of any calendar month, other than those
5 wages due upon termination of an employee, are due and payable between the 16th and the 26th
6 day of the month during which the labor was performed, and that all wages earned by any person
7 in any employment between the 16th and the last day, inclusive, of any calendar month, other
8 than those wages due upon termination of an employee, are due and payable between the 1st and
9 the 10th day of the following month. California Labor Code § 204 also requires that all wages
10 earned for labor in excess of the normal work period shall be paid no later than the payday for the
11 next regular payroll period. During the relevant time period, Defendants failed to pay Plaintiff
12 and other aggrieved employees all wages due to them, including, but not limited to, overtime
13 wages, within any time period specified by California Labor Code § 204.

14 88. Defendants, at all times relevant to this complaint, were employers or persons
15 acting on behalf of an employer(s) who violated Plaintiff and other aggrieved employees' rights
16 by violating various sections of the California Labor Code as set forth above.

17 89. As set forth above, Defendants have violated numerous provisions of both the
18 Labor Code sections regulating hours and days of work as well as the applicable order of the
19 Industrial Welfare commission. Accordingly, Plaintiff seeks the remedies set forth in Labor Code
20 § 558 for themselves, the State of California, and all other aggrieved employees.

21 90. Pursuant to PAGA, and in particular California Labor Code §§ 2699(a), 2699.3,
22 2699.5, and 558, Plaintiff, acting in the public interest as a private attorney general, seeks
23 assessment and collection of unpaid wages and civil penalties for Plaintiff and all aggrieved
24 employees, and the State of California against Defendants, in addition to other
25 remedies, plus reasonable attorneys' fees and costs, pursuant to California Labor Code §§ 201,
26 202, 203, 204, 210, 218.5, 218.6, 226, 226(a), 226.3, 510, 1174, 1194, 1197, 1197.1, 1198, 1199,
27 C.C.P. § 1021.5, California common law, (and I.W.C. Wage orders).
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SEVENTH CAUSE OF ACTION
FAILURE TO PROVIDE MANDATED MEAL PERIODS
(Labor Code §§ 226.7, 512)
(Plaintiff Against All Defendants and Does 1-100)

91. Plaintiff incorporates by reference in this cause of action each allegation of all of the foregoing paragraphs as if fully restated herein, and further allege against Defendants and Does 1-100, and each of them, as follows:

92. Plaintiff and Class Members regularly work in excess of five (5) hours per day without being afforded a duty-free meal period of not less than 30 minutes as required by Labor Code §§ 226.7, 512 and I.W.C Wage Orders .

93. California Labor Code § 512 provides that an employer may not employ an employee for a work period of more than five (5) hours per day without providing the employee with a meal period of not less than 30 minutes.

94. Furthermore, California Labor Code § 226.7 provides that:

(a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.

(b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee 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.

95. As a direct and proximate result of Defendants' unlawful conduct in not providing for duty-free meal periods, Plaintiff and Class Members are entitled to one additional hour of pay at their regular rate as wages under Labor Code §§ 226.7, 512 for each day in which the proper meal period was not provided. In addition, Plaintiff and Class Members are entitled to interests, penalties, attorney's fees and costs pursuant to C.C.P. §1021.5.

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EIGHTH CAUSE OF ACTION
FAILURE TO PROVIDE MANDATED REST PERIODS
(Labor Code § 226.7)
(Plaintiff Against All Defendants and Does 1-100)

96. Plaintiff incorporates by reference in this cause of action each allegation of all of

1 the foregoing paragraphs as if fully restated herein, and further allege against Defendants and
2 Does 1-100, and each of them, as follows:

3 97. Plaintiff and Class Members regularly work in excess of four (4) hours per day
4 without being afforded a rest period of not less than ten (10) minutes as required by Labor Code
5 § 226.7 and I.W.C Order 5-2001, 15-2001 (employees are entitled to 10 minutes rest for shifts
6 from 3 ½ hours to 6 hours in length, 20 minutes for shifts of more than 6 hours up to 10 hours, 30
7 minutes for shifts of more than 10 hours up to 14 hours, and so) (See *Brinker Restaurant Corp., et*
8 *al v. Superior Court (2012)*, 53 Cal. 4th 1004, 1029.

9 98. California Labor Code § 226.7 mandates that no employer shall require any
10 employee to work during any meal or rest period.

11 99. California Labor Code § 226.7 provides that:

12 (a) No employer shall require any employee to work during any
13 meal or rest period mandated by an applicable order of the
Industrial Welfare Commission.

14 (b) If an employer fails to provide an employee a meal period or
15 rest period in accordance with an applicable order of the Industrial
Welfare Commission, the employer shall pay the employee one
16 additional hour of pay at the employee's regular rate of
17 compensation for each work day that the meal or rest period is not
provided.

18 100. As a direct and proximate result of Defendants' unlawful conduct in not providing
19 for duty-free rest periods, Plaintiff and Class Members are entitled to one additional hour of pay
20 at their regular rate as wages under Labor Code § 226.7, for each day in which the proper rest
21 break was not provided. In addition, Plaintiff and Class Members are entitled to interests,
22 penalties, attorney's fees and costs pursuant to C.C.P. §1021.5.

23 **NINTH CAUSE OF ACTION**
24 **FAILURE TO REIMBURSE EMPLOYEES FOR NECESSARY BUSINESS EXPENSES**
(California Labor Code §2802)
25 **(Plaintiff Against All Defendants and Does 1-100)**

26 101. Plaintiff incorporates by reference in this cause of action each allegation of all of
27 the foregoing paragraphs as if fully restated herein, and further allege against Defendants and
28 Does 1-100, and each of them, as follows:

1 102. Cal. Lab. Code § 2802 provides, in relevant part, that:

2 “An employer shall indemnify his or her employee for all necessary expenditures
3 or losses incurred by the employee in direct consequence of the discharge of his
4 or her duties, or of his or her obedience to the directions of the employer, even
5 though unlawful, unless the employee, at the time of obeying the directions
6 believed them to be unlawful.”

7 103. Pursuant to California Labor Code §2802, Defendants were required to reimburse
8 Plaintiffs and the Class Members for necessary business expenditures. The purpose of this
9 statute is to prevent employers from passing their operating costs and expenses onto their
10 employees. See *Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal. 4th 554, 562.

11 104. At all relevant times herein, Defendants violated Cal. Lab. Code § 2802, by failing
12 to indemnify and reimburse Plaintiff and Class Members for required expenses incurred in the
13 discharge of their job duties for Defendants’ benefit. Specifically, Defendants failed to reimburse
14 Plaintiff and Class Members for expenses which included, but were not limited to, the cost
15 associated with the use of their personal cellular phones / mobile phones for Defendants’ benefit.

16 105. In order to work for Defendants, Plaintiff and other Class Members were required
17 to use a third-party mobile phone application called Homebase to track time, shifts, meal/rest
18 breaks, and as such it is/was mandatory to have a cell phone/mobile phone that is compatible with
19 that mobile application. As a result, in the course of their employment with Defendants, Plaintiff
20 and Class Members incurred unreimbursed business expenses which included, but were not
21 limited to, the costs related to the use of their personal cellular mobile phones all on behalf of and
22 for the benefit of Defendants. These expenses are necessary to complete the Class Members’
23 principal job duties.

24 106. Although these expenses are necessary expenses incurred by Plaintiff and Class
25 Members Defendants failed to indemnify and reimburse Plaintiff and Class members for these
26 expenses as an employer is required to do under the laws and regulations of California.

27 107. As a direct and proximate cause of Defendants’ conduct, Plaintiff and Class
28 Members have suffered substantial losses according to proof, as well as pre-judgment interest,
costs, and attorneys’ fees for the prosecution of this action. Plaintiff therefore demands

1 reimbursement for expenditures or losses incurred by Plaintiff and Class Members in the
2 discharge of their job duties for Defendants, or their obedience to the directions of Defendants,
3 with interest at the statutory rate and costs under Cal. Lab. Code § 2802. Further, by unlawfully
4 failing to indemnify Plaintiff and Class Members the Defendants are liable for reasonable
5 attorneys' fees and costs under Labor Code § 2802(c).

6
7 **TENTH CAUSE OF ACTION**
8 **VIOLATION OF FAIR LABOR STANDARDS ACT**
9 **(29 U.S.C. §§ 201, et seq.)**
10 **(Plaintiff Against All Defendants and Does 1-100)**

11 108. Plaintiff incorporates by reference in this cause of action each allegation of all of
12 the foregoing paragraphs as if fully restated herein, and further allege against Defendants and
13 Does 1-100, and each of them, as follows:

14 109. Plaintiff is informed and believes that at all relevant times Defendants have been,
15 and continue to be, an "employer" engaged in interstate commerce within the meaning of 29
16 U.S.C. § 203. At all relevant times, Defendants have employed the Class Members and continue
17 to employ certain members of the Class, as "employee[s]" within the meaning of the FLSA. At
18 all relevant times, Defendant has had gross operating revenues in excess of \$500,000.00.

19 110. The FLSA requires that employers whose employees are engaged in commerce or
20 employed in an enterprise engaged in commerce pay their employees overtime wages at one and
21 one-half their regular rate for hours worked in excess of forty (40) hours during a work week. 29
22 U.S.C. § 207.

23 111. Defendants violated the FLSA by failing to pay the Class Members for all time
24 worked, including overtime pay. The FLSA requires each covered employer, such as Defendants,
25 to compensate all nonexempt employees at a rate of not less than one and one-half times the
26 regular rate of pay for work performed in excess of 40 hours in a workweek.

27 112. The Class Members are victims of a uniform and company-wide compensation
28 policy that systematically denies them their statutorily mandated overtime premium pay. This
uniform policy, in violation of the FLSA, has been applied to all Class Members.

113. By failing to compensate Plaintiff and the Class Members at a rate not less than

one and one-half times the regular rate of pay for work performed in excess of 40 hours in a workweek, Defendants violated the FLSA.

114. The foregoing conduct, as alleged, constitutes a willful violation of the FLSA within the meaning of 29 U.S.C. § 255(a).

115. Plaintiff and the Class Members are entitled to recover an award in the amount of their unpaid overtime compensation including all interest, liquidated damages, applicable penalties, attorney fees and costs (pursuant to 29 U.S.C. § 216(b)), and such other legal and equitable relief as this Court deems just and proper.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and the Proposed Class pray for judgment and the following specific relief against Defendants, jointly and separately, as follows:

A. That the Court determine that this action may be maintained and certified as a class action under California Code of Civil Procedure § 382;

B. That the Court appoint Plaintiff as representatives of the Class;

C. That the Court appoint Counsel for Plaintiff as Class Counsel;

D. That Defendants are found to have violated the provisions of the Labor Code and/or I.W.C. wage orders as to the Plaintiff and Class Members by failing to pay all wages owed including regular hours, overtime hours and/or minimum wage for said hours in violation of Labor Code §§ 204, 510, 1182.11, 1182.12, 1194, 1197, 1197.1, 1198, 1199 and I.W.C. Orders and FLSA;

E. That Defendants are found to have violated meal period and rest brake provisions of Labor Code §§226.7, 512 and I.W.C. Orders;

F. That Defendants are found to have violated the record-keeping provisions of Labor Code §§ 226, 1174(d), 1174.5, and I.W.C. Orders;

G. That Defendants are found to have violated the reimbursement of employee business expenses provisions of Labor Code §2802 and I.W.C Orders;

1 H. That Defendants are found to have violated Labor Code §§ 201-203 for willful
2 failure to pay all wages owed at the time of termination/separation of employment of Plaintiff and
3 Class Members formerly employed by Defendants, therefore owe waiting time penalties under
4 California Labor Code § 203;

5 I. That Defendants are found to have willfully misclassified as exempt from overtime
6 wages Plaintiff and Class Members, and have therefore violated California Labor Code § 510
7 and/or § 515 and FLSA; and that all damages proximately caused by Defendants' wrongful
8 conduct be reimbursed and/or applicable penalties be awarded to Plaintiff and the Class
9 Members.

10 J. That the Defendants are found to have committed unfair and unlawful business
11 practices in violation of California Business & Professions Code §§ 17200, *et seq.*, by their
12 violations of the Labor Code and Wage Order(s) as described above;

13 K. That Defendants be ordered and enjoined to pay restitution to Plaintiff and Class
14 Members due to Defendants' unlawful activities, pursuant to Business & Professions Code
15 §§ 17200, *et seq.*;

16 L. That Defendants further be ordered and enjoined to cease and desist from unlawful
17 activities in violation of Business & Professions Code §§ 17200, *et seq.*;

18 M. That Defendants' violations as described above are found to have been willful;

19 N. That Plaintiff and Class Members receive an award of damages for the amount of
20 unpaid compensation (including for regular hours, overtime hours, and minimum wage for said
21 hours), interest thereon, and liquidated damages and/or statutory penalties as set forth herein,
22 according to proof at trial;

23 O. That Plaintiff and the Class be awarded reasonable attorneys' fees, costs, interest,
24 penalties and liquidated damages pursuant to Labor Code §§ 200, 201, 202, 203, 204, 218.5,
25 218.6, 225.5, 226, 1174, 1174.5, 1182.11, 1182.12, 1194, 1194.2, 1197, 1197.1, 2699, *et seq.*;
26 Code of Civil Procedure § 1021.5; and FLSA; and/or other applicable law;
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1 P. That Plaintiff and the Class Members be awarded pre-judgment and/or post-
2 judgment interest on all damages and other relief awarded pursuant to Labor Code § 218.6 and
3 Civil Code § 3287, and FLSA, and/or other applicable law;

4 Q. Actual and/or liquidated damages pursuant to Labor Code §226(e);

5 R. For penalties as provided, per violation, under the Private Attorneys General Act
6 (PAGA) Labor Code § 2699, et seq., and as provided by Labor Code § 558, and distributed in
7 accordance with the Act.

8 S. That Plaintiff and the Class Members receive an award of such other and further
9 relief as this Court may deem appropriate.
10

11 Dated: March 22, 2023

12 By:  _____

13 Matthew S. Da Vega
14 **DA VEGA | FISHER | MECHTENBERG, LLP**
15 Attorneys for the Plaintiff, the Proposed Plaintiff Class
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DEMAND FOR JURY TRIAL

Plaintiff, on behalf of himself and all others similarly situated, hereby demands a trial by jury for all issues so triable.

Dated: March 22, 2023



By: _____

Matthew S. Da Vega
DA VEGA | FISHER | MECHTENBERG, LLP
Attorneys for the Plaintiff, the Proposed Plaintiff Class