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FILED
 Superior Court of California
 County of Los Angeles

01/13/2023

David W. Slayton, Executive Officer / Clerk of Court

By: M. Arellanes Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

CODY UMBEL, as an individual and on
 behalf of all others similarly situated,

 Plaintiff,

vs.

ACADEMY LA, LLC, a California Limited
 Liability Company; INSOMNIAC
 HOLDINGS, LLC, a Delaware Limited
 Liability Company; WHY NOT SAN DIEGO,
 LLC, dba NOVA SD, a Delaware Limited
 Liability Company; WHY NOT OC, LLC,
 dba TIME NIGHTCLUB, a California
 Limited Liability Company, W.E.R.M.
 INVESTMENTS, LLC, dba EXCHANGE
 LA, a California Limited Liability Company,
 and DOES 1 through 100,

Defendants.

CASE NO. 22STCV35178

**FIRST AMENDED CLASS AND
 REPRESENTATIVE ACTION
 COMPLAINT:**

- (1) **FAILURE TO PAY ALL OVERTIME
 WAGES (LABOR CODE §§ 204, 510,
 558, 1194, 1198);**
- (2) **MEAL PERIOD VIOLATIONS
 (LABOR CODE §§ 226.7, 512, 558);**
- (3) **REST PERIOD VIOLATIONS
 (LABOR CODE §§ 226.7, 516, 558);**
- (4) **WAGE STATEMENT VIOLATIONS
 (LABOR CODE §226 *et seq.*);**
- (5) **WAITING TIME PENALTIES
 (LABOR CODE §§ 201-203);**
- (6) **UNFAIR COMPETITION (BUS &
 PROF CODE § 17200 *et seq.*); and**
- (7) **CIVIL PENALTIES UNDER THE
 PRIVATE ATTORNEYS GENERAL
 ACT (LABOR CODE §§ 2698, *et seq.*).**

**DEMAND FOR JURY TRIAL
 UNLIMITED CIVIL CASE**

1 Plaintiff Cody Umbel (“Plaintiff”), on behalf of himself and all others similarly situated,
2 hereby brings this First Amended Class and Representative Action Complaint
3 (“Complaint”) against Academy LA, LLC, a California limited liability company; Insomniac
4 Holdings, LLC, a Delaware limited liability company; Why Not San Diego, LLC, dba Nova SD,
5 a Delaware limited liability company; Why Not OC, LLC, dba Time Nightclub, a California
6 limited liability company; W.E.R.M. Investments, LLC, dba Exchange LA, a California limited
7 liability company; and Does 1 through 100, inclusive (collectively “Defendants”), and on
8 information and belief alleges as follows:

9 **JURISDICTION**

10 1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this
11 action for recovery of unpaid wages, and penalties under California Labor Code §§ 201-204, 226
12 *et seq.*, 226.7, 351, 510, 512, 516, 558, 1194, 1198, and 2698 *et seq.*, and California Business and
13 Professions Code § 17200 *et. seq.* (“Unfair Competition Law”), and Industrial Welfare
14 Commission Wage Order 5 (“Wage Order 5”) in addition to seeking declaratory relief, injunctive
15 relief, and restitution. This Complaint is brought pursuant to California Code of Civil Procedure
16 § 382. This Court has jurisdiction over Defendants’ violations of the California Labor Code
17 because the amount in controversy exceeds this Court’s jurisdictional minimum.

18 **VENUE**

19 2. Venue is proper in this judicial district pursuant to California Code of Civil
20 Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein
21 occurred in the County of Los Angeles. Defendants own, maintain offices, transact business, have
22 an agent or agents within the County of Los Angeles, and/or otherwise are found within the
23 County of Los Angeles, and Defendants are within the jurisdiction of this Court for purposes of
24 service of process.

25 **THE PARTIES**

26 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
27 Plaintiff was, and currently is, a California resident, residing in the County of Los Angeles. During
28 the four years immediately preceding the filing of the Complaint in this action, and within the

1 statute of limitations periods applicable to each cause of action pled herein, Plaintiff was
2 employed by Defendants as a non-exempt employee in Los Angeles County. Plaintiff was, and
3 is, a victim of Defendants' policies and/or practices complained of herein, lost money and/or
4 property, and has been deprived of the rights guaranteed to him by California Labor Code §§ 201-
5 204, 226 *et seq.*, 226.7, 351, 510, 512, 516, 558, 1194, 1198, and 2698 *et seq.*, California Business
6 and Professions Code § 17200 *et. seq.*, and Wage Order 5 which sets employment standards for
7 the public housekeeping industry, which includes nightclubs and similar establishments.

8 4. Plaintiff is informed and believes, and based thereon alleges, that during the four
9 years preceding the filing of the Complaint and continuing to the present, Defendants did (and
10 continue to do) business within the County of Los Angeles by operating nightclubs and similar
11 entertainment establishments, and employed Plaintiff and other, similarly situated non-exempt
12 employees within Los Angeles County and the State of California and, therefore, were (and
13 are) doing business in Los Angeles County and the State of California.

14 5. Plaintiff does not know the true names or capacities, whether individual, partner,
15 or corporate, of the defendants sued herein as DOES 1 through 100, and for that reason, said
16 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
17 further amend this Complaint when such true names and capacities are discovered. Plaintiff is
18 informed and believes, and based thereon alleges, that each of said fictitious defendants, whether
19 individual, partner, or corporate, were responsible in some manner for the acts and omissions
20 alleged herein, and proximately caused Plaintiff and the Classes (as defined herein) to be subject
21 to the unlawful employment practices, wrongs, injuries, and damages complained of herein.

22 6. Plaintiff is informed and believes, and thereon alleges, that all Defendants,
23 however designated whether by real or fictitious name, were and are in some manner responsible
24 for the events, happenings, occurrence and instrumentalities upon and about which this Demand
25 is made. At all relevant times mentioned herein, Defendants were and are the employers of
26 Plaintiff and all similarly situated employees.

27 7. Plaintiff is further informed and believes, and thereon alleges, that each of the
28 Defendants herein, whether designated by real or fictitious name, are, and at all times relevant

1 hereto, were, the agents servants, and employees and hirelings of each of the co-Defendants, as
2 well as the agents of all Defendants, and in doing things and acts herein alleged and complained
3 of or in failing to do that which they should have done, were acting within the scope of
4 employment. Defendants, and each of them, approved of, condoned, and/or otherwise ratified
5 each and every one of the acts or omissions alleged herein.

6 8. At all times mentioned herein, Defendants, and each of them, were members of
7 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
8 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
9 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all
10 members of the Classes.

11 **GENERAL FACTUAL ALLEGATIONS**

12 9. Defendants operate a number of nightclubs and event venues in Southern
13 California. Although employees would typically be assigned to work at one particular venue, on
14 occasions when one venue was short staffed or needed additional workers, Defendants would
15 often move employees across different venues. Plaintiff was employed by Defendants as a non-
16 exempt “Bartender” from approximately October 2018 to June 24, 2022, who worked primarily
17 at the “Academy LA” nightclub. Plaintiff’s job duties included mixing and serving drinks for
18 patrons as well as cleaning and maintaining the nightclub’s bar. Unless otherwise stated, all
19 allegations contained herein occurred during Plaintiff’s employment with Defendants.

20 10. Plaintiff routinely worked in excess of 8 hours per workday but did not receive
21 overtime compensation equal to one and a half times his regular rate of pay for working overtime
22 hours. Defendants paid Plaintiff and other non-exempt employees non-discretionary incentive pay
23 and/or other forms of pay that are not excludable from an employee’s “regular rate” of
24 compensation including but not limited to payments for working during special events, denoted
25 in their wage statements as “Party Pay” (hereinafter referred to as “Incentive Pay”). As a result of
26 paying Plaintiff Incentive Pay, Defendants failed to properly calculate the regular rate of pay,
27 resulting in unpaid overtime wages, and to the extent that Defendants ever paid meal and/or rest
28 period premium payments, such premium payments were also underpaid during workweeks when

1 Incentive Pay was also earned.

2 11. Plaintiff and other similarly situated employees typically worked night and
3 evening shifts at Defendants' nightclubs, but on occasion Defendants required Plaintiff and other
4 non-exempt employees to work "Day Parties" where Plaintiff and other non-exempt employees
5 worked 8-hour daytime shifts prior to working their regularly scheduled 7-hour night shifts.
6 Although these policies often required Plaintiff and other non-exempt employees to work in
7 excess of 12 hours in a single day, Defendant failed to compensate Plaintiff and other non-exempt
8 employees at two times their regular rate of pay for all work done after the twelfth hour of work.
9 As a result of Defendants' policies/practices, Defendants failed to compensate Plaintiff and other
10 non-exempt employees for all overtime and doubletime wages earned.

11 12. Defendants failed to provide Plaintiff and other non-exempt employees with all
12 required meal periods. Specifically, Defendants required Plaintiff and other non-exempt
13 employees to begin their shifts around 9:30 p.m. with shifts regularly ending after 3:30 a.m.
14 However, although Defendants required employees to work shifts in excess of 5 hours,
15 Defendants did not provide meal periods for Plaintiff and other non-exempt employees.
16 Defendants also failed to provide Plaintiff and other non-exempt employees with an additional
17 hour of premium pay for each workday in which a meal period violation occurred, as required by
18 Labor Code § 226.7.

19 13. Plaintiff and other non-exempt employees were also not authorized and permitted
20 to take a rest period for every 4 hours worked (or major fraction thereof) due to Defendants'
21 unlawful rest period policies/practices. Specifically, Defendants failed to authorize and permit
22 any rest breaks throughout the workday in violation of California law. Defendants also failed to
23 provide Plaintiff and other non-exempt employees with an additional hour of premium pay for
24 each workday in which a rest period violation occurred, as required by Labor Code § 226.7.

25 14. As a result of Defendants' failure to pay all overtime wages and meal and rest
26 period premium wages owed, Defendants maintained inaccurate payroll records, and issued
27 inaccurate wage statements and failed to pay all final wages to Plaintiff and other non-exempt
28 employees upon their separation of employment.

15. Defendants also failed to remit to Plaintiff and other non-exempt service employees all gratuities owed to them. Specifically, Defendants routinely hosted private events and imposed mandatory venue and service charges for such events in lieu of traditional tipping. Despite collecting service charges, Defendants did not remit all such charges to its service employees and instead distributed shares of these service charges to itself, managerial, and other ineligible employees. *See O’Grady v. Merchant Exchange Productions, Inc.* (2019) 41 Cal.App. 5th 771, 790 (holding that the meaning of gratuities is to be construed liberally and that Labor Code §§ 350 and 351 do not preclude what is called a service charge being treated as a gratuity).

CLASS ACTION ALLEGATIONS

16. **Class Definitions:** Plaintiff brings this action on behalf of himself and the following Classes pursuant to Code of Civil Procedure § 382:

- a. The Overtime Class consists of all of Defendants' current and former non-exempt employees in California who: (i) worked more than 12 hours in a workday without receiving double-time wages for hours worked in excess of 12, and/or (ii) received Incentive Pay and worked overtime hours during the corresponding time period, during the four years immediately preceding the filing of this action through the present.
- b. The Meal Period Class consists of all Defendants' current and former non-exempt employees in California who: (i) worked at least one shift in excess of 5.0 hours without a meal period of at least 30 minutes commencing prior to the end of the fifth hour of work, during the four years immediately preceding the filing of this action through the present.
- c. The Rest Period Class consists of all Defendants' current and former non-exempt employees in California who worked at least one shift in excess of 3.5 hours, during the four years immediately preceding the filing of this action through the present.

1 d. The Wage Statement Class consists of all members of the Overtime Class, Meal
2 Period Class, and/or Rest Period Class who received a wage statement during the
3 one year immediately preceding the filing of this action through the present.

4 e. The Waiting Time Class consists of all formerly employed members of the
5 Overtime Class, Meal Period Class, and/or Rest Period Class, who separated their
6 employment from Defendants during the three years immediately preceding the
7 filing of this action through the present.

8 f. The Service Charge Class consists of all of Defendants' current and former non-
9 exempt service employees who worked at least one event during which a
10 mandatory service charge was imposed during the four years immediately
11 preceding the filing of this action through the present.

12 17. **Numerosity/Ascertainability:** The members of the Classes are so numerous that
13 joinder of all members would be unfeasible and not practicable. The membership of the Classes
14 is unknown to Plaintiff at this time; however, it is estimated that the Classes numbers greater than
15 one hundred (100) individuals. The identity of such membership is readily ascertainable via
16 inspection of Defendants' employment records.

17 18. **Common Questions of Law and Fact Predominate/Well Defined Community**
18 **of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly
19 situated employees, which predominate over questions affecting only individual members
20 including, without limitation to:

21 i. Whether Defendants' timekeeping policies and/or practices resulted in the failure
22 to properly compensate members of the Overtime Class for all hours actually
23 worked;

24 ii. Whether Defendants provided all legally compliant meal periods to members of
25 the Meal Period Class;

26 iii. Whether Defendants authorized and permitted all legally compliant rest periods to
27 members of the Rest Period Class;

- 1 iv. Whether Defendants provided meal and/or rest period premium payments for non-
2 compliant meal and/or rest periods;
- 3 v. Whether Defendants furnished legally compliant wage statements to members of
4 the Wage Statement Class;
- 5 vi. Whether Defendants' policies and/or practices for the timing and amount of
6 payment of final wages to members of the Waiting Time Class at the time of
7 separation from employment were unlawful; and
- 8 vii. Whether Defendants' mandatory service charge policies and/or practices were
9 lawful and remitted the correct amount owed to the Service Charge Class.

10 19. **Predominance of Common Questions:** Common questions of law and fact
11 predominate over questions that affect only individual members of the Classes. The common
12 questions of law set forth above are numerous and substantial and stem from Defendants' policies
13 and/or practices applicable to each individual class member, such as Defendants' uniform
14 timekeeping policies/practices, meal, rest period policies/practices, and mandatory service charge
15 policies/practices. As such, the common questions predominate over individual questions
16 concerning each individual class member's showing as to his or her eligibility for recovery or as
17 to the amount of his or her damages.

18 20. **Typicality:** Plaintiff's claims are typical of the claims of the Classes because
19 Plaintiff, like the members of the Classes, was employed by Defendants in California during the
20 applicable statute of limitations period and was deprived of all overtime wages owed, was not
21 provided all legally required meal and rest periods, did not receive accurate, compliant wage
22 statements, was not remitted all gratuities owed to him, and was not paid all final wages owed at
23 the time of separation of employment.

24 21. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary
25 steps to represent fairly and adequately the interests of the members of the Classes. Moreover,
26 Plaintiff's attorneys are ready, willing, and able to represent the members of the Classes and
27 Plaintiff fully and adequately. Plaintiff's attorneys have prosecuted and defended numerous wage
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1 and hour class actions in state and federal courts in the past and are committed to vigorously
2 prosecuting this action on behalf of the members of the Classes.

3 22. **Superiority:** The California Labor Code is broadly remedial in nature and serves
4 an important public interest in establishing minimum working conditions and standards in
5 California. These laws and labor standards protect the average working employee from
6 exploitation by employers who have the responsibility to follow the laws, and who may seek to
7 take advantage of superior economic and bargaining power in setting onerous terms and
8 conditions of employment. The nature of this action and the format of laws available to Plaintiff
9 and members of the Classes make the class action format a particularly efficient and appropriate
10 procedure to redress the violations alleged herein. If each employee was required to file an
11 individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they
12 would be able to exploit and overwhelm the limited resources of each individual plaintiff with
13 their vastly superior financial and legal resources. Moreover, requiring each member of the
14 Classes to pursue an individual remedy would also discourage the assertion of lawful claims by
15 employees who would be disinclined to file an action against their former and/or current employer
16 for real and justifiable fear of retaliation and permanent damages to their careers at subsequent
17 employment. Further, the prosecution of separate actions by the individual class members, even
18 if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications
19 with respect to the individual class members against Defendants herein; and which would
20 establish potentially incompatible standards of conduct for Defendants; and/or legal
21 determinations with respect to individual class members which would, as a practical matter, be
22 dispositive of the interest of the other class members not parties to adjudications or which would
23 substantially impair or impede the ability of the class members to protect their interests. Further,
24 the claims of the individual members of the Classes are not sufficiently large to warrant vigorous
25 individual prosecution considering all of the concomitant costs and expenses attending thereto.
26 As such, the Classes identified herein are maintainable under Code of Civil Procedure § 382.

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1 28. Plaintiff is informed and believes, and based thereon alleges, that Defendants
2 failed in their affirmative obligation to provide all of their non-exempt employees in California,
3 including Plaintiff and members of the Meal Period Class, with all legally compliant meal periods
4 in accordance with the mandates of the California Labor Code and Wage Order 5, § 11. Despite
5 Defendants' violations, Defendants did not pay an additional hour of pay to Plaintiff and members
6 of the Meal Period Class at their respective regular rates of pay, in accordance with California
7 Labor Code §§ 204, 210, 226.7, and 512.

8 29. As a result, Defendants are responsible for paying premium compensation for meal
9 period violations pursuant to Labor Code §§ 226.7, 512, 558, and 1198, and Wage Order 5,
10 including interest thereon, statutory penalties, civil penalties, and costs of suit.

11 **THIRD CAUSE OF ACTION**
12 **REST PERIOD VIOLATIONS**
13 **(AGAINST ALL DEFENDANTS)**

14 30. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

15 31. Wage Order 5, § 12 and California Labor Code §§ 226.7, 516, 558, and 1198
16 establish the right of employees to be authorized and permitted to take a paid rest period of at
17 least ten (10) minutes net rest time for each four (4) hour period worked, or major fraction thereof.

18 32. As alleged herein, Defendants failed to authorize and permit Plaintiff and members
19 of the Rest Period Class to take all required and legally compliant rest periods, and failed to pay
20 rest period premium wages when rest periods were not authorized and permitted.

21 33. The foregoing violations create an entitlement to recovery by Plaintiff and
22 members of the Rest Period Class in a civil action for the unpaid amount of rest period premiums
23 owing, including interest thereon, statutory penalties, civil penalties, and costs of suit according
24 to California Labor Code §§ 226.7, 516, 558, and Civil Code §§ 3287(b) and 3289.

25 **FOURTH CAUSE OF ACTION**
26 **WAGE STATEMENT VIOLATIONS**
27 **(AGAINST ALL DEFENDANTS)**

28 34. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

1 35. Plaintiff is informed and believes, and based thereon alleges, that Defendants
2 knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff
3 and other non-exempted employees with complete and accurate wage statements that included,
4 among other requirements, all overtime wages earned, gross wages earned, and net wages earned,
5 and the incorrect address for the legal entity that employed them in violation of Labor Code § 226
6 *et seq.*

7 36. Defendants' failure to furnish Plaintiff with complete and accurate itemized wage
8 statements resulted in actual injury, as said failures led to, among other things, the non-payment
9 of all overtime owed, and deprived Plaintiff of the information necessary to identify the
10 discrepancies in Defendants' reported data.

11 37. Defendants' failures create an entitlement to recovery by Plaintiff and members of
12 the Classes in a civil action for all damages and/or penalties pursuant to Labor Code § 226 *et seq.*,
13 including statutory penalties, civil penalties, reasonable attorneys' fees, and costs of suit
14 according to California Labor Code § 226 *et seq.*

15 **FIFTH CAUSE OF ACTION**

16 **WAITING TIME PENALTIES**

17 **(AGAINST ALL DEFENDANTS)**

18 38. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

19 39. This cause of action is brought pursuant to Labor Code §§ 201-203, which require
20 an employer to pay all wages earned immediately at the time of separation of employment in the
21 event the employer discharges the employee, or if the employee provides at least 72 hours of
22 notice of his/her intent to quit. In the event the employee provides less than 72 hours of notice of
23 his/her intent to quit, said employee's wages become due and payable not later than 72 hours upon
24 said employee's last date of employment.

25 40. Plaintiff is informed and believes, and based thereon alleges, that Defendants
26 failed to timely pay Plaintiff and members of the Classes all final wages due to them at the time
27 of their separation including, among other things, underpaid overtime and meal and rest period
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1 premiums. Defendants' failure to pay all final wages was willful within the meaning of Labor
2 Code § 203.

3 41. Defendants' failure to timely pay Plaintiff and members of the Classes their earned
4 wages upon separation from employment results in a continued payment of wages up to thirty
5 (30) days from the time the wages were due. Therefore, Plaintiff and members of the Classes are
6 entitled to compensation pursuant to Labor Code § 203, plus reasonable attorneys' fees and costs
7 of suit.

8 **SIXTH CAUSE OF ACTION**

9 **UNFAIR COMPETITION**

10 **(AGAINST ALL DEFENDANTS)**

11 42. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

12 43. Defendants have engaged and continue to engage in unfair and/or unlawful
13 business practices in California in violation of California Business and Professions Code § 17200
14 *et seq.*, by failing to pay Plaintiff and the Classes all overtime wages owed; failing to provide
15 Plaintiff and the Classes lawful meal periods; failing to authorize and permit Plaintiff and the
16 Classes lawful rest periods; failing to furnish accurate and complete itemized wage statements in
17 violation of § 226 *et seq.*; failing to remit to employees all gratuities owed to them; and failing to
18 pay all final wages at the time of separation from employment.

19 44. Defendants' utilization of these unfair and/or unlawful business practices deprived
20 Plaintiff and continues to deprive members of the Classes of compensation to which they are
21 legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage
22 over Defendants' competitors who have been and/or are currently employing workers and
23 attempting to do so in honest compliance with applicable wage and hour laws.

24 45. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged
25 herein, Plaintiff for himself and on behalf of the members of the Classes, seeks full restitution of
26 monies, as necessary and according to proof, to restore all monies withheld, acquired and/or
27 converted by the Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

1 46. The acts complained of herein occurred within the last four years immediately
2 preceding the filing of the Complaint in this action.

3 47. Plaintiff was compelled to retain the services of counsel to file this court action to
4 protect Plaintiff's interests and those of the Class, to obtain restitution, to secure injunctive relief
5 on behalf of Defendants' current non-exempt employees, and to enforce important rights affecting
6 the public interest. Plaintiff thereby incurred the financial burden of attorneys' fees and costs,
7 which Plaintiff is entitled to recover under Code of Civil Procedure § 1021.5.

8 **SEVENTH CAUSE OF ACTION**

9 **PRIVATE ATTORNEYS GENERAL ACT**

10 **(AGAINST ALL DEFENDANTS)**

11 48. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

12 49. Defendants have committed several Labor Code violations against Plaintiff,
13 members of the Classes, and other aggrieved employees. Plaintiff, an "aggrieved employee"
14 within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of himself and other
15 aggrieved employees, brings this representative action against Defendants to recover the civil
16 penalties due to Plaintiff, the members of the Classes, other aggrieved employees, and the State
17 of California according to proof pursuant to Labor Code § 558 and § 2699 (a) and (f) including,
18 but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee
19 pursuant to Labor Code § 210 for each failure to pay each employee; (2) \$50.00 for each initial
20 violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each
21 initial violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for
22 each initial violation pursuant to Labor Code § 226.3 per employee per pay period; and/or
23 (5) \$100.00 for each initial violation per employee per pay period for those violations of the
24 Labor Code for which no civil penalty is specifically provided, based on the following Labor
25 Code violations:
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- 27 a. Failing to pay Plaintiff and other aggrieved employees all overtime compensation
28 earned in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;

- b. Failing to provide meal periods as required by law and failing to pay meal period premiums to Plaintiff and other aggrieved employees at these employees' respective regular rates of compensation for meal period violations in violation of Labor Code §§ 226.7, 512, and 558;
- c. Failing to authorize and permit Plaintiff and other aggrieved employees all required rest periods and failing to pay rest period premiums to Plaintiff and other aggrieved employees at these employees' respective regular rates of compensation for rest period violations in violation of Labor Code §§ 226.7, 516, and 558;
- d. Failing to furnish Plaintiff and other aggrieved employees with accurate and compliant itemized wage statements in violation of Labor Code § 226 *et seq*;
- e. Failing to timely pay all final wages due to Plaintiff and other aggrieved employees in violation of Labor Code §§ 201-203;
- f. Failing to pay Plaintiff and other aggrieved employees all wages earned at least twice during each calendar month in violation of Labor Code § 204;
- g. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees in violation of Labor Code §§ 558 and 1174; and
- h. Failing to remit to Plaintiff and other aggrieved service employees all gratuities owed to them in violation of Labor Code § 351.

50. On November 8, 2022, Plaintiff notified Defendants, via certified mail, and the California Labor and Workforce Development Agency ("LWDA") via e-mail of Defendants' violations of the California Labor Code and Plaintiff's intent to bring a claim for civil penalties under California Labor Code § 2698 *et seq.* with respect to violations of the California Labor Code identified herein. Now that sixty-five days have passed from Plaintiff notifying Defendants of these violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

51. Based on the foregoing, Plaintiff seeks to represent himself and all other Aggrieved Employees, as defined by Labor Code § 2699(c), which includes all of Defendants'

1 current and former nonexempt employees who worked for Defendants in California at any time
2 between November 8, 2021, and the present.

3 52. Plaintiff was compelled to retain the services of counsel to file this court action to
4 protect his interests and the interests of other similarly aggrieved employees, and to assess and
5 collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and
6 costs, which he is entitled to receive under California Labor Code § 2699.

7 **PRAYER**

8 WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf
9 this suit is brought against Defendants, as follows:

- 10 1. For an order certifying the proposed Classes;
- 11 2. For an order appointing Plaintiff as representative of the Classes;
- 12 3. For an order appointing counsel for Plaintiff as counsel for the Classes;
- 13 4. Upon the First Cause of Action for compensatory, consequential, general and special
14 damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
- 15 5. Upon the Second Cause of Action for compensatory, consequential, general and
16 special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;
- 17 6. Upon the Third Cause of Action for compensatory, consequential, general and
18 special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;
- 19 7. Upon the Fourth Cause of Action for statutory wage statement penalties pursuant to
20 Labor Code § 226 *et seq.*;
- 21 8. Upon the Fifth Cause of Action for statutory waiting time penalties pursuant to
22 Labor Code §§ 201-203;
- 23 9. Upon the Sixth Cause of Action for restitution to Plaintiff and members of the
24 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
25 practices declared by this Court to be in violation of California Business and Professions Code
26 § 17200 *et seq.* and Labor Code § 351;
- 27 10. Upon the Seventh Cause of Action, for civil penalties due to Plaintiff, other
28 aggrieved employees, and the State of California according to proof pursuant to Labor

Code §§ 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation of failing to pay employees pursuant to Labor Code § 210; (2) \$50.00 for each initial violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the violations of Labor Code sections cited in Paragraph 49 (a)-(h) above;

11. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code § 218.6, and Civil Code §§ 3287 and 3289;

12. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§ 218.5, 226, 1194 *et seq.*, and Code of Civil Procedure § 1021.5; and

13. For such other and further relief the Court may deem just and proper.

Dated: January 13, 2023

Respectfully submitted,
HAINES LAW GROUP, APC

By:



Fletcher W. Schmidt
Attorney for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

Dated: January 13, 2023

Respectfully submitted,
HAINES LAW GROUP, APC

By:



Fletcher W. Schmidt
Attorney for Plaintiff