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5 Attorneys for Plaintiffs KASSANDRA DUENAS,
6 OSCAR BADILLO, TAMMY BIBIAN,
MANILOU REDOR, individually, and
7 on behalf of all others similarly situated

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF LOS ANGELES
11

12 KASSANDRA DUENAS, an individual;
OSCAR BADILLO, an individual; TAMMY
13 BIBIAN, an individual; MANILOU REDOR,
an individual, on behalf of themselves and all
14 others similarly situated,

15 Plaintiffs,

16 vs.

17 EXER MEDICAL CORPORATION, a
California corporation; ROTH STAFFING
18 COMPANIES, L.P., a California limited
partnership; and DOES 1 through 50, inclusive,

19 Defendants
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CASE NO.: **22STCV15064**

CLASS ACTION

COMPLAINT FOR:

1. Failure to Provide Required Meal Periods
2. Failure to Provide Required Rest Periods
3. Failure to Pay Overtime Wages
4. Failure to Pay Minimum Wages
5. Failure to Pay All Wages Due to Discharged and Quitting Employees
6. Failure to Furnish Accurate Itemized Wage Statements
7. Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties
8. Unfair and Unlawful Business Practices

REPRESENTATIVE ACTION:

9. Penalties under the Labor Code Private Attorneys General Act, as Representative Action

DEMAND FOR JURY TRIAL

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former non-exempt employees of DEFENDANTS in the State of California at any time during the four years preceding the filing of this action, and continuing while this action is pending, bring this class action to recover, among other things, wages and penalties from unpaid wages earned and due, including but not limited to unpaid minimum wages, unpaid and illegally calculated overtime compensation, illegal meal and rest period policies, failure to pay all wages due to discharged and quitting employees, failure to indemnify employees for necessary expenditures and/or losses incurred in discharging their duties, failure to provide accurate itemized wage statements, and interest, attorneys' fees, costs, and expenses.

8. PLAINTIFFS bring this action on behalf of themselves and the following similarly situated class of individuals (“CLASS MEMBERS”): all current and former non-exempt employees of DEFENDANTS in the State of California at any time within the period beginning four (4) years prior to the filing of this action and ending at the time this action settles or the class is certified (the “CLASS PERIOD”). PLAINTIFFS reserve the right to name additional class representatives.

DEFENDANTS

9. PLAINTIFFS are informed and believe, and thereon allege, that Defendant EXER MEDICAL CORPORATION is, and at all times relevant hereto was, a California corporation. PLAINTIFFS are further informed and believe, and thereon allege, that Defendant EXER MEDICAL CORPORATION is authorized to conduct business in the State of California, and does conduct business in the State of California. Specifically, Defendant EXER MEDICAL CORPORATION maintains offices and facilities and conducts business in, and engages in illegal payroll practices or policies in, the County of Los Angeles, State of California.

10. PLAINTIFFS are informed and believe, and thereon allege, that Defendant ROTH STAFFING COMPANIES, L.P. is, and at all times relevant hereto was, a California limited partnership. PLAINTIFFS are further informed and believes, and thereon alleges, that Defendant ROTH STAFFING COMPANIES, L.P. is authorized to conduct business in the State of California, and does conduct business in the State of California. Specifically, Defendant ROTH STAFFING COMPANIES, L.P. maintains offices and facilities and conducts business in, and engages in illegal

1 payroll practices or policies in, the County of Los Angeles, State of California.

2 11. The true names and capacities of DOES 1 through 50, inclusive, are unknown to
3 PLAINTIFFS at this time, and PLAINTIFFS therefore sues such DOE Defendants under fictitious
4 names. PLAINTIFFS are informed and believe, and thereon allege, that each Defendant designated
5 as a DOE is in some manner highly responsible for the occurrences alleged herein, and that
6 PLAINTIFFS and CLASS MEMBERS' injuries and damages, as alleged herein, were proximately
7 caused by the conduct of such DOE Defendants. PLAINTIFFS will seek leave of the court to amend
8 this Complaint to allege their true names and capacities of such DOE Defendants when ascertained.

9 12. At all relevant times herein, DEFENDANTS were the joint employers of
10 PLAINTIFFS and CLASS MEMBERS. PLAINTIFFS are informed and believe, and thereon allege,
11 that at all times material to this complaint DEFENDANTS were the alter egos, divisions, affiliates,
12 integrated enterprises, joint employers, subsidiaries, parents, principals, related entities, co-
13 conspirators, authorized agents, partners, joint venturers, and/or guarantors, actual or ostensible, of
14 each other. Each Defendant was completely dominated by his, her or its co-Defendant, and each
15 was the alter ego of the other.

16 13. At all relevant times herein, PLAINTIFFS and CLASS MEMBERS were employed
17 by DEFENDANTS under employment agreements that were partly written, partly oral, and partly
18 implied. In perpetrating the acts and omissions alleged herein, DEFENDANTS, and each of them,
19 acted pursuant to, and in furtherance of, their policies and practices of not paying PLAINTIFFS and
20 CLASS MEMBERS all wages earned and due, through methods and schemes which include, but
21 are not limited to, failing to pay overtime premiums; failing to provide rest and meal periods; failing
22 to properly maintain records; failing to provide accurate itemized statements for each pay period;
23 failing to properly compensate PLAINTIFFS and CLASS MEMBERS for necessary expenditures;
24 and requiring, permitting or suffering the employees to work off the clock, in violation of the
25 California Labor Code and the applicable Welfare Commission ("IWC") Orders.

26 14. PLAINTIFFS are informed and believe, and thereon allege, that each and every one
27 of the acts and omissions alleged herein were performed by, and/or attributable to, all
28 DEFENDANTS, each acting as agents and/or employees, and/or under the direction and control of,

1 each of the other DEFENDANTS, and that said acts and failures to act were within the course and
2 scope of said agency, employment and/or direction and control.

3 15. Pursuant to California Labor Code § 558.1, DEFENDANTS and any person acting
4 on behalf of any of the DEFENDANTS, are liable for violating, or causing to violate, any provision
5 regulating minimum wages or hours and days of work in any order of the Industrial Welfare
6 Commission, or Labor Code §§ 203, 226, 226.7, 1193.6, 1194, or 2802.

7 16. As a direct and proximate result of the unlawful actions of DEFENDANTS,
8 PLAINTIFFS and CLASS MEMBERS have suffered, and continue to suffer, from loss of earnings
9 in amounts as yet unascertained, but subject to proof at trial, and within the jurisdiction of this Court.

10 **CLIENT EMPLOYER-LABOR CONTRACTOR ALLEGATIONS**

11 17. PLAINTIFFS are informed and believe, and thereon allege, that, at all times material
12 to this complaint, Defendant EXER MEDICAL CORPORATION, and/or DOES 1 through 50, were
13 and remain business entities that obtain(ed) or are/were provided workers to perform labor within
14 their “usual course of business”—i.e., the regular and customary work of a business, performed
15 within or upon the premises or worksite of Defendant EXER MEDICAL CORPORATION, and/or
16 DOES 1 through 50—from a “labor contractor,” as defined in Labor Code § 2810.3(a)(3). As such,
17 at all times material to this complaint, Defendant EXER MEDICAL CORPORATION, and/or
18 DOES 1 through 50 were and remain “client employers” as statutorily defined in California Labor
19 Code § 2810.3(a)(1)(A).

20 18. PLAINTIFFS are informed and believe, and thereon allege that, at all times material
21 to this complaint, Defendant ROTH STAFFING COMPANIES, L.P., and/or DOES 1 through 50,
22 were and remain individuals or entities that supply, either with or without a contract, a client
23 employer with workers to perform labor within the client employers’ usual course of business. As
24 such, at all times material to this complaint, Defendant ROTH STAFFING COMPANIES, L.P.,
25 and/or DOES 1 through 50 were and remain “labor contractors” as that term is statutorily defined
26 in California Labor Code § 2810.3(a)(3).

27 19. PLAINTIFFS are informed and believe, and thereon allege that, at all times material
28 to this complaint, PLAINTIFFS and their fellow aggrieved employees were not exempt from the

1 payment of an overtime rate of compensation for executive, administrative, and professional
2 employees pursuant to wage orders by the IWC as described in Labor Code § 515.

3 20. PLAINTIFFS are informed and believe, and thereon allege, that, at all times material
4 to this complaint, Defendant EXER MEDICAL CORPORATION, and/or DOES 1 through 50 were
5 and remain business entities with a workforce of greater than twenty-five (25) workers, including
6 those hired directly by the client employer and those obtained from, or provided by, any labor
7 contractor.

8 21. PLAINTIFFS are informed and believe, and thereon allege, that, at all times material
9 to this complaint, Defendant EXER MEDICAL CORPORATION, and/or DOES 1 through 50 were
10 and remain business entities with more than five (5) workers supplied by a labor contractor or labor
11 contractors to the client employer at any given time.

12 22. PLAINTIFFS are informed and believe, and thereon allege, that, at all times material
13 to this complaint, Defendant EXER MEDICAL CORPORATION, and/or DOES 1 through 50 were
14 not states or the political subdivision of the states, including any city, county, city and county, or
15 special district.

16 23. PLAINTIFFS are informed and believe, and thereon allege that, at all times material
17 to this complaint, Defendant ROTH STAFFING COMPANIES, L.P., and/or DOES 1 through 50,
18 were neither bona fide nonprofit, community-based organizations that provide services to workers
19 nor bona fide labor organizations or apprenticeship programs or hiring halls operated pursuant to a
20 collective bargaining agreement.

21 24. PLAINTIFFs are informed and believe, and thereon allege that, at all times material
22 to this complaint, Defendant ROTH STAFFING COMPANIES, L.P., and/or DOES 1 through 50,
23 were not motion picture payroll service companies as defined in subparagraph (A) of paragraph (4)
24 of subdivision (f) of Section 679 of the Unemployment Insurance Code.

25 25. PLAINTIFFS are informed and believe, and thereon allege that, at all times material
26 to this complaint, Defendant ROTH STAFFING COMPANIES, L.P., and/or DOES 1 through 50,
27 were not third parties who were parties to an employee leasing arrangement, as defined by Rule 4
28 of Section V of the California Workers Compensation Experience Rating Plan-1995 (Section 2353.1

of Title 10 of the California Code of Regulations), as it read on January 1, 2014.

26. Pursuant to Labor Code §2810.3(d), PLAINTIFF DUENAS gave written notice to DEFENDANTS by certified mail, postmarked January 14, 2022, of Labor Code violations covered by Labor Code § 2810.3(b). Therefore, because PLAINTIFF DUENAS provided notice to DEFENDANTS of violations covered by Labor Code § 2810.3(b) at least 30 days prior to filing a civil action against the client employer, PLAINTIFF DUENAS has complied with all of the requirements set forth in Labor Code § 2810.3(d).

CLASS ACTION ALLEGATIONS

27. This action is appropriately suited for a Class Action because:

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

b. This action involves common questions of law and fact to the potential class because the action focuses on DEFENDANTS' systematic course of illegal payroll practices and policies, which was applied to all non-exempt employees in violation of the Labor Code, the applicable IWC wage order, and the Business and Professions Code which prohibits unfair business practices arising from such violations.

c. The claims of PLAINTIFFS are typical of the class because DEFENDANTS subjected all non-exempt employees to identical violations of the Labor Code, the applicable IWC wage order, and the Business and Professions Code.

d. PLAINTIFFS are able to fairly and adequately protect the interests of all members of the class because it is in her best interests to prosecute the claims alleged herein to obtain full compensation due to them for all services rendered and hours worked.

FIRST CAUSE OF ACTION

Failure to Provide Required Meal Periods

[Cal. Labor Code §§ 226.7, 510, 512, 1194, 1197; IWC Wage Order No. 4-2001, § 11]

(Against all DEFENDANTS)

28. PLAINTIFFS incorporate herein by specific reference, as though fully set forth, the allegations in the foregoing paragraphs.

1 29. During the CLASS PERIOD, as part of DEFENDANTS' illegal payroll policies and
2 practices to deprive their non-exempt employees all wages earned and due, DEFENDANTS
3 required, permitted or otherwise suffered PLAINTIFFS and CLASS MEMBERS to take less than
4 the 30-minute meal period, or to work through them, and have failed to otherwise provide the
5 required meal periods to PLAINTIFFS and CLASS MEMBERS pursuant to California Labor Code
6 § 226.7, 512 and IWC Order No. 4-2001, § 11.

7 30. DEFENDANTS further violated California Labor Code §§ 226.7 and IWC Wage
8 Order No. 4-2001, § 11 by failing to compensate PLAINTIFFS and CLASS MEMBERS who were
9 not provided with a meal period, in accordance with the applicable wage order, one additional hour
10 of compensation at each employee's regular rate of pay for each workday that a meal period was
11 not provided.

12 31. DEFENDANTS further violated California Labor Code §§ 226.7, 510, 1194, 1197,
13 and IWC Wage Order No. 4-2001 by failing to compensate PLAINTIFFS and CLASS MEMBERS
14 for all hours worked during their meal periods.

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

18 **SECOND CAUSE OF ACTION**

19 **Failure to Provide Required Rest Periods**

20 **[Cal. Labor Code §§ 226.7, 512; IWC Wage Order No. 4-2001, § 12]**

21 **(Against all DEFENDANTS)**

22 33. PLAINTIFFS incorporates herein by specific reference, as though fully set forth, the
23 allegations in the foregoing paragraphs.

24 34. At all times relevant herein, as part of DEFENDANTS' illegal payroll policies and
25 practices to deprive their non-exempt employees all wages earned and due, DEFENDANTS failed
26 to provide rest periods to PLAINTIFFS and CLASS MEMBERS as required under California Labor
27 Code §§ 226.7 and 512, and IWC Wage Order No. 4-2001, § 12.

28 35. DEFENDANTS further violated California Labor Code § 226.7 and IWC Wage

1 Order No. 4-2001, § 12 by failing to pay PLAINTIFFS and CLASS MEMBERS who were not
2 provided with a rest period, in accordance with the applicable wage order, one additional hour of
3 compensation at each employee's regular rate of pay for each workday that a rest period was not
4 provided.

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

8 **THIRD CAUSE OF ACTION**

9 **Failure to Pay Overtime Wages**

10 **[Cal. Labor Code §§ 510, 1194, 1198; IWC Wage Order No. 4-2001, § 3]**

11 **(Against all DEFENDANTS)**

12 37. PLAINTIFFS incorporate herein by specific reference, as though fully set forth, the
13 allegations in the foregoing paragraphs.

14 38. Pursuant to California Labor Code §§ 510, 1194, and IWC Wage Order No. 4-2001,
15 § 3, DEFENDANTS are required to compensate PLAINTIFFS and CLASS MEMBERS for all
16 overtime, which is calculated at one and one-half (1 ½) times the regular rate of pay for all hours
17 worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the first eight
18 (8) hours on the seventh consecutive workday, with double time for all hours worked in excess of
19 twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours on the seventh
20 consecutive day of work in any workweek.

21 39. PLAINTIFFS and CLASS MEMBERS are current and former non-exempt
22 employees entitled to the protections of California Labor Code §§ 510, 1194, and IWC Wage Order
23 No. 4-2001. During the CLASS PERIOD, DEFENDANTS failed to compensate PLAINTIFFS and
24 CLASS MEMBERS for all overtime hours worked as required under the foregoing provisions of
25 the California Labor Code and IWC Wage Order by, among other things: failing to pay overtime at
26 one and one-half (1 ½) or double the regular rate of pay as provided by California Labor Code §§
27 510, 1194, and IWC Wage Order No. 4-2001, § 3; requiring, permitting or suffering PLAINTIFFS
28 and CLASS MEMBERS to work off the clock; requiring, permitting or suffering PLAINTIFFS and

1 CLASS MEMBERS to work through meal and rest breaks; illegally and inaccurately recording time
2 in which PLAINTIFFS and CLASS MEMBERS worked; failing to properly maintain
3 PLAINTIFFS' and CLASS MEMBERS' records; failing to provide accurate itemized wage
4 statements to PLAINTIFFS for each pay period; and other methods to be discovered.

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

12 41. DEFENDANTS' conduct described herein violates California Labor Code §§ 510,
13 1194, 1198 and IWC Wage Order No. 4-2001, § 3. Therefore, pursuant to California Labor Code
14 §§ 200, 203, 226, 558, 1194, 1197.1, and other applicable provisions under the California Labor
15 Code and IWC Wage Orders, PLAINTIFFS and CLASS MEMBERS are entitled to recover the
16 unpaid balance of wages owed to them by DEFENDANTS, plus interest, penalties, attorneys' fees,
17 expenses, and costs of suit.

18 **FOURTH CAUSE OF ACTION**

19 **Failure to Pay Minimum Wages**

20 **[Cal Labor Code §§ 1194, 1197; IWC Wage Order No. 4-2001, § 4]**

21 **(Against all DEFENDANTS)**

22 42. PLAINTIFFS incorporate herein by specific reference, as though fully set forth, the
23 allegations in the foregoing paragraphs.

24 43. Pursuant to California Labor Code §§ 1194, 1197, and IWC Wage Order No. 4-2001,
25 § 4, payment to an employee of less than the applicable minimum wage for all hours worked in a
26 payroll period is unlawful.

27 44. During the CLASS PERIOD, DEFENDANTS failed to pay PLAINTIFFS and
28 CLASS MEMBERS minimum wages for all hours worked by, among other things: requiring,

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

7 45. DEFENDANTS' conduct described herein violates California Labor Code §§ 1194,
8 1197, and IWC Wage Order No. 4-2001, § 4. As a proximate result of the aforementioned
9 violations, PLAINTIFFS and CLASS MEMBERS have been damaged in an amount according to
10 proof at trial. Therefore, pursuant to California Labor Code §§ 200, 203, 226, 558, 1194, 1197.1,
11 and other applicable provisions under the Labor Code and IWC Wage Orders, PLAINTIFFS and
12 CLASS MEMBERS are entitled to recover the unpaid balance of wages owed to them by
13 DEFENDANTS, plus interest, penalties, attorneys' fees, expenses, and costs of suit.

14 **FIFTH CAUSE OF ACTION**

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

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

17 **(Against all DEFENDANTS)**

18 46. PLAINTIFFS incorporate herein by specific reference, as though fully set forth, the
19 allegations in the foregoing paragraphs.

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

24 48. Furthermore, pursuant to California Labor Code § 202, DEFENDANTS are required
25 to pay all accrued wages due to an employee no later than 72 hours after the employee quits his or
26 her employment, unless the employee provided 72 hours previous notice of his or her intention to
27 quit, in which case the employee is entitled to his or her wages at the time of quitting.

28 49. California Labor Code § 203 provides that if an employer willfully fails to pay, in

1 accordance with California Labor Code §§ 201 and 202, any wages of an employee who is
2 discharged or who quits, the employer is liable for waiting time penalties in the form of continued
3 compensation to the employee at the same rate for up to 30 workdays.

4 50. During the CLASS PERIOD, DEFENDANTS have willfully failed to pay accrued
5 wages and other compensation to PLAINTIFFS and CLASS MEMBERS in accordance with
6 California Labor Code §§ 201 and 202.

7 51. As a result, PLAINTIFFS and CLASS MEMBERS are entitled to all available
8 statutory penalties, including the waiting time penalties provided in California Labor Code § 203,
9 together with interest thereon, as well as other available remedies.

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

15 **SIXTH CAUSE OF ACTION**

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

17 **[Cal. Labor Code §§ 226; IWC Wage Order No. 4-2001, § 7]**

18 **(Against all DEFENDANTS)**

19 53. PLAINTIFFS incorporates herein by specific reference, as though fully set forth, the
20 allegations in the foregoing paragraphs.

21 54. During the CLASS PERIOD, DEFENDANTS routinely failed to provide
22 PLAINTIFFS and CLASS MEMBERS with timely, accurate, and itemized wage statements in
23 writing showing each employee's gross wages earned, total hours worked, the number of piece-rate
24 units earned and any applicable piece rate, all deductions made, net wages earned, the name and
25 address of the legal entity or entities employing PLAINTIFFS and CLASS MEMBERS, the
26 inclusive dates of the period for which the employee is paid, only the last four digits of the
27 employees social security number or an employee identification number other than a social security
28 number, and all applicable hourly rates in effect during each pay period and the corresponding

1 number of hours worked at each hourly rate, in violation of California Labor Code § 226 and IWC
2 Wage Order No. 4-2001, § 7.

3 55. During the CLASS PERIOD, DEFENDANTS knowingly and intentionally failed to
4 provide PLAINTIFFS and CLASS MEMBERS with timely, accurate, and itemized wage statements
5 in accordance with California Labor Code § 226(a).

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

13 **SEVENTH CAUSE OF ACTION**

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

15 **[Cal. Labor Code § 2802]**

16 **(Against all DEFENDANTS)**

17 57. PLAINTIFFS incorporate herein by specific reference, as though fully set forth, the
18 allegations in the foregoing paragraphs.

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

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

27 60. As a proximate result of DEFENDANTS' unlawful actions and omissions,
28 PLAINTIFFS and CLASS MEMBERS have been damaged in an amount according to proof at trial,

1 and seek reimbursement of all necessary expenditures, plus interest thereon pursuant to California
2 Labor Code § 2802(b). Additionally, PLAINTIFFS and CLASS MEMBERS are entitled to all
3 available statutory penalties and an award of costs, expenses, and reasonable attorneys' fees,
4 including those provided in California Labor Code § 2802(c), as well as other available remedies.

5 **EIGHTH CAUSE OF ACTION**

6 **Unfair and Unlawful Business Practices**

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

8 **(Against all DEFENDANTS)**

9 61. PLAINTIFFS incorporate herein by specific reference, as though fully set forth, the
10 allegations in the foregoing paragraphs.

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

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

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

1 Code and other applicable regulations.

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

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

12 **NINTH CAUSE OF ACTION**

13 **Representative Action for Civil Penalties**

14 **[Cal. Labor Code §§ 2698–2699.5]**

15 **(Against All DEFENDANTS)**

16 67. PLAINTIFFS incorporate herein by specific reference as though fully set forth the
17 allegations in all preceding paragraphs, with exception of the allegations in paragraph 13 and the
18 subparagraphs thereto.

19 68. PLAINTIFFS are “aggrieved employees” within the meaning of California Labor
20 Code § 2699(c), and a proper representative to bring a civil action on behalf of themselves and other
21 current and former employees of DEFENDANTS pursuant to the procedures specified in California
22 Labor Code § 2699.3, because PLAINTIFFS and CLASS MEMBERS were employed by
23 DEFENDANTS and the alleged violations of the California Labor Code were committed against
24 PLAINTIFFS and CLASS MEMBERS.

25 69. Pursuant to the California Private Attorneys General Act of 2004 (“PAGA”), Labor
26 Code §§ 2698–2699.5, PLAINTIFFS and CLASS MEMBERS seek to recover civil penalties,
27 including but not limited to penalties under California Labor Code §§ 2699, 210, 226.3, 558,
28 1174.5, 1197.1, and IWC Wage Order No. 4-2001, § 20, from DEFENDANTS in a representative

1 action for the violations set forth above, including but not limited to violations of California Labor
2 Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802. PLAINTIFFS
3 and CLASS MEMBERS are also entitled to an award of reasonable attorneys' fees and costs
4 pursuant to California Labor Code § 2699(g)(1).

5 70. Pursuant to California Labor Code §§ 2699.3, PLAINTIFF DUENAS gave written
6 notice on January 11, 2022 by online filing to the California Labor and Workforce Development
7 Agency ("LWDA") and by certified mail to DEFENDANTS of the specific provisions of the
8 California Labor Code and IWC Wage Orders alleged to have been violated, including the facts and
9 theories to support the alleged violations. More than sixty-five (65) days have passed and the
10 LWDA has not provided notice to PLAINTIFF DUENAS that it intends to investigate the alleged
11 violations.

12 71. Pursuant to California Labor Code §§ 2699.3, PLAINTIFF BADILLO gave written
13 notice on February 23, 2022 by online filing to the California Labor and Workforce Development
14 Agency ("LWDA") and by certified mail to DEFENDANTS of the specific provisions of the
15 California Labor Code and IWC Wage Orders alleged to have been violated, including the facts and
16 theories to support the alleged violations. More than sixty-five (65) days have passed and the
17 LWDA has not provided notice to PLAINTIFF BADILLO that it intends to investigate the alleged
18 violations.

19 72. Pursuant to California Labor Code §§ 2699.3, PLAINTIFF BIBIAN gave written
20 notice on February 23, 2022 by online filing to the California Labor and Workforce Development
21 Agency ("LWDA") and by certified mail to DEFENDANTS of the specific provisions of the
22 California Labor Code and IWC Wage Orders alleged to have been violated, including the facts and
23 theories to support the alleged violations. More than sixty-five (65) days have passed and the
24 LWDA has not provided notice to PLAINTIFF BIBIAN that it intends to investigate the alleged
25 violations.

26 73. Pursuant to California Labor Code §§ 2699.3, PLAINTIFF REDOR gave written
27 notice on February 23, 2022 by online filing to the California Labor and Workforce Development
28 Agency ("LWDA") and by certified mail to DEFENDANTS of the specific provisions of the

1 California Labor Code and IWC Wage Orders alleged to have been violated, including the facts and
2 theories to support the alleged violations. More than sixty-five (65) days have passed and the
3 LWDA has not provided notice to PLAINTIFF REDOR that it intends to investigate the alleged
4 violations.

5 74. Therefore, PLAINTIFFS have complied with all of the requirements set forth in
6 California Labor Code § 2699.3 to commence a representative action under PAGA.

7 **PRAYER FOR RELIEF**

8 **WHEREFORE**, PLAINTIFFS, individually and on behalf of all other persons similarly
9 situated, respectfully pray for relief against DEFENDANTS and DOES 1 through 50, inclusive, and
10 each of them, as follows:

- 11 1. For compensatory damages in an amount to be ascertained at trial;
- 12 2. For restitution of all monies due to PLAINTIFFS and CLASS MEMBERS, as well
13 as disgorged profits from DEFENDANTS' unfair and unlawful business practices;
- 14 3. For meal and rest period compensation pursuant to California Labor Code § 226.7
15 and IWC Wage Order No. 4-2001;
- 16 4. For liquidated damages pursuant to California Labor Code §§ 1194.2 and 1197.1;
- 17 5. For preliminary and permanent injunctive relief enjoining DEFENDANTS from
18 violating the relevant provisions of the California Labor Code and the IWC Wage Orders, and from
19 engaging in the unlawful business practices complained of herein;
- 20 6. For waiting time penalties pursuant to California Labor Code § 203;
- 21 7. For statutory and civil penalties according to proof, including but not limited to all
22 penalties authorized by the California Labor Code §§ 226(e) and §§ 2698–2699.5;
- 23 8. For interest on the unpaid wages at 10% per annum pursuant to California Labor
24 Code §§ 218.6, 1194, 2802, California Civil Code §§ 3287, 3288, and/or any other applicable
25 provision providing for pre-judgment interest;
- 26 9. For reasonable attorneys' fees and costs pursuant to California Labor Code §§ 218.5,
27 1194, 2699, 2802, California Civil Code § 1021.5, and any other applicable provisions providing
28 for attorneys' fees and costs;

- 1 10. For declaratory relief;
- 2 11. For an order requiring and certifying the First, Second, Third, Fourth, Fifth, Sixth,
- 3 Seventh, and Eighth Causes of Action as a class action;
- 4 12. For an order appointing PLAINTIFFS as class representative, and PLAINTIFFS'
- 5 counsel as class counsel; and
- 6 13. For such further relief that the Court may deem just and proper.
- 7

8 DATED: May 5, 2022

Respectfully submitted,

9 MATERN LAW GROUP, PC

10

11 By:



12 MATTHEW J. MATERN
13 MATTHEW W. GORDON
14 KEVIN S. WALLENTINE
15 Attorneys for Plaintiffs
16 KASSANDRA DUENAS, OSCAR BADILLO,
17 TAMMY BIBIAN, and MANILOU REDOR,
18 individually, and on behalf of all other persons
19 similarly situated
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