

EXHIBIT A

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

FLORENTINO LOPEZ and LUIS
HERNANDEZ, individuals and on behalf
of all others similarly situated

Plaintiffs,

vs.

UTILITY TREE SERVICE, LLC, a
Pennsylvania Limited Liability Company;
and DOES 1 through 25, inclusive,

Defendants.

Case No.: 22-cv-1404-RSH-DDL

**THIRD AMENDED COMPLAINT
FOR DAMAGES FOR:**

- 1. AGE DISCRIMINATION IN
VIOLATION OF FEHA;**
- 2. RETALIATION IN
VIOLATION OF FEHA;**
- 3. FAILURE TO TAKE ALL
REASONABLE STEPS TO
PREVENT
DISCRIMINATION, AND/OR
RETALIATION;**
- 4. WRONGFUL TERMINATION
IN VIOLATION OF PUBLIC
POLICY;**
- 5. FAILURE TO PAY
MINIMUM WAGES [CAL.
LAB. CODE §§ 204, 1194,
1194.2, AND 1197];**

6. **FAILURE TO PAY OVERTIME COMPENSATION [CAL. LAB. CODE §§ 1194 AND 1198];**
7. **FAILURE TO PROVIDE MEAL PERIODS [CAL. LAB. CODE §§ 226.7, 512];**
8. **FAILURE TO AUTHORIZE AND PERMIT REST BREAKS [CAL. LAB. CODE §§ 226.7];**
9. **FAILURE TO INDEMNIFY NECESSARY BUSINESS EXPENSES [CAL. LAB. CODE § 2802];**
10. **FAILURE TO TIMELY PAY FINAL WAGES AT TERMINATION [CAL. LAB. CODE §§ 201-203];**
11. **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS [CAL. LAB. CODE § 226];**
12. **UNFAIR BUSINESS PRACTICES [CAL. BUS. & PROF. CODE §§ 17200, ET SEQ.]; and**
13. **CIVIL PENALTIES UNDER PAGA [CAL. LAB. CODE §§ 2698, ET SEQ.]**

[JURY TRIAL DEMANDED]

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LUIS HERNANDEZ

COMES NOW Plaintiffs Florentino Lopez and Luis Hernandez who files this Complaint against Defendant Utility Tree Service, LLC, and DOES 1 through 25 inclusive (collectively “Defendants”) herein, and against each of them, and for causes of action allege as follows.

THE PARTIES

1. Plaintiff Florentino Lopez (“Lopez”, or collectively with Hernandez “Plaintiffs”) is, and at all relevant times herein was, an individual residing in the County of San Diego, State of California.

2. Plaintiff Luis Hernandez (“Hernandez”, or collectively with Lopez “Plaintiffs”) is, and at all relevant times herein was, an individual residing in the County of Los Angeles, State of California.

3. Plaintiffs are informed and believe, and thereon allege that Defendant Utility Tree Service, LLC (“Utility” or “Defendant”) is, and at all times material hereto was a Pennsylvania Limited Liability Corporation doing business in the County of San Diego, State of California with its corporate office located at 16486 Bernardo Center Dr. #318, San Diego, CA 92128.

4. Plaintiffs are ignorant of the true names and capacities of those defendants sued as DOES 1 through 25, inclusive, and, therefore, sues them under the fictitious names pursuant to Code of Civil Procedure Section 474. Plaintiffs are informed and believe, and thereupon allege that DOE defendants are in some manner or capacity and to some degree legally and proximately responsible and liable for the damages which Plaintiffs complain. When the true names and capacities of DOES 1 through 25 are determined, Plaintiffs will seek leave to amend this complaint to allege the true names and capacities of such DOE defendants.

5. Plaintiff Lopez brings the First through Fourth causes of action in his individual capacity only. Plaintiffs bring the Fifth through Twelfth Causes of

1 Action individually and as a class action on behalf of themselves and certain
2 current and former employees of Defendants (hereinafter collectively referred to
3 as the “Class” or “Class Members” and defined more fully below). The Class
4 consists of Plaintiffs and all other persons who have been employed by any
5 Defendants in California as an hourly-paid, non-exempt employee during the
6 statute of limitations period applicable to the claims pleaded here. Plaintiff Lopez
7 brings the Thirteenth Cause of Action as a representative action under the
8 California Private Attorneys General Act (“PAGA”). The representative action
9 seeks to recover civil penalties owed to Plaintiffs, the State of California, and
10 past and present non-exempt, hourly-paid employees of Defendants who worked
11 in California during the applicable statute of limitations period (collectively
12 referred to as the “Aggrieved Employees”).

13 6. Defendants own/owned and operate/operated an industry, business,
14 and establishment within the State of California, including Los Angeles County. As
15 such, and based upon all the facts and circumstances incident to Defendants’
16 business in California, Defendants are subject to the California Labor Code, Wage
17 Orders issued by the Industrial Welfare Commission (“IWC”), and the California
18 Business & Professions Code.

19 7. Despite these requirements, throughout the statutory period Defendants
20 maintained a systematic, company-wide policy and practice of:

- 21 a. Failing to pay employees for all hours worked, including all
22 minimum wages, regular wages, overtime wages, overtime wages at
23 the regular rate, double time wages, paid sick leave, reporting time
24 wages, vacation wages and shift differentials in compliance with
25 the California Labor Code and IWC Wage Orders;
- 26 b. Failing to provide employees with timely and duty-free meal
27 periods in compliance with the California Labor Code and IWC
28 Wage Orders, failing to maintain accurate records of all meal

- 1 periods taken or missed, and failing to pay an additional hour's pay
2 for each workday a meal period violation occurred;
- 3 c. Failing to authorize and permit employees to take timely and duty-
4 free rest periods in compliance with the California Labor Code and
5 IWC Wage Orders, and failing to pay an additional hour's pay for
6 each workday a rest period violation occurred;
- 7 d. Failing to indemnify employees for necessary business expenses
8 incurred;
- 9 e. Willfully failing to pay employees all minimum wages, regular
10 wages, overtime wages, overtime wages at the regular rate, double
11 time wages, paid sick leave, reporting time wages, vacation wages
12 and shift differentials meal period premium wages, and rest period
13 premium wages due within the time period specified by California
14 law when employment terminates; and
- 15 f. Failing to maintain accurate records of the hours that employees
16 worked.
- 17 g. Failing to provide employees with accurate, itemized wage
18 statements containing all the information required by the California
19 Labor Code and IWC Wage Orders.

20 8. On information and belief, Defendants, and each of them were on
21 actual and constructive notice of the improprieties alleged herein and intentionally
22 refused to rectify their unlawful policies. Defendants' violations, as alleged above,
23 during all relevant times herein were willful and deliberate.

24 9. At all relevant times, Defendants were and are legally responsible for
25 all of the unlawful conduct, policies, practices, acts and omissions as described in
26 each and all of the foregoing paragraphs as the employer of Plaintiffs, the Class,
27 and the Aggrieved Employees. Further, Defendants are responsible for each of
28

1 the unlawful acts or omissions complained of herein under the doctrine of
2 “respondeat superior”.

3 10. Plaintiffs are informed and believe, and thereon allege that
4 Defendants’ improper conduct hereinafter alleged occurred in the County of San
5 Diego, California. Plaintiffs further allege that at all times relevant hereto,
6 Plaintiffs were employed to work, and did work in the State of California, County
7 San Diego.

8 **GENERAL ALLEGATIONS**

9 11. In or around 2001, Lopez became employed by Defendant. Lopez
10 remained employed by Defendant until he was wrongfully terminated on or about
11 June 4, 2021.

12 12. Hernandez worked for Defendant as an hourly-paid, non-exempt
13 employee from approximately June 2017 to approximately August 2022.

14 13. Throughout the statutory period, Defendants failed to pay Plaintiffs for
15 all hours worked (including minimum wages and overtime wages), failed to
16 provide Plaintiffs with uninterrupted meal periods, failed to authorize and permit
17 Plaintiffs to take uninterrupted rest periods, failed to indemnify Plaintiffs for
18 necessary business expenses, failed to timely pay all final wages to Plaintiffs when
19 Defendants terminated Plaintiffs’ employment, and failed to furnish accurate wage
20 statements to Plaintiffs. As discussed below, Plaintiffs’ experience working for
21 Defendants was typical and illustrative.

22 14. Throughout the statutory period, Defendants maintained a policy and
23 practice of not paying Plaintiffs, the Class, and the Aggrieved Employees for all
24 hours worked, including all overtime wages. Throughout the statutory period,
25 Plaintiffs, the Class, and the Aggrieved Employees were required to work “off the
26 clock”, and uncompensated. This included pre-check-in activities such as a
27 COVID temperature screening (including waiting in line for this screening), and
28 waiting in line in order to clock into work each workday, off the clock and

1 uncompensated. This also included time spent undergoing mandatory drug testing
2 or any other testing and/or examination required as a condition of employment.
3 Defendants also paid additional remunerations, through their non-discretionary
4 incentive program, that were not factored into the regular rate of pay for purposes
5 of paying overtime, meal premiums, and/or sick pay. Moreover, Defendant failed to
6 provide all required sick pay pursuant to Labor Code sections 246 and 246.5.
7 Further, Defendants occasionally sent Plaintiffs, the Class, and the Aggrieved
8 Employees home early, such as within the first 2 hours of work, but failed to pay
9 reporting time pay in those instances. In maintaining a practice of not paying all
10 wages owed, Defendants failed to maintain accurate records of the hours Plaintiffs,
11 the Class, and the Aggrieved Employees worked.

12 15. Throughout the statutory period, Defendants maintained a policy and
13 practice of not paying Plaintiffs, the Aggrieved Employees, and the Class for all
14 hours worked, including minimum and straight time wages. Defendants regularly
15 used a system of time rounding and/or synthetic timekeeping that resulted, over a
16 period of time, in failing to compensate Plaintiffs, the Aggrieved Employees, and
17 the Class properly for all the time they have actually worked, even though the
18 realities of Defendants' operations are such that it is possible, practical, and feasible
19 to count and pay for work time to the minute. Accordingly, Defendants frequently
20 paid Plaintiffs, the Aggrieved Employees, and the Class less than all their work
21 time.

22 16. Throughout the statutory period, Defendants have wrongfully failed to
23 provide Plaintiffs, the Class, and the Aggrieved Employees with legally compliant
24 meal periods. Defendants sometimes, but not always, required Plaintiffs, the Class,
25 and the Aggrieved Employees to work in excess of five consecutive hours a day
26 without providing 30-minute, continuous and uninterrupted, duty-free meal period
27 for every five hours of work, or without compensating Plaintiffs, the Class, and the
28 Aggrieved Employees for meal periods that were not provided by the end of the

1 fifth hour of work or tenth hour of work. Defendants also did not adequately inform
2 Plaintiffs, the Class, and the Aggrieved Employees of their right to take a meal
3 period by the end of the fifth hour of work, or, for shifts greater than 10 hours, by
4 the end of the tenth hour of work. Instead, as a result of the rigorous work
5 schedules, Defendants continued to assert control over Plaintiffs, the Aggrieved
6 Employees, and the Class by requiring, pressuring, or encouraging them to perform
7 work tasks which could not be completed without working in lieu of taking
8 mandatory meal periods, or by denying Plaintiff, the Aggrieved Employees, and the
9 Class permission to take a meal period. Defendants also engaged in the practice of
10 rounding the meal period times to avoid paying penalties to Plaintiffs, the
11 Aggrieved Employees, and the Class. Accordingly, Defendants' policy and practice
12 was to not provide meal periods to Plaintiffs, the Class, and the Aggrieved
13 Employees in compliance with California law.

14 17. Throughout the statutory period, Defendants have wrongfully failed to
15 authorize and permit Plaintiffs, the Class, and the Aggrieved Employees to take
16 timely and duty-free rest periods. Defendants sometimes, but not always, required
17 Plaintiffs, the Class, and the Aggrieved Employees to work in excess of four
18 consecutive hours a day without Defendants authorizing and permitting them to
19 take a 10-minute, continuous and uninterrupted, rest period for every four hours of
20 work (or major fraction of four hours), or without compensating Plaintiffs, the
21 Class, and the Aggrieved Employees for rest periods that were not authorized or
22 permitted. Defendants also did not adequately inform Plaintiffs, the Class, and the
23 Aggrieved Employees of their right to take a rest period. Instead, Defendants
24 continued to assert control over Plaintiffs, the Class, and the Aggrieved Employees
25 by requiring, pressuring, or encouraging them to perform work tasks which could
26 not be completed without working in lieu of taking mandatory rest periods, or by
27 denying Plaintiffs, the Class, and the Aggrieved Employees permission to take a
28 rest period. Moreover, Defendants did not have adequate policies or practices

1 permitting or authorizing rest periods for Plaintiffs, the Class, and the Aggrieved
2 Employees, nor did Defendants have adequate policies or practices regarding the
3 timing of rest periods. Defendants also did not have adequate policies or practices
4 to verify whether Plaintiffs, the Class, and the Aggrieved Employees were taking
5 their required rest periods. Further, Defendants did not maintain accurate records
6 of employee work periods, and therefore Defendants cannot demonstrate that
7 Plaintiffs, the Class, and the Aggrieved Employees took rest periods during the
8 middle of each work period. In addition, Defendants' policy restricted Plaintiffs,
9 the Class, and the Aggrieved Employees from unconstrained walks and is unlawful
10 based on Defendants' rule which states Plaintiffs, the Class, and the Aggrieved
11 Employees cannot leave the work premises during their rest period. Accordingly,
12 Defendants' policy and practice was to not authorize and permit Plaintiffs, the
13 Class, and the Aggrieved Employees to take rest periods in compliance with
14 California law.

15 18. Throughout the statutory period, Defendants wrongfully required
16 Plaintiffs, the Class, and the Aggrieved Employees to pay expenses that they
17 incurred in direct discharge of their duties for Defendants without reimbursement.
18 As a result, in the course of their employment with Defendants, Plaintiffs, the
19 Class, and the Aggrieved Employees incurred unreimbursed business expenses
20 which included, but were not limited to, costs related to the use of their personal
21 cellular phones and personal home offices all on behalf of and for the benefit of
22 Defendants.

23 19. Throughout the statutory period, Defendants willfully failed and
24 refused to timely pay Plaintiffs, the Class, and the Aggrieved Employees at the
25 conclusion of their employment all wages for all expenditures, straight time wages,
26 minimum wages, overtime wages, sick pay, reporting time pay, vacation pay, shift
27 differentials, meal period premium wages, and rest period premium wages.
28 Further, Defendants did not pay Plaintiffs, the Class, and the Aggrieved Employees

1 their final paychecks immediately upon termination. Additionally, Defendants
2 failed to pay all compensation due to Plaintiffs, the Class, and the Aggrieved
3 Employees, makes unlawful deductions from compensation payable to Plaintiffs,
4 the Class, and the Aggrieved Employees, failed to disclose all aspects of the
5 deductions from compensation payable Plaintiffs, the Class, and the Aggrieved
6 Employees, and thereby failed to pay these employees all wages due at each
7 applicable pay period and upon termination, all in violation of Cal. Lab. Code
8 Section 221.

9 20. Throughout the statutory period, Defendants failed to furnish
10 Plaintiffs, the Class, and the Aggrieved Employees with accurate, itemized wage
11 statements showing all applicable hourly rates, and all gross and net wages earned
12 (including correct hours worked, correct wages earned for hours worked, correct
13 overtime hours worked, correct wages for meal periods that were not provided in
14 accordance with California law, correct wages for rest periods that were not
15 authorized and permitted to take in accordance with California law, and
16 Defendant's address). Further, the wage statements do not show Defendant's
17 address as required by California law. As a result of these violations of California
18 Labor Code § 226(a), the Plaintiffs, the Class, and the Aggrieved Employees
19 suffered injury because, among other things:

- 20 a. the violations led them to believe that they were not entitled to be
21 paid minimum wages, overtime wages, meal period premium
22 wages, and rest period premium wages to which they were entitled,
23 even though they were entitled;
- 24 b. the violations led them to believe that they had been paid the
25 minimum, overtime, meal period premium, and rest period
26 premium wages, even though they had not been;
- 27 c. the violations led them to believe they were not entitled to be paid
28 minimum, overtime, meal period premium, and rest period

premium wages at the correct California rate even though they were;

- d. the violations led them to believe they had been paid minimum, overtime, meal period premium, and rest period premium wages at the correct California rate even though they had not been;
- e. the violations hindered them from determining the amounts of minimum, overtime, meal period premium, and rest period premium owed to them;
- f. in connection with their employment before and during this action, and in connection with prosecuting this action, the violations caused them to have to perform mathematical computations to determine the amounts of wages owed to them, computations they would not have to make if the wage statements contained the required accurate information;
- g. by understating the wages truly due them, the violations caused them to lose entitlement and/or accrual of the full amount of Social Security, disability, unemployment, and other governmental benefits;
- h. the wage statements inaccurately understated the wages, hours, and wages rates to which Plaintiffs, the Class, and the Aggrieved Employees were entitled, and Plaintiffs, the Class, and the Aggrieved Employees were paid less than the wages and wage rates to which they were entitled.

21. Thus, Plaintiffs, the Class, and the Aggrieved Employees are owed the amounts provided for in California Labor Code § 226(e), including actual damages.

22. Cal. Lab. Code § 204(d) provides, the requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or

1 semimonthly payroll if the wages are paid not more than seven calendar days
2 following the close of the payroll period. Throughout the statutory period,
3 Defendants from time to time failed to pay Plaintiffs, the Class, and the
4 Aggrieved Employees within seven (7) days of the close of the payroll period in
5 accordance with Cal. Lab. Code§ 204(d).

6 23. Throughout the statutory period, Plaintiffs, the Class, and the
7 Aggrieved Employees routinely earned non-discretionary incentive wages which
8 increased their regular rate of pay. However, when sick pay was paid, it was paid
9 at the base rate of pay for Plaintiffs, the Class, and the Aggrieved Employees, as
10 opposed to the correct, higher regular rate of pay, as required under Cal. Lab.
11 Code Section 246. Under Cal Lab. Code §§ 218 and 233 employees may sue to
12 recover underpaid sick pay wages as damages.

13 24. Near the end of Lopez’s employment with Defendant, Lopez’s
14 supervisor consistently made comments about the speed of Lopez’s work,
15 derogatorily referring to him as “flash.” Lopez’s supervisor also frequently asked
16 Lopez when Lopez would be retiring from Defendant. Lopez complained about
17 these comments to Defendant; however, Defendant took no corrective action.

18 25. On or about June 4, 2021, Defendant called Lopez in for a meeting
19 and suddenly informed Lopez that he was being terminated. Lopez was over the
20 age of 40 at the time he was terminated, being approximately 74 years of age at
21 the time.

22 26. Lopez is informed and believes and thereon alleges that at all times
23 mentioned in this complaint, Defendants regularly employed 5 or more persons in
24 the state of California, and therefore are accordingly subject to the provisions of
25 FEHA.

26 27. Lopez has duly complied with the requirements of the Fair
27 Employment and Housing Act by filing charges of discrimination with the DFEH
28 and obtaining the requisite “Right to Sue” notice.

1 28. On information and belief, Defendants, and each of them were on
2 actual and constructive notice of the improprieties alleged herein and
3 intentionally refused to rectify their unlawful policies. Defendants' violations, as
4 alleged above, during all relevant times herein were willful and deliberate.

5 29. At all relevant times, Defendants were and are legally responsible for
6 all of the unlawful conduct, policies, practices, acts and omissions as described in
7 each and all of the foregoing paragraphs as the employer of Lopez. Further,
8 Defendants are responsible for each of the unlawful acts or omissions complained
9 of herein under the doctrine of "respondeat superior."

10 30. On information and belief, Defendants, and each of them were on
11 actual and constructive notice of the improprieties alleged herein and
12 intentionally refused to rectify their unlawful policies. Defendants' violations, as
13 alleged above, during all relevant times herein were willful and deliberate.

14 **CLASS ACTION ALLEGATIONS**

15 31. Plaintiffs bring certain claims individually, as well as on behalf of each
16 and all other persons similarly situated, and thus, seek class certification under
17 California Code of Civil Procedure § 382.

18 32. All claims alleged herein arise under California law for which
19 Plaintiffs seek relief authorized by California law.

20 33. The proposed Class consists of and is defined as:

21 All persons who worked for any Defendant in California as an
22 hourly, non-exempt employee at any time during the period
23 beginning four years before the filing of the initial complaint in this
24 action and ending when notice to the Class is sent.

25 34. At all material times, Plaintiffs were members of the Class.

26 35. Plaintiffs undertake this concerted activity to improve the wages and
27 working conditions of all Class Members.

28 36. There is a well-defined community of interest in the litigation and the

1 Class is readily ascertainable:

- 2 (a) Numerosity: The members of the Class (and each subclass, if
3 any) are so numerous that joinder of all members would be
4 unfeasible and impractical. The membership of the entire Class
5 is unknown to Plaintiffs at this time, however, the Class is
6 estimated to be greater than 100 individuals and the identity of
7 such membership is readily ascertainable by inspection of
8 Defendants' records.
- 9 (b) Typicality: Plaintiffs are qualified to, and will, fairly and
10 adequately protect the interests of each Class Member with
11 whom there is a shared, well-defined community of interest, and
12 Plaintiffs' claims (or defenses, if any) are typical of all Class
13 Members' claims as demonstrated herein.
- 14 (c) Adequacy: Plaintiffs are qualified to, and will, fairly and
15 adequately protect the interests of each Class Member with
16 whom there is a shared, well-defined community of interest and
17 typicality of claims, as demonstrated herein. Plaintiffs have no
18 conflicts with or interests antagonistic to any Class Member.
19 Plaintiffs' attorneys, the proposed class counsel, are versed in
20 the rules governing class action discovery, certification, and
21 settlement. Plaintiffs have incurred, and throughout the duration
22 of this action, will continue to incur costs and attorneys' fees
23 that have been, are, and will be necessarily expended for the
24 prosecution of this action for the substantial benefit of each class
25 member.
- 26 (d) Superiority: A Class Action is superior to other available
27 methods for the fair and efficient adjudication of the
28 controversy, including consideration of:

- 1) The interests of the members of the Class in individually controlling the prosecution or defense of separate actions;
- 2) The extent and nature of any litigation concerning the controversy already commenced by or against members of the Class;
- 3) The desirability or undesirability of concentrating the litigation of the claims in the particular forum; and
- 4) The difficulties likely to be encountered in the management of a class action.

(e) Public Policy Considerations: The public policy of the State of California is to resolve the California Labor Code claims of many employees through a class action. Indeed, current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. Former employees are also fearful of bringing actions because they believe their former employers might damage their future endeavors through negative references and/or other means. Class actions provide the class members who are not named in the complaint with a type of anonymity that allows for the vindication of their rights at the same time as their privacy is protected.

37. There are common questions of law and fact as to the Class (and each subclass, if any) that predominate over questions affecting only individual members, including without limitation, whether, as alleged herein, Defendants have:

- (f) Failed to pay Class Members for all hours worked, including minimum wages, and overtime wages;
- (g) Failed to provide meal periods and pay meal period premium wages to Class Members;

- (h) Failed to authorize and permit rest periods and pay rest period premium wages to Class Members;
- (i) Failed to promptly pay all wages due to Class Members upon their discharge or resignation;
- (j) Failed to maintain accurate records of all hours Class Members worked, and all meal periods Class Members took or missed;
- (k) Failed to reimburse Class Members for all necessary business expenses; and
- (l) Violated California Business & Professions Code §§ 17200 *et. seq.* as a result of their illegal conduct as described above.

38. This Court should permit this action to be maintained as a class action pursuant to California Code of Civil Procedure § 382 because:

- (m) The questions of law and fact common to the Class predominate over any question affecting only individual members;
- (n) A class action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the Class;
- (o) The members of the Class are so numerous that it is impractical to bring all members of the class before the Court;
- (p) Plaintiffs, and the other members of the Class, will not be able to obtain effective and economic legal redress unless the action is maintained as a class action;
- (q) There is a community of interest in obtaining appropriate legal and equitable relief for the statutory violations, and in obtaining adequate compensation for the damages and injuries for which Defendants are responsible in an amount sufficient to adequately compensate the members of the Class for the injuries sustained;
- (r) Without class certification, the prosecution of separate actions

by individual members of the class would create a risk of:

- 1) Inconsistent or varying adjudications with respect to individual members of the Class which would establish incompatible standards of conduct for Defendants; and/or
 - 2) Adjudications with respect to the individual members which would, as a practical matter, be dispositive of the interests of other members not parties to the adjudications, or would substantially impair or impede their ability to protect their interests, including but not limited to the potential for exhausting the funds available from those parties who are, or may be, responsible Defendants; and,
- (s) Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making final injunctive relief appropriate with respect to the class as a whole.

39. Plaintiffs contemplate the eventual issuance of notice to the proposed members of the Class that would set forth the subject and nature of the instant action. The Defendants' own business records may be utilized for assistance in the preparation and issuance of the contemplated notices. To the extent that any further notices may be required, Plaintiffs would contemplate the use of additional techniques and forms commonly used in class actions, such as published notice, e-mail notice, website notice, first-class mail, or combinations thereof, or by other methods suitable to the Class and deemed necessary and/or appropriate by the Court.

FIRST CAUSE OF ACTION

(Age Discrimination in Violation of FEHA – By Plaintiff Lopez Against All Defendants)

40. Plaintiff Lopez hereby incorporate all foregoing paragraphs of this complaint as though fully set forth herein.

1 41. FEHA, codified in Government Code §§12900 *et seq.*, makes it
2 unlawful for an employer to discriminate against an employee on the basis of the
3 employee's age.

4 42. Plaintiff Lopez is informed and believes and thereon alleges, that by
5 terminating Plaintiff Lopez, who at the time of his termination was the age of 74,
6 Defendants violated FEHA.

7 43. Plaintiff Lopez is informed and believes and thereon alleges, that his
8 age was a motivating factor in Defendants' decision to terminate Plaintiff Lopez's
9 employment, and other discrimination against his, in violation of Government
10 Code §12940.

11 44. At all times relevant hereto, Plaintiff Lopez performed his job duties
12 for Defendants in a competent and efficient manner within the company rules and
13 policies. In general, Plaintiff Lopez performed his duties as an exemplary
14 employee.

15 45. Although Plaintiff Lopez was qualified for his position based on his
16 extensive experience with Defendants, Plaintiff Lopez was discriminated based
17 on his age.

18 46. As a proximate cause of Defendants' wrongful conduct as referenced
19 above, Plaintiff Lopez has suffered emotional distress and general damages in a
20 sum of excess of the minimum jurisdiction of the court and according to proof.

21 47. As a further proximate result of Defendants' wrongful conduct as
22 referenced above, Plaintiff Lopez will need to seek medical attention, all to his
23 damage in a sum in excess of the minimum jurisdiction of the court and
24 according to proof.

25 48. As a further proximate result of Defendants' wrongful conduct as
26 referenced above, Plaintiff Lopez suffered a loss of wages, fringe benefits, and
27 job benefits, all in amounts in excess of the minimum jurisdiction of the court
28 and according to proof.

1 49. As a further proximate result of Defendants' wrongful conduct as
2 referenced above, Plaintiff Lopez was required to and did hire attorneys, all to his
3 damage in a sum according to proof.

4 50. The above-referenced actions of Defendants were done with malice,
5 fraud or oppression, and in reckless disregard of Plaintiff Lopez's rights under
6 FEHA, California Civil Code § 3294 and in violation of the public policy of
7 California. Specifically, Defendants discriminated against and/or terminated
8 Plaintiff Lopez because of his age, thereby entitling Plaintiff Lopez to punitive
9 damages.

10 **SECOND CAUSE OF ACTION**

11 **(Retaliation in Violation of FEHA – By Plaintiff Lopez Against All**
12 **Defendants)**

13 51. Plaintiff Lopez hereby incorporates all foregoing paragraphs of this
14 complaint as though fully set forth herein.

15 52. Plaintiff Lopez was subjected to adverse employment actions
16 including, but not limited to, termination. Plaintiff Lopez is informed and
17 believes and thereon alleges that such adverse employment actions were taken in
18 retaliation for exercising his rights under FEHA. Such conduct violates
19 Government Code section 12945.2(1) and other provisions of FEHA.

20 53. As a proximate cause of these Defendants' wrongful conduct as
21 referenced above, Plaintiff Lopez has suffered emotional distress and general
22 damages in a sum of excess of the minimum jurisdiction of the court and
23 according to proof.

24 54. As a further proximate result of these Defendants' wrongful conduct
25 as referenced above, Plaintiff Lopez was required to and did seek medical
26 attention, and will need to seek medical attention in the future, all to his damage
27 in a sum in excess of the minimum jurisdiction of the court and according to
28 proof.

1 55. As a further proximate result of these Defendants' wrongful conduct
2 as referenced above, Plaintiff Lopez suffered a loss of wages, fringe benefits, and
3 job benefits, all in amounts in excess of the minimum jurisdiction of the court
4 and according to proof.

5 56. As a further proximate result of these Defendants' wrongful conduct
6 as referenced above, Plaintiff Lopez was required to and did hire attorneys, all to
7 his damage in a sum according to proof.

8 57. The above-referenced actions of these Defendants' were done with
9 malice, fraud or oppression, and in reckless disregard of Plaintiff Lopez's rights
10 under FEHA, California Civil Code § 3294 and in violation of the public policy
11 of California. Specifically, these Defendants discriminated against and/or
12 terminated Plaintiff Lopez because of his age, thereby entitling Plaintiff Lopez to
13 punitive damages.

14 **THIRD CAUSE OF ACTION**

15 **(Failure to Take All Reasonable Steps to Prevent Discrimination and/or** 16 **Retaliation – By Plaintiff Lopez Against All Defendants)**

17 58. Plaintiff Lopez hereby incorporates all foregoing paragraphs of this
18 complaint as though fully set forth herein.

19 59. Defendants failed to take all reasonable steps necessary to prevent
20 the aforementioned discrimination, and/or retaliation to which Plaintiff Lopez
21 was subjected to in violation of California Government Code § 12940.

22 60. The conduct and acts described herein were an ongoing part of a
23 continuing scheme and course of conduct. Defendants knew the substance of the
24 above-described facts and circumstances and ratified the wrongs and injuries
25 mentioned herein when it was in their ability to prevent, remedy and/or correct
26 these wrongs. Defendants have continued to ratify and refused to remedy or
27 correct the aforementioned conduct, notwithstanding the fact that its officials
28

1 knew or reasonably should have known of the conduct and its unlawful
2 motivations.

3 61. As a proximate cause of Defendants' wrongful conduct as referenced
4 above, Plaintiff Lopez has suffered emotional distress and general damages in a
5 sum of excess of the minimum jurisdiction of the court and according to proof.

6 62. As a further proximate result of Defendants' wrongful conduct as
7 referenced above, Plaintiff Lopez will need to seek medical attention, all to his
8 damage in a sum in excess of the minimum jurisdiction of the court and
9 according to proof.

10 63. As a further proximate result of Defendants' wrongful conduct as
11 referenced above, Plaintiff Lopez suffered a loss of wages, fringe benefits, and
12 job benefits, all in amounts in excess of the minimum jurisdiction of the court
13 and according to proof.

14 64. As a further proximate result of Defendants' wrongful conduct as
15 referenced above, Plaintiff Lopez was required to and did hire attorneys, all to his
16 damage in a sum according to proof.

17 65. The above-referenced actions of all Defendants were done with
18 malice, fraud or oppression, and in reckless disregard of Plaintiff Lopez's rights
19 under FEHA, California Civil Code § 3294 and in violation of the public policy
20 of California. Specifically, Defendants discriminated against and/or terminated
21 Plaintiff because of his age, thereby entitling Plaintiff Lopez to punitive
22 damages.

23 **FOURTH CAUSE OF ACTION**

24 **(Wrongful Termination in Violation of Public Policy – By Plaintiff Lopez**
25 **Against All Defendants)**

26 66. Plaintiff Lopez hereby incorporates by reference all foregoing
27 paragraphs of this complaint as though fully set forth herein.
28

67. Plaintiff Lopez is informed and believes and thereon alleges, that Defendants terminated Plaintiff Lopez because he is over the age of 40.

68. As a proximate cause of Defendants' wrongful conduct as referenced above, Plaintiff Lopez has suffered emotional distress and general damages in a sum of excess of the minimum jurisdiction of the court and according to proof.

69. As a further proximate result of Defendants' wrongful conduct as referenced above, Plaintiff Lopez was required to and did seek medical attention, and will need to seek medical attention in the future, all to Plaintiff Lopez's damage in a sum in excess of the minimum jurisdiction of the court and according to proof.

70. As a further proximate result of Defendants' wrongful conduct as referenced above, Plaintiff Lopez suffered a loss of wages, fringe benefits, and job benefits, all in amounts in excess of the minimum jurisdiction of the court and according to proof.

71. As a further proximate result of Defendants' wrongful conduct as referenced above, Plaintiff Lopez was required to and did hire attorneys, all to Plaintiff Lopez's damage in a sum according to proof.

72. The above-referenced actions of Defendants were done with malice, fraud or oppression, and in reckless disregard of Plaintiff Lopez's rights under FEHA, California Civil Code § 3294 and in violation of the public policy of California. Specifically, Defendants discriminated against and/or terminated Plaintiff because of Plaintiff Lopez's age, thereby entitling Plaintiff Lopez to punitive damages.

FIFTH CAUSE OF ACTION

(Against all Defendants for Failure to Pay Minimum Wages for All Hours Worked)

73. Plaintiffs incorporate by reference and re-allege as if fully stated herein each foregoing paragraph in this Complaint.

1 74. “Hours worked” is the time during which an employee is subject to the
2 control of an employer, and includes all the time the employee is suffered or
3 permitted to work, whether or not required to do so.

4 75. At all relevant times herein mentioned, Defendants knowingly failed to
5 pay to Plaintiffs and the Class compensation for all hours they worked. By their
6 failure to pay compensation for each hour worked as alleged above, Defendants
7 willfully violated the provisions of Section 1194 of the California Labor Code, and
8 any additional applicable Wage Orders, which require such compensation to non-
9 exempt employees.

10 76. Accordingly, Plaintiffs and the Class are entitled to recover minimum
11 wages for all non-overtime hours worked for Defendants.

12 77. By and through the conduct described above, Plaintiffs and the Class
13 have been deprived of their rights to be paid wages earned by virtue of their
14 employment with Defendants.

15 78. By virtue of the Defendants’ unlawful failure to pay additional
16 compensation to Plaintiffs and the Class for their non-overtime hours worked
17 without pay, Plaintiffs and the Class suffered, and will continue to suffer, damages
18 in amounts which are presently unknown to Plaintiffs and the Class, but which
19 exceed the jurisdictional minimum of this Court, and which will be ascertained
20 according to proof at trial.

21 79. By failing to keep adequate time records required by California Labor
22 Code § 1174(d), Defendants have made it difficult to calculate the full extent of
23 minimum wage compensation due Plaintiffs and the Class.

24 80. Pursuant to California Labor Code section 1194.2, Plaintiffs and the
25 Class are entitled to recover liquidated damages (double damages) for Defendants’
26 failure to pay minimum wages.

27 81. California Labor Code section 204 requires employers to provide
28 employees with all wages due and payable twice a month. Throughout the statute

1 of limitations period applicable to this cause of action, Plaintiffs and the Class were
2 entitled to be paid twice a month at rates required by law, including minimum
3 wages. However, during all such times, Defendants systematically failed and
4 refused to pay Plaintiffs and the Class all such wages due, and failed to pay those
5 wages twice a month.

6 82. Plaintiffs and the Class are also entitled to seek recovery of all unpaid
7 minimum wages, interest, and reasonable attorneys' fees and costs pursuant to
8 California Labor Code §§ 218.5, 218.6, and 1194(a).

9 **SIXTH CAUSE OF ACTION**

10 **(Against all Defendants for Failure to Pay Overtime Wages)**

11 83. Plaintiffs incorporate by reference and re-allege as if fully stated
12 herein each foregoing paragraph in this Complaint.

13 84. California Labor Code § 510 provides that employees in California
14 shall not be employed more than eight (8) hours in any workday or forty (40) hours
15 in a workweek unless they receive additional compensation beyond their regular
16 wages in amounts specified by law.

17 85. California Labor Code §§ 1194 and 1198 provide that employees in
18 California shall not be employed more than eight hours in any workday unless they
19 receive additional compensation beyond their regular wages in amounts specified
20 by law. Additionally, California Labor Code § 1198 states that the employment of
21 an employee for longer hours than those fixed by the Industrial Welfare
22 Commission is unlawful.

23 86. At all times relevant hereto, Plaintiffs and the Class have worked more
24 than eight hours in a workday, as employees of Defendants.

25 87. At all times relevant hereto, Defendants failed to pay Plaintiffs and the
26 Class overtime compensation for the hours they have worked in excess of the
27 maximum hours permissible by law as required by California Labor Code § 510
28 and 1198. Plaintiffs and the Class are regularly required to work overtime hours.

1 88. By virtue of Defendants' unlawful failure to pay additional premium
2 rate compensation to the Plaintiffs and the Class for their overtime hours worked,
3 Plaintiffs and the Class have suffered, and will continue to suffer, damages in
4 amounts which are presently unknown to them but which exceed the jurisdictional
5 minimum of this Court and which will be ascertained according to proof at trial.

6 89. By failing to keep adequate time records required by Labor Code §
7 1174(d), Defendants have made it difficult to calculate the full extent of overtime
8 compensation due to Plaintiffs and the Class.

9 90. Plaintiffs and the Class also request recovery of overtime
10 compensation according to proof, interest, attorneys' fees and costs pursuant to
11 California Labor Code § 1194(a), as well as the assessment of any statutory
12 penalties against Defendants, in a sum as provided by the California Labor Code
13 and/or other statutes.

14 91. California Labor Code § 204 requires employers to provide employees
15 with all wages due and payable twice a month. The Wage Orders also provide that
16 every employer shall pay to each employee, on the established payday for the
17 period involved, overtime wages for all overtime hours worked in the payroll
18 period. Defendants failed to provide Plaintiffs and the Class with all compensation
19 due, in violation of California Labor Code § 204.

20 **SEVENTH CAUSE OF ACTION**

21 **(Against All Defendants for Failure to Provide Meal Periods)**

22 92. Plaintiffs incorporate by reference and re-allege as if fully stated
23 herein each foregoing paragraph in this Complaint.

24 93. Under California law, Defendants have an affirmative obligation to
25 relieve the Plaintiffs and the Class of all duty in order to take their first daily meal
26 periods no later than the start of Plaintiffs and the Class' sixth hour of work in a
27 workday, and to take their second meal periods no later than the start of the
28 eleventh hour of work in the workday. Section 512 of the California Labor Code,

1 and Section 11 of the applicable Wage Orders require that an employer provide
2 unpaid meal periods of at least 30 minutes for each five-hour period worked. It is a
3 violation of Section 226.7 of the California Labor Code for an employer to require
4 any employee to work during any meal period mandated under any Wage Order.

5 94. Despite these legal requirements, Defendants regularly failed to
6 provide Plaintiffs and the Class with both meal periods as required by California
7 law. By their failure to permit and authorize Plaintiffs and the Class to take all
8 meal periods as alleged above (or due to the fact that Defendants made it
9 impossible or impracticable to take these uninterrupted meal periods), Defendants
10 willfully violated the provisions of Section 226.7 of the California Labor Code and
11 the applicable Wage Orders.

12 95. Under California law, Plaintiffs and the Class are entitled to be paid
13 one hour of additional wages for each workday he or she was not provided with all
14 required meal period(s), plus interest thereon.

15 **EIGHTH CAUSE OF ACTION**

16 **(Against All Defendants for Failure to Authorize and Permit Rest Periods)**

17 96. Plaintiffs incorporate by reference and re-allege as if fully stated
18 herein each foregoing paragraph in this Complaint.

19 97. Defendants are required by California law to authorize and permit
20 breaks of 10 uninterrupted minutes for each four hours of work or major fraction of
21 four hours (i.e. more than two hours). Section 512 of the California Labor Code,
22 the applicable Wage Orders require that the employer permit and authorize all
23 employees to take paid rest periods of 10 minutes each for each 4-hour period
24 worked. Thus, for example, if an employee's work time is 6 hours and ten minutes,
25 the employee is entitled to two rest breaks. Each failure to authorize rest breaks as
26 so required is itself a violation of California's rest break laws. It is a violation of
27 Section 226.7 of the California Labor Code for an employer to require any
28 employee to work during any rest period mandated under any Wage Order.

1 98. Despite these legal requirements, Defendants failed to authorize
2 Plaintiffs and the Class to take rest breaks, regardless of whether employees
3 worked more than 4 hours in a workday. By their failure to permit and authorize
4 Plaintiffs and the Class to take rest periods as alleged above (or due to the fact that
5 Defendants made it impossible or impracticable to take these uninterrupted rest
6 periods), Defendants willfully violated the provisions of Section 226.7 of the
7 California Labor Code and the applicable Wage Orders.

8 99. Under California law, Plaintiffs and the Class are entitled to be paid
9 one hour of premium wages rate for each workday he or she was not provided with
10 all required rest break(s), plus interest thereon.

11 **NINTH CAUSE OF ACTION**

12 **(Against All Defendants for Failure to Indemnify Necessary Business**
13 **Expenses)**

14 100. Plaintiffs incorporate by reference and re-allege as if fully stated
15 herein each foregoing paragraph in this Complaint.

16 101. Defendants violated Labor Code sections 2800, 2802 and the IWC
17 Wage Orders, by failing to pay and indemnify the Plaintiffs and the Class for their
18 necessary expenditures and losses incurred in direct consequence of the discharge
19 of their duties or of their obedience to directions of Defendants.

20 102. As a result, Plaintiffs and the Class were damaged at least in the
21 amounts of the expenses they paid, or which were deducted by Defendants from
22 their wages.

23 103. Plaintiffs and the class they represent are entitled to attorney's fees,
24 expenses, and costs of suit pursuant to Labor Code section 2802(c) and interest
25 pursuant to Labor Code section 2802(b).

26 **TENTH CAUSE OF ACTION**

27 **(Against all Defendants for Failure to Pay Wages of Discharged Employees –**
28 **Waiting Time Penalties)**

1 104. Plaintiffs incorporate by reference and re-allege as if fully stated
2 herein each foregoing paragraph in this Complaint.

3 105. At all times herein set forth, California Labor Code §§ 201 and 202
4 provide that if an employer discharges an employee, the wages earned and unpaid
5 at the time of discharge are due and payable immediately, and that if an employee
6 voluntarily leaves his or her employment, his or her wages shall become due and
7 payable not later than seventy-two (72) hours thereafter, unless the employee has
8 given seventy-two (72) hours previous notice of his or her intention to quit, in
9 which case the employee is entitled to his or her wages at the time of quitting.

10 106. Within the applicable statute of limitations, the employment of
11 Plaintiffs and many other members of the Class ended, i.e. was terminated by
12 quitting or discharge, and the employment of others will be. However, during the
13 relevant time period, Defendants failed, and continue to fail to pay terminated Class
14 Members, without abatement, all wages required to be paid by California Labor
15 Code sections 201 and 202 either at the time of discharge, or within seventy-two
16 (72) hours of their leaving Defendants' employ.

17 107. Defendants' failure to pay Plaintiffs and those Class members who are
18 no longer employed by Defendants their wages earned and unpaid at the time of
19 discharge, or within seventy-two (72) hours of their leaving Defendants' employ, is
20 in violation of California Labor Code §§ 201 and 202.

21 108. California Labor Code § 203 provides that if an employer willfully
22 fails to pay wages owed, in accordance with sections 201 and 202, then the wages
23 of the employee shall continue as a penalty wage from the due date, and at the same
24 rate until paid or until an action is commenced; but the wages shall not continue for
25 more than thirty (30) days.

26 109. Plaintiffs and the Class are entitled to recover from Defendants their
27 additionally accruing wages for each day they were not paid, at their regular hourly
28 rate of pay, up to 30 days maximum pursuant to California Labor Code § 203.

110. Pursuant to California Labor Code §§ 218.5, 218.6 and 1194, Plaintiffs and the Class are also entitled to an award of reasonable attorneys' fees, interest, expenses, and costs incurred in this action.

ELEVENTH CAUSE OF ACTION

(Against all Defendants for Failure to Provide and Maintain Accurate and Compliant Wage Records)

111. Plaintiffs incorporate by reference and re-allege as if fully stated herein each foregoing paragraph in this Complaint.

112. At all material times set forth herein, California Labor Code § 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized wage statement in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (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.

113. Defendants have intentionally and willfully failed to provide employees with complete and accurate wage statements. The deficiencies include, among other things, the failure to correctly identify the gross wages earned by Plaintiffs and the Class, the failure to list the true "total hours worked by the employee," and the failure to list the true net wages earned.

114. As a result of Defendants' violation of California Labor Code § 226(a), Plaintiffs and the Class have suffered injury and damage to their statutorily-

protected rights.

115. Specifically, Plaintiffs and the members of the Class have been injured by Defendants' intentional violation of California Labor Code § 226(a) because they were denied both their legal right to receive, and their protected interest in receiving, accurate, itemized wage statements under California Labor Code § 226(a).

116. Calculation of the true wage entitlement for Plaintiffs and the Class is difficult and time consuming. As a result of this unlawful burden, Plaintiffs and the Class were also injured as a result of having to bring this action to attempt to obtain correct wage information following Defendants' refusal to comply with many of the mandates of California's Labor Code and related laws and regulations.

117. Plaintiffs and the Class are entitled to recover from Defendants their actual damages caused by Defendants' failure to comply with California Labor Code § 226(a).

118. Plaintiffs and the Class are also entitled to injunctive relief, as well as an award of attorney's fees and costs to ensure compliance with this section, pursuant to California Labor Code § 226(h).

TWELFTH CAUSE OF ACTION

(Against all Defendants for Violation of California Business & Professions Code §§ 17200, et seq.)

119. Plaintiffs incorporate by reference and re-allege as if fully stated herein each foregoing paragraph in this Complaint.

120. Defendants, and each of them, are "persons" as defined under California Business & Professions Code § 17201.

121. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, unlawful, and harmful to Plaintiffs, other Class members, and to the general public. Plaintiffs seek to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

122. Defendants' activities, as alleged herein, are violations of California law, and constitute unlawful business acts and practices in violation of California Business & Professions Code §§ 17200, *et seq.*

123. A violation of California Business & Professions Code §§ 17200, *et seq.* may be predicated on the violation of any state or federal law. All of the acts described herein as violations of, among other things, the California Labor Code, are unlawful and in violation of public policy; and in addition are immoral, unethical, oppressive, fraudulent and unscrupulous, and thereby constitute unfair, unlawful and/or fraudulent business practices in violation of California Business & Professions Code §§ 17200, *et seq.*

Failure to Pay Minimum Wages

124. Defendants' failure to pay minimum wages, and other benefits in violation of the California Labor Code constitutes unlawful and/or unfair activity prohibited by California Business & Professions Code §§ 17200, *et seq.*

Failure to Pay Overtime Wages

125. Defendants' failure to pay overtime compensation and other benefits in violation of the Fair Labor Standards Act, California Labor Code §§ 510, 1194, and 1198 constitutes unlawful and/or unfair activity prohibited by California Business & Professions Code §§ 17200, *et seq.*

Failure to Maintain Accurate Records of All Hours Worked

126. Defendants' failure to maintain accurate records of all hours worked in accordance with California Labor Code § 1174.5 and the IWC Wage Orders constitutes unlawful and/or unfair activity prohibited by California Business & Professions Code §§ 17200, *et seq.*

Failure to Provide Meal Periods

127. Defendants' failure to provide meal periods in accordance with California Labor Code §§ 226.7 and 512, and the IWC Wage Orders, as alleged above, constitutes unlawful and/or unfair activity prohibited by California Business

1 & Professions Code §§ 17200, *et seq.*

2 **Failure to Authorize and Permit Rest Periods**

3 128. Defendants' failure to authorize and permit rest periods in accordance
4 with California Labor Code § 226.7 and the IWC Wage Orders, as alleged above,
5 constitutes unlawful and/or unfair activity prohibited by Business and Professions
6 Code §§ 17200, *et seq.*

7 **Failure to Indemnify Necessary Business Expenses**

8 129. Defendants' failure to indemnify employees for necessary business
9 expenses in accordance with California Labor Code §§ 2800, 2802 and the IWC
10 Wage Orders, as alleged above, constitutes unlawful and/or unfair activity
11 prohibited by Business and Professions Code §§ 17200, *et seq.*

12 **Failure to Provide Accurate Itemized Wage Statements**

13 130. Defendants' failure to provide accurate itemized wage statements in
14 accordance with California Labor Code § 226, as alleged above, constitutes
15 unlawful and/or unfair activity prohibited by California Business & Professions
16 Code §§ 17200, *et seq.*

17 131. By and through their unfair, unlawful and/or fraudulent business
18 practices described herein, the Defendants, have obtained valuable property, money
19 and services from Plaintiffs, and all persons similarly situated, and have deprived
20 Plaintiffs, and all persons similarly situated, of valuable rights and benefits
21 guaranteed by law, all to their detriment.

22 132. Plaintiffs and the Class Members suffered monetary injury as a direct
23 result of Defendants' wrongful conduct.

24 133. Plaintiffs, individually, and on behalf of members of the putative
25 Class, are entitled to, and do, seek such relief as may be necessary to disgorge
26 money and/or property which the Defendants have wrongfully acquired, or of
27 which Plaintiffs and the Class have been deprived, by means of the above-
28 described unfair, unlawful and/or fraudulent business practices. Plaintiffs and the

1 Class are not obligated to establish individual knowledge of the wrongful practices
2 of Defendants in order to recover restitution.

3 134. Plaintiffs, individually, and on behalf of members of the putative class,
4 are further entitled to and do seek a declaration that the above described business
5 practices are unfair, unlawful and/or fraudulent, and injunctive relief restraining the
6 Defendants, and each of them, from engaging in any of the above-described unfair,
7 unlawful and/or fraudulent business practices in the future.

8 135. Plaintiffs, individually, and on behalf of members of the putative class,
9 have no plain, speedy, and/or adequate remedy at law to redress the injuries which
10 the Class Members suffered as a consequence of the Defendants' unfair, unlawful
11 and/or fraudulent business practices. As a result of the unfair, unlawful and/or
12 fraudulent business practices described above, Plaintiffs, individually, and on
13 behalf of members of the putative Class, has suffered and will continue to suffer
14 irreparable harm unless the Defendants, and each of them, are restrained from
15 continuing to engage in said unfair, unlawful and/or fraudulent business practices.

16 136. Plaintiffs also allege that if Defendants are not enjoined from the
17 conduct set forth herein above, they will continue to avoid paying the appropriate
18 taxes, insurance and other withholdings.

19 137. Pursuant to California Business & Professions Code §§ 17200, *et*
20 *seq.*, Plaintiffs and putative Class Members are entitled to restitution of the
21 wages withheld and retained by Defendants during a period that commences four
22 years prior to the filing of this complaint; a permanent injunction requiring
23 Defendants to pay all outstanding wages due to Plaintiffs and Class Members; an
24 award of attorneys' fees pursuant to California Code of Civil Procedure § 1021.5
25 and other applicable laws; and an award of costs.

26 **THIRTEENTH CAUSE OF ACTION**

27 **(Against All Defendants for Civil Penalties Under the**
28 **Private Attorneys General Act of 2004, Cal. Lab. Code §§ 2698, et seq.)**

1 138. Plaintiff Lopez incorporates by reference and re-alleges as if fully
2 stated herein the foregoing in this Complaint.

3 139. At all times herein mentioned, Defendants were subject to the Labor
4 Code of the State of California and the applicable Industrial Welfare Commission
5 Orders.

6 140. California Labor Code § 2699(a) specifically provides for a private
7 right of action to recover penalties for violations of the Labor Code:
8 “Notwithstanding any other provision of law, any provision of this code that
9 provides for a civil penalty to be assessed and collected by the Labor and
10 Workforce Development Agency or any of its departments, divisions, commissions,
11 boards, agencies, or employees, for a violation of this code, may, as an alternative,
12 be recovered through a civil action brought by an aggrieved employee on behalf of
13 himself or herself and other current or former employees pursuant to the procedures
14 specified in Section 2699.3.”

15 141. Plaintiff Lopez has exhausted his administrative remedies pursuant to
16 California Labor Code § 2699.3. On October 28, 2022, he gave written notice by
17 online filing to the Labor and Workforce Development Agency and by certified
18 mail to Defendants of the specific provisions of the Labor Code that Defendants
19 have violated against Plaintiffs and certain current and former aggrieved
20 employees, including the facts and theories to support the violations. Plaintiff
21 Lopez also paid the filing fee. Plaintiff Lopez’s PAGA case number is LWDA-
22 CM-916555-22.

23 142. More than 65 days have elapsed since Plaintiff Lopez provided notice,
24 but the Labor and Workforce Development Agency has not indicated that it intends
25 to investigate Defendants’ Labor Code violations discussed in the notice.
26 Accordingly, Plaintiff Lopez may commence a civil action to recover penalties
27 under Labor Code § 2699, pursuant to § 2699.3, for the violations of the Labor
28 Code described in this Complaint. These penalties include, but are not limited to,

1 penalties under California Labor Code §§ 201, 202, 203, 204, 210, 218, 221, 226,
2 226.7, 227.3, 233, 246, 246.5, 510, 512, 551, 552, 558, 1174, 1174.5, 1194, 1197,
3 1197.1, 1198, 2800, 2802 and 2699(f)(2).

4 143. In addition, Plaintiff Lopez seeks penalties for Defendants' violation
5 of California Labor Code § 1174(d). Pursuant to California Labor Code § 1174.5,
6 any person, including any entity, employing labor who willfully fails to maintain
7 accurate and complete records required by California Labor Code § 1174 is subject
8 to a penalty under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every
9 employer shall keep time records showing when the employee begins and ends
10 each work period. Meal periods, and total hours worked daily shall also be
11 recorded. Additionally, pursuant to the applicable IWC Order § 7(A)(5), every
12 employer shall keep total hours worked in the payroll period and applicable rates of
13 pay.

14 144. During the time period of employment for Plaintiffs and the Aggrieved
15 Employees, Defendants failed to maintain records pursuant to the Labor Code and
16 IWC Orders by failing to maintain accurate records showing meal periods.
17 Defendants' failure to provide and maintain records required by the Labor Code
18 IWC Wage Orders deprived Plaintiffs and the Aggrieved Employees the ability to
19 know, understand and question the accuracy and frequency of meal periods.
20 Therefore, Plaintiffs and the Aggrieved Employees had no way to dispute the
21 resulting failure to pay wages, all of which resulted in an unjustified economic
22 enrichment to Defendants. As a direct result, Plaintiffs and the Aggrieved
23 Employees have suffered and continue to suffer, substantial losses related to the use
24 and enjoyment of such wages, lost interest on such wages and expenses and
25 attorney's fees in seeking to compel Defendants to fully perform its obligation
26 under state law, all to their respective damage in amounts according to proof at
27 trial. Because of Defendants' knowing failure to comply with the Labor Code and
28 applicable IWC Wage Orders, Plaintiffs and the Aggrieved Employees have also

suffered an injury in that they were prevented from knowing, understanding, and disputing the wage payments paid to them.

145. Based on the conduct described in this Complaint, Plaintiffs are entitled to an award of civil penalties on behalf of themselves, the State of California, and similarly Aggrieved Employees of Defendants. The exact amount of the applicable penalties, in all, is in an amount to be shown according to proof at trial. These penalties are in addition to all other remedies permitted by law. In addition, Plaintiff Lopez seeks an award of reasonable attorney's fees and costs pursuant to California Labor Code § 2699(g)(1), which states, "Any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs."

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request the following relief against Defendants, and each of them as follows:

Class Certification

1. That this action be certified as a class action with respect to the Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, and Twelfth Causes of Action;
2. That Plaintiffs be appointed as the representative of the Class; and
3. That counsel for Plaintiffs be appointed as Class Counsel.

FIRST, SECOND, THIRD, AND FOURTH CAUSES OF ACTION

1. For general damages for pain and suffering according to proof;
2. For damages for past and future medical expenses according to proof;
3. For lost wages and other benefits according to proof;
4. For reasonable attorneys' fees in an amount according to proof;
5. For punitive damages in an amount according to proof;
6. For prejudgment interest as provided by law;

- 1 7. For civil penalties as provided by law;
2 8. For costs of suit; and
3 9. For such other and further relief as the Court may deem proper.

4 As to the Fifth Cause of Action

5 10. That the Court declare, adjudge and decree that Defendants violated
6 California Labor Code §§ 204 and 1194 and applicable IWC Wage Orders by
7 willfully failing to pay all minimum wages due;

8 11. For general unpaid wages as may be appropriate;

9 12. For pre-judgment interest on any unpaid compensation commencing
10 from the date such amounts were due;

11 13. For liquidated damages;

12 14. For reasonable attorneys' fees and for costs of suit incurred herein
13 pursuant to California Labor Code § 1194(a); and,

14 15. For such other and further relief as the Court may deem equitable and
15 appropriate.

16 As to the Sixth Cause of Action

17 16. That the Court declare, adjudge and decree that Defendants violated
18 California Labor Code §§ 510 and 1198 and applicable IWC Wage Orders by
19 willfully failing to pay all overtime wages due;

20 17. For general unpaid wages at overtime wage rates as may be
21 appropriate;

22 18. For pre-judgment interest on any unpaid overtime compensation
23 commencing from the date such amounts were due;

24 19. For reasonable attorneys' fees and for costs of suit incurred herein
25 pursuant to California Labor Code § 1194(a); and,

26 20. For such other and further relief as the Court may deem equitable and
27 appropriate.

28 As to the Seventh Cause of Action

1 21. That the Court declare, adjudge and decree that Defendants violated
2 California Labor Code §§ 226.7 and 512, and the IWC Wage Orders;

3 22. For unpaid meal period premium wages as may be appropriate;

4 23. For pre-judgment interest on any unpaid compensation commencing
5 from the date such amounts were due;

6 24. For reasonable attorneys' fees under California Code of Civil
7 Procedure § 1021.5, and for costs of suit incurred herein; and

8 25. For such other and further relief as the Court may deem equitable and
9 appropriate.

10 As to the Eighth Cause of Action

11 26. That the Court declare, adjudge and decree that Defendants violated
12 California Labor Code §§ 226.7 and 512, and the IWC Wage Orders;

13 27. For unpaid rest period premium wages as may be appropriate;

14 28. For pre-judgment interest on any unpaid compensation commencing
15 from the date such amounts were due;

16 29. For reasonable attorneys' fees under California Code of Civil
17 Procedure § 1021.5, and for costs of suit incurred herein; and

18 30. For such other and further relief as the Court may deem equitable and
19 appropriate.

20 As to the Ninth Cause of Action

21 31. That the Court declare, adjudge and decree that Defendants violated
22 Labor Code § 2802 and the IWC Wage Orders;

23 32. For general unpaid wages and reimbursement of business expenses as
24 may be appropriate;

25 33. For pre-judgment interest on any unpaid compensation commencing
26 from the date such amounts were due;

27 34. For reasonable attorneys' fees and for costs of suit incurred herein; and
28

1 35. For such other and further relief as the Court may deem equitable and
2 appropriate.

3 As to the Tenth Cause of Action

4 36. That the Court declare, adjudge and decree that Defendants violated
5 California Labor Code §§ 201, 202, and 203 by willfully failing to pay all
6 compensation owed at the time of termination of the employment;

7 37. For statutory wage penalties pursuant to California Labor Code § 203
8 for former employees who have left Defendants' employ;

9 38. For pre-judgment interest on any unpaid wages from the date such
10 amounts were due;

11 39. For reasonable attorneys' fees and for costs of suit incurred herein; and

12 40. For such other and further relief as the Court may deem equitable and
13 appropriate.

14 As to the Eleventh Cause of Action

15 41. That the Court declare, adjudge and decree that Defendants violated
16 the record keeping provisions of California Labor Code § 226(a) and applicable
17 IWC Wage Orders, and willfully failed to provide accurate itemized wage
18 statements thereto;

19 42. For penalties and actual damages pursuant to California Labor Code §
20 226(e);

21 43. For injunctive relief to ensure compliance with this section, pursuant to
22 California Labor Code § 226(h);

23 44. For reasonable attorneys' fees and for costs of suit incurred herein; and

24 45. For such other and further relief as the Court may deem equitable and
25 appropriate.

26 As to the Twelfth Cause of Action

27 46. That the Court declare, adjudge and decree that Defendants
28 violated California Business & Professions Code §§ 17200, *et seq.* by failing to pay

1 wages for all hours worked (including minimum and overtime wages), failing to
2 provide meal periods, failing to maintain accurate records of meal periods, failing
3 to authorize and permit rest periods, and failing to maintain accurate records of all
4 hours worked and meal periods, failing to furnish accurate wage statements, and
5 failing to indemnify necessary business expenses;

6 47. For restitution of unpaid wages to Plaintiffs and all Class
7 Members and prejudgment interest from the day such amounts were due and
8 payable;

9 48. For the appointment of a receiver to receive, manage and
10 distribute any and all funds disgorged from Defendants and determined to have
11 been wrongfully acquired by Defendants as a result of violations of California
12 Business & Professions Code §§ 17200 *et seq.*;

13 49. For reasonable attorneys' fees and costs of suit incurred herein
14 pursuant to California Code of Civil Procedure § 1021.5;

15 50. For injunctive relief to ensure compliance with this section,
16 pursuant to California Business & Professions Code §§ 17200, *et seq.*; and,

17 51. For such other and further relief as the Court may deem
18 equitable and appropriate.

19 As to the Thirteenth Cause of Action

20 52. That the Court declare, adjudge and decree that Defendants violated the
21 California Labor Code by failing to pay all wages owed, including overtime, failing
22 to provide meal periods, failing to maintain accurate records of meal periods,
23 failing to authorize and permit rest breaks, failing to indemnify necessary business
24 expenses, failing to pay final wages at termination, and failing to furnish accurate
25 itemized wage statements;

26 53. For all civil penalties pursuant to California Labor Code §§ 2699, *et*
27 *seq.*, and all other applicable Labor Code provisions;

54. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Labor Code § 2699; and,

55. For such other and further relief as the Court may deem equitable and appropriate.

As to all Causes of Action

55. For any additional relief that the Court deems just and proper.

Dated: September 22, 2023

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By: /s/ Justin F. Marquez

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Plaintiffs hereby demand trial of their claims by jury to the extent authorized by law.

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