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David W. Slayton,
Executive Officer/Clerk of Court,
By G. Carini, Deputy Clerk

5 Attorney for Plaintiffs,
6 MARLON OSORIO ORTIZ,
7 OSCAR FRANCISCO JR PACACH,
MARIA LUZ ORTIZ, on behalf of themselves,
and others similarly situated,

8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

11 MARLON OSORIO ORTIZ, an individual;
12 OSCAR FRANCISCO JR PACACH, an
individual; MARIA LUZ ORTIZ, an individual,
13 on behalf of themselves and all others similarly
situated,

14 Plaintiffs,

15 v.

16 OVERFLOW PARTNERS, LLC, a California
limited liability company; DI LOGISTICS,
17 LLC, a California limited liability company;
DCN PROCESSING SERVICES LLC, a
18 limited liability company; DELIVER-IT, INC.,
a California corporation; IC DECLARATION
19 OF TRUST, a company of unknown entity; and
DOES 1 through 20, inclusive,

20 Defendants.
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CLASS ACTION COMPLAINT

Case No. **25STCV11981**

1. **MISCLASSIFICATION OF EMPLOYEE AS "INDEPENDENT CONTRACTOR;"**
2. **FAILURE TO PAY WAGES (CAL. LABOR CODE §§201, 1194);**
3. **FAILURE TO PAY MINIMUM WAGES (CAL. LABOR CODE §§1182.12, 1194, 1194.2, 1197);**
4. **FAILURE TO PAY OVERTIME COMPENSATION (CAL. LABOR CODE §§510, 1194);**
5. **FAILURE TO INDEMNIFY FOR NECESSARY BUSINESS EXPENSES (CAL. LABOR CODE §2802)**
6. **FAILURE TO PAY SICK TIME (CAL. LABOR CODE §246);**
7. **FAILURE TO PROVIDE REST PERIODS (CAL. LABOR CODE §§226.7);**
8. **FAILURE TO PROVIDE MEAL PERIODS (CAL. LABOR CODE § 512);**
9. **FAILURE TO PROVIDE ITEMIZED WAGE AND HOUR STATEMENTS (CAL. LABOR CODE §§226, ET SEQ.);**

10. WAITING TIME PENALTIES (CAL. LABOR CODE §§201-203);

11. UNFAIR COMPETITION (BUS. & PROF. CODE §17200 ET SEQ.).

DEMAND OVER \$35,000

DEMAND FOR JURY TRIAL

PLAINTIFFS, MARLON OSORIO ORTIZ, OSCAR FRANCISCO JR PACACH, MARIA LUZ ORTIZ, individuals on behalf of themselves and all other similarly situated employees (hereinafter collectively referred to as "Class Plaintiffs"), hereby file this Complaint against Defendants OVERFLOW PARTNERS, LLC, a California limited liability company; DI LOGISTICS, LLC, a California limited liability company; DCN PROCESSING SERVICES LLC, a limited liability company; DELIVER-IT, INC., a California corporation; IC DECLARATION OF TRUST, and DOES 1 through 20 (hereinafter collectively referred to as "Defendants"). Plaintiffs are informed and believe, and thereon allege as follows:

INTRODUCTION

1. This is a civil action seeking recovery for Defendants' violations of the California Labor Code, California Business and Professions Code ("B&PC"), the applicable Wage Orders issued by the California Industrial Welfare Commission (hereinafter, the "IWC Wage Orders") and related common law principles.

2. Plaintiffs' action seeks monetary damages and injunctive relief, including full restitution from Defendants as a result of Defendants' unlawful, fraudulent and/or unfair business practices.

3. Class Plaintiffs will also file a Private Attorney General Act ("PAGA") notice with the Labor and Workforce Development Agency, and the Complaint will be later amended to include a PAGA cause of action, seeking recovery of civil penalties under the PAGA General Act of 2004, Cal. Labor Code §2699 et seq.

4. The acts complained of herein occurred, occur and will occur, at least in part, within the time period from April 23, 2021, up to and through the time of trial for this matter. This is hereinafter the "Class Period."

5. The "Class Plaintiffs" are all current and former drivers or carriers who performed work for any of the Defendants, from on or about April 23, 2021, up to and through the time of trial in this matter, regardless of how Defendants designated as employees or independent contractors.

6. The claims are based on Defendants' misclassification of Class Plaintiffs, failure to pay wages, failure to pay minimum wage for all hours worked, failure to pay overtime, failure to provide meal and rest breaks, failure to reimburse for necessary business expenses, failure to provide sick pay, failure to provide accurate and itemized wage and hour statements, and failure to pay earned and due wages upon separation of employment.

JURISDICTION AND VENUE

7. This Court is the proper court pursuant to CCP §295(a) and CCP §395.5, and this action is properly filed in Los Angeles County, because Defendants' obligations and liability arise therein, because Defendants maintain offices and transact business within Los Angeles County, and because the work that is the subject of this action was performed by Class Plaintiffs in Los Angeles County.

8. The California Superior Court has jurisdiction in this matter because both the individual and aggregate monetary damages and restitution sought herein exceed the minimal jurisdictional limits of the Superior Court and will be established at trial, according to proof.

9. The California Superior Court also has jurisdiction in this matter because during their employment with Defendants, Class Plaintiffs, were all California citizens and Defendants OVERFLOW PARTNERS, LLC, DI LOGISTICS, LLC, DCN PROCESSING SERVICES LLC, DELIVER-IT, INC., IC DECLARATION OF TRUST conducted and transacted business throughout Los Angeles County. Further there is no federal question at issue, as the issues herein are based solely on California statutes and law.

1 **DEFENDANT DI LOGISTICS, LLC**

2 17. Defendant DI LOGISTICS, LLC (hereinafter "DI LOGISTICS") was and is a California
3 limited liability company business in the County of Los Angeles, State of California. At all relevant
4 times, Defendant DI LOGISTICS employed 26 or more employees.

5
6 **DEFENDANT DCN PROCESSING SERVICES LLC**

7 18. Defendant DCN PROCESSING SERVICES LLC (hereinafter "DCN") was and is a
8 limited liability company doing business in the County of Los Angeles, State of California. At all relevant
9 times, Defendant DCN employed 26 or more employees.

10
11 **DEFENDANT DELIVER-IT, INC.**

12 19. Defendant DELIVER-IT, INC. (hereinafter "DELIVER-IT") was and is a California
13 corporation doing business in the County of Los Angeles, State of California. At all relevant times,
14 Defendant DELIVER-IT employed 26 or more employees.

15
16 **DEFENDANT IC DECLARATION OF TRUST**

17 20. Defendant IC DECLARATION OF TRUST (hereinafter "IC DECLARATION") was and
18 is a company of unknown entity doing business in the County of Los Angeles, State of California. At all
19 relevant times, Defendant IC DECLARATION employed 26 or more employees.

20
21 **DOES 1 – 20, INCLUSIVE**

22 21. DOES 1 to 20, inclusive are now, and/or at all times mentioned in this Complaint were
23 licensed to do business and/or actually doing business in California.

24 22. Class Plaintiffs do not know the true names or capacities, whether individual, partner or
25 corporate, of DOES 1 to 20, inclusive and for that reason, DOES 1 to 20 are sued under such fictitious
26 names pursuant to CCP §474.

27 23. Class Plaintiffs will seek leave of court to amend this Complaint to allege such names and
28 capacities as soon as they are ascertained.

ALL DEFENDANTS

24. Pursuant to Labor Code Section 558.1. "(a) any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation."

25. Defendants, and each of them, are now and/or at all times mentioned in this Complaint were in some manner legally responsible for the events, happenings, and circumstances alleged in this Complaint.

26. Defendants, and each of them, proximately subjected Plaintiffs to the unlawful practices, wrongs, complaints, injuries and/or damages alleged in this Complaint.

27. Defendants, and each of them, are now and/or at all times mentioned in this Complaint were the agents, servants and/or employees of some or all other Defendants, and vice-versa, and in doing the things alleged in this Complaint, Defendants are now and/or at all times mentioned in this Complaint were acting within the course and scope of that agency, servitude and/or employment.

28. Defendants, and each of them, are now and/or at all times mentioned in this Complaint were members of and/or engaged in a joint venture, partnership, and common enterprise, and were acting within the course and scope of, and in pursuance of said joint venture, partnership, and common enterprise.

29. Defendants, and each of them, at all times mentioned in this Complaint, concurred and contributed to the various acts and omissions of each and every one of the other Defendants in proximately causing the complaints, injuries and/or damages alleged in this Complaint.

30. Defendants, and each of them, at all times mentioned in this Complaint approved of, condoned and/or otherwise ratified each and every one of the acts and/or omissions alleged in this Complaint.

31. Defendants, and each of them, at all times mentioned in this Complaint, aided and abetted the acts and omissions of each and every one of the other Defendants thereby proximately causing the damages alleged in this Complaint.

1 32. Class Plaintiffs are informed and believe, and based thereupon allege, that Defendants,
2 and each of them, including those defendants named as DOES 1-20 acted in concert with one another to
3 commit the wrongful acts alleged herein, and aided, abetted, incited, compelled and/or coerced one
4 another in the wrongful acts alleged herein, and/or attempted to do so. Class Plaintiffs are further
5 informed and believe, and based thereupon allege, that Defendants, and each of them, including those
6 defendants named as DOES 1-20, and each of them, formed and executed a conspiracy or common plan
7 pursuant to which they would commit the unlawful acts alleged herein, with all such acts alleged herein
8 done as part of and pursuant to said conspiracy, intended to cause and actually causing Plaintiffs harm.

9 33. Whenever and wherever reference is made in this complaint to any act or failure to act
10 by a Defendant or co-Defendant, such allegations and references shall also be deemed to mean the acts
11 and/or failures to act by each Defendant acting individually, jointly and severally.

12
13 **ALTER EGO, AGENCY, SUCCESSOR AND JOINT EMPLOYER**

14 34. Class Plaintiffs are informed and believe, and based thereon allege, that there exists such
15 a unity of interest and ownership between OVERFLOW, DI LOGISTICS, DCN, DELIVER-IT, IC
16 DECLARATION and DOES 1-20 (collectively "Defendants") that the individuality and separateness of
17 defendants have ceased to exist.

18 35. Class Plaintiffs are informed and believe, and based thereon allege, that despite the
19 formation of purported corporate existence, OVERFLOW, DI LOGISTICS, DCN, DELIVER-IT, IC
20 DECLARATION and DOES 1-20 are, in reality, one and the same, including, but not limited to because:

21 a. OVERFLOW, DI LOGISTICS, DCN, DELIVER-IT, IC DECLARATION are
22 completely dominated and controlled by DOES 1-20, who personally committed the frauds and violated
23 the laws as set forth in this complaint, and who have hidden and currently hide behind OVERFLOW,
24 DI LOGISTICS, DCN, DELIVER-IT, IC DECLARATION to perpetrate frauds, circumvent statutes, or
25 accomplish some other wrongful or inequitable purpose.

26 b. DOES 1-20 derive actual and significant monetary benefits by and through
27 OVERFLOW, DI LOGISTICS, DCN, DELIVER-IT, IC DECLARATION's unlawful conduct, and by
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1 using OVERFLOW, DI LOGISTICS, DCN, DELIVER-IT, IC DECLARATION as the funding source
2 for their own personal expenditures.

3 c. OVERFLOW, DI LOGISTICS, DCN, DELIVER-IT, IC DECLARATION and
4 DOES 1-20, while really one and the same, were segregated to appear as though separate and distinct
5 for purposes of perpetrating a fraud, circumventing a statute, or accomplishing some other wrongful or
6 inequitable purpose.

7 d. OVERFLOW, DI LOGISTICS, DCN, DELIVER-IT, IC DECLARATION do not
8 comply with all requisite corporate formalities to maintain a legal and separate corporate existence.

9 e. The business affairs of OVERFLOW, DI LOGISTICS, DCN, DELIVER-IT, IC
10 DECLARATION and DOES 1-20 are, and at all times relevant were, so mixed and intermingled that
11 the same cannot reasonably be segregated, and the same are in inextricable confusion. OVERFLOW,
12 DI LOGISTICS, DCN, DELIVER-IT, IC DECLARATION are at all times relevant hereto, used by
13 DOES 1-20 as a mere shell and conduit for the conduct of certain of OVERFLOW, DI LOGISTICS,
14 DCN, DELIVER-IT, IC DECLARATION's affairs, and are, and were, the alter ego of DOES 1-20. The
15 recognition of the separate existence of OVERFLOW, DI LOGISTICS, DCN, DELIVER-IT, IC
16 DECLARATION would not promote justice, in that it would permit OVERFLOW, DI LOGISTICS,
17 DCN, DELIVER-IT, IC DECLARATION to insulate themselves from liability to Plaintiffs for
18 violations of the Labor Code, Business and Professions Code and other statutory violations. The
19 corporate existence of OVERFLOW, DI LOGISTICS, DCN, DELIVER-IT, IC DECLARATION and
20 DOES 1-20 should be disregarded in equity and for the ends of justice because such disregard is
21 necessary to avoid fraud and injustice to Plaintiffs herein.

22 36. Accordingly, OVERFLOW, DI LOGISTICS, DCN, DELIVER-IT, IC DECLARATION
23 constitute the alter ego of DOES 1-20, and the fiction of their separate corporate existence must be
24 disregarded.

25 37. As a result of the aforementioned facts, Class Plaintiffs are informed and believe, and
26 based thereon allege that OVERFLOW, DI LOGISTICS, DCN, DELIVER-IT, IC DECLARATION and
27 DOES 1-20 are Plaintiffs' joint employers by virtue of a joint enterprise, and that Plaintiffs were
28 employees of OVERFLOW, DI LOGISTICS, DCN, DELIVER-IT, IC DECLARATION and DOES 1-

20. Class Plaintiffs performed services for each and every one of Defendants, and to the mutual benefit of all Defendants, and all Defendants shared control of the responsibility and influence of Class Plaintiffs as employees, either directly or indirectly, and the manner in which OVERFLOW, DI LOGISTICS, DCN, DELIVER-IT, IC DECLARATION's business was and is conducted.

38. Alternatively, Class Plaintiffs are informed and believe and, based thereupon alleges, that as and between DOES 1-20, OVERFLOW, DI LOGISTICS, DCN, DELIVER-IT, IC DECLARATION, (1) there is an express or implied agreement of assumption pursuant to which DOES 1-20 agreed to be liable for the debts of OVERFLOW, DI LOGISTICS, DCN, DELIVER-IT, IC DECLARATION, (2) the transaction between DOES 1-20 and OVERFLOW, DI LOGISTICS, DCN, DELIVER-IT, IC DECLARATION amounts to a consolidation or merger of entities, (3) DOES 1-20 is a mere continuation of OVERFLOW, DI LOGISTICS, DCN, DELIVER-IT, IC DECLARATION or (4) the transfer of assets to DOES 1-20 is for the fraudulent purpose of escaping liability for OVERFLOW, DI LOGISTICS, DCN, DELIVER-IT, IC DECLARATION's debts. Accordingly, DOES 1-20 are the successors of OVERFLOW, DI LOGISTICS, DCN, DELIVER-IT, IC DECLARATION and are liable on that basis.

CLASS ACTION ALLEGATIONS

39. The Class Plaintiffs are entitled to the protections of the California Labor Code and all applicable Wage Orders.

40. The Class Plaintiffs were misclassified as independent contractors. Throughout the course of the Class Plaintiffs employment, Defendants completely controlled the Class Plaintiffs' performance, including the manner in which the Class Plaintiffs were to perform their required duties, as follows:

- a. Defendants provided the Class Plaintiffs with the supplies Class Plaintiffs required to do their job;
- b. Class Plaintiffs were told what days and hours Class Plaintiffs were required to work, where to go and what to do, and worked a regular schedule;
- c. Class Plaintiffs had no ability to turn down jobs assigned to Class Plaintiffs by Defendants; and

1 d. Defendants had the right to discipline Class Plaintiffs and to fire Class Plaintiff at
2 will;

3 41. Additional factors confirming Class Plaintiffs' status as employees include:

4 e. Class Plaintiffs were not engaged in a distinct occupation or business;

5 f. Class Plaintiffs were not required to make any major investments in equipment or
6 materials to provide the services;

7 g. Class Plaintiffs' occupation and work is usually done under the direction of the
8 principal or a supervisor;

9 h. No particular skill is required for Class Plaintiffs' occupation;

10 i. Class Plaintiffs were not paid by "the job";

11 j. Class Plaintiffs' work was part of the regular business of Defendants; and

12 k. Class Plaintiffs believed, by going to work for Defendants, Class Plaintiffs were
13 creating an employer-employee relationship;

14 l. Class Plaintiffs were told what days and hours Class Plaintiff were required to
15 work, where to go and what to do;

16 m. Defendants failed to comply with the Independent Contractor Reporting
17 requirements that required Employers report to the Employment Development Department ("EDD"),
18 within 20 days if Employers hired an independent contractor who is an individual or sole proprietorship,
19 who Employers have either paid, or contracted to pay, more than \$600.

20 42. Despite the aforementioned facts, Defendants illegally classified Class Plaintiffs as
21 "independent contractors" instead of as employees, and wrongfully issued Class Plaintiffs IRS Form W-
22 1099 forms.

23 43. The Class Plaintiffs were not paid the California statutory minimum wage for all hours
24 worked.

25 44. The Class Plaintiffs regularly worked in excess of 8 hours per day or 40 hours per week
26 and were not paid an overtime premium. Accordingly, the Class Plaintiffs were entitled to be paid
27 overtime premiums for all hours worked over 8 hours in a single day or over 40 hours in a week.
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1 45. Defendants failed to reimburse Class Plaintiffs for all necessary business expenditures
2 incurred during the course of their employment.

3 46. Defendants failed to provide Class Plaintiffs with paid sick leave. Class Plaintiffs worked
4 for Defendants for more than 30 days and were thus entitled to accrued paid sick leave at the rate of 1
5 hour every 30 hours worked.

6 47. The Class Plaintiffs were not permitted to take duty-free rest periods of at least ten minutes
7 every four hours worked, as required by California Labor Code §226.7.

8 48. The Class Plaintiffs were also not provided duty-free meal periods of at least thirty minutes
9 for every five hours worked, as required by California Labor Code §512.

10 49. Defendants failed to maintain working conditions that comply with the Labor Code,
11 failed to timely provide them with accurate written wage statements, and failed to timely pay them
12 earned wages during employment.

13 50. CCP §382 provides in pertinent part: "... [W]hen the question is one of a common or
14 general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them
15 all before the court, one or more may sue or defend for the benefit of all." Plaintiffs bring this suit as a
16 class action pursuant to CCP §382.

17 51. The putative classes that Class Plaintiffs will seek to certify are all current or former
18 drivers or carriers who performed work for any of the Defendants, from on or about April 23, 2021, up
19 to and through the time of trial, whether designated as employees or independent contractors who were:
20 (1) misclassified as independent contractors; (2) were not paid minimum wage for all hours worked; (3)
21 were not paid overtime compensation for all overtime hours worked; (4) were not reimbursed for all
22 necessary business expenditures incurred in the course of their employment; (5) were not provided paid
23 sick leave; (6) were not provided legally compliant rest periods; (7) were not provided legally compliant
24 meal periods; (8) were not provided accurate wage statements, or (9) were not paid all earned wages
25 timely upon termination of their employment.

26 52. In addition, Class Plaintiffs will seek to certify a subclass of those similarly situated
27 individuals who were formerly employed by Defendants in California from April 23, 2021 through trial
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1 whose employment ended or was terminated. Hereinafter, this is referred to as the "Terminated
2 Employee SubClass."

3 53. The Class and the Terminated SubClass are herein collectively referred to as the
4 "Classes."

5 54. Throughout discovery in this litigation, Plaintiffs may find it appropriate and/or necessary
6 to amend the definition of the Classes. Plaintiffs will formally define and designate a class definition at
7 such time when Class Plaintiffs seek to certify the Classes alleged herein.

8 55. Numerosity (CCP §382):

- 9 a. The potential quantity of members of the Classes as defined is so numerous that
10 joinder of all members is unfeasible and impractical;
11 b. The disposition of the claims of the members of the Classes through this class action
12 will benefit both the parties and this Court;
13 c. The quantity of members of the Classes is unknown to Class Plaintiffs at this time;
14 however, it is estimated that the membership of the Classes numbers greater than 100
15 individuals; and
16 d. The quantity and identity of such membership is readily ascertainable via inspection
17 of Defendants' records.

18 56. Superiority (CCP §382): The nature of this action and the nature of the laws available to
19 Class Plaintiffs make the use of the class action format particularly efficient and the appropriate
20 procedure to afford relief to Class Plaintiffs for the wrongs alleged herein, as follows:

- 21 a. California has a public policy which encourages the use of the class action device;
22 b. By establishing a technique whereby the claims of many individuals can be resolved
23 at the same time, the class suit both eliminates the possibility of repetitious litigation
24 and provides small claimants with a method of obtaining redress for claims which
25 would otherwise be too small to warrant individual litigation;
26 c. This case involves large corporate Defendants and a large number of individual Class
27 members with many relatively small claims and common issues of law and fact;
28

- 1 d. If each individual member of the Classes were required to file an individual lawsuit,
2 the large corporate Defendants would necessarily gain an unconscionable advantage
3 because Defendants would be able to exploit and overwhelm the limited resources of
4 each individual member of the Classes with Defendants' vastly superior financial and
5 legal resources;
- 6 e. Requiring each individual member of the Classes to pursue an individual remedy
7 would also discourage the assertion of lawful claims by the members of the Classes
8 who would be disinclined to pursue an action against Defendants because of an
9 appreciable and justifiable fear of retaliation and permanent damage to their lives,
10 careers, and well-being;
- 11 f. Proof of a common business practice or factual pattern, of which the members of the
12 Classes experienced, is representative of the Classes herein and will establish the right
13 of each of the members of the Classes to recover on the causes of action alleged
14 herein;
- 15 g. Absent class treatment, the prosecution of separate actions by the individual members
16 of the Classes, even if possible, would likely create:
- 17 i) a substantial risk of each individual Plaintiff presenting in separate,
18 duplicative proceedings the same or essentially similar arguments and
19 evidence, including expert testimony;
 - 20 ii) a multiplicity of trials conducted at enormous expense to both the judicial
21 system and the litigants;
 - 22 iii) inconsistent or varying verdicts or adjudications with respect to the
23 individual members of the Classes against Defendants;
 - 24 iv) potentially incompatible standards of conduct for Defendants; and
 - 25 v) potentially incompatible legal determinations with respect to individual
26 members of the Classes which would, as a practical matter, be dispositive
27 of the interest of the other members of the Classes who are not parties to
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1 the adjudications or which would substantially impair or impede the
2 ability of the members of the Classes to protect their interests.

- 3 h. The claims of the individual members of the Classes are not sufficiently large to
4 warrant vigorous individual prosecution considering all of the concomitant costs and
5 expenses attendant thereto;
- 6 i. Courts seeking to preserve efficiency and other benefits of class actions routinely
7 fashion methods to manage any individual questions; and
- 8 j. The Supreme Court of California urges trial courts, which have an obligation to
9 consider the use of innovative procedural tools to certify a manageable class, to be
10 procedurally innovative in managing class actions.

11 57. Well-defined Community of Interest: Plaintiffs also meet the established standards for
12 class certification (see, e.g. *Lockheed Martin Corp. v. Superior Court* (2003) 29 Cal.4th 1096), as
13 follows:

- 14 a. Typicality: The claims of Plaintiffs OSORIO, PACACH, ORTIZ are typical of the
15 claims of all members of the Classes they seeks to represent because they has been
16 subject to all the violations described herein, as have all members of the Classes
17 sustained injuries and damages arising out of Defendants' common course of conduct
18 in violation of law and the injuries and damages of all members of the Classes were
19 caused by Defendants' wrongful conduct in violation of law, as alleged herein.
- 20 b. Adequacy: Plaintiffs OSORIO, PACACH, ORTIZ:
- 21 i) Are adequate representatives of the Classes they seek to represent;
- 22 ii) will fairly protect the interests of the members of the Classes;
- 23 iii) have no interests antagonistic to the members of the Classes; and
- 24 iv) will vigorously pursue this suit via attorneys who are competent, skilled
25 and experienced in litigating matters of this type.
- 26 c. Predominant Common Questions of Law or Fact: There are common questions of law
27 and/or fact as to the members of the Classes which predominate over questions
28 affecting only individual members of the Classes, including, without limitation:

- i) Whether Defendants misclassified the Class Plaintiffs as independent contractors in violation of the Labor Code;
- ii) Whether Defendants failed to pay Class Plaintiffs the California statutory minimum wage for all hours worked in violation of the Labor Code and Section 1 of the IWC Wage Orders;
- iii) Whether Defendants failed to pay Class Plaintiffs an overtime premium for all hours over 8 in a day or 40 in a week in violation of the Labor Code and Section 1 of the IWC Wage Orders;
- iv) Whether Defendants failed to reimburse Class Plaintiffs for all necessary business expenditures in the course of their employment in violation of the Labor Code;
- v) Whether Defendants failed to provide Class Plaintiffs with paid sick leave in violation of the Labor Code;
- vi) Whether Defendants failed and continue to fail to authorize and permit legally-requisite rest breaks to Class Plaintiffs in violation of the Labor code and Section 1 of the IWC Wage Orders;
- vii) Whether Defendants failed and continue to fail to authorize and permit legally-requisite meal periods to Class Plaintiffs in violation of the Labor Code and Section 1 of the IWC Wage Orders;
- viii) Whether Defendants failed to timely furnish accurate, itemized and legal wage statements to Class Plaintiffs;
- ix) Whether Defendants are derivatively liable pursuant to Labor Code §203 to the Terminated Employee SubClass;
- x) Whether Defendants' conduct constitutes unfair, illegal, or fraudulent competition within the meaning of B&PC §17200, et seq.;
- xi) Whether Defendants' conduct constitutes unfair, illegal, or fraudulent business practices within the meaning of B&PC § 17200, et seq.;

- 1 xii) Whether the members of the Classes are entitled to compensatory
2 damages, and if so, the means of measuring such damages;
3 xiii) Whether the members of the Classes are entitled to injunctive relief;
4 xiv) Whether the members of the Classes are entitled to restitution; and
5 xv) Whether Defendants are liable for attorneys' fees and costs.

6 58. Whether each member of the Classes might be required to ultimately justify an individual
7 claim does not preclude maintenance of a class action (see, e.g. *Collins v. Rocha* (1972) 7 Cal.3d 232,
8 238).

9
10 **FIRST CAUSE OF ACTION**
11 **FOR MISCLASSIFICATION AS "INDEPENDENT CONTRACTORS"**
12 **(ON BEHALF OF THE CLASS PLAINTIFFS)**
13 **AGAINST ALL DEFENDANTS**

14 59. Class Plaintiffs re-allege and incorporates by reference each of the foregoing paragraphs
15 as though set forth in full herein.

16 60. Pursuant to Labor Code §226.8(a)(1), it is unlawful for any person or employer to engage
17 in willful misclassification of an individual as an independent contractor. Pursuant to Labor code
18 §226.8(b), if a court issues a determination that a person or employer has violated subdivision (a), the
19 person or employer shall be subject to a civil penalty of not less than five thousand dollars (\$5,000) and
20 not more than fifteen thousand dollars (\$15,000) for each violation, in addition to any other penalties or
21 fines permitted by law. Pursuant to Labor code §226.8(c), if a court issues a determination that a person
22 or employer has violated subdivision (a) and the person or employer has engaged in or is engaging in a
23 pattern or practice of these violations, the person or employer shall be subject to a civil penalty of not
24 less than ten thousand dollars (\$10,000) and not more than twenty-five thousand dollars (\$25,000) for
25 each violation, in addition to any other penalties or fines permitted by law.

26 61. During the period of Class Plaintiffs employment with defendants, Class Plaintiffs were
27 employees of Defendants, and each of them based upon their alter ego relationship, as defined by
28 California Labor Code § 350(b). However, Defendants purposefully misclassified Class Plaintiffs as

1 “Independent Contractors” because, by so doing, defendants lowered their cost of doing business by
2 means of, but not limited to, the following:

3 62. Defendants did not report or pay the employer’s share of federal or state payroll taxes with
4 respect to any of the funds paid to Class Plaintiffs, as required by federal and state law;

5 63. Defendants did not provide or pay for Workers Compensation insurance for Class
6 Plaintiffs;

7 64. Defendants did not provide or pay for State Disability insurance for Class Plaintiffs; and

8 65. Defendants did not provide or pay for benefits to Class Plaintiffs that other of Defendants’
9 employees received.

10 66. As a direct and proximate result of the aforementioned violations of California law
11 committed by defendants, Class Plaintiffs have suffered, and continue to suffer, substantial losses related
12 to the loss of the employer’s share of payroll taxes, the use and enjoyment of such employee benefits,
13 and expenses and attorneys’ fees in seeking to compel defendants to fully perform their obligation under
14 state law, all to their damage in amounts according to proof at time of trial, but in amounts in excess of
15 the minimum jurisdiction of this Court. Class Plaintiffs are thus entitled to recover nominal, actual and
16 compensatory damages in amounts according to proof at time of trial, but in amounts in excess of the
17 minimum jurisdiction of this Court.

18 67. Defendants’ failure to classify Class Plaintiffs as employees, in violation of California
19 law, was knowing and intentional. Defendants have refused to classify Class Plaintiffs as employees for
20 false and fraudulent reasons. The decision to misclassify Class Plaintiffs as “independent contractors”
21 was made, maintained, and enforced by Defendants, by and through their offices, directors and/or
22 managing agents, and was done willfully, maliciously, oppressively, and fraudulently, with the wrongful
23 and deliberate intention of injuring Class Plaintiffs, and with a conscious disregard for Class Plaintiffs’
24 rights and defendants’ obligations under California laws, all of which has deprived Class Plaintiffs of
25 Class Plaintiffs’ property and legal rights. Therefore, in addition to all other types of relief requested
26 herein, Class Plaintiffs are entitled to recover punitive and exemplary damages in amounts according to
27 proof at time of trial, but in amounts in excess of the minimum jurisdiction of this Court.
28

1 68. Pursuant to Labor Code §226.8(b)-(c), Class Plaintiffs seek a determination that
2 Defendants have violated subdivision (a) and have engaged in or are engaging in a pattern or practice of
3 these violations, and seeks penalties of \$25,000 for each violation, in addition to any other penalties or
4 fines permitted by law.

5
6 **SECOND CAUSE OF ACTION**
7 **FOR FAILURE TO PAY WAGES DUE**
8 **LABOR CODE §§201, 226.7, 512, 1194**
9 **(ON BEHALF OF THE CLASS PLAINTIFFS)**
10 **AGAINST ALL DEFENDANTS**

11 69. Class Plaintiffs re-allege and incorporate by reference the above paragraphs as though set
12 forth in full herein.

13 70. At all relevant times, Defendants failed and refused to pay Class Plaintiffs wages earned
14 and required by the California Labor Code and the applicable Wage Order. As alleged herein,
15 Defendants routinely failed to pay Class Plaintiffs minimum wage, overtime compensation and failed to
16 compensate them for missed rest and meal breaks.

17 71. As alleged herein, Class Plaintiffs were not exempt from the requirements of Labor Code
18 §510, and the applicable Wage Order.

19 72. Class Plaintiffs have been deprived of their rightfully earned compensation as a direct
20 and proximate result of Defendants' failure and refusal to pay said compensation. Class Plaintiffs are
21 entitled to recover such amounts, plus interest thereon, attorneys' fees and costs.

22
23 **THIRD CAUSE OF ACTION**
24 **FOR FAILURE TO PAY MINIMUM WAGES**
25 **LABOR CODE §§1182.12, 1194, 1194.2, 1197**
26 **AGAINST ALL DEFENDANTS**

27 73. Class Plaintiffs re-allege and incorporate by reference each of the foregoing paragraphs as
28 though set forth in full herein.

1 74. Pursuant to Labor Code §1197, payment of less than the minimum wage fixed by law is
2 unlawful. An employer violates the minimum wage statute even if the average rate for paid and unpaid
3 hours exceeded the minimum wage. Under California law, Class Plaintiffs are entitled to at least the
4 minimum wage for every hour worked.

5 75. In the four years immediately preceding the filing of this complaint, Defendants failed and
6 refused to pay Class Plaintiffs the legal minimum wage in the State of California, as set forth in Labor
7 Code §1182.12.

8 76. Defendants' failure to pay the legal minimum wage to Class Plaintiff as alleged herein is
9 unlawful and creates entitlement, pursuant to Labor Code §1197, to recovery by Class Plaintiffs in a civil
10 action for the unpaid balance of the full amount of the unpaid wages owed.

11 77. Pursuant to Labor Code §1194, Class Plaintiffs request that the court award reasonable
12 attorneys' fees and costs incurred by Class Plaintiffs in this action.

13 78. In addition, pursuant to Labor Code §1194.2, Class Plaintiffs are entitled to recover
14 liquidated damages in an amount equal to the minimum wages unlawfully unpaid, plus interest thereon.

15
16 **FOURTH CAUSE OF ACTION**
17 **FOR FAILURE TO PAY OVERTIME COMPENSATION**
18 **LABOR CODE §§510, 1194**
19 **(ON BEHALF OF THE CLASS PLAINTIFFS)**
20 **AGAINST ALL DEFENDANTS**

21 79. Class Plaintiffs re-allege and incorporate by reference the above paragraphs as though set
22 forth in full herein.

23 80. Labor Code §510 requires employers to pay their non-exempt employees one and one-half
24 times their regular hourly rate (overtime) for time worked in excess of eight hours in a single day, or 40
25 hours per week, and double their regular hourly rate (double-time) for all hours worked in excess of 12
26 hours in a single day. It also requires employers to pay their non-exempt employees overtime
27 compensation for the first eight hours of work done on the seventh consecutive day of work done in any
28

1 work week and double-time compensation for any work done beyond the first eight hours on the seventh
2 consecutive day of work.

3 81. As alleged herein, Class Plaintiffs were not exempt from the requirements of Labor Code
4 §510, and the applicable Wage Order.

5 82. At all relevant times, Class Plaintiffs were required to work more than eight hours per
6 day and/or more than 40 hours per workweek.

7 83. At all relevant times, Defendants failed and refused to pay Class Plaintiffs all the overtime
8 compensation required by Labor Code §510, and the applicable Wage Order.

9 84. From April 23, 2021 through trial, Class Plaintiffs worked overtime hours each week, all
10 of which should have been paid at 1.5 times their regular hourly wage rate at that time. Defendants
11 failed to pay Class Plaintiffs the requisite overtime wages in the four years immediately preceding the
12 filing of this complaint.

13 85. Class Plaintiffs have been deprived of their rightfully earned compensation as a direct and
14 proximate result of Defendants' failure and refusal to pay said compensation. Class Plaintiffs are entitled
15 to recover such amounts, plus interest thereon, attorneys' fees and costs.

16
17 **FIFTH CAUSE OF ACTION**

18 **FOR FAILURE TO INDEMNIFY FOR NECESSARY BUSINESS EXPENSES**

19 **LABOR CODE §2802**

20 **(ON BEHALF OF THE CLASS PLAINTIFFS)**

21 **AGAINST ALL DEFENDANTS**

22 86. Class Plaintiffs re-allege and incorporates by reference each of the foregoing paragraphs
23 as though set forth in full herein.

24 87. Pursuant to Labor Code §450(a), "no employer...may compel or coerce any employee...to
25 patronize his or her employer, or any other person, in the purchase of any thing of value."

26 88. Pursuant to Labor Code §2802(a), "an employer shall indemnify his or her employee for
27 all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of
28 his or her duties, or of his or her obedience to the directions of the employer."

1 89. Class Plaintiffs were required by Defendants to expend Class Plaintiffs' personal funds
2 because of the duties required by Defendants, as alleged hereinabove.

3 90. Pursuant to Labor Code §2802(a), Defendants are legally required to reimburse Class
4 Plaintiffs for all necessary expenditures incurred in the performance of Class Plaintiffs' duties.

5 91. Defendants have failed and refused to reimburse Class Plaintiff for all necessary business
6 expenditures.

7 92. As a proximate result of the aforementioned violations of Labor Code §§450(a) and
8 2502(a), Class Plaintiffs are entitled to recover from Defendants the unpaid balance of all of the necessary
9 expenditures.

10 93. Pursuant to Labor Code §2802(b), Class Plaintiffs request that the Court award interest at
11 the same rate as judgments in civil actions, accruing from the date on which Class Plaintiffs incurred the
12 necessary expenditure or loss.

13 94. Pursuant to Labor Code §2802(c), Class Plaintiffs request that the Court award Class
14 Plaintiffs reasonable attorneys' fees and costs incurred in this action.

15
16 **SIXTH CAUSE OF ACTION**
17 **FOR FAILURE TO PAY SICK TIME**
18 **LABOR CODE §246**
19 **(ON BEHALF OF THE CLASS PLAINTIFFS)**
20 **AGAINST ALL DEFENDANTS**

21 95. Class Plaintiffs re-allege and incorporates by reference each of the foregoing paragraphs
22 as though set forth in full herein.

23 96. An employee who works in California for the same employer for 30 or more days within
24 a year from the commencement of employment is entitled to paid sick days. An employee shall accrue
25 paid sick days at the rate of not less than one hour per every 30 hours worked, beginning at the
26 commencement of employment.

27 97. At all relevant times, Class Plaintiffs worked for Defendants for more than 30 days and
28 were thus entitled to paid sick days.

1 98. At all relevant times, Defendants failed to provide to Class Plaintiffs, not less than one
2 hour of sick leave for every thirty hours worked.

3 99. Paid sick time for nonexempt employees shall be calculated in the same manner as the
4 regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the
5 employee actually works overtime in that workweek.

6 100. Paid sick time for nonexempt employees shall be calculated by dividing the employee's
7 total wages, not including overtime premium pay, by the employee's total hours worked in the full pay
8 periods of the prior 90 days of employment.

9 101. Paid sick time for exempt employees shall be calculated in the same manner as the
10 employer calculates wages for other forms of paid leave time.

11
12 **SEVENTH CAUSE OF ACTION**
13 **FOR FAILURE TO AUTHORIZE AND PERMIT REST BREAKS**
14 **LABOR CODE §§226.7, 516**
15 **(ON BEHALF OF THE CLASS PLAINTIFFS)**
16 **AGAINST ALL DEFENDANTS**

17 102. Class Plaintiffs re-allege and incorporate by reference the above paragraphs as though set
18 forth in full herein.

19 103. Labor Code §226.7 requires an employer to provide every employee with an
20 uninterrupted rest period of not less than 10 minutes, for every period worked of four hours, or
21 substantial portion thereof, and further prohibits an employer from requiring "an employee to work
22 during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
23 regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health
24 Standards Board, or the Division of Occupational Safety and Health."

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

1 105. Section 12(A) of the IWC Wage Order(s) states: "Every employer shall authorize and
2 permit all employees to take rest periods, which insofar as practicable shall be in the middle of each
3 work period. The authorized rest period time shall be based on the total hours worked daily at a rate of
4 ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need
5 not be authorized for employees whose total daily work time is less than three and one-half (3½) hours.
6 Authorized rest period time shall be counted as hours worked for which there shall be no deduction from
7 wages."

8 106. Section 12(B) of the IWC Wage Order(s) states: "If an employer fails to provide an
9 employee a rest period in accordance with the applicable provisions of this order, the employer shall pay
10 the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that
11 the rest period is not provided."

12 107. The Class Plaintiffs sometimes worked over 4 hours per shift.

13 108. The Class Plaintiffs were entitled to a rest period of not less than 10 minutes prior to
14 exceeding 4 hours of employment.

15 109. As a matter of Defendants' established company policy, Defendants failed to always
16 authorize and permit all required rest periods established by Labor Code §226.7 and Labor Code §516
17 and Section 12 of the IWC Wage Order(s).

18 110. Pursuant to Section 12 of the IWC Wage Order(s) and Labor Code §226.7(b) which states
19 "if an employer fails to provide an employee a meal or rest period in accordance with an applicable order
20 of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay
21 at the employee's regular rate of compensation for each work day that the meal or rest period is not
22 provided," the Class Plaintiffs are entitled to damages in an amount equal to 1 additional hour of pay at
23 each employee's regular rate of compensation for each work day that the rest period was not provided.

24 111. Pursuant to Labor Code §218.6 and Civil Code § 3287, the Class Plaintiffs seek recovery
25 for prejudgment interest on all amounts recovered herein.

EIGHTH CAUSE OF ACTION
FOR FAILURE TO AUTHORIZE AND PERMIT MEAL BREAKS
LABOR CODE §§226.7, 512
(ON BEHALF OF THE CLASS PLAINTIFFS)
AGAINST ALL DEFENDANTS

112. Class Plaintiffs re-allege and incorporate by reference the above paragraphs as though set forth in full herein.

113. Labor Code §512 requires employers to provide every employee with an uninterrupted meal period of not less than 30 consecutive minutes, for every period of work exceeding five hours.

114. Class Plaintiffs regularly worked in excess of five hours per day and were thereby entitled to take uninterrupted 30-minute meal periods on each day of work.

115. Defendants failed and refused to provide the Class Plaintiffs with uninterrupted meal and rest periods, and failed to compensate Class Plaintiffs, and other similarly situated employees, for missed meal and rest periods, as required by Labor Code §§226.7 and the applicable Wage Order.

116. Class Plaintiffs have been deprived of wages for missed meal breaks due in amounts to be determined at trial.

117. As alleged herein, Class Plaintiffs are not exempt from the meal break requirements of the Labor Code and the applicable Wage Order. Consequently, Class Plaintiffs are owed one hour of pay at his or her then regular hourly rate, or the requisite minimum wage, whichever is greater, for each day that he or he was denied such meal periods.

118. Class Plaintiffs have been deprived of his or her rightfully earned compensation for missed meal breaks as a direct and proximate result of Defendants' failure and refusal to pay said compensation.

119. Thus, for the entirety of the time periods set forth above, Class Plaintiffs are entitled to recover such amounts to be determined at trial pursuant to Labor Code §226.7(b), plus interest thereon and costs of suit.

NINTH CAUSE OF ACTION
FOR FAILURE TO TIMELY FURNISH ACURATE ITEMIZED WAGE STATEMENTS
LABOR CODE §§226
(ON BEHALF OF THE CLASS PLAINTIFFS)
AGAINST ALL DEFENDANTS

120. Class Plaintiffs re-allege and incorporate by reference the above paragraphs as though set forth in full herein.

121. Labor Code §226(a) states in pertinent part: "Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee ... (4) all deductions ... (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid ... (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee"

122. Therefore, pursuant to Labor Code §226(a) and the IWC Wage Orders §12(A), California employers are required to maintain accurate records pertaining to the total hours worked for Defendants by Class Plaintiffs, including but not limited to, beginning and ending of each work period, meal period and split shift interval, the total daily hours worked, and the total hours worked per pay period and applicable rates of pay.

123. As a pattern and practice, in violation of Labor Code §226(a) and the applicable Wage Order, Defendants did not and still do not furnish each of the Class Plaintiffs with an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, (3) all deductions, (4) net wages earned and/or (5) all applicable hourly rates in effect during each respective pay period and the corresponding number of hours worked at each hourly rate by each respective individual and/or pertaining to the total hours worked for Defendants by the Class Plaintiffs, including but not limited to, beginning and ending of each work period, meal period and split shift interval, the total daily hours worked, and the total hours worked per pay period and applicable rates of pay.

1 124. As of January 1, 2013, SB 1255 amended Labor Code §226 to clarify that an employee
2 suffers injury if the employer fails to provide accurate and complete information as required by any one
3 or more items listed in Labor Code §226(a)(1)-(9) and the employee cannot promptly and easily ascertain
4 requisite information without reference to other documents or information.

5 125. Here, the Class Plaintiffs suffered injury because Defendants failed to provide accurate
6 and complete information as required by one or more items listed in Labor Code §226(a)(1)-(9) and the
7 Class Plaintiffs could not and cannot promptly and easily ascertain requisite information without
8 reference to other documents or information.

9 126. In addition, the Class Plaintiffs have suffered injury as a result of Defendants' failure to
10 maintain accurate records for the Class Plaintiffs in that the Class Plaintiffs were not timely provided
11 written accurate itemized statements showing all requisite information, including but not limited to total
12 hours worked by the employee, net wages earned and all applicable hourly rates in effect during the pay
13 period and the corresponding number of hours worked at each hourly rate, in violation of Labor Code
14 §226 and the applicable Wage Orders, such that the Class Plaintiffs were misled by Defendants as to the
15 correct information regarding various items, including but not limited to total hours worked by the
16 employee, net wages earned and all applicable hourly rates in effect during the pay period and the
17 corresponding number of hours worked at each hourly rate.

18 127. The actual injuries suffered by the Class Plaintiffs as a result of Defendants' knowing
19 and intentional failure to maintain accurate records for the Class Plaintiffs include but are not limited to:

- 20 a. Confusion over whether they received all wages owed them by Defendants;
- 21 b. The difficulty and expense of attempting to reconstruct time and pay records;
- 22 c. Being forced to engage in mathematical computations to analyze whether
- 23 Defendants' wages in fact compensated for all hours worked;
- 24 d. The inability to accurately calculate wage rates complicated by the fact that wage
- 25 statement information required by Labor Code §226 is missing;
- 26 e. That such practice prevents the Class Plaintiffs from being able to effectively
- 27 challenge information on their wage statements; and/or
- 28

1 f. The difficulty and expense of filing and maintaining this lawsuit, and the discovery
2 required to collect and analyze the very information that California law requires.

3 128. Pursuant to Labor Code §226(e), the Class Plaintiffs are entitled to actual damages or
4 four thousand dollars (\$4,000.00), whichever is greater.

5 129. Pursuant to Labor Code §226(g), the currently-employed members of the Class Plaintiffs
6 are entitled to injunctive relief to ensure Defendants' compliance with Labor Code §226.

7 130. Pursuant to Labor Code §226(e) and/or §226(g), the Class Plaintiffs are also entitled to
8 an award of costs and reasonable attorneys' fees.

9
10 **TENTH CAUSE OF ACTION**
11 **FOR WAITING TIME PENALTIES**

12 **LABOR CODE §203**
13 **(ON BEHALF OF THE TERMINATED EMPLOYEE SUBCLASS)**
14 **AGAINST ALL DEFENDANTS**

15 131. The Terminated Employee SubClass re-alleges and incorporates by reference the above
16 paragraphs as though set forth in full herein.

17 132. Labor Code §203 provides that if an employer willfully fails to pay, without abatement
18 or reduction, in accordance with Labor Code §§201 and 202, any wages of an employee who is
19 discharged or who quits, the wages of the employee shall continue at the same rate, for up to thirty (30)
20 days from the due date thereof, until paid or until an action therefore is commenced.

21 133. The members of the Terminated Employee SubClass are no longer employed by
22 Defendants as they were either discharged from or quit Defendants' employ.

23 134. Defendants had a consistent and uniform policy, practice and procedure of willfully
24 failing to pay the earned wages of Defendants' former employees, as set forth above, according to
25 amendment or proof.

26 135. As set forth above, Defendants willfully failed to pay the members of the Terminated
27 Employee SubClass their entire wages due and owing at the time of their termination or within seventy-
28 two (72) hours of their resignation, and failed to pay those sums for up to thirty (30) days thereafter.

1 136. Defendants' willful failure to pay wages to the members of the Terminated Employee
2 SubClass violates Labor Code §203 because Defendants knew or should have known wages were due
3 to the members of the Terminated Employee SubClass, as set forth above, but Defendants failed to pay
4 them.

5 137. Thus, the members of the Terminated Employee SubClass are entitled to recovery
6 pursuant to Labor Code §203, as well as attorneys' fees and costs.

7
8 **ELEVENTH CAUSE OF ACTION**
9 **FOR UNFAIR COMPETITION**
10 **BUSINESS & PROFESSIONS CODE §§17200, ET SEQ.**
11 **(ON BEHALF OF THE CLASS PLAINTIFFS)**
12 **AGAINST ALL DEFENDANTS**

13 138. Class Plaintiffs re-allege and incorporate by reference each of the foregoing paragraphs as
14 though set forth in full herein.

15 139. B&PC §17200 provides in pertinent part "...[U]nfair competition shall mean and include
16 any unlawful, unfair or fraudulent business act..."

17 140. B&PC §17205 provides that unless otherwise expressly provided, the remedies or
18 penalties provided for unfair competition "are cumulative to each other and to the remedies or penalties
19 available under all other laws of this state."

20 141. B&PC §17204 provides that an action for relief from unfair competition may be
21 prosecuted by any person who has suffered injury in fact and has lost money or property as a result of
22 such unfair competition.

23 142. Defendants' have engaged in unlawful, unfair and fraudulent business acts or practices
24 prohibited by B&PC §17200, including those set forth in the preceding and foregoing paragraphs of the
25 complaint, thereby depriving Plaintiffs of the minimum working standards and conditions due to them
26 under the Labor Code and/or the IWC Wage Orders, as specifically described herein.

27 143. Defendants have engaged in unfair business practices in California by practicing,
28 employing, and utilizing the employment practices outlined in the preceding paragraphs, specifically, by

1 requiring employees to perform the labor services complained of herein without the requisite
2 compensation.

3 144. Defendants' use of such practices constitutes an unfair business practice, unfair
4 competition and provides an unfair advantage over Defendants' competitors.

5 145. Plaintiffs have suffered injury in fact and have lost money or property as a result of such
6 unfair competition.

7 146. Plaintiffs seek full restitution from Defendants, as necessary and according to proof, to
8 restore any and all monies withheld, acquired and/or converted by Defendants by means of the unfair
9 practices complained of herein.

10 147. Further, if Defendants are not enjoined from the conduct set forth above, Defendants will
11 continue to practice, employ and utilize the employment practices outlined in the preceding paragraphs.

12 148. Therefore, Plaintiffs request that the Court issue a preliminary and permanent injunction
13 prohibiting Defendants from engaging in the foregoing conduct.

14 149. Plaintiffs seek the appointment of a receiver, as necessary, to establish the total monetary
15 relief sought from Defendants.

16
17 **PRAYER FOR RELIEF**

18 **WHEREFORE**, Plaintiffs pray:

19 1. That the Court issue an Order certifying the Classes herein, appointing the named
20 Plaintiffs OSORIO, PACACH, ORTIZ as representatives of all others similarly situated, and
21 appointing the law firm(s) representing the named Plaintiffs OSORIO, PACACH, ORTIZ as counsel
22 for the Class Plaintiffs;

23 As to the First Cause of Action for Misclassification as "Independent Contractors":

- 24 a. For civil penalties pursuant to Labor Code §226.8(b);
25 b. For civil penalties pursuant to Labor code §226.8(c);
26 c. For punitive damages.

27 As to the Second Cause of Action for Failure to Pay Wages:
28

- 1 a. For recovery of the unpaid balance of the full amount of wages due and owing, according
2 to proof;
- 3 b. For prejudgment interest as allowed by Labor Code §§201, 226.7, 512, 558, 1182.12, 1194,
4 1194.2;
- 5 c. For an award of reasonable attorneys' fees and costs pursuant to Labor Code §218.5 and/or
6 Labor Code §1194(a);

7 As to the Third Cause of Action for Failure to Pay Minimum Wages:

- 8 a. For recovery of the unpaid balance of the full amount of minimum wages due and owing,
9 according to proof;
- 10 b. For liquidated damages pursuant to Labor Code §1194;
- 11 c. For an award of reasonable attorneys' fees and costs pursuant to Labor Code §1194;

12 As to the Fourth Cause of Action for Failure to Pay Overtime Compensation:

- 13 a. For recovery of the unpaid balance of the full amount of overtime wages due and owing,
14 according to proof;
- 15 b. For prejudgment interest as allowed by Labor Code §510;
- 16 c. For an award of reasonable attorneys' fees and costs pursuant to Labor Code §218.5 and/or
17 Labor Code §1194(a);

18 As to the Fifth Cause of Action for Failure to Indemnify for Necessary Business Expenses:

- 19 a. For reimbursement of all necessary business expenditures pursuant to Labor Code §2802;
- 20 b. For prejudgment interest as allowed by Labor Code §2802(b);
- 21 c. For an award of reasonable attorneys' fees and costs pursuant to Labor Code §2802(c).

22 As to the Sixth Cause of Action for Failure to Pay Sick Pay:

- 23 a. For all sick pay Class Plaintiffs are entitled to.

24 As to the Seventh Cause of Action for Failure to Authorize and Permit Rest Periods:

- 25 a. For one (1) hour of pay at the regular rate of compensation for each member of the Unpaid
26 Rest Period Class for each workday that a paid rest period was not provided;
- 27 b. For prejudgment interest as allowed by Labor Code §218.6 and Civil Code §3287;

28 As to the Eighth Cause of Action for Failure to Authorize and Permit Meal Periods:

1 a. For one (1) hour of pay at the regular rate of compensation for each member of the Unpaid
2 Meal Period Class for each workday that a meal period was not provided;

3 b. For prejudgment interest as allowed by Labor Code §218.6 and Civil Code §3287

4 As to the Ninth Cause of Action for Failure to Timely Furnish Accurate Itemized Wage Statements:

5 a. For damages according to proof;

6 b. For recovery as authorized by Labor Code §226(e) and 226.3;

7 c. For an award of costs and reasonable attorneys' fees pursuant to Labor Code §226(e) and/or
8 §226(g);

9 As to the Tenth Cause of Action for Derivative Violations of Labor Code §203:

10 a. For recovery as authorized by Labor Code §203;

11 b. For an award of reasonable attorneys' fees and costs pursuant to Labor Code §203 and/or
12 Labor Code §1194(a);

13 As to the Eleventh Cause of Action for Unfair Business Practices:

14 a. For an accounting, under the administration of Plaintiffs and/or the receiver and subject to
15 Court review, to determine the amount to be returned by Defendants, and the amounts to be
16 refunded to members of the Classes who are owed monies by Defendants;

17 b. For an Order requiring Defendants to identify each of the members of the Classes by name,
18 home address, home telephone number and, if available, email address;

19 c. For an Order requiring Defendants to make full restitution and payment pursuant to
20 California law;

21 d. For an Order for a preliminary and/or permanent injunction prohibiting Defendants from
22 engaging in the acts complained of herein;

23 e. For all other appropriate injunctive, declaratory and equitable relief;

24 f. For interest to the extent permitted by law;

25 g. For an award of attorneys' fees and costs incurred in the investigation, filing and
26 prosecution of this action pursuant to CCP §1021.5, B&PC §17200, et seq., Labor Code
27 §1194 and/or any other applicable provision of law;

1 As to All Causes of Action:

- 2 a. For such relief as this Court may deem just and proper, including reasonable attorneys' fees
3 and costs incurred.
4

5 DATED: April 23, 2025

**LAW OFFICES OF RAMIN R. YOUNESSI
A PROFESSIONAL LAW CORPORATION**

7
8 By: _____

Ramin R. Younessi, Esq.
Attorney for Plaintiffs
MARLON OSORIO ORTIZ, OSCAR
FRANCISCO JR PACACH, MARIA LUZ
ORTIZ, on behalf of themselves and all others
similarly situated

11
12 **JURY TRIAL DEMANDED**

13 Plaintiffs demand trial of all issues by jury.
14

15 DATED: April 23, 2025

**LAW OFFICES OF RAMIN R. YOUNESSI
A PROFESSIONAL LAW CORPORATION**

17
18 By: _____

Ramin R. Younessi, Esq.
Attorney for Plaintiffs
MARLON OSORIO ORTIZ, OSCAR
FRANCISCO JR PACACH, MARIA LUZ
ORTIZ, on behalf of themselves and all others
similarly situated