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Attorneys for Plaintiffs

PEDRO NEGRETE PLASCENCIA,

ISAIAH MAGEE, NICOLE ANAYA,

individually and on behalf of other persons

similarly situated

[Additional Counsel listed on the following page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF CONTRA COSTA

PEDRO NEGRETE PLASCENCIA, an individual, ISAIAH MAGEE, an individual, NICOLE ANAYA, an individual, on behalf of themselves and other persons similarly situated,

Plaintiff,

vs.

THE COUNTER WALNUT CREEK LP, a California limited partnership; CI MANAGEMENT LLC, a California limited liability company; COUNTER INTELLIGENCE LLC, a California limited liability company; THE COUNTER CUPERTINO LP, a California limited partnership; THE COUNTER MOUNTAIN VIEW LP, a California limited partnership; THE COUNTER PALO ALTO LP, a California limited partnership; THE COUNTER SAN MATEO LP, a California limited partnership; THE COUNTER SANTANA ROW LP, a California limited partnership; PETER E. KATZ, an individual; and DOES 1 through 50, inclusive,

Defendants.

CASE NO.: MSC20-02432

[PROPOSED] SECOND AMENDED COMPLAINT

CLASS ACTION COMPLAINT:

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

REPRESENTATIVE ACTION

10. Penalties under the Labor Code Private Attorneys General Act, as representative action

DEMAND FOR JURY TRIAL

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1 Plaintiffs PEDRO NEGRETE PLASCENCIA, an individual, ISAIAH MAGEE, an
2 individual, NICOLE ANAYA, an individual (collectively "PLAINTIFFS") demanding a jury
3 trial, on behalf of themselves and other persons similarly situated, hereby alleges as follows:

4 **INTRODUCTION**

5 1. PLAINTIFFS bring this action on behalf of themselves and all other similarly-
6 situated current and former non-exempt employees of Defendants THE COUNTER WALNUT
7 CREEK LP ("THE COUNTER WALNUT CREEK"); CI MANAGEMENT LLC ("CI
8 MANAGEMENT"); COUNTER INTELLIGENCE LLC ("COUNTER INTELLIGENCE"); THE
9 COUNTER CUPERTINO LP ("THE COUNTER CUPERTINO"); THE COUNTER
10 MOUNTAIN VIEW LP ("THE COUNTER MOUNTAIN VIEW"); THE COUNTER PALO
11 ALTO LP ("THE COUNTER PALO ALTO"); THE COUNTER SAN MATEO LP ("THE
12 COUNTER SAN MATEO"); THE COUNTER SANTANA ROW LP ("THE COUNTER
13 SANTANA ROW"); PETER E. KATZ ("KATZ"); and DOES 1 through 50 inclusive
14 (collectively, "DEFENDANTS") in the State of California during the relevant statutory period to
15 recover penalties arising from DEFENDANTS' failure to provide employees meal and rest
16 periods (or compensation therefor) as required under California law, failure to provide minimum
17 and overtimes wages for all hours worked, failure to timely pay wages during employment,
18 failure to pay wages due upon separation, failure to maintain required records, failure to provide
19 accurate itemized wage statements, and failure to indemnify employees for necessary
20 expenditures and/or losses incurred the discharge of their duties. PLAINTIFFS also seek
21 penalties, interest, attorneys' fees, costs and expenses, and equitable, restitutionary and injunctive
22 relief.

23 **JURISDICTION AND VENUE**

24 2. The Superior Court of the State of California has jurisdiction in this matter because
25 PLAINTIFFS are citizens and residents of the State of California and DEFENDANTS are citizens
26 and residents of, and/or regularly conduct business in California. Further, no federal question is at
27 issue because the claims are based solely on California law.

28 3. Venue is proper in this judicial district and the County of Contra Costa, California

1 because DEFENDANTS maintain offices and facilities and transact business in the County of
2 Contra Costa, and DEFENDANTS' illegal policies and practices which are the subject of this
3 action were applied, at least in part, to PLAINTIFFS and other persons similarly situated in the
4 County of Contra Costa.

5 **PLAINTIFFS**

6 4. PLAINTIFF PEDRO NEGRETE PLASCENCIA is a citizen and resident of the
7 State of California. At all times material to this complaint, PLAINTIFF was employed by
8 DEFENDANTS at THE COUNTER WALNUT CREEK in the State of California as a non-
9 exempt employee.

10 5. PLAINTIFF ISAAH MAGEE is a citizen and resident of the State of California.
11 At all times material to this complaint, PLAINTIFF was employed by DEFENDANTS at THE
12 COUNTER PALO ALTO or THE COUNTER MOUNTAIN VIEW in the State of California as a
13 non-exempt employee. His last date of employment was November 12, 2018.

14 6. PLAINTIFF NICOLE ANAYA is a citizen and resident of the State of California.
15 At all times material to this complaint, PLAINTIFF was employed by DEFENDANTS at THE
16 COUNTER SANTANA ROW in the State of California as a non-exempt employee. Her last date
17 of employment was March 13, 2020.

18 7. PLAINTIFFS bring this action on behalf of themselves and the following similarly
19 situated class of individuals ("CLASS MEMBERS"): all current and former non-exempt
20 employees of DEFENDANTS in the State of California at any time within the period beginning
21 four (4) years prior to the filing of this action and ending at the time this action settles or proceeds
22 to final judgment (the "CLASS PERIOD"). PLAINTIFFS reserve the right to name additional
23 class representatives.

24 **DEFENDANTS**

25 8. PLAINTIFFS are informed and believe, and thereon allege, that DEFENDANT
26 THE COUNTER WALNUT CREEK is, and at all times relevant hereto was, a California limited
27 partnership. PLAINTIFFS are further informed and believe, and thereon allege, that THE
28 COUNTER WALNUT CREEK is authorized to and does conduct business in the State of

1 California. Specifically, THE COUNTER WALNUT CREEK maintains offices and facilities and
2 conducts business in, and engages in illegal payroll practices or policies in the County of Contra
3 Costa, State of California.

4 9. PLAINTIFFS are informed and believe, and thereon allege, that DEFENDANT CI
5 MANAGEMENT is, and at all times relevant hereto was, a California limited liability company.
6 PLAINTIFFS are further informed and believe, and thereon allege, that CI MANAGEMENT is
7 authorized to and does conduct business in the State of California.

8 10. PLAINTIFFS are informed and believe, and thereon allege, that DEFENDANT
9 COUNTER INTELLIGENCE is, and at all times relevant hereto was, a California limited liability
10 company. PLAINTIFFS are further informed and believe, and thereon allege, that COUNTER
11 INTELLIGENCE is authorized to and does conduct business in the State of California.

12 11. PLAINTIFFS are informed and believe, and thereon allege, that DEFENDANT
13 THE COUNTER CUPERTINO is, and at all times relevant hereto was, a California limited
14 partnership. PLAINTIFFS are further informed and believe, and thereon allege, that THE
15 COUNTER CUPERTINO is authorized to and does conduct business in the State of California.

16 12. PLAINTIFFS are informed and believe, and thereon allege, that DEFENDANT
17 THE COUNTER MOUNTAIN VIEW is, and at all times relevant hereto was, a California limited
18 partnership. PLAINTIFFS are further informed and believe, and thereon allege, that THE
19 COUNTER MOUNTAIN VIEW is authorized to and does conduct business in the State of
20 California.

21 13. PLAINTIFFS are informed and believe, and thereon allege, that DEFENDANT
22 THE COUNTER PALO ALTO is, and at all times relevant hereto was, a California limited
23 partnership. PLAINTIFFS are further informed and believe, and thereon allege, that THE
24 COUNTER PALO ALTO is authorized to and does conduct business in the State of California.

25 14. PLAINTIFFS are informed and believe, and thereon allege, that DEFENDANT
26 THE COUNTER SAN MATEO is, and at all times relevant hereto was, a California limited
27 partnership. PLAINTIFFS are further informed and believe, and thereon allege, that THE
28 COUNTER SAN MATEO is authorized to and does conduct business in the State of California.

1 15. PLAINTIFFS are informed and believe, and thereon allege, that DEFENDANT
2 THE COUNTER SANTANA ROW is, and at all times relevant hereto was, a California limited
3 partnership. PLAINTIFFS are further informed and believe, and thereon allege, that THE
4 COUNTER SANTANA ROW is authorized to and does conduct business in the State of
5 California.

6 16. PLAINTIFFS are informed and believe, and thereon allege, that DEFENDANT
7 KATZ is, and at all times relevant hereto was, a male resident of the State of California. At all
8 times material to this complaint, DEFENDANT KATZ was the Manager of DEFENDANTS THE
9 COUNTER WALNUT CREEK, CI MANAGEMENT, COUNTER INTELLIGENCE, THE
10 COUNTER CUPERTINO, THE COUNTER MOUNTAIN VIEW, THE COUNTER PALO
11 ALTO, THE COUNTER SAN MATEO, and THE COUNTER SANTANA ROW, and a joint
12 employer of PLAINTIFFS and CLASS MEMBERS. On information and belief, DEFENDANT
13 KATZ directly or indirectly employed or exercised control over the wages, hours, and working
14 conditions of PLAINTIFFS and CLASS MEMBERS, and DEFENDANT KATZ caused the
15 wage-and-hour violations alleged herein, including but not limited to violations of the California
16 Labor Code, the California Business and Professions Code, and the applicable Industrial Welfare
17 Commission (“IWC”) wage order.

18 17. Upon information and belief, DEFENDANTS THE COUNTER WALNUT
19 CREEK, CI MANAGEMENT, COUNTER INTELLIGENCE, THE COUNTER CUPERTINO,
20 THE COUNTER MOUNTAIN VIEW, THE COUNTER PALO ALTO, THE COUNTER SAN
21 MATEO, and THE COUNTER SANTANA ROW are, and at all times material to this complaint,
22 were the alter ego of DEFENDANT KATZ.

23 18. The true names and capacities of DOES 1 through 50, inclusive, are unknown to
24 PLAINTIFFS at this time, and PLAINTIFFS therefore sues such DOE Defendants under
25 fictitious names. PLAINTIFFS are informed and believe, and thereon allege, that each Defendant
26 designated as a DOE is in some manner highly responsible for the occurrences alleged herein, and
27 that PLAINTIFFS and other CLASS MEMBERS’ injuries and damages, as alleged herein, were
28 proximately caused by the conduct of such DOE Defendants. PLAINTIFFS will seek leave of the

1 court to amend this Complaint to allege their true names and capacities of such DOE Defendants
2 when ascertained.

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

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

21 21. PLAINTIFFS are informed and believe, and thereon allege, that each and every
22 one of the acts and omissions alleged herein were performed by, and/or attributable to, all
23 DEFENDANTS, each acting as agents and/or employees, and/or under the direction and control
24 of, each of the other DEFENDANTS, and that said acts and failures to act were within the course
25 and scope of said agency, employment and/or direction and control.

26 22. Pursuant to California Labor Code § 558.1, DEFENDANTS and any person acting
27 on behalf of any of the DEFENDANTS, are liable for violating, or causing to violate, any
28 provision regulating minimum wages or hours and days of work in any order of the Industrial

1 Welfare Commission, or Labor Code §§ 203, 226, 226.7, 1193.6, 1994, or 2802.

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

6 **CLASS ACTION ALLEGATIONS**

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

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

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

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

18 d. PLAINTIFFS will fairly and adequately protect the interest of all CLASS
19 MEMBERS because it is in their best interests to prosecute the claims alleged herein to obtain
20 full compensation due to them for all services rendered and hours worked.

21 e. A class action is superior to other available methods for fairly and
22 efficiently adjudicating the controversy.

23 **FIRST CAUSE OF ACTION**

24 **Failure to Provide Required Meal Periods**

25 **[Cal. Labor Code §§ 226.7, 510, 512, 1194, 1197; IWC Wage Order No. 5-2001, § 11]**
26 **(By PLAINTIFF PLASCENCIA Against all DEFENDANTS, and PLAINTIFFS MAGEE**
27 **and ANAYA Against CI MANAGEMENT LLC, COUNTER INTELLIGENCE LLC, and**
28 **their respective locations of THE COUNTER)**

1 25. PLAINTIFFS incorporate herein by specific reference, as though fully set forth,
2 the factual allegations in the foregoing paragraphs.

3 26. PLAINTIFF PLASCENCIA make the allegations contained in this cause of action
4 against all DEFENDANTS.

5 27. PLAINTIFF MAGEE makes the allegations contained in this cause of action
6 against DEFENDANTS CI MANAGEMENT LLC, COUNTER INTELLIGENCE LLC, and
7 THE COUNTER PALO ALTO or THE COUNTER MOUNTAIN VIEW.

8 28. PLAINTIFF ANAYA makes the allegations contained in this cause of action
9 against DEFENDANTS CI MANAGEMENT LLC, COUNTER INTELLIGENCE LLC, and
10 THE COUNTER SANTANA ROW.

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

17 30. DEFENDANTS further violated Labor Code §§ 226.7 and 512 and IWC Wage
18 Order No. 5-2001, §11 by failing to compensate PLAINTIFFS and CLASS MEMBERS who
19 were not provided with a meal period, in accordance with the applicable IWC Wage Order, one
20 additional hour of compensation at each employee's regular rate of pay for each workday that a
21 meal period was not provided.

22 31. DEFENDANTS further violated California Labor Code §§ 226.7, 510, 1194,
23 1197, and IWC Wage Order No. 5-2001 by failing to compensate PLAINTIFFS and CLASS
24 MEMBERS for all hours worked during their meal periods.

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

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1 **THIRD CAUSE OF ACTION**

2 **Failure to Pay Overtime Wages**

3 **[Cal. Labor Code §§ 510, 1194, 1198; IWC Wage Order No. 5-2001, § 3]**

4 **(By PLAINTIFF PLASCENCIA Against all DEFENDANTS, and PLAINTIFFS MAGEE**
5 **and ANAYA Against CI MANAGEMENT LLC, COUNTER INTELLIGENCE LLC, and**
6 **their respective locations of THE COUNTER)**

7 39. PLAINTIFFS incorporate herein by specific reference, as though fully set forth,
8 the factual allegations in the foregoing paragraphs.

9 40. PLAINTIFF PLASCENCIA make the allegations contained in this cause of action
10 against all DEFENDANTS.

11 41. PLAINTIFF MAGEE makes the allegations contained in this cause of action
12 against DEFENDANTS CI MANAGEMENT LLC, COUNTER INTELLIGENCE LLC, and
13 THE COUNTER PALO ALTO or THE COUNTER MOUNTAIN VIEW.

14 42. PLAINTIFF ANAYA makes the allegations contained in this cause of action
15 against DEFENDANTS CI MANAGEMENT LLC, COUNTER INTELLIGENCE LLC, and
16 THE COUNTER SANTANA ROW.

17 43. Pursuant to Labor Code §§ 510 and 1194 and IWC Wage Order No. 5-2001, § 3,
18 DEFENDANTS are required to compensate PLAINTIFFS and CLASS MEMBERS for all
19 overtime, which is calculated at one and one-half (1 ½) times the regular rate of pay for all hours
20 worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the first
21 eight (8) hours on the seventh consecutive workday, with double time for all hours worked in
22 excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours
23 on the seventh consecutive day of work in any workweek.

24 44. PLAINTIFFS and CLASS MEMBERS are current and former non-exempt
25 employees entitled to the protections of California Labor Code §§ 510 and 1194 and IWC Wage
26 Order No. 5-2001. During the CLASS PERIOD, DEFENDANTS failed to compensate
27 PLAINTIFFS and CLASS MEMBERS for all overtime hours worked as required under the
28 foregoing provisions of the Labor Code and IWC Wage Order by, among other things: failing to

1 pay overtime at one and one-half (1 ½) or double the regular rate of pay as provided by Labor
2 Code §§ 510, 1194, and IWC Wage Order No. 5-2001, § 3; requiring, suffering or permitting
3 PLAINTIFFS and CLASS MEMBERS to work off the clock; requiring, permitting or suffering
4 PLAINTIFFS and CLASS MEMBERS to work through meal breaks; illegally and inaccurately
5 recording time in which PLAINTIFFS and CLASS MEMBERS worked; failing to properly
6 maintain PLAINTIFFS' and CLASS MEMBERS' records; failing to provide accurate itemized
7 wage statements to PLAINTIFFS for each pay period; and other methods to be discovered.

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

16 46. DEFENDANTS' conduct described herein violates California Labor Code §§ 510,
17 1194, 1198 and IWC Wage Order No. 5-2001, § 3. Therefore, pursuant to California Labor Code
18 §§ 200, 226, 558, 1194, 1197.1, and other applicable provisions under the California Labor Code
19 and IWC Wage Orders, PLAINTIFFS and CLASS MEMBERS are entitled to recover the unpaid
20 balance of wages owed to them by DEFENDANTS, plus interest, penalties, attorneys' fees,
21 expenses, and costs of suit.

22 **FOURTH CAUSE OF ACTION**

23 **Failure to Pay Minimum Wages**

24 **[Cal Labor Code §§ 1194, 1197; IWC Wage Order No. 5-2001, § 4]**

25 **(By PLAINTIFF PLASCENCIA Against all DEFENDANTS, and PLAINTIFFS MAGEE**
26 **and ANAYA Against CI MANAGEMENT LLC, COUNTER INTELLIGENCE LLC, and**
27 **their respective locations of THE COUNTER)**

28 47. PLAINTIFFS incorporate herein by specific reference, as though fully set forth,

1 the factual allegations in the foregoing paragraphs.

2 48. PLAINTIFF PLASCENCIA make the allegations contained in this cause of action
3 against all DEFENDANTS.

4 49. PLAINTIFF MAGEE makes the allegations contained in this cause of action
5 against DEFENDANTS CI MANAGEMENT LLC, COUNTER INTELLIGENCE LLC, and
6 THE COUNTER PALO ALTO or THE COUNTER MOUNTAIN VIEW.

7 50. PLAINTIFF ANAYA makes the allegations contained in this cause of action
8 against DEFENDANTS CI MANAGEMENT LLC, COUNTER INTELLIGENCE LLC, and
9 THE COUNTER SANTANA ROW.

10 51. Pursuant to California Labor Code §§ 1194 and 1197 and IWC Wage Order No. 5-
11 2001, § 4, payment to an employee of less than the applicable minimum wage for all hours
12 worked in a payroll period is unlawful.

13 52. During the CLASS PERIOD and in violation of California Labor Code §§ 1194
14 and 1197 and IWC Wage Order No. 5-2001, § 4, DEFENDANTS failed to pay PLAINTIFFS and
15 CLASS MEMBERS the applicable minimum wages for all hours worked in a payroll period by,
16 among other things: requiring, suffering or permitting PLAINTIFFS and CLASS MEMBERS to
17 work off the clock; requiring, suffering or permitting PLAINTIFFS and CLASS MEMBERS to
18 work through meal and rest breaks; illegally and inaccurately recording time in which
19 PLAINTIFFS and CLASS MEMBERS worked; failing to properly maintain PLAINTIFFS' and
20 CLASS MEMBERS' records; failing to provide accurate itemized wage statements to
21 PLAINTIFFS and CLASS MEMBERS for each pay period; and other methods to be discovered.

22 53. DEFENDANTS' conduct described herein violates California Labor Code §§
23 1194, 1197, and IWC Wage Order No. 5-2001, § 4. As a proximate result of the aforementioned
24 violations, PLAINTIFFS and CLASS MEMBERS have been damaged in an amount according to
25 proof at trial. Therefore, pursuant to California Labor Code §§ 200, 226, 558, 1194, 1197.1, and
26 other applicable provisions under the Labor Code and IWC Wage Orders, PLAINTIFFS and
27 CLASS MEMBERS are entitled to recover the unpaid balance of wages owed to them by
28 DEFENDANTS, plus interest, penalties, attorneys' fees, expenses, and costs of suit.

1 **FIFTH CAUSE OF ACTION**

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

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

4 **(By PLAINTIFF PLASCENCIA Against all DEFENDANTS, and PLAINTIFFS MAGEE**
5 **and ANAYA Against CI MANAGEMENT LLC, COUNTER INTELLIGENCE LLC, and**
6 **their respective locations of THE COUNTER)**

7 54. PLAINTIFFS incorporate herein by specific reference, as though fully set forth,
8 the factual allegations in the foregoing paragraphs.

9 55. PLAINTIFF PLASCENCIA make the allegations contained in this cause of action
10 against all DEFENDANTS.

11 56. PLAINTIFF MAGEE makes the allegations contained in this cause of action
12 against DEFENDANTS CI MANAGEMENT LLC, COUNTER INTELLIGENCE LLC, and
13 THE COUNTER PALO ALTO or THE COUNTER MOUNTAIN VIEW.

14 57. PLAINTIFF ANAYA makes the allegations contained in this cause of action
15 against DEFENDANTS CI MANAGEMENT LLC, COUNTER INTELLIGENCE LLC, and
16 THE COUNTER SANTANA ROW.

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

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

25 60. California Labor Code § 203 provides that if an employer willfully fails to pay, in
26 accordance with California Labor Code §§ 201 and 202, any wages of an employee who is
27 discharged or who quits, the employer is liable for waiting time penalties in the form of continued
28 compensation to the employee at the same rate for up to 30 workdays.

1 61. During the CLASS PERIOD, DEFENDANTS have willfully failed to pay accrued
2 wages and other compensation to PLAINTIFFS and CLASS MEMBERS in accordance with
3 California Labor Code §§ 201 and 202.

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

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

12 **SIXTH CAUSE OF ACTION**

13 **Failure to Maintain Required Records**

14 **[Cal. Labor Code §§ 226(a), 1174(d); IWC Wage Order No. 5-2001, § 7]**

15 **(By PLAINTIFF PLASCENCIA Against all DEFENDANTS, and PLAINTIFFS MAGEE**
16 **and ANAYA Against CI MANAGEMENT LLC, COUNTER INTELLIGENCE LLC, and**
17 **their respective locations of THE COUNTER)**

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

20 65. PLAINTIFF PLASCENCIA make the allegations contained in this cause of action
21 against all DEFENDANTS.

22 66. PLAINTIFF MAGEE makes the allegations contained in this cause of action
23 against DEFENDANTS CI MANAGEMENT LLC, COUNTER INTELLIGENCE LLC, and
24 THE COUNTER PALO ALTO or THE COUNTER MOUNTAIN VIEW.

25 67. PLAINTIFF ANAYA makes the allegations contained in this cause of action
26 against DEFENDANTS CI MANAGEMENT LLC, COUNTER INTELLIGENCE LLC, and
27 THE COUNTER SANTANA ROW.

28 68. During the CLASS PERIOD, as part of DEFENDANTS' illegal payroll policies

1 and practices to deprive PLAINTIFFS and CLASS MEMBERS of all wages earned and due,
2 DEFENDANTS knowingly and intentionally failed to maintain records as required under Labor
3 Code §§ 226(a) and 1174(d) and IWC Wage Order No. 5-2001, § 7, including but not limited to
4 the following records: total daily hours worked by each employee; applicable rates of pay; all
5 deductions; meal periods; time records showing when each employee begins and ends each work
6 period; and accurate itemized statements.

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

14 **SEVENTH CAUSE OF ACTION**

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

16 **[Cal. Labor Code § 226(a), 1174; IWC Wage Order No. 5-2001, § 7]**

17 **(By PLAINTIFF PLASCENCIA Against all DEFENDANTS, and PLAINTIFFS MAGEE**
18 **and ANAYA Against CI MANAGEMENT LLC, COUNTER INTELLIGENCE LLC, and**
19 **their respective locations of THE COUNTER)**

20 70. PLAINTIFFS incorporate herein by specific reference, as though fully set forth,
21 the factual allegations in the foregoing paragraphs.

22 71. PLAINTIFF PLASCENCIA make the allegations contained in this cause of action
23 against all DEFENDANTS.

24 72. PLAINTIFF MAGEE makes the allegations contained in this cause of action
25 against DEFENDANTS CI MANAGEMENT LLC, COUNTER INTELLIGENCE LLC, and
26 THE COUNTER PALO ALTO or THE COUNTER MOUNTAIN VIEW.

27 73. PLAINTIFF ANAYA makes the allegations contained in this cause of action
28 against DEFENDANTS CI MANAGEMENT LLC, COUNTER INTELLIGENCE LLC, and

1 THE COUNTER SANTANA ROW.

2 74. During the CLASS PERIOD, DEFENDANTS routinely failed and continue to fail
3 to provide PLAINTIFFS and CLASS MEMBERS with timely and accurate itemized wage
4 statements in writing showing each employee's gross wages earned, total hours worked, the
5 number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-
6 rate basis, all deductions made, net wages earned, the inclusive dates of the period for which the
7 employee is paid, the name of the employee and only the last four digits of his or her social
8 security number or employee identification number, the name and address of the legal entity or
9 entities employing PLAINTIFFS and CLASS MEMBERS, and all applicable hourly rates in
10 effect during each pay period and the corresponding number of hours worked at each hourly rate,
11 in violation of California Labor Code § 226(a) and IWC Wage Order No. 5-2001, § 7.

12 75. During the CLASS PERIOD, DEFENDANTS knowingly and intentionally failed
13 to provide PLAINTIFFS and CLASS MEMBERS with timely and accurate itemized wage
14 statements in accordance with Labor Code § 226(a).

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

22 **EIGHTH CAUSE OF ACTION**

23 **Failure to Indemnify Employees for Necessary Expenditures**

24 **Incurred in Discharge of Duties**

25 **[Cal. Labor Code § 2802]**

26 **(By PLAINTIFF PLASCENCIA Against all DEFENDANTS, and PLAINTIFFS MAGEE**
27 **and ANAYA Against CI MANAGEMENT LLC, COUNTER INTELLIGENCE LLC, and**
28 **their respective locations of THE COUNTER)**

1
2 77. PLAINTIFFS incorporate herein by specific reference, as though fully set forth,
3 the factual allegations in the foregoing paragraphs.

4 78. PLAINTIFF PLASCENCIA make the allegations contained in this cause of action
5 against all DEFENDANTS.

6 79. PLAINTIFF MAGEE makes the allegations contained in this cause of action
7 against DEFENDANTS CI MANAGEMENT LLC, COUNTER INTELLIGENCE LLC, and
8 THE COUNTER PALO ALTO or THE COUNTER MOUNTAIN VIEW.

9 80. PLAINTIFF ANAYA makes the allegations contained in this cause of action
10 against DEFENDANTS CI MANAGEMENT LLC, COUNTER INTELLIGENCE LLC, and
11 THE COUNTER SANTANA ROW.

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

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

20 83. As a proximate result of DEFENDANTS' unlawful actions and omissions,
21 PLAINTIFFS and CLASS MEMBERS have been damaged in an amount according to proof at
22 trial, and seek reimbursement of all necessary expenditures, plus interest thereon pursuant to
23 California Labor Code § 2802(b). Additionally, PLAINTIFFS and CLASS MEMBERS are
24 entitled to all available statutory penalties and an award of costs, expenses, and reasonable
25 attorneys' fees, including those provided in California Labor Code § 2802(c), as well as other
26 available remedies.

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1 **NINTH CAUSE OF ACTION**

2 **Unfair and Unlawful Business Practices**

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

4 **(By PLAINTIFF PLASCENCIA Against all DEFENDANTS, and PLAINTIFFS MAGEE**
5 **and ANAYA Against CI MANAGEMENT LLC, COUNTER INTELLIGENCE LLC, and**
6 **their respective locations of THE COUNTER)**

7 84. PLAINTIFFS incorporate herein by specific reference, as though fully set forth,
8 the factual allegations in the foregoing paragraphs.

9 85. PLAINTIFF PLASCENCIA make the allegations contained in this cause of action
10 against all DEFENDANTS.

11 86. PLAINTIFF MAGEE makes the allegations contained in this cause of action
12 against DEFENDANTS CI MANAGEMENT LLC, COUNTER INTELLIGENCE LLC, and
13 THE COUNTER PALO ALTO or THE COUNTER MOUNTAIN VIEW.

14 87. PLAINTIFF ANAYA makes the allegations contained in this cause of action
15 against DEFENDANTS CI MANAGEMENT LLC, COUNTER INTELLIGENCE LLC, and
16 THE COUNTER SANTANA ROW.

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

28 89. DEFENDANTS' violations of California wage and hour laws constitute a business

1 practice because DEFENDANTS' aforementioned acts and omissions were done repeatedly over
2 a significant period of time, and in a systematic manner, to the detriment of PLAINTIFFS and
3 CLASS MEMBERS.

4 90. DEFENDANTS have avoided payment of wages, overtime wages, meal periods,
5 rest periods, and other benefits as required by the California Labor Code, the California Code of
6 Regulations, and the applicable IWC Wage Order. Further, DEFENDANTS have failed to
7 record, report, and pay the correct sums of assessment to the state authorities under the California
8 Labor Code and other applicable regulations.

9 91. As a result of DEFENDANTS' unfair and unlawful business practices,
10 DEFENDANTS have reaped unfair and illegal profits during the CLASS PERIOD at the expense
11 of PLAINTIFFS, CLASS MEMBERS, and members of the public. DEFENDANTS should be
12 made to disgorge their ill-gotten gains and to restore them to PLAINTIFFS and CLASS
13 MEMBERS.

14 92. DEFENDANTS' unfair and unlawful business practices entitle PLAINTIFFS and
15 CLASS MEMBERS to seek preliminary and permanent injunctive relief, including but not
16 limited to orders that DEFENDANTS account for, disgorge, and restore to PLAINTIFFS and
17 CLASS MEMBERS the wages and other compensation unlawfully withheld from them.
18 PLAINTIFFS and CLASS MEMBERS are entitled to restitution of all monies to be disgorged
19 from DEFENDANTS in an amount according to proof at the time of trial, but in excess of the
20 jurisdiction of this Court.

21 **REPRESENTATIVE ACTION**

22 **TENTH CAUSE OF ACTION**

23 **Representative Action for Civil Penalties**

24 **[Cal. Labor Code §§ 2698- 2699.5]**

25 **(PLAINTIFF PLASCENCIA only Against All DEFENDANTS)**

26 93. PLAINTIFF incorporates the foregoing allegations by reference as though fully set
27 forth herein, with exception to the allegations concerning class action designation in Paragraph 23
28 (a-e).

94. Under the California Private Attorneys General Act of 2004 ("PAGA"), Labor
Code §§ 2698-2699.5, private parties may recover civil penalties for violations of the Labor

1 Code. These penalties are in addition to any other relief available under the Labor Code. As set
2 forth above, DEFENDANTS have committed numerous violations of the Labor Code against
3 PLAINTIFF PLASCENCIA and other current and former non-exempt employees, including but
4 not limited to:

- 5 a. Failing to properly compensate PLAINTIFFS and other current and former
6 non-exempt employees for missed meal periods in violation of Labor Code §§
7 226.7, 510, 512, 1194, 1197 and IWC Wage Order No. 5-2001;
- 8 b. Failing to properly compensate PLAINTIFF and other current and former non-
9 exempt employees for all overtime hours worked in violation of Labor Code
10 §§ 226, 510, 1194, 1197, and IWC Wage Order No. 5-2001;
- 11 c. Failing to compensate PLAINTIFF and other current and former non-exempt
12 employees at a wage rate at least equal to the California minimum wage for
13 each hour worked in violation of Labor Code §§ 226, 510, 1182.12, 1194,
14 1197, and 1174.5;
- 15 d. Failing to maintain records as required for PLAINTIFF and other current and
16 former non-exempt employees in violation of Labor Code §§ 226, 1174,
17 1174.5;
- 18 e. Failing to provide PLAINTIFF and other current and former non-exempt
19 employees with accurate itemized wage statements in violation of Labor Code
20 § 226; and
- 21 f. Failing to properly compensate PLAINTIFF and other current and former non-
22 exempt employees for all wages due in violation of Labor Code §§ 201, 202
23 and 203.

24 95. PLAINTIFF PLASCENCIA seeks to recover civil penalties, including but not
25 limited to penalties under California Labor Code §§ 2699, 210, 225.5, 226.3, 558, 1174.5, 1197.1,
26 1199, and IWC Wage Order No. 5-2001, § 20, from DEFENDANT in a representative action for
27 the violations set forth above, including but not limited to violations of California Labor Code §§
28 201, 202, 203, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802. PLAINTIFF

1 PLASCENCIA is also entitled to an award of reasonable attorneys' fees and costs pursuant to
2 California Labor Code § 2699(g)(1).

3 96. PLAINTIFF PLASCENCIA is an "aggrieved employee" within the meaning of
4 California Labor Code § 2699(c), and a proper representative to bring a civil action on behalf of
5 herself and other current and former employees of DEFENDANTS pursuant to the procedures
6 specified in California Labor Code § 2699.3, because PLAINTIFF was employed by
7 DEFENDANTS and the alleged violations of the California Labor Code were committed against
8 PLAINTIFF PLASCENCIA .

9 97. Pursuant to PAGA, PLAINTIFF PLASCENCIA seeks to recover civil penalties,
10 including but not limited to penalties under Labor Code §§ 2699, 210, 225.5, 226.3, 558, 1174.5,
11 1197.1, 1199, and IWC Wage Order No. 5-2001 § 20 from DEFENDANTS in a representative
12 action for the violations set forth above, including but not limited to violations of Labor Code §§
13 201, 202, 203, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198 and 2802. PLAINTIFF
14 PLASCENCIA is also entitled to an award of reasonable attorneys' fees and costs pursuant to
15 Labor Code § 2699(g)(1).

16 98. Pursuant to California Labor Code § 2699.3, PLAINTIFF PLASCENCIA gave
17 written notice by certified mail to the California Labor and Workforce Development Agency
18 ("LWDA") and DEFENDANTS of the specific provisions of the California Labor Code and IWC
19 Wage Orders alleged to have been violated, including the facts and theories to support the alleged
20 violations. The LWDA provided notice to PLAINTIFF PLASCENCIA that it did not intend to
21 investigate his claims.

22 99. Accordingly, PLAINTIFF PLASCENCIA has complied with all of the
23 requirements set forth in California Labor Code § 2699.3 to commence a representative action
24 under PAGA.

25 **PRAYER FOR RELIEF**

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

1. For compensatory damages in an amount to be ascertained at trial;
2. For restitution of all monies due to PLAINTIFFS and CLASS MEMBERS, as well as disgorged profits from DEFENDANTS' unfair and unlawful business practices;
3. For meal and rest period compensation pursuant to California Labor Code § 226.7 and IWC Wage Order No. 5-2001;
4. For liquidated damages pursuant to California Labor Code §§ 1194.2 and 1197.1;
5. For preliminary and permanent injunctive relief enjoining DEFENDANTS from violating the relevant provisions of the California Labor Code and the IWC Wage Orders, and from engaging in the unlawful business practices complained of herein;
6. For waiting time penalties pursuant to California Labor Code § 203;
7. For statutory and civil penalties according to proof, including but not limited to all penalties authorized by the California Labor Code §§ 226(e) and §§ 2698–2699.5;
8. For interest on the unpaid wages at 10% per annum pursuant to California Labor Code §§ 218.6, 1194, 2802, California Civil Code §§ 3287, 3288, and/or any other applicable provision providing for pre-judgment interest;
9. For reasonable attorneys' fees and costs pursuant to California Labor Code §§ 1194, 2699, 2802, California Civil Code § 1021.5, and any other applicable provisions providing for attorneys' fees and costs;
10. For declaratory relief;
11. For an order requiring and certifying the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, and Ninth Causes of Action as a class action;
12. For an order appointing PLAINTIFFS as class representatives, and PLAINTIFFS' counsel as class counsel; and
13. For such further relief that the Court may deem just and proper.

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1 DATED: July 13, 2023

Respectfully submitted,

2 **MATERN LAW GROUP, PC**

3
4 By: _____

5 Matthew J. Matern
6 Joshua D. Boxer
7 Corey B. Bennett
8 Attorneys for Plaintiffs
9 PEDRO NEGRETE PLASCENCIA,
10 ISAIAH MAGEE, NICOLE ANAYA
11 individually and on behalf of other persons
12 similarly situated
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DEMAND FOR JURY TRIAL

PLAINTIFFS hereby demand a jury trial with respect to all issues triable of right by jury.

DATED: July 13, 2023

Respectfully submitted,

MATERN LAW GROUP, PC

By:



Matthew J. Matern
Joshua D. Boxer
Corey B. Bennett
Attorneys for Plaintiffs
PEDRO NEGRETE PLASCENCIA,
ISAIAH MAGEE, NICOLE ANAYA
individually and on behalf of other persons
similarly situated

1 **PROOF OF SERVICE**

2 I am employed in the County of Alameda, State of California. I am over the age of 18 years, and
3 not a party to this action. My business address is 1230 Rosecrans Ave, Suite 200, Manhattan Beach,
4 California 90266.

5 On July 13, 2023, I served the following document or documents:

6 **[PROPOSED] SECOND AMENDED COMPLAINT**

7 ☒ **By electronic service (via electronic filing service provider).** I caused the document or
8 documents to be electronically transmitted to File & Serve Xpress, an electronic filing service
9 provider, at file&servexpress.com pursuant to the Court's Order Mandating Electronic file and
10 serve governing the matter titled *Pedro Negrete Plascencia v. The Counter Walnut Creek, LP, et al., Contra Costa County Case No.: MSC 20-02432* mandating electronic service. The
11 transmission was reported as complete and without error to the addresses as stated on the attached
12 service list.

11 Christine H. Long, Esq.
12 Aleshia M. White, Esq.
13 **BERLINER COHEN, LLP**
14 Ten Almaden Boulevard, Eleventh Floor
15 San Jose, CA 95113
16 Telephone: (408) 286-5800
Facsimile: (408) 998-5388
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INTELLIGENCE, LLC; THE COUNTER
CORTE MADERA LP; THE COUNTER
CUPERTINO, LP; THE COUNTER
MOUNTAIN VIEW LP; THE COUNTER
PALO ALTO LP; THE COUNTER SAN
MATEO LP, THE COUNTER SANTANA
ROW LP; and PETER E. KATZ

17 I declare under penalty of perjury under the laws of the State of California that the foregoing
18 is true and correct. Executed on July 13, 2023 at Manhattan Beach, California.

19
20 Briana Markovich
Briana Markovich