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on behalf of himself and others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

MARCO ROSALES, on behalf of himself and
others similarly situated,

Plaintiff,

vs.

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

Defendants.

Case No. 37-2022-00036845-CU-OE-NC

CLASS ACTION

Assigned for All Purposes To:

Hon. Dept.:

CLASS ACTION COMPLAINT FOR:

1. Failure to Pay Minimum Wages;
2. Failure to Pay Wages and Overtime
Under Labor Code § 510;
3. Meal-Period Liability Under Labor Code
§ 226.7;
4. Rest-Break Liability Under Labor Code §
226.7;
5. Failure to Pay Vacation Wages
6. Failure to Comply with Labor Code §§ 245 *et*
seq. and 246
7. Failure to Provide Accurate Wage Statements
Under Labor Code § 226(a);
8. Failure to Keep Required Payroll
Records Under Labor Code §§ 1174 and
1174.5
9. Violation of Labor Code § 204
10. Penalties Pursuant to Labor Code § 203;
11. Failure to Provide Paid Sick Days and
COVID-19 Supplemental Sick Leave
12. Violation of Business & Professions Code §
17200 *et seq.*
13. Penalties Pursuant to Labor Code § 2699,

DEMAND FOR JURY TRIAL

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

09/14/2022 at 12:42:34 PM

Clerk of the Superior Court
By Veronica Navarro, Deputy Clerk

1 Plaintiff MARCO ROSALES, (hereinafter collectively “Plaintiff”) on behalf of himself
2 and all others similarly situated (collectively, “Employees”; individually, “Employee”) complains
3 of Defendants, and each of them, as follows:

4 INTRODUCTION

5 1. Plaintiff bring this action on behalf of himself and all current and former
6 Employees within the State of California who, at any time four (4) years prior to the filing of this
7 lawsuit, are or were employed as non-exempt, hourly employees by Defendants SYNERGEYES,
8 INC., and DOES 1 through 50 (all defendants being collectively referred to herein as
9 “Defendants”). Plaintiff alleges that Defendants, and each of them, violated various provisions of
10 the California Labor Code, relevant orders of the Industrial Welfare Commission (IWC) and
11 California Business & Professions Code, and seeks redress therefore.

12 2. Plaintiff is a resident of California and during the time period relevant to this
13 Complaint was employed by Defendants as non-exempt hourly employee within the State of
14 California. Plaintiff and the other Class members worked for Defendants throughout California
15 and/or San Diego County, and in other nonexempt positions, throughout California, and
16 consistently worked at Defendants’ behest without being paid all wages due. More specifically,
17 Plaintiff and the other similarly situated Class members were employed by Defendants and
18 worked at Defendants’ offices and other facilities where the conduct giving rise to the allegations
19 in this Class Action Complaint occurred. Upon information and belief, Plaintiff was employed by
20 Defendants and (1) shared similar job duties and responsibilities, (2) were subjected to the same
21 policies and practices, and (3) endured similar violations at the hands of Defendants as the other
22 Employee Class members who served in similar and related positions.

23 3. Defendants required Plaintiff and the Employees in the Class to perform work
24 while remaining under Defendants’ control before being on the clock for their daily work shift.
25 Defendant also required Plaintiff and the Employees in the Class to work off the clock and to
26 perform work and remain under Defendants’ control during their meal and rest breaks.
27 Defendants also failed to provide Plaintiff and the Class with lawful meal periods and failed to
28 authorize and permit them to take all required rest breaks, as Employees were not provided with

1 the opportunity to take uninterrupted and duty-free rest breaks and meal breaks or Defendants
2 failed to timely provide them as required by the Labor Code and applicable IWC Wage Orders.
3 Plaintiff and the Class members were also compelled to clock out for meal periods and return to
4 work off the clock or to otherwise work through meal periods and rest breaks while remaining
5 under Defendants' control due to the difficult work requirements and management demands
6 placed upon them. Defendants thus failed to pay Plaintiff and the Class members for all hours
7 worked, and provided them with inaccurate wage statements that prevented Plaintiff and the Class
8 from learning of these unlawful pay practices.

9 **THE PARTIES**

10 **A. The Plaintiff**

11 4. Plaintiff MARCO ROSALES has resided in California and during the time period
12 relevant to this Complaint was employed by Defendants as a non-exempt hourly employee within
13 the State of California.

14 **B. The Defendants**

15 5. Defendant SYNERGEYES, INC., ("SYNERGEYES") is a California Corporation,
16 with its principle executive offices in Carlsbad, California and has been listed as the employer on
17 the wage statements issued to Plaintiff during the relevant time period. SYNERGEYES lists a
18 California address in Carlsbad, California with the California Secretary of State and employed
19 Plaintiff and the Class members in California and/or San Diego, including at Defendants' offices
20 and facilities in Carlsbad, California, and/or throughout California and conducts business
21 throughout California.

22 6. The true names and capacities, whether individual, corporate, associate, or
23 whatever else, of the Defendants sued herein as Does 1 through 50, inclusive, are currently
24 unknown to Plaintiff, who therefore sue these Defendants by such fictitious names under Code of
25 Civil Procedure § 474. Plaintiff is informed and believes and thereon alleges that Defendants
26 designated herein as Does 1 through 50, inclusive, and each of them, are legally responsible in
27 some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend
28 this Complaint to reflect the true names and capacities of the Defendants designated herein as

1 Does 1 through 50 when their identities become known.

2 7. Plaintiff is informed and believes and thereon alleges that each Defendant acted in
3 all respects pertinent to this action as the agent of the other Defendants, that Defendants carried
4 out a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of
5 each Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted in
6 all respects as the employers or joint employers of Employees. Defendants, and each of them,
7 exercised control over the wages, hours or working conditions of Employees, or suffered or
8 permitted Employees to work, or engaged, thereby creating a common law employment
9 relationship, with Employees. Therefore, Defendants, and each of them, employed or jointly
10 employed Employees.

11 **JURISDICTION AND VENUE**

12 8. This Court has jurisdiction over this Action pursuant to California Code of Civil
13 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought
14 as a Class Action on behalf of similarly situated Employees of Defendants pursuant to California
15 Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district
16 pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the
17 obligations and liabilities giving rise to this lawsuit occurred at least in part in San Diego County
18 and Defendants maintain and operate company offices and facilities in San Diego County and
19 employed Plaintiff and other Class members in San Diego County and/or throughout California.

20 **FACTUAL BACKGROUND**

21 9. The Employees who comprise the Class, including Plaintiff, are nonexempt
22 employees pursuant to the applicable Wage Order of the IWC. Defendants hire Employees who
23 work in nonexempt positions at the direction of Defendants in the State of California. Plaintiff and
24 the Class members were either not paid by Defendants for all hours worked or were not paid at the
25 appropriate minimum, regular and overtime rates. Defendants paid Plaintiff and Employees
26 nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses. However, upon
27 information and belief, Defendants failed to incorporate all remunerations, including
28 nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses, into the

1 calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore,
2 during times when Plaintiff and Employees worked overtime and received nondiscretionary
3 commissions, incentive pay, and/or nondiscretionary bonuses, Defendants failed to pay all
4 overtime wages by paying a lower overtime rate than required.

5 10. From at least four (4) years prior to the filing of this lawsuit and continuing to the
6 present, Defendants paid Plaintiff and Employees nondiscretionary commissions, incentive pay,
7 and/or nondiscretionary bonuses. However, upon information and belief, Defendants failed to
8 incorporate all remunerations, including nondiscretionary commissions, incentive pay, and/or
9 nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating
10 sick pay. Therefore, during times when Plaintiff and Employees worked overtime and received
11 nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses, Defendants failed
12 to pay all sick pay by paying a lower overtime rate than required.

13 11. From at least four (4) years prior to the filing of this lawsuit and continuing to the
14 present, Defendants paid Plaintiff and Employees nondiscretionary commissions, incentive pay,
15 and/or nondiscretionary bonuses. However, upon information and belief, Defendants failed to
16 incorporate all remunerations, including nondiscretionary commissions, incentive pay, and/or
17 nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating
18 vacation pay. Therefore, during times when Plaintiff and Employees worked overtime and
19 received nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses,
20 Defendants failed to pay all vacation pay by paying a lower overtime rate than required.

21 12. During the course of Plaintiff and the Class members' employment with
22 Defendants, they were not paid all wages they were owed, including for all work performed and
23 for all overtime hours to keep labor budgets low. Plaintiff and Class members were forced to
24 work off the clock by going through lengthy temperature checks each day before clocking in, as
25 part of their duties under Defendants' employ, for which they were never compensated. Thus,
26 Plaintiff and Class members were required to work hours, under the control of Defendants,
27 without wages.

28 13. Moreover, Plaintiff contends that Defendants failed to pay Plaintiff and the Class

1 members all wages due and owing, failed to provide meal and rest breaks, and failed to furnish
2 accurate wage statements, all in violation of various provisions of the California Labor Code and
3 applicable Wage Order provisions.

4 14. During the course of Plaintiff's and the Class members' employment with
5 Defendants, they were not paid all wages they were owed, including for all work performed and
6 for all overtime hours worked, and they were forced to work during their meal and rest breaks to
7 keep labor budgets low.

8 15. As a matter of uniform and unlawful Company policy, Plaintiff and the Class
9 members were required to work during their meal periods and rest breaks, and they were again
10 not compensated for this off the clock work, in violation of the California Labor Code. Plaintiff
11 and the Class members were also not paid regular wages and overtime for the time they were
12 required to comply with other work demands and requirements imposed upon them, which they
13 often had to complete while working through their meal and rest breaks and without
14 compensation. As a result Plaintiff and the Class members worked shifts over eight (8) hours in a
15 day and over forty (40) hours in a work week, but they were not paid at the appropriate overtime
16 rate for all such hours, including by being required to perform work duties and tasks without pay
17 and while off-the-clock which caused overtime to begin accruing before it did in Defendants'
18 timekeeping and payroll systems. As a result, Plaintiff and the Class members worked substantial
19 overtime hours during their employment with Defendants for which they were not compensated,
20 in violation of the California Labor Code and applicable IWC Wage Orders.

21 16. As a result of the above described practices, the daily work demands and pressures
22 to work through breaks, and the other wage violations they endured at Defendants' hands, Plaintiff
23 and the Class members were not properly paid for all wages earned and for all wages owed to
24 them by Defendants, including when working more than eight (8) hours in any given day and/or
25 more than forty (40) hours in any given week.

26 17. Therefore, from at least four (4) years prior to the filing of this lawsuit and
27 continuing to the present, Defendants had a consistent policy or practice of failing to pay
28 Employees for all hours worked, and failing to pay minimum wage for all time worked as required

1 by California Law.

2 18. Additionally from at least four (4) years prior to the filing of this lawsuit and
3 continuing to the present, Defendants had a consistent policy or practice of failing to pay
4 Employees overtime compensation at premium overtime rates for all hours worked in excess of
5 eight (8) hours a day and/or forty (40) hours a week, and double-time rates for all hours worked in
6 excess of twelve (12) hours a day, in violation of Labor Code § 510 and the corresponding
7 sections of IWC Wage Orders.

8 19. Additionally from at least four (4) years prior to the filing of this lawsuit and
9 continuing to the present, Defendants have regularly required Employees to work shifts in excess
10 of five (5) hours without providing them with uninterrupted meal periods of not less than thirty
11 (30) minutes and shifts in excess of ten (10) hours without providing them with second meal
12 periods of not less than thirty minutes; nor did Defendants pay Employees “premium pay,” i.e. one
13 hour of wages at each Employee’s effective regular rate of pay, for each meal period that
14 Defendants failed to provide or deficiently provided.

15 20. From at least four (4) years prior to the filing of this lawsuit and continuing to the
16 present, Defendants have consistently failed to provide Employees with paid rest breaks of not less
17 than ten (10) minutes for every work period of four (4) or more consecutive hours; nor did
18 Defendant pay Employees premium pay for each day on which requisite rest breaks were not
19 provided or were deficiently provided at one hour of wages at each Employee’s effective regular
20 rate of pay, for each rest period that Defendants failed to provide or deficiently provided.

21 21. Additionally, from at least four (4) years prior to the filing of this lawsuit, and
22 continuing to the present, Defendants have consistently failed to provide Employees with timely,
23 accurate, and itemized wage statements as required by California wage-and-hour laws.
24 Specifically, Defendants failed in their affirmative obligation to keep accurate records of the
25 correct overtime wages based on proper regular rate calculations that included nondiscretionary
26 commissions, incentive pay, and/or nondiscretionary bonuses earned, and the total amount of
27 compensation of their Employees. Moreover, the wage statements given to Employees by
28 Defendants failed to accurately account for wages, overtime, and premium pay for deficient meal

1 periods and rest breaks, all of which Defendants knew or reasonably should have known were
2 owed to Employees, as alleged hereinabove. The wage statements provided to Employees were
3 confusing and required Employees to engage in discovery and refer to outside sources to verify
4 whether their pay was correct and potentially resulting in a miscalculation by the Employees.

5 22. Additionally, from at least three (3) years prior to the filing of this lawsuit, and
6 continuing to the present, Defendants have consistently failed to keep accurate time and wage
7 records as required by California wage-and-hour laws.

8 23. Additionally, from at least four (4) years prior to the filing of this lawsuit, and
9 continuing to the present, Defendants failed to timely pay Employees wages on a semimonthly
10 basis.

11 24. Defendants also violated California Labor Code § 246 by not providing all
12 required paid sick days to Plaintiff and the aggrieved employees. Labor Code § 246 provides that
13 an Employee who “works in California for the same employer for 30 or more days within a year
14 from the commencement of employment is entitled to paid sick days as specified in this section.”
15 Defendants failed to provide Plaintiff and the other similarly Aggrieved Employees with all their
16 required and earned sick days, in violation of Labor Code §§ 245 *et seq.*, and 246. Additionally
17 and upon information and belief, Defendants have failed to provide COVID-19 supplemental sick
18 leave to the Class members during the relevant time period, including by failing to provide two
19 work weeks of COVID-19 supplemental paid sick leave as required under Labor Code §§ 248.2
20 and 248.6 and including damages and penalties as these sections are enforced through Labor
21 Code § 248.5, which requires that: “If paid sick days were unlawfully withheld, the dollar amount
22 of paid sick days withheld from the employee multiplied by three, or two hundred fifty dollars
23 (\$250), whichever amount is greater, but not to exceed an aggregate penalty of four thousand
24 dollars (\$4,000), shall be included in the administrative penalty.” Plaintiff accordingly seek this
25 relief available for Defendants’ failure to provide Employees with all their required and earned
26 sick days and all their COVID-19 supplemental sick leave in violation of Labor Code §§ 246,
27 248.2, 248.6 and the civil and statutory penalties available and applicable under Labor Code §§
28 246, 248.2, 248.5, 248.6, 558, 1194.2, 1197.1, 1198, 1199, and 2699(f)(2), and also for attorneys’

1 fees and costs pursuant to Labor Code § 2699(g)(1).

2 25. Additionally from at least four (4) years prior to filing this lawsuit and continuing
3 to the present, Defendants have had a consistent policy of failing to pay all wages and owed to
4 Employees at the time of their termination of within seventy-two (72) hours of their resignation, as
5 required by California wage-and-hour laws.

6 26. Additionally, from at least four (4) years prior to filing this lawsuit and continuing
7 to the present, Defendants failed to provide Plaintiff and Employees with all their required and
8 earned sick days and also failed to provide COVID-19 supplemental sick leave to the Employees.

9 27. In light of the foregoing, Employees bring this action pursuant to, inter alia, Labor
10 Code §§ 201, 202, 203, 204, 210, 212, 213, 226, 226.7, 227.3, 245 *et seq.*, 246, 248.2, 248.5,
11 248.6, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698,
12 and 2699, *et seq.*

13 28. Furthermore, pursuant to Business and Professions Code §§ 17200-17208,
14 Employees seek injunctive relief, restitution, and disgorgement of all benefits Defendants have
15 enjoyed from their violations of Labor Code.

16 **CLASS ALLEGATIONS**

17 29. Plaintiff brings this class action on behalf of himself and all others similarly situated
18 pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a class defined as follows:
19 all individuals employed by Defendants, at any time within four (4) years of the filing of this
20 lawsuit, and have been employed by Defendants within the State of California.

21 30. Further, Plaintiff seeks to represent the following Subclasses composed of and
22 defined as follows:

23 a. Subclass 1. Minimum Wages Subclass. All Class members who were not
24 compensated for all hours worked for Defendants at the applicable minimum wage.

25 b. Subclass 2. Wages and Overtime Subclass. All Class members who were not
26 compensated for all hours worked for Defendants at the required rates of pay, including for all
27 hours worked in excess of eight in a day and/or forty in a week.

28 c. Subclass 3. Meal Period Subclass. All Class members who were subject to

Defendants' policy and/or practice of failing to provide unpaid 30-minute uninterrupted and duty free meal periods or one hour of pay at the Employee's regular rate of pay in lieu thereof.

d. Subclass 4. Rest Break Subclass. All Class members who were subject to Defendants' policy and/or practice of failing to authorize and permit Employees to take uninterrupted, duty-free, 10-minute rest periods for every four hours worked, or major fraction thereof, and failing to pay one hour of pay at the Employee's regular rate of pay in lieu thereof.

e. Subclass 5. Vacation Wages Subclass. All Class members who were not compensated at the Employee's regular rate of pay for their vacation wages.

f. Subclass 6. Sick Pay Subclass. All Class members who were not compensated at the Employee's regular rate of pay for their sick pay wages.

g. Subclass 7. Failure to Timely Pay Wages Subclass. All Class members who, within the applicable limitations period, were not paid wages on a semimonthly basis.

h. Subclass 8. Wage Statement Subclass. All Class members who, within the applicable limitations period, were not provided with accurate itemized wage statements

i. Subclass 9. Payroll Records Subclass. All Class members who were subject to Defendants' policy and/or practice of failing to keep accurate time and wage records as required by California wage-and-hour laws.

j. Subclass 10. Termination Pay Subclass. All Class members who, within the applicable limitations period, either voluntarily or involuntarily separated from their employment and were subject to Defendants' policy and/or practice of failing to timely pay wages upon termination.

k. Subclass 11. Failure to Pay Paid Sick Days and COVID-19 Supplemental Sick Leave Subclass. All Class members who, within the applicable limitations period, were not provided with all their required and earned sick days and COVID-19 supplemental sick leave.

l. Subclass 12. UCL Subclass. All Class members who are owed restitution as a result of Defendants' business acts and practices, to the extent such acts and practices are found to be unlawful, deceptive, and/or unfair.

31. Plaintiff reserves the right under California Rule of Court 3.765 to amend or

1 modify the class description with greater particularity or further division into subclasses or
2 limitation to particular issues.

3 32. This action has been brought and may properly be maintained as a class action
4 under the provisions of Code of Civil Procedure § 382 because there is a well-defined community
5 of interest in litigation and proposed class is easily ascertainable.

6 **A. Numerosity**

7 33. The potential members of the class as defined are so numerous that joinder of all
8 the member of the class is impracticable. While the precise number of class member has not been
9 determined at this time, Plaintiff is informed and believes that Defendants employ or, during the
10 time period relevant to this lawsuit, employed more than 100 individuals were employed by
11 Defendant's within the State of California.

12 34. Accounting for employee turnover during the relevant time period increases this
13 number substantially. Plaintiff alleges that Defendants' employment records will provide
14 information as to the number and location of all class members.

15 **B. Commonality**

16 35. There are questions of law and fact common to the class that predominate over any
17 questions affecting only individual class members. These common questions of law and fact
18 include:

- 19 a. Whether Defendants failed to pay Employees minimum wages;
- 20 b. Whether Defendants failed to pay Employees wages for all hours worked;
- 21 c. Whether Defendants failed to pay Employees overtime as required under Labor
22 Code § 510;
- 23 d. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable
24 IWC Wage Orders, by failing to provide Employees with requisite meal periods or
25 premium pay in lieu thereof;
- 26 e. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage
27 Orders, by failing to provide Employees with requisite rest breaks or premium pay
28 in lieu thereof;

- 1 f. Whether Defendants failed to pay Employees vacation wages as required under
2 Labor Code § 227.3;
- 3 g. Whether Defendants failed to pay Employees sick pay as required under Labor
4 Code §§ 245 and 246;
- 5 h. Whether Defendants violated California Labor Code §§ 248.2 and 248.6 by not
6 providing employees with all required sick days and COVID-19 supplemental sick
7 leave;
- 8 i. Whether Defendants violated Labor Code § 226(a);
- 9 j. Whether Defendants violated Labor Code § 204;
- 10 k. Whether Defendants violated Labor Code §§ 1174 and 1174.5;
- 11 l. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay
12 wages and compensation due and owing at the time of termination of employment;
- 13 m. Whether Defendants violated Business and Professions Code § 17200 *et seq.*;
- 14 n. Whether Defendants are liable for penalties under Labor Code § 2699, *et seq.*; and
- 15 o. Whether Employees are entitled to equitable relief pursuant to Business and
16 Professions Code § 17200 *et seq.*

17 **C. Typicality**

18 36. The claims of the named Plaintiff is typical of those of the other Employees.
19 Employees all sustained injuries and damages arising out of and caused by Defendant's common
20 course of conducts in violation of statutes, as well as regulations that have the force and effect of
21 law, as alleged herein.

22 **D. Adequacy of Representation**

23 37. Plaintiff will fairly and adequately represent and protect the interest of Employees.
24 Counsel who represents Employees are experienced and competent in litigating employment class
25 actions.

26 **E. Superiority of Class Action**

27 38. A class action is superior to other available means for the fair and efficient
28 adjudication of this controversy. Individual joinder of all Employees is not practicable, and

1 questions of law and fact common to all Employees predominate over any questions affecting only
2 individual Employees. Each Employee has been damaged and is entitled to recovery by reason of
3 Defendants' illegal policies or practices of failing to compensate Employees properly.

4 39. Class action treatment will allow those persons similarly situated to litigate their
5 claims in the manner that is most efficient and economical for the parties and the judicial system.
6 Plaintiff is unaware of any difficulties in managing this case that should preclude class action.

7 **FIRST CAUSE OF ACTION**

8 **FAILURE TO PAY MINIMUM WAGES**

9 **(Against All Defendants)**

10 40. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
11 full herein.

12 41. Defendants failed to pay Employees minimum wages for all hours worked.
13 Defendants had a consistent policy of misstating Employees time records and failing to pay
14 Employees for all hours worked. Specifically, Defendants had a consistent policy of failing to
15 pay Employees for hours worked during alleged meal periods for which Employees were
16 consistently denied. (see infra). Moreover, Employees would work hours and not receive wages,
17 including as alleged above in connection with requiring employees to go through lengthy
18 temperature checks each day before clocking in, as part of their duties under Defendants'
19 employ, for which they were never compensated. Thus, Plaintiff and Class members were
20 required to work hours, under the control of Defendants, without wages. This caused Employees
21 to work without compensation in excess of their eight-hour shift in a given workday. Defendants'
22 uniform pattern of unlawful wage and hour practices manifested, without limitation, applicable to
23 Employees, as a result of implementing a uniform policy and practice that denied accurate
24 compensation to Plaintiff and the other members of the Employees as to minimum wage pay.

25 42. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage"
26 states:

27 The minimum wage for employees fixed by the commission is the
28 minimum wage to be paid to employees, and the payment of a less
wage than the minimum so fixed is unlawful.

1 43. The applicable minimum wages fixed by the commission for work during the
2 relevant period is found in the Wage Orders. Pursuant to the Wage Orders, Employees are
3 therefore entitled to double the minimum wage during the relevant period.

4 44. The minimum wage provisions of California Labor Code are enforceable by private
5 civil action pursuant to California Labor Code § 1194(a) which states:

6 Notwithstanding any agreement to work for a lesser wage, any
7 employee receiving less than the legal minimum wage or the legal
8 overtime compensation applicable to the employee is entitled to
9 recover in a civil action the unpaid balance of the full amount of
this minimum wage or overtime compensation, including interest
thereon, reasonable attorney's fees and costs of suit.

10 45. As described in California Labor Code §§ 1185 and 1194.2, any action for wages
11 incorporates the applicable Wage Order of the California Industrial Welfare Commission.

12 46. California Labor Code § 1194.2 also provides for the following remedies:

13 In any action under Section 1194 . . . to recover wages because of
14 the payment of a wage less than the minimum wages fixed by an
15 order of the commission, an employee shall be entitled to recover
liquidated damages in an amount equal to the wages unlawfully
unpaid and interest thereon.

16 47. Wherefore, Employees are entitled to recover the unpaid minimum wages
17 (including double minimum wages), liquidated damages in an amount equal to the minimum
18 wages unlawfully unpaid, interest thereon and reasonable attorney's fees and costs of suit pursuant
19 to California Labor Code § 1194(a).

20 **SECOND CAUSE OF ACTION**

21 **FAILURE TO PAY WAGES AND OVERTIME UNDER LABOR CODE § 510**

22 **(Against All Defendants)**

23 48. Plaintiff re-alleges and incorporate all preceding paragraphs, as though set forth in
24 full herein.

25 49. By their conduct, as set forth herein, Defendants violated California Labor Code §
26 510 (and the relevant orders of the Industrial Welfare Commission) by failing to pay Employees:
27 (a) time and one-half their regular hourly rates for hours worked in excess of eight (8) hours in a
28 workday or in excess of forty (40) hours in any workweek or for the first eight (8) hours worked
on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours

1 worked in excess of twelve (12) hours in any one (1) day or for hours worked in excess of eight
2 (8) hours on any seventh day of work in a workweek. Defendants had a consistent policy of not
3 paying Employees wages for all hours worked. Defendants had a consistent policy of not paying
4 Employees wages for all hours worked, including by requiring off the clock work as addressed
5 above.

6 50. Furthermore, on information and belief, Defendants did not pay Plaintiff and
7 Employees the correct overtime rate for the recorded overtime hours that they generated. In
8 addition to an hourly wage, Defendants paid Plaintiff and Employees nondiscretionary
9 commissions, incentive pay, and/or nondiscretionary bonuses. However, upon information and
10 belief, Defendants failed to incorporate all remunerations, including nondiscretionary
11 commissions, incentive pay, and/or nondiscretionary bonuses, into the calculation of the regular
12 rate of pay for purposes of calculating the overtime wage rate.

13 51. Therefore, during times when Plaintiff and Employees worked overtime and
14 received nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses,
15 Defendants failed to pay all overtime wages by paying a lower overtime rate than required.

16 52. Defendants' failure to pay compensation in a timely fashion also constituted a
17 violation of California Labor Code § 204, which requires that all wages shall be paid
18 semimonthly. From four (4) years prior to the filing of this lawsuit to the present, in direct
19 violation of that provision of the California Labor Code, Defendants have failed to pay all wages
20 and overtime compensation earned by Employees. Each such failure to make a timely payment of
21 compensation to Employees constitutes a separate violation of California Labor Code § 204.

22 53. Employees have been damaged by these violations of California Labor Code §§
23 204 and 510 (and the relevant orders of the Industrial Welfare Commission).

24 54. Consequently, pursuant to California Labor Code §§ 204, 510, and 1194 (and the
25 relevant orders of the Industrial Welfare Commission), Defendants are liable to Employees for
26 the full amount of all their unpaid wages and overtime compensation, with interest, plus their
27 reasonable attorneys' fees and costs.

28 ///

1 **THIRD CAUSE OF ACTION**

2 **MEAL-PERIOD LIABILITY UNDER LABOR CODE § 226.7**

3 **(Against All Defendants)**

4 55. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
5 full herein.

6 56. Employees regularly worked shifts greater than five (5) hours and greater than ten
7 (10) hours. Pursuant to Labor Code § 512 an employer may not employ someone for a shift of
8 more than five (5) hours without providing him or her with a meal period of not less than thirty
9 (30) minutes or for a shift of more than ten (10) hours without providing him or her with a second
10 meal period of not less than thirty (30) minutes.

11 57. Defendants failed to provide Employees with meal periods as required under the
12 Labor Code. Employees were consistently required to work through their meal periods which they
13 were consistently denied. Employees were also required to take meal periods after working well
14 beyond the five (5) hour shifts. Furthermore, Employees were regularly required to work for more
15 than 10 hours in a given shift without receiving a second uninterrupted thirty (30) minute meal
16 period as required by law.

17 58. Moreover, Defendants failed to compensate Employees for each meal period not
18 provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11 and
19 20 of the applicable IWC Wage Orders, which provide that, if an employer fails to provide an
20 employee a meal period in accordance with this section, the employer shall pay the employee one
21 hour of pay at the employee's regular rate of compensation for each workday that the meal period
22 is not provided. Defendants failed to compensate the Employees in the Class for each meal period
23 not provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11
24 and 20 of the applicable IWC Wage Order. Additionally, as detailed above, when Defendants did
25 pay meal period premiums, they did so at the normal regular rate of pay without factoring in all
26 forms or remuneration/compensation or by otherwise incorrectly calculating the regular rate.

27 59. Therefore, pursuant to Labor Code § 226.7, Employees are entitled to damages in
28 an amount equal to one (1) hour of wages at their effective hourly rates of pay for each meal

1 period not provided or deficiently provided, a sum to be proven at trial.

2 **FOURTH CAUSE OF ACTION**

3 **REST-BREAK LIABILITY UNDER LABOR CODE § 226.7**

4 **(Against All Defendants)**

5 60. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
6 full herein.

7 61. Employees consistently worked consecutive four (4) hour shifts. Pursuant to the
8 Labor Code and the applicable IWC Wage Order, Employees were entitled to paid rest breaks of
9 not less than ten (10) minutes for each consecutive four (4) hour shift.

10 62. Defendants failed to provide Employees with timely rest breaks of not less than ten
11 (10) minutes for each consecutive four (4) hour shift.

12 63. Moreover, Defendants failed to compensate Employees for each rest period not
13 provided or inadequately provided, as required under Labor Code § 226.7 and the applicable IWC
14 Wage Orders, which provide that, if an employer fails to provide an employee a rest period in
15 accordance with this section, the employer shall pay the employee one hour of pay at the
16 employee's regular rate of compensation for each workday that the rest period is not provided.
17 Defendants failed to compensate the Employees in the Class for each rest period not provided or
18 inadequately provided, as required under Labor Code § 226.7 and the applicable IWC Wage
19 Order. Additionally, as detailed above, when Defendants did pay rest period premiums, they did
20 so at the normal regular rate of pay without factoring in all forms or remuneration/compensation
21 or by otherwise incorrectly calculating the regular rate.

22 64. Therefore, pursuant to Labor Code § 226.7, Employees are entitled to damages in
23 an amount equal to one (1) hour of wages at their effective hourly rates of pay for each day
24 worked without the required rest breaks, a sum to be proven at trial.

25 **FIFTH CAUSE OF ACTION**

26 **FAILURE TO PAY VACATION WAGES**

27 **(Against All Defendants)**

28 65. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in

1 full herein.

2 66. Pursuant to California Labor Code § 227.3, whenever a contract of employment or
3 employment policy provides for paid vacation and an employee is terminated without having
4 taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate
5 in accordance with said contract of employment or policy respecting eligibility or time served.

6 67. Defendants paid nondiscretionary commissions, incentive pay, and/or
7 nondiscretionary bonuses to Employees but Defendants failed to include these forms of
8 remuneration in the regular rate of pay upon which vacation wages were calculated and paid.

9 68. Therefore, pursuant to Labor Code § 227.3, Plaintiff and Employees seek to
10 recover damages and penalties, in a sum to be proven at trial.

11 **SIXTH CAUSE OF ACTION**

12 **FAILURE TO COMPLY WITH LABOR CODE §§ 245 *ET SEQ.* AND 246**

13 **(Against All Defendants)**

14 69. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
15 full herein.

16 70. California Labor Code § 245 *et seq.* requires that Defendants provide paid sick time
17 to Employees, including at the amount, terms, and rate of compensation set forth in said law. At
18 times relevant, Defendants have failed compute the amount due for paid sick time in conformance
19 with the pay calculation under California Labor Code § 246(l).

20 71. Defendants paid nondiscretionary commissions, incentive pay, and/or
21 nondiscretionary bonuses to Employees but Defendants failed to include these forms of
22 remuneration in the regular rate of pay upon which sick pay was calculated and paid. Rather than
23 calculating the amount of paid sick time due when sick time is used according to the requirements
24 set forth in California Labor Code § 246(1), Defendants paid sick leave to Employees at a lower
25 rate, in violation of the law.

26 72. Therefore, Plaintiff and Employees seek to recover penalties pursuant to Labor
27 Code § 245 *et seq.* and §§ 245 *et seq.* and 246.

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SEVENTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 226(a)
(Against All Defendants)

73. Plaintiff re-alleges and incorporate all preceding paragraphs, as though set forth in full herein.

74. California Labor Code § 226(a) requires an employer to furnish each of his or her employees with an accurate, itemized statement in writing showing the gross and net earnings, total hours worked, and the corresponding number of hours worked at each hourly rate; these statements must be appended to the detachable part of the check, draft, voucher, or whatever else serves to pay the employee's wages; or, if wages are paid by cash or personal check, these statements may be given to the employee separately from the payment of wages; in either case the employer must give the employee these statements twice a month or each time wages are paid.

75. Defendants failed to provide Employees with accurate itemized wage statements in writing, as required by the Labor Code. Specifically, Defendants failed in their affirmative obligation to keep accurate records of the correct overtime wages based on proper regular rate calculations that included nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses earned, and the total amount of compensation of their Employees. Moreover, the wage statements given to Employees by Defendants failed to accurately account for wages, overtime, and premium pay for deficient meal periods and rest breaks all of which Defendants knew or reasonably should have known were owed to Employees, as alleged hereinabove. The wage statements provided to Employees were confusing and required Employees to engage in discovery and refer to outside sources to verify whether their pay was correct and potentially resulting in a miscalculation by the Employees.

76. As a direct and proximate cause of Defendants' violation of Labor Code § 226(a), Employees suffered injuries, including among other things confusion over whether they received all wages owed them, the difficulty and expense involved in reconstructing pay records, and forcing them to make mathematical computations to analyze whether the wages paid in fact compensated them correctly for all hours worked.

1 77. Pursuant to Labor Code §§ 226(a) and 226(e), Employees are entitled to recover
2 the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
3 occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not
4 exceeding an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an
5 award of costs and reasonable attorneys' fees.

6 **EIGHTH CAUSE OF ACTION**

7 **FAILURE TO KEEP REQUIRED PAYROLL RECORDS UNDER LABOR CODE § 1174**

8 **AND 1174.5**

9 **(Against All Defendants)**

10 78. Plaintiff re-alleges and incorporate all preceding paragraphs, as though set forth in
11 full herein.

12 79. California Labor Code § 1174 requires that all employers shall keep accurate time
13 and wage records for all employees. California Labor Code § 1174.5 further requires that any
14 employee suffering injury due to a willful violation of the aforementioned obligations may seek
15 damages, including civil penalties, from the employer.

16 80. During the course of Plaintiff's and Employees' employment, Defendants
17 consistently failed to maintain accurate time and wage records for Plaintiff and Employees as
18 required by California Labor Code § 1174 by failing to pay Plaintiff and Employees proper wages,
19 overtime, and premium pay as discussed above.

20 81. Accordingly, Defendants are liable for civil penalties pursuant to the California
21 Labor Code §§ 1174.5 for the three (3) years prior to the filing of this Complaint.

22 **NINTH CAUSE OF ACTION**

23 **VIOLATION OF LABOR CODE § 204**

24 **(Against All Defendants)**

25 82. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
26 full herein.

27 83. California Labor Code § 200 " 'wages' include all amounts for labor performed by
28 employees of every description, whether the amount is fixed or ascertained by the standard of

1 time, task, pieces, commission basis, or other method of calculation.”

2 84. California Labor Code § 204 states that all wages earned by any person in any
3 employment are payable twice during the calendar month and must be paid not more than seven
4 days following the close of the period when the wages were earned.

5 85. California Labor Code § 204 expressly requires employers who pay employees on
6 a weekly, biweekly, or semimonthly basis to pay all wages “not more than seven calendar days
7 following the close of the payroll period.” Defendants failed to timely pay Employees wages on a
8 semimonthly basis as required under Labor Code § 204. Defendants failed to maintain records
9 showing accurate hours worked daily and the wages paid to Employees, as well as the meal and
10 rest periods taken by Employees, as required by Labor Code § 1174 and the applicable IWC wage
11 orders.

12 **TENTH CAUSE OF ACTION**
13 **VIOLATION OF LABOR CODE § 203**
14 **(Against All Defendants)**

15 86. Plaintiff re-alleges and incorporate all preceding paragraphs, as though set forth in
16 full herein.

17 87. Numerous Employees are no longer employed by Defendants; they either quit
18 Defendants’ employ or were fired therefrom.

19 88. Defendants failed to pay these Employees all wages due and certain at the time of
20 termination or within seventy-two (72) hours of resignation.

21 89. The wages withheld from these Employees by Defendants remained due and owing
22 for more than thirty (30) days from the date of separation of employment.

23 90. Defendants’ failure to pay wages, as alleged above, was willful in that Defendants
24 knew wages to be due but failed to pay them; this violation entitles these Employees to penalties
25 under Labor Code § 203, which provides that an employee’s wages shall continue until paid for up
26 to thirty (30) days from the date they were due.

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ELEVENTH CAUSE OF ACTION
FAILURE TO PROVIDE PAID SICK DAYS AND COVID-19 SUPPLEMENTAL SICK
LEAVE
(Against All Defendants)

91. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

92. Defendants violated California Labor Code § 246 by not providing all required paid sick days to Plaintiff and the Employees. Labor Code § 246 provides that an Employee who “works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified in this section.” Defendants failed to provide Plaintiff and the other similarly Employees with all their required and earned sick days, in violation of Labor Code § 246. Defendants have also failed to provide COVID-19 supplemental sick leave to the Employees during the relevant time period, including by failing to provide two work weeks of COVID-19 supplemental paid sick leave as required under Labor Code §§ 248.2 and 248.6.

93. Therefore, Plaintiff and Employees seek to recover penalties pursuant to Labor Code § 248.5 and §§ 245 *et seq.* and 246.

TWELFTH CAUSE OF ACTION
VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 ET SEQ.
(Against All Defendants)

94. Plaintiff re-alleges and incorporate all preceding paragraphs, as though set forth in full herein.

95. Plaintiff, on behalf of himself, Employees, and the general public, brings this claim pursuant to Business & Professions Code § 17200 *et seq.* The conduct of Defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to Employees and the general public. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

96. Plaintiff is a “person” within the meaning of Business & Professions Code

1 § 17204, has suffered injury, and therefore has standing to bring this cause of action for injunctive
2 relief, restitution, and other appropriate equitable relief.

3 97. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair
4 business practices.

5 98. Wage-and-hour laws express fundamental public policies. Paying employees their
6 wages and overtime, providing them with meal periods and rest breaks, etc., are fundamental
7 public policies of California. Labor Code § 90.5(a) articulates the public policies of this State
8 vigorously to enforce minimum labor standards, to ensure that employees are not required or
9 permitted to work under substandard and unlawful conditions, and to protect law-abiding
10 employers and their employees from competitors who lower costs to themselves by failing to
11 comply with minimum labor standards.

12 99. Defendants have violated statutes and public policies. Through the conduct alleged
13 in this Complaint Defendants have acted contrary to these public policies, have violated specific
14 provisions of the Labor Code, and have engaged in other unlawful and unfair business practices in
15 violation of Business & Professions Code § 17200 *et seq.*; which conduct has deprived Plaintiff,
16 and all persons similarly situated, and all interested persons, of the rights, benefits, and privileges
17 guaranteed to all employees under the law.

18 100. Defendants' conduct, as alleged hereinabove, constitutes unfair competition in
19 violation of the Business & Professions Code § 17200 *et seq.*

20 101. Defendants, by engaging in the conduct herein alleged, by failing to pay wages and
21 overtime, failing to provide meal periods and rest breaks, etc., either knew or in the exercise of
22 reasonable care should have known that their conduct was unlawful; therefore their conduct
23 violates the Business & Professions Code § 17200 *et seq.*

24 102. As a proximate result of the above-mentioned acts of Defendants, Employees have
25 been damaged, in a sum to be proven at trial.

26 103. Unless restrained by this Court Defendants will continue to engage in such
27 unlawful conduct as alleged above. Pursuant to the Business & Professions Code this Court should
28 make such orders or judgments, including the appointment of a receiver, as may be necessary to

1 prevent the use by Defendants or their agents or employees of any unlawful or deceptive practice
2 prohibited by the Business & Professions Code, including but not limited to the disgorgement of
3 such profits as may be necessary to restore Employees to the money Defendants have unlawfully
4 failed to pay.

5 **THIRTEENTH CAUSE OF ACTION**
6 **PENALTIES PURSUANT TO LABOR CODE § 2699, *ET SEQ.***
7 **(Against All Defendants)**

8 104. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
9 full herein.

10 105. Plaintiff and Employees are aggrieved employees as defined under Labor Code §
11 2699(c) in that they suffered the violations alleged in this Complaint and were employed by the
12 alleged violators, Defendants.

13 106. Plaintiff seeks penalties under Labor Code §§ 2698 and 2699 for Defendants'
14 violation of all Labor Code provisions included under Labor Code § 2699.5 and includes the
15 penalty provisions, without limitation, based on the following California Labor Code sections:
16 201, 202, 203, 204, 210, 212, 213, 226, 226.7, 227.3, 245 *et seq.*, 246, 248.2, 248.5, 248.6, 510,
17 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, and 2699, *et*
18 *seq.*

19 107. The penalties shall be allocated as follows: 75% to the Labor and Workforce
20 Development Agency (LWDA) and 25% to the affected employee.

21 108. Employees also seek any and all penalties and remedies set forth in Labor Code
22 § 558, which states:

23 (a) Any employer or other person acting on behalf of an
24 employer who violates, or causes to be violated, a section of this
25 chapter or any provision regulating hours and days of work in any
26 order of the Industrial Welfare Commission shall be subject to a
27 civil penalty as follows: (1) For any initial violation, fifty dollars
28 (\$50) for each underpaid employee for each pay period for which
the employee was underpaid in addition to an amount sufficient to
recover underpaid wages. (2) For each subsequent violation, one
hundred dollars (\$100) for each underpaid employee for each pay
period for which the employee was underpaid in addition to an

1 amount sufficient to recover underpaid wages. (3) Wages
2 recovered pursuant to this section shall be paid to the affected
employee.

3 (b) If upon inspection or investigation the Labor
4 Commissioner determines that a person had paid or caused to be
5 paid a wage for overtime work in violation of any provision of
6 this chapter, or any provision regulating hours and days of work
7 in any order of the Industrial Welfare Commission, the Labor
8 Commissioner may issue a citation. The procedures for issuing,
contesting, and enforcing judgments for citations or civil penalties
issued by the Labor Commissioner for a violation of this chapter
shall be the same as those set out in Section 1197.1.

9 (c) The civil penalties provided for in this section are in addition to
10 any other civil or criminal penalty provided by law.

11 109. Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of
12 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
13 per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee
14 for each violation in a subsequent citation, for which the employer fails to provide the employee a
15 wage deduction statement or fails to keep the required in subdivision (a) of Section 226.” To the
16 extent that Labor Code § 226.3 applies, Plaintiff and Employees also seeks such penalties on.

17 110. Plaintiff has exhausted his administrative remedy by sending a certified letter to the
18 LWDA and Defendants postmarked on January 18, 2022. The LWDA has not provided notice of
19 its intent to investigate the alleged violations within 65 calendar days of the postmark date of the
20 letters.

21 **RELIEF REQUESTED**

22 WHEREFORE, Plaintiff prays for the following relief:

- 23 1. For an order certifying this action as a class action;
- 24 2. For compensatory damages in the amount of the unpaid minimum wages for work
25 performed by Employees and unpaid overtime compensation from at least four (4) years prior to
26 the filing of this action, as may be proven;
- 27 3. For liquidated damages in the amount equal to the unpaid minimum wage and
28 interest thereon, from at least four (4) years prior to the filing of this action, according to proof;

1 4. For compensatory damages in the amount of all unpaid wages, including overtime
2 and double-time pay, as may be proven;

3 5. For compensatory damages in the amount of the hourly wage made by Employees
4 for each missed or deficient meal period where no premium pay was paid therefor from four (4)
5 years prior to the filing of this action, as may be proven;

6 6. For compensatory damages in the amount of the hourly wage made by Employees
7 for each day requisite rest breaks were not provided or were deficiently provided where no
8 premium pay was paid therefor from at least four (4) years prior to the filing of this action, as may
9 be proven;

10 7. For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven;

11 8. For penalties pursuant to Labor Code § 203 for all Employees who quit or were
12 fired in an amount equal to their daily wage times thirty (30) days, as may be proven;

13 9. For penalties pursuant to Labor Code § 227.3, as may be proven;

14 10. For penalties pursuant to Labor Code §§ 245 and 246, as may be proven;

15 11. For penalties pursuant to Labor Code § 248.5, as may be proven;

16 12. For penalties pursuant to Labor Code § 204, as may be proven;

17 13. For penalties pursuant to Labor Code § 1174.5, as may be proven;

18 14. For restitution for unfair competition pursuant to Business & Professions Code
19 § 17200 *et seq.*, including disgorgement or profits, as may be proven;

20 15. For penalties pursuant to Labor Code § 2699, *et seq.*, as may be proven;

21 16. For an order enjoining Defendants and their agents, servants, and employees, and
22 all persons acting under, in concert with, or for them, from acting in derogation of any rights or
23 duties adumbrated in this Complaint;

24 17. For all general, special, and incidental damages as may be proven;

25 18. For an award of pre-judgment and post-judgment interest;

26 19. For an award providing for the payment of the costs of this suit;

27 20. For an award of attorneys' fees; and

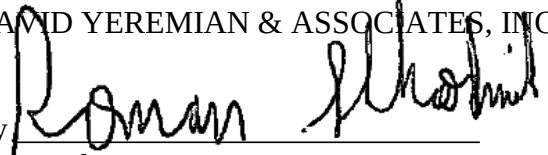
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21. For such other and further relief as this Court may deem proper and just.

DATED: September 14, 2022

DAVID YEREMIAN & ASSOCIATES, INC.

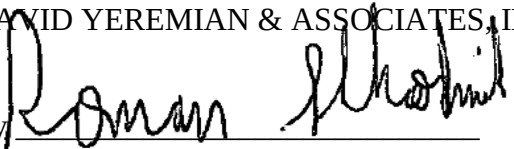
By 
David Yeremian
Roman Shkodnik
Attorneys for Plaintiff
MARCO ROSALES and the putative class

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial of his claims by jury to the extent authorized by law.

DATED: September 14, 2022

DAVID YEREMIAN & ASSOCIATES, INC.

By 

David Yeremian

Roman Shkodnik

Attorneys for Plaintiff

MARCO ROSALES and the putative class