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and on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

ERICKA NATALY ESCOBAR URRUTIA,
REBECCA DAWN STEWART, MICHAEL
NGO, and KADY HOPPER, individuals and
class representatives on behalf of themselves
and all other similarly situated non-exempt
former and current employees,

Plaintiff,

vs.

LAZER SPOT, INC., a Georgia
Corporation; and DOES 1 through 100,
inclusive,

Defendants.

Case No.: CIVSB2228377

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

- 1. FAILURE TO PROVIDE REQUIRED MEAL PERIODS**
- 2. FAILURE TO PROVIDE REQUIRED REST PERIODS**
- 3. FAILURE TO PAY OVERTIME WAGES**
- 4. FAILURE TO PAY MINIMUM WAGE**
- 5. FAILURE TO TIMELY PAY WAGES**
- 6. FAILURE TO PAY ALL WAGES DUE TO DISCHARGED AND QUITTING EMPLOYEES**
- 7. FAILURE TO MAINTAIN REQUIRED RECORDS**
- 8. FAILURE TO FURNISH ACCURATE ITEMIZED STATEMENTS**
- 9. FAILURE TO INDEMNIFY EMPLOYEES FOR NECESSARY EXPENDITURES INCURRED IN DISCHARGE OF DUTIES**
- 10. FAILURE TO PAY VESTED**

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- VACATION UPON TERMINATION**
11. FAILURE TO PAY SICK LEAVE WAGES
12. FAILURE TO PAY COVID-19 SUPPLEMENTAL PAID SICK LEAVE
13. VIOLATIONS OF THE FAIR CREDIT REPORTING ACT
14. VIOLATIONS OF THE FAIR LABOR STANDARDS ACT
15. VIOLATIONS OF THE INVESTIGATIVE CONSUMER REPORTING AGENCIES ACT
16. UNFAIR AND UNLAWFUL BUSINESS PRACTICES
17. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT OF 2004

DEMAND FOR JURY TRIAL

1 Plaintiffs ERICKA NATALY ESCOBAR URRUTIA, REBECCA DAWN STEWART,
2 MICHAEL NGO, and KADY HOPPER, individuals and class representatives on behalf of
3 themselves and all other similarly situated non-exempt former and current employees
4 (“PLAINTIFFS”), demanding a jury trial, on behalf of themselves and all other persons similarly
5 situated, hereby alleges as follows:

6 **JURISDICTION AND VENUE**

7 1. The Superior Court of the State of California has jurisdiction in this matter
8 because PLAINTIFFS were and are residents of the State of California, Defendants LAZER
9 SPOT, INC., a Georgia Corporation; and DOES 1 through 100, inclusive, (collectively,
10 “DEFENDANTS” or “LAZER SPOT”) are qualified to do business in California and regularly
11 conduct business in California.

12 2. Venue is proper in this judicial district and the County of San Bernardino,
13 California because PLAINTIFFS, and other persons similarly situated, performed work for
14 DEFENDANTS in the County of San Bernardino, DEFENDANTS maintain offices and facilities
15 and transact business in the County of San Bernardino, and DEFENDANTS’ illegal payroll
16 policies and practices, which are the subject of this action, were applied, at least in part, to
17 PLAINTIFFS, and other persons similarly situated, in the County of San Bernardino. Further, the
18 amount in controversy exceeds the sum of \$25,000.00, exclusive of interest and costs.

19 **PLAINTIFFS**

20 3. Plaintiffs ERICKA NATALY ESCOBAR URRUTIA, REBECCA DAWN
21 STEWART, MICHAEL NGO, and KADY HOPPER are residents of the State of California who
22 was employed by DEFENDANTS as non-exempt employees at times relevant to this Complaint.

23 4. PLAINTIFFS, on behalf of themselves and all other similarly situated current and
24 former non-exempt employees of DEFENDANTS who were employed by DEFENDANTS at
25 any time during the four (4) years preceding the filing of this complaint, and continuing while
26 this action is pending, bring this class action to recover, among other things, wages and penalties
27 from unpaid wages earned and due, including but not limited to unpaid minimum wages and
28 unpaid wages, unpaid and illegally calculated overtime compensation, illegal meal and rest

1 period policies, failure to timely pay wages, failure to pay all wages due to discharged or quitting
2 employees, failure to maintain required records, failure to provide accurate itemized wage
3 statements, failure to indemnify employees for necessary expenditures and/or losses incurred in
4 discharging their duties, and interest, attorneys' fees, costs, and expenses.

5 5. PLAINTIFFS bring this action on behalf of themselves and the following
6 similarly situated class of individuals ("CLASS MEMBERS"): All current and former non-
7 exempt employees of DEFENDANTS who worked at any locations in the State of California at
8 any time within the period beginning December 16, 2018 through January 14, 2024 (the "CLASS
9 PERIOD").

10 6. PLAINTIFFS reserve the right to name additional class representatives.

11 **DEFENDANTS**

12 7. PLAINTIFFS are informed and believe, and thereon allege, that Defendant
13 LAZER SPOT, INC. is, and at all times relevant hereto was, a company authorized to do
14 business in the State of California and doing business in the State of California. Specifically,
15 upon information and belief, Defendant LAZER SPOT, INC. conducts business in the County of
16 San Bernardino, State of California.

17 8. The true names and capacities of DOES 1 through 100, inclusive, are unknown to
18 PLAINTIFFS at this time, and PLAINTIFFS therefore sues such DOE Defendants under
19 fictitious names. PLAINTIFFS are informed and believe, and thereon allege, that each
20 Defendant designated as a DOE is in some manner responsible for the occurrences alleged
21 herein, and that PLAINTIFFS and CLASS MEMBERS' injuries and damages, as alleged herein,
22 were proximately caused by the conduct of such DOE Defendants. PLAINTIFFS will seek leave
23 of the court to amend this complaint to allege the true names and capacities of such DOE
24 Defendants when ascertained.

25 9. At all relevant times herein, DEFENDANTS were the joint employers of
26 PLAINTIFFS and the CLASS MEMBERS. PLAINTIFFS are informed and believe, and thereon
27 allege, that at all times material to this complaint DEFENDANTS, as categorized above, were
28 the alter egos, divisions, affiliates, integrated enterprises, joint employers, subsidiaries, parents,

principals, related entities, co-conspirators, authorized agents, partners, joint venturers, and/or guarantors, actual or ostensible, of each other. Each DEFENDANT, as categorized above, was completely dominated by his, her or its co-DEFENDANT, and each was the alter ego of the other.

10. At all relevant times herein, PLAINTIFFS and CLASS MEMBERS were employed by DEFENDANTS under employment agreements that were partly written, partly oral, and partly implied.

GENERAL ALLEGATIONS

11. In perpetrating the acts and omissions alleged herein, DEFENDANTS, and each of them, acted pursuant to, and in furtherance of, their policies and practices of not paying PLAINTIFFS and CLASS MEMBERS all wages earned and due, through methods and schemes which include, but are not limited to, failing to pay minimum wages; failing to pay overtime premiums; failing to provide rest and meal periods; failing to properly maintain records; failing to provide accurate itemized statements for each pay period; failing to properly compensate PLAINTIFFS and CLASS MEMBERS for necessary expenditures; requiring, permitting or suffering PLAINTIFFS and CLASS MEMBERS to work off the clock, in violation of the California Labor Code and the applicable IWC Wage Order; failing to pay PLAINTIFFS and CLASS MEMBERS' wages at the regular rate of pay, including, but not limited to, overtime wages, meal period premiums, rest period premiums, paid sick leave, and accrued and unused vacation upon termination; failing to pay PLAINTIFFS and CLASS MEMBERS for accrued and unused vacation upon termination; failing to pay PLAINTIFFS and CLASS MEMBERS' sick leave wages; failing to pay PLAINTIFFS and CLASS MEMBERS' COVID-19 supplemental paid sick leave; violations of the Fair Credit Reporting Act ("FCRA"); violations of the Fair Labor Standards Act ("FLSA"); and violations of the Investigative Consumer Reporting Agencies Act ("ICRAA").

12. PLAINTIFFS are informed and believe, and based thereon allege, that DEFENDANTS engaged in a uniform policy and systematic scheme of wage abuse against their hourly-paid or non-exempt employees. This scheme involved, *inter alia*, failing to pay them for

1 all hours worked and for missed (short, late, interrupted, and altogether missed) meal periods and
2 rest breaks in violation of California law. For example, PLAINTIFFS are informed and believe,
3 and based thereon allege, that DEFENDANTS rounded PLAINTIFFS and CLASS MEMBERS'
4 hours worked to their detriment, which resulted in unpaid wages, including, but not limited to,
5 unpaid minimum wages, unpaid overtime, meal period violations, rest period violations, wage
6 statement violations, and the failure to pay wages timely during employment and upon separation
7 of employment.

8 13. PLAINTIFFS are informed and believe, and thereon allege, that DEFENDANTS
9 knew or should have known that PLAINTIFFS and CLASS MEMBERS were entitled to be paid
10 at a regular rate of pay, and corresponding rates of pay, for overtime wages, meal and rest period
11 premiums, paid sick leave, and accrued and unused vacation time upon termination, that included
12 as eligible income all remuneration required by law, including but not limited to, all income
13 derived from incentive pay, nondiscretionary bonuses, and/or other forms of compensation, but
14 failed to include all forms of remuneration in calculating the regular rate of pay for PLAINTIFFS
15 and CLASS MEMBERS.

16 14. PLAINTIFFS are informed and believe, and thereon allege, that DEFENDANTS
17 knew or should have known that PLAINTIFFS and CLASS MEMBERS were entitled to receive
18 at least minimum wages for compensation and that they were not receiving at least minimum
19 wages for work that was required to be done off-the-clock, reporting time, split-shifts, and/or the
20 rounding of hours worked. In violation of the California Labor Code, PLAINTIFFS and CLASS
21 MEMBERS were not paid at least minimum wages for work done off-the-clock, reporting time,
22 split-shifts, and/or the rounding of hours worked.

23 15. PLAINTIFFS are informed and believe, and based thereon allege, that
24 DEFENDANTS failed to provide PLAINTIFFS and CLASS MEMBERS the required meal and
25 rest periods during the relevant time period as required under the Industrial Welfare Commission
26 Wage Orders and thus they are entitled to any and all applicable premiums and penalties.

27 16. PLAINTIFFS are informed and believe, and based thereon allege, that
28 DEFENDANTS knew or should have known that PLAINTIFFS and CLASS MEMBERS were

1 entitled to receive all meal periods or payment of one additional hour of pay at PLAINTIFFS'
2 and the other aggrieved employee's regular rate of pay when a meal period was missed, and they
3 did not receive all meal periods or payment of one additional hour of pay at PLAINTIFFS' and
4 CLASS MEMBERS' regular rate of pay when a meal period was missed, short, interrupted, or
5 late.

6 17. PLAINTIFFS are informed and believe, and based thereon allege, that
7 DEFENDANTS knew or should have known that PLAINTIFFS and CLASS MEMBERS were
8 entitled to receive all rest periods or payment of one additional hour of pay at PLAINTIFFS' and
9 CLASS MEMBERS' regular rate of pay when a rest period was missed, and they did not receive
10 all rest periods or payment of one additional hour of pay at PLAINTIFFS' and CLASS
11 MEMBERS' regular rate of pay when a rest period was missed, short, interrupted, or late.

12 18. PLAINTIFFS are informed and believe, and based thereon allege, that
13 DEFENDANTS knew or should have known that PLAINTIFFS and CLASS MEMBERS were
14 entitled to receive at least minimum wages for compensation and that they were not receiving at
15 least minimum wages for all hours worked.

16 19. PLAINTIFFS are informed and believe, and based thereon allege, that
17 DEFENDANTS knew or should have known that PLAINTIFFS and CLASS MEMBERS were
18 entitled to receive complete and accurate wage statements in accordance with California law,
19 but, in fact, they did not receive complete and accurate wage statements from DEFENDANTS.
20 The deficiencies included, *inter alia*, the failure to include the total number of hours worked by
21 PLAINTIFFS and CLASS MEMBERS and the failure to include correct rates of pay for
22 PLAINTIFFS and the CLASS MEMBERS.

23 20. PLAINTIFFS are informed and believe, and based thereon allege, that
24 DEFENDANTS knew or should have known that DEFENDANTS had to keep complete and
25 accurate payroll records and personnel records for PLAINTIFFS and CLASS MEMBERS in
26 accordance with California law, but, in fact, did not keep complete and accurate payroll records
27 and personnel records.

28 21. PLAINTIFFS are informed and believe, and based thereon allege, that

1 DEFENDANTS knew or should have known that PLAINTIFFS and CLASS MEMBERS were
2 entitled to receive all wages owed to them upon discharge or resignation, including, but not
3 limited to, overtime, minimum wages, meal and rest period premiums, reporting time pay, vested
4 vacation wages, and/or sick leave pay, and they did not, in fact, receive all such wages owed to
5 them at the time of their discharge.

6 22. PLAINTIFFS are informed and believe, and based thereon allege, that
7 DEFENDANTS knew or should have known that PLAINTIFFS and CLASS MEMBERS were
8 entitled to receive all wages owed to them during their employment. PLAINTIFFS and CLASS
9 MEMBERS did not receive payment of all wages, including, but not limited to, overtime,
10 minimum wages, meal and rest period premiums, reporting time pay, vested vacation wages,
11 and/or sick leave pay, within any time permissible under California Labor Code section 204.

12 23. PLAINTIFFS are informed and believe, and based thereon allege, that
13 DEFENDANTS knew or should have known that they were required to pay departing employees
14 all vested vacation wages that were owed to them at the end of their employment. In violation of
15 the California Labor Code, DEFENDANTS failed to pay PLAINTIFFS and CLASS MEMBERS
16 all vested vacation time at the end of their employment, causing a forfeiture of vested vacation
17 wages.

18 24. PLAINTIFFS are informed and believe, and thereon allege, that DEFENDANTS
19 knew or should have known that PLAINTIFFS and CLASS MEMBERS were entitled to one
20 day's rest in seven. In violation of the California Labor Code, DEFENDANTS required
21 PLAINTIFFS and CLASS MEMBERS to work more than six consecutive days without a day of
22 rest, where the total hours worked exceeded 30 hours in any week or six hours in any one day
23 thereof.

24 25. PLAINTIFFS are informed and believe, and thereon allege, that DEFENDANTS
25 knew or should have known that PLAINTIFFS and CLASS MEMBERS who worked in excess
26 of 30 days for DEFENDANTS in California were entitled to receive one hour of paid sick leave
27 for every 30 hours worked to be paid at a regular rate of pay, that included, as eligible income,
28 all income derived from incentive pay, nondiscretionary bonuses, and/or other forms of

1 compensation. In violation of the California Labor Code, DEFENDANTS failed to provide
2 PLAINTIFFS and CLASS MEMBERS with all sick leave benefits and failed to include all forms
3 of remuneration in calculating the regular rate of pay for sick leave pay.

4 26. PLAINTIFFS are informed and believe, and thereon allege, that DEFENDANTS
5 knew or should have known that PLAINTIFFS and CLASS MEMBERS were entitled to receive
6 all reporting time pay when PLAINTIFFS and CLASS MEMBERS were required to report to
7 work but were put to work for less than half of their usual or scheduled shift. In violation of the
8 California Labor Code and applicable IWC Wage Order, PLAINTIFFS and CLASS MEMBERS
9 were not paid all reporting time pay.

10 27. PLAINTIFFS are informed and believe, and based thereon allege, that
11 DEFENDANTS knew or should have known that PLAINTIFFS and CLASS MEMBERS were
12 entitled to reimbursement for necessary business-related expenses and costs and that they did not
13 receive reimbursement of applicable business-related expenses and costs incurred, including, but
14 not limited to, personal cell phone usage, personal vehicle usage, and uniforms.

15 28. PLAINTIFFS are informed and believe, and thereon allege, that at all times herein
16 mentioned, DEFENDANTS knew or should have known that DEFENDANTS had a duty to
17 provide PLAINTIFFS and CLASS MEMBERS with written notice of the material terms of their
18 employment with DEFENDANTS as required by the California Wage Theft Prevention Act, but
19 failed to do so.

20 29. PLAINTIFFS are informed and believe, and thereon allege, that at all times herein
21 mentioned, DEFENDANTS knew or should have known that DEFENDANTS conducted failed
22 to pay all wages and premium pay in violation of the California Labor Code and FLSA.

23 30. PLAINTIFFS are informed and believe, and thereon allege, that at all times herein
24 mentioned, DEFENDANTS knew or should have known that DEFENDANTS violated the
25 FCRA and/or ICRAA by, for example, conducting unlawful background checks and/or failing to
26 provide lawful notice(s).

27 31. PLAINTIFFS are informed and believe, and thereon allege, that each and every
28 one of the acts and omissions alleged herein was performed by, and/or attributable to, all

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

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

8 **CLASS ACTION ALLEGATIONS**

9 33. This action is appropriately suited for a class action because:

- 10 a. The potential class is a significant number. Joinder of all current and former
11 employees individually would be impractical.
- 12 b. This action involves common questions of law and fact to the potential class
13 because the action focuses on DEFENDANTS' systematic course of illegal
14 practices and policies, which was applied to all non-exempt employees in
15 violation of the California Labor Code, IWC Wage Orders, FLSA, FCRA,
16 ICRAA, and the California Business and Professions Code which prohibits unfair
17 and unlawful business practices arising from such violations. Specifically, there
18 are common questions of law and fact regarding the alleged (1) failure to pay
19 straight time, overtime, or double time wages, failure to pay wages for off-the-
20 clock work, the alleged rounding of hours worked, and failure to pay other wages
21 of any kind during employment under the California Labor Code, IWC Wage
22 Orders, the FLSA, or common law; (2) failure to provide meal periods or properly
23 pay meal period premiums; (3) failure to authorize and permit rest periods or
24 properly pay rest period premiums; (4) failure to pay minimum wages; (5) failure
25 to pay final wages due at separation; (6) failure to provide accurate and itemized
26 wage statements; (7) failure to reimburse for necessary business expenditures,
27 including, but not limited to, cell phone expenses, vehicle expenses, and uniform
28 expenses; (8) failure to provide reporting time pay; (9) claims arising from the

1 failure to pay at the regular rate of pay; (10) requiring employees to perform
2 seven consecutive days of work; (11) untimely payment of wages during
3 employment; (12) failure to pay all paid time off, including vacation, paid sick
4 leave, and COVID-19 supplemental paid sick leave; (13) failure to pay all wages
5 due to the unlawful rounding of hours worked; and (14) violations of the Business
6 & Professions Code §§ 17200 *et seq.*, the ICRAA, Cal. Civ. Code §§ 1786 *et seq.*,
7 the FCRA, 15 U.S.C. §§ 1681 *et seq.*, violations of Labor Code §§ 201, 202, 203,
8 204, 210, 218, 218.5, 222, 223, 224, 226, 226.3, 226.7, 226.8, 227.3, 245-248.6,
9 432, 432.5, 432.7, 510, 512, 551, 552, 558, 558.1, 1024.5, 1174, 1174.5, 1182.12,
10 1194, 1197, 1197.1, 1198, 1199, 2800, 2802, and 2810.5, and the applicable IWC
11 Wage Orders.

- 12 c. The claims of PLAINTIFFS are typical of the class because DEFENDANTS
13 subjected all non-exempt employees to identical violations of the California Labor
14 Code, the applicable IWC Wage Order, FLSA, FCRA, ICRAA, and the California
15 Business and Professions Code, as set forth above.
- 16 d. PLAINTIFFS is able to fairly and adequately protect the interests of all CLASS
17 MEMBERS because it is in their best interest to prosecute the claims alleged
18 herein to obtain full compensation due to the CLASS MEMBERS for all services
19 rendered and hours worked.
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1 **FIRST CAUSE OF ACTION**

2 **Failure to Provide Required Meal Periods**

3 **[Cal. Labor Code §§ 226.7, 510, 512, 1194, 1197; IWC Wage Order Nos. 4 and 9, § 11]**

4 **(Against all DEFENDANTS)**

5 34. PLAINTIFFS incorporate herein by specific reference, as though fully set forth,
6 the allegations in all preceding paragraphs.

7 35. During the CLASS PERIOD, as part of DEFENDANTS' illegal payroll policies
8 and practices to deprive their non-exempt employees all wages earned and due, DEFENDANTS
9 required, permitted or otherwise suffered PLAINTIFFS and CLASS MEMBERS to take less
10 than the 30-minute meal period, or to work through them, and have failed to otherwise provide
11 the required meal periods to PLAINTIFFS and CLASS MEMBERS pursuant to California Labor
12 Code § 226.7, 512 and IWC Order Nos. 4 and 9, § 11.

13 36. DEFENDANTS further violated California Labor Code §§ 226.7 and IWC Wage
14 Order Nos. 4 and 9, § 11 by failing to compensate PLAINTIFFS and CLASS MEMBERS who
15 were not provided with a meal period, in accordance with the applicable wage order, one
16 additional hour of compensation at each employee's regular rate of pay for each workday that a
17 meal period was not provided.

18 37. DEFENDANTS further violated California Labor Code §§ 226.7, 510, 1194,
19 1197, and IWC Wage Order Nos. 4 and 9 by failing to compensate PLAINTIFFS and CLASS
20 MEMBERS for all hours worked during their meal periods.

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

1 **SECOND CAUSE OF ACTION**

2 **Failure to Provide Required Rest Periods**

3 **[Cal. Labor Code §§ 226.7, 512; IWC Wage Order Nos. 4 and 9, § 12]**

4 **(Against all DEFENDANTS)**

5 39. PLAINTIFFS incorporate herein by specific reference, as though fully set forth,
6 the allegations in all preceding paragraphs.

7 40. At all times relevant herein, as part of DEFENDANTS' illegal payroll policies
8 and practices to deprive their non-exempt employees all wages earned and due, DEFENDANTS
9 failed to provide rest periods to PLAINTIFFS and CLASS MEMBERS as required under
10 California Labor Code §§ 226.7 and 512, and IWC Wage Order Nos. 4 and 9, § 12.

11 41. DEFENDANTS further violated California Labor Code § 226.7 and IWC Wage
12 Order Nos. 4 and 9, § 12 by failing to pay PLAINTIFFS and CLASS MEMBERS who were not
13 provided with a rest period, in accordance with the applicable wage order, one additional hour of
14 compensation at each employee's regular rate of pay for each workday that a rest period was not
15 provided.

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

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20 **THIRD CAUSE OF ACTION**

21 **Failure to Pay Overtime Wages**

22 **[Cal. Labor Code §§ 510, 1194, 1198; IWC Wage Order Nos. 4 and 9, § 3]**

23 **(Against all DEFENDANTS)**

24 43. PLAINTIFFS incorporate herein by specific reference, as though fully set forth,
25 the allegations in all preceding paragraphs.

26 44. Pursuant to California Labor Code §§ 510, 1194, and IWC Wage Order Nos. 4
27 and 9, § 3, DEFENDANTS are required to compensate PLAINTIFFS and CLASS MEMBERS
28 for all overtime, which is calculated at one and one-half (1 ½) times the regular rate of pay for all

1 hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the
2 first eight (8) hours on the seventh consecutive workday, with double time for all hours worked
3 in excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8)
4 hours on the seventh consecutive day of work in any workweek.

5 45. PLAINTIFFS and CLASS MEMBERS are current and former non-exempt
6 employees entitled to the protections of California Labor Code §§ 510, 1194, and IWC Wage
7 Order Nos. 4 and 9. During the CLASS PERIOD, DEFENDANTS failed to compensate
8 PLAINTIFFS and CLASS MEMBERS for all overtime hours worked as required under the
9 foregoing provisions of the California Labor Code and IWC Wage Order by, among other things:
10 failing to pay overtime at one and one-half (1 ½) or double the regular rate of pay as provided by
11 California Labor Code §§ 510, 1194, and IWC Wage Order Nos. 4 and 9, § 3; requiring,
12 permitting or suffering PLAINTIFFS and CLASS MEMBERS to work off the clock; requiring,
13 permitting or suffering PLAINTIFFS and CLASS MEMBERS to work through meal and rest
14 breaks; illegally and inaccurately recording time in which PLAINTIFFS and CLASS
15 MEMBERS worked; illegally rounding the work hours of PLAINTIFFS and CLASS
16 MEMBERS; failing to properly maintain PLAINTIFFS' and CLASS MEMBERS' records;
17 failing to provide accurate itemized wage statements to PLAINTIFFS and CLASS MEMBERS
18 for each pay period; and other methods to be discovered.

19 46. In violation of California law, DEFENDANTS have knowingly and willfully
20 refused to perform their obligations to compensate PLAINTIFFS and CLASS MEMBERS for all
21 wages earned and all hours worked. As a proximate result, PLAINTIFFS and CLASS
22 MEMBERS have suffered, and continue to suffer, substantial losses related to the use and
23 enjoyment of such wages, lost interest on such wages, and expenses and attorneys' fees in
24 seeking to compel DEFENDANTS to fully perform their obligations under state law, all to their
25 respective damages in amounts according to proof at time of trial, and within the jurisdiction of
26 this Court.

27 47. DEFENDANTS' conduct described herein violates California Labor Code §§
28 510, 1194, 1198 and IWC Wage Order Nos. 4 and 9, § 3. Therefore, pursuant to California

1 Labor Code §§ 200, 203, 226, 558, 1194, 1197.1, and other applicable provisions under the
2 California Labor Code and IWC Wage Orders, PLAINTIFFS and CLASS MEMBERS are
3 entitled to recover the unpaid balance of wages owed to them by DEFENDANTS, plus interest,
4 penalties, attorneys' fees, expenses, and costs of suit.

5
6 **FOURTH CAUSE OF ACTION**

7 **Failure to Pay Minimum Wages**

8 **[Cal Labor Code §§ 1194, 1197; IWC Wage Order Nos. 4 and 9, § 4]**

9 **(Against all DEFENDANTS)**

10 48. PLAINTIFFS incorporate herein by specific reference, as though fully set forth,
11 the allegations in all preceding paragraphs.

12 49. Pursuant to California Labor Code §§ 1194, 1197, and IWC Wage Order Nos. 4
13 and 9, § 4, payment to an employee of less than the applicable minimum wage for all hours
14 worked in a payroll period is unlawful.

15 50. During the CLASS PERIOD, DEFENDANTS failed to pay PLAINTIFFS and
16 CLASS MEMBERS minimum wages for all hours worked by, among other things: requiring,
17 permitting or suffering PLAINTIFFS and CLASS MEMBERS to work off the clock; requiring,
18 permitting or suffering PLAINTIFFS and CLASS MEMBERS to work through meal and rest
19 breaks; illegally and inaccurately recording time in which PLAINTIFFS and CLASS
20 MEMBERS worked; illegally rounding the work hours of PLAINTIFFS and CLASS
21 MEMBERS; failing to properly maintain PLAINTIFFS' and CLASS MEMBERS' records;
22 failing to provide accurate itemized wage statements to PLAINTIFFS and CLASS MEMBERS
23 for each pay period; and other methods to be discovered.

24 51. DEFENDANTS' conduct described herein violates California Labor Code §§
25 1194, 1197, and IWC Wage Order Nos. 4 and 9, § 4. As a proximate result of the
26 aforementioned violations, PLAINTIFFS and CLASS MEMBERS have been damaged in an
27 amount according to proof at trial. Therefore, pursuant to California Labor Code §§ 200, 203,
28 226, 558, 1194, 1197.1, and other applicable provisions under the Labor Code and IWC Wage

1 Orders, PLAINTIFFS and CLASS MEMBERS are entitled to recover the unpaid balance of
2 wages owed to them by DEFENDANTS, plus interest, penalties, attorneys' fees, expenses, and
3 costs of suit.

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5 **FIFTH CAUSE OF ACTION**

6 **Failure to Timely Pay Wages During Employment**

7 **[Cal. Labor Code § 204]**

8 **(Against All DEFENDANTS)**

9 52. PLAINTIFFS incorporate herein by specific reference, as though fully set forth,
10 the allegations in all preceding paragraphs.

11 53. Pursuant to California Labor Code § 204, for all labor performed between the 1st
12 and 15th days of any calendar month, DEFENDANTS are required to pay their nonexempt
13 employees between the 16th and 26th day of the month during which the labor was performed.
14 California Labor Code § 204 also provides that for all labor performed between the 16th and 26th
15 days of any calendar month, DEFENDANTS are required to pay their nonexempt employees
16 between the 1st and 10th day of the following calendar month. In addition, California Labor Code
17 § 204 provides that all wages earned for labor in excess of the normal work period shall be paid
18 no later than the payday of the next regular payroll period.

19 54. During the CLASS PERIOD, DEFENDANTS knowingly and willfully failed to
20 pay PLAINTIFFS and CLASS MEMBERS all the wages they earned when due as required by
21 California Labor Code § 204.

22 55. Pursuant to California Labor Code § 210, failure to pay the wages of each
23 employee as provided in California Labor Code § 204 will subject DEFENDANTS to a civil
24 penalty of: (1) one hundred dollars (\$100) for each failure to pay each employee for each initial
25 violation; and (2) two hundred dollars (\$200) for each failure to pay each employee, plus twenty-
26 five percent (25%) of the amount unlawfully withheld, for each subsequent violation.

27 56. DEFENDANTS' conduct described herein violates California Labor Code § 204.
28 As a proximate result of the aforementioned violations, PLAINTIFFS and CLASS MEMBERS

1 have been damaged in an amount according to proof at trial. Therefore, pursuant to California
2 Labor Code §§ 200, 210, 226, 558, 1194, 1197.1, 2699, and other applicable provisions under
3 the Labor Code and IWC Wage Orders, PLAINTIFFS and CLASS MEMBERS are entitled to
4 recover the unpaid balance of wages owed to them by DEFENDANTS, plus interest, penalties,
5 attorneys' fees, expenses, and costs of suit.

6
7 **SIXTH CAUSE OF ACTION**

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

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

10 **(Against all DEFENDANTS)**

11 57. PLAINTIFFS incorporate herein by specific reference, as though fully set forth,
12 the allegations in all preceding paragraphs.

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

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

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

26 61. During the CLASS PERIOD, DEFENDANTS have willfully failed to pay
27 accrued wages and other compensation to PLAINTIFFS and CLASS MEMBERS in accordance
28 with California Labor Code §§ 201, 202, and 203.

1 62. As a result, PLAINTIFFS and CLASS MEMBERS are entitled to all available
2 statutory penalties, including the waiting time penalties provided in California Labor Code §
3 203, together with interest thereon, as well as other available remedies.

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

9
10 **SEVENTH CAUSE OF ACTION**

11 **Failure to Maintain Required Records**

12 **[Cal. Labor Code §§ 226, 1174; IWC Wage Order Nos. 4 and 9, § 7]**

13 **(Against all DEFENDANTS)**

14 64. PLAINTIFFS incorporate herein by specific reference, as though fully set forth,
15 the allegations in all preceding paragraphs.

16 65. During the CLASS PERIOD, as part of DEFENDANTS' illegal payroll policies
17 and practices to deprive PLAINTIFFS and CLASS MEMBERS of all wages earned and due,
18 DEFENDANTS knowingly and intentionally failed to maintain records as required under
19 California Labor Code §§ 226, 1174, and IWC Wage Order Nos. 4 and 9, § 7, including but not
20 limited to the following records: total daily hours worked by each employee; applicable rates of
21 pay; all deductions; meal periods; time records showing when each employee begins and ends
22 each work period; and accurate itemized statements.

23 66. As a proximate result of DEFENDANTS' unlawful actions and omissions,
24 PLAINTIFFS and CLASS MEMBERS have been damaged in an amount according to proof at
25 trial, and are entitled to all wages earned and due, plus interest thereon. Additionally,
26 PLAINTIFFS and CLASS MEMBERS are entitled to all available statutory penalties, including
27 but not limited to civil penalties pursuant to California Labor Code §§ 226(e), 226.3, and 1174.5,
28 and an award of costs, expenses, and reasonable attorneys' fees, including but not limited to

1 those provided in California Labor Code § 226(e), as well as other available remedies.

2
3 **EIGHTH CAUSE OF ACTION**

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

5 **[Cal. Labor Code §§ 226; IWC Wage Order Nos. 4 and 9, § 7]**

6 **(Against all DEFENDANTS)**

7 67. PLAINTIFFS incorporate herein by specific reference, as though fully set forth,
8 the allegations in all preceding paragraphs.

9 68. During the CLASS PERIOD, DEFENDANTS routinely failed to provide
10 PLAINTIFFS and CLASS MEMBERS with timely, accurate, and itemized wage statements in
11 writing showing each employee's gross wages earned, total hours worked, all deductions made,
12 net wages earned, the inclusive dates of the period for which the employee is paid, the name and
13 address of the legal entity or entities employing PLAINTIFFS and CLASS MEMBERS, and all
14 applicable hourly rates in effect during each pay period and the corresponding number of hours
15 worked at each hourly rate, in violation of California Labor Code § 226 and IWC Wage Order
16 Nos. 4 and 9, § 7.

17 69. During the CLASS PERIOD, DEFENDANTS knowingly and intentionally failed
18 to provide PLAINTIFFS and CLASS MEMBERS with timely, accurate, and itemized wage
19 statements in accordance with California Labor Code § 226(a).

20 70. 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 all wages earned and due, plus interest thereon. Additionally, PLAINTIFFS and
23 CLASS MEMBERS are entitled to all available statutory penalties, including but not limited to
24 civil penalties pursuant to California Labor Code §§ 226(e), 226.3, and 1174.5, and an award of
25 costs, expenses, and reasonable attorneys' fees, including but not limited to those provided in
26 California Labor Code § 226(e), as well as other available remedies.

1 **NINTH CAUSE OF ACTION**

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

3 **Incurred in Discharge of Duties**

4 **[Cal. Labor Code § 2802]**

5 **(Against all DEFENDANTS)**

6 71. PLAINTIFFS incorporate herein by specific reference, as though fully set forth,
7 the allegations in all preceding paragraphs.

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

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

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

1 **TENTH CAUSE OF ACTION**

2 **Failure to Pay All Vested Vacation Time Upon Termination**

3 **[Cal. Labor Code § 227.3]**

4 **(Against all DEFENDANTS)**

5 75. PLAINTIFFS incorporate by reference and re-allege as if fully stated herein
6 each and every allegation set forth above.

7 76. At all relevant times herein set forth, California Labor Code section 227.3
8 provides that whenever a contract of employment or employer policy provides for paid
9 vacations, and an employee is terminated without having taken his or her vested vacation time,
10 all vested vacation shall be paid to him or her as wages at his or her final rate in accordance with
11 such contract of employment or employer policy respecting eligibility or time served.

12 77. During the relevant time period, DEFENDANTS had a company-wide policy and
13 practice of failing to pay PLAINTIFFS and CLASS MEMBERS vested vacation wages that were
14 owed to them at the end of their employment, in violation of California Labor Code section
15 227.3. Specifically, DEFENDANTS failed to properly calculate and pay all earned vested
16 vacation time due to the hours PLAINTIFFS and CLASS MEMBERS worked off-the-clock
17 pursuant to their company-wide policies and/or practices. Alternatively, when DEFENDANTS
18 did pay earned vested vacation time, it was not paid at the proper rate.

19 78. DEFENDANTS' failure to pay PLAINTIFFS and CLASS MEMBERS all vested
20 vacation wages at the proper rate at the end of their employment has caused a forfeiture of vested
21 vacation wages, in violation of California Labor Code section 227.3. PLAINTIFFS and CLASS
22 MEMBERS are therefore entitled to recover from DEFENDANTS their unpaid vested vacation
23 wages due to them, plus interest.

ELEVENTH CAUSE OF ACTION

Failure to Pay Sick Leave Wages

[Cal. Lab. Code §§ 245-247.5]

(Against all DEFENDANTS)

79. PLAINTIFFS incorporate by reference and re-allege as if fully stated herein each and every allegation set forth above.

80. At all relevant times herein, California Labor Code sections 245.5, 246, 246.5, 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more days from the commencement of employment with paid sick days, to be accrued at least one hour for every 30 hours worked. Effective January 1, 2024, California Labor Code section 246(b)(4) requires employers to provide no less than 40 hours or five (5) days of paid sick leave (or equivalent paid leave or paid time off) in each year of the employee's employment. Further, Labor Code section 246(l) provides that an employer shall calculate paid sick leave by using one of two calculations: 1) "[p]aid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek[;]" or 2) "[p]aid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment."

81. During the relevant time period, on information and belief, DEFENDANTS did not pay PLAINTIFFS and CLASS MEMBERS the correct sick leave rates of pay. DEFENDANTS failed to correctly use either method of calculation under Labor Code section 246(l) to determine PLAINTIFFS' and CLASS MEMBERS' sick leave rates of pay. As stated, in addition to an hourly wage, DEFENDANTS paid PLAINTIFFS and CLASS MEMBERS incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, DEFENDANTS failed to incorporate all remunerations, including incentive pay, and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the sick leave pay rate. Therefore, during times when

1 PLAINTIFFS and CLASS MEMBERS took sick leave and received these other forms of pay,
2 DEFENDANTS failed to pay all sick leave benefits by paying a lower sick leave pay rate than
3 required. Specifically, DEFENDANTS paid PLAINTIFFS and CLASS MEMBERS sick leave
4 based on their hourly rate of pay instead of their regular rate of pay. DEFENDANTS' failure to
5 properly calculate the sick leave rates of pay based on all remuneration paid has resulted in an
6 underpayment of sick leave benefits to PLAINTIFFS and CLASS MEMBERS on a company-
7 wide basis in violation of Labor Code section 246(l).

8 82. Additionally, DEFENDANTS failed to provide PLAINTIFFS and CLASS
9 MEMBERS paid sick leave of one hour of paid sick leave for every 30 hours worked, by failing
10 to account for all hours worked by PLAINTIFFS and CLASS MEMBERS, including time spent
11 working off the clock. PLAINTIFFS and CLASS MEMBERS worked in excess of 30 days for
12 DEFENDANTS in California and were therefore eligible to receive paid sick leave. As a result,
13 DEFENDANTS failed to PLAINTIFFS and CLASS MEMBERS with the correct amount of sick
14 leave benefits, in violation of Labor Code section 246(b)(1)-(4).

15 83. Accordingly, PLAINTIFFS and CLASS MEMBERS are entitled to recover
16 statutory penalty wages pursuant to Labor Code section 248.5.

17
18 **TWELFTH CAUSE OF ACTION**

19 **Failure to Pay COVID-19 Supplemental Paid Sick Leave**

20 **[Cal. Lab. Code §§ 248-248.5]**

21 **(Against all DEFENDANTS)**

22 84. PLAINTIFFS incorporate by reference and re-allege as if fully stated herein each
23 and every allegation set forth above.

24 85. California Labor Code § 248.2(b)(1) provides that "[a]n employer shall provide
25 COVID-19 supplemental paid sick leave to each covered employee if that covered employee is
26 unable to work or telework due to any of the following reasons:

27 (A) The covered employee is subject to a quarantine or isolation period related to
28 COVID-19 as defined by an order or guidelines of the State Department of Public

1 Health, the federal Centers for Disease Control and Prevention, or a local health
2 officer who has jurisdiction over the workplace. If the covered employee is
3 subject to more than one of the foregoing, the covered employee shall be
4 permitted to use COVID-19 supplemental paid sick leave for the minimum
5 quarantine or isolation period under the order or guidelines that provides for the
6 longest such minimum period.

7 (B) The covered employee has been advised by a health care provider to self-
8 quarantine due to concerns related to COVID-19.

9 (C) The covered employee is attending an appointment to receive a vaccine for
10 protection against contracting COVID-19.

11 (D) The covered employee is experiencing symptoms related to a COVID-19
12 vaccine that prevent the employee from being able to work or telework.

13 (E) The covered employee is experiencing symptoms of COVID-19 and seeking a
14 medical diagnosis.

15 (F) The covered employee is caring for a family member, as defined
16 in [subdivision \(c\) of Section 245.5](#), who is subject to an order or guidelines
17 described in subparagraph (A) or who has been advised to self-quarantine, as
18 described in subparagraph (B).

19 (G) The covered employee is caring for a child, as defined in [subdivision \(c\) of](#)
20 [Section 245.5](#), whose school or place of care is closed or otherwise unavailable
21 for reasons related to COVID-19 on the premises.” *Id.*

22 86. Pursuant to California Labor Code 248.2(b)(2)(A), such employees are “entitled
23 to 80 hours of COVID-19 supplemental paid sick leave” if “(i) The employer considers the
24 covered employee to work full time,” or “(ii) [t]he covered employee worked or was scheduled
25 to work, on average, at least 40 hours per week for the employer in the two weeks preceding the
26 date the covered employee took COVID-19 supplemental paid sick leave.” *Id.*

27 87. During the relevant time period, on information and belief, DEFENDANTS did
28 not pay PLAINTIFFS and CLASS MEMBERS all COVID-19 supplemental paid sick leave that

1 they were entitled to receive. Further, on information and belief, DEFENDANTS required
2 PLAINTIFFS and CLASS MEMBERS to use other forms of paid time off, such as paid sick
3 leave and vacation pay, in lieu of COVID-19 supplemental paid sick leave. As a result,
4 DEFENDANTS failed to comply with Labor Code §§ 248 *et seq.*

5 88. DEFENDANTS are liable to PLAINTIFFS and CLASS MEMBERS alleged
6 herein for the unpaid COVID-19 supplemental paid sick leave.

7
8 **THIRTEENTH CAUSE OF ACTION**

9 **Violations of the Fair Credit Reporting Act**

10 **[15 U.S.C. §§ 1681 *et seq.*]**

11 **(Against all DEFENDANTS)**

12 89. PLAINTIFFS re-allege and incorporate all preceding paragraphs as though fully
13 set forth herein.

14 90. DEFENDANTS are “persons” as defined by Section 1681a(b) of the FCRA.

15 91. PLAINTIFFS and CLASS MEMBERS are “consumers” within the meaning of
16 1681a(c) of the FCRA because they are “individuals.”

17 92. Pursuant to 15 U.S.C. section 1681b(b)(2)(A), an employer may not procure, or
18 cause to be procured, consumer reporting for employment purposes without providing the
19 employee with “a clear and conspicuous disclosure ... made in writing ... in a document that
20 consists solely of the disclosure that a consumer report may be obtained for employment
21 purposes” and which the consumer has “authorized in writing” the procedure of the report by
22 that person.

23 93. PLAINTIFFS are informed and believes, and based thereon alleges, that during
24 the relevant time period alleged herein, DEFENDANTS have, at times, obtained and used
25 information in consumer reports to conduct background checks on prospective and existing
26 employees which failed to comply with the requirements under the FCRA because they, among
27 other things, included superfluous information within the disclosure. DEFENDANTS have, at
28 times, also used conducted improper background checks when making employment-related

1 decisions.

2 94. PLAINTIFFS, on behalf of themselves and CLASS MEMBERS, allege that
3 DEFENDANTS' violations of the FCRA were willful. DEFENDANTS knew or should have
4 known about its obligations under the FCRA as a result of the plain language of the statutes.

5 95. PLAINTIFFS, on behalf of themselves and CLASS MEMBERS, seek all
6 statutory remedies available under the FCRA, including statutory penalties, punitive damages,
7 and attorneys' fees and costs pursuant to, without limitation, 15 U.S.C. §§ 1681n and 1681o.

8
9 **FOURTEENTH CAUSE OF ACTION**

10 **Violations of the Fair Labor Standards Act**

11 **[29 U.S.C. §§ 201, *et seq.*]**

12 **(Against all DEFENDANTS)**

13 96. PLAINTIFFS re-allege and incorporate all preceding paragraphs as though fully
14 set forth herein.

15 97. DEFENDANTS are employer engaged in interstate commerce and/or the
16 production of goods for commerce, within the meaning of the FLSA.

17 98. DEFENDANTS employed and/or continue to employ PLAINTIFFS and CLASS
18 MEMBERS within the meaning of the FLSA. PLAINTIFFS have expressly consented in writing
19 to be a party to this action, pursuant to 29 U.S.C. § 216(b).

20 99. Pursuant to the FLSA, DEFENDANTS were required to compensate
21 PLAINTIFFS and CLASS MEMBERS an amount at least equal to the applicable minimum
22 wage for all hours worked, and for overtime at a rate of one and one-half times the regular rate of
23 pay for work performed in excess of 40 hours in a workweek. 29 U.S.C. §§ 206(a), 207(a).

24 100. During the relevant time period, PLAINTIFFS and CLASS MEMBERS worked
25 in excess of 40 hours in a workweek.

26 101. DEFENDANTS required PLAINTIFFS and CLASS MEMBERS to regularly
27 work off-the-clock before and after scheduled shifts and during unpaid meal periods. As a result,
28 DEFENDANTS failed to pay PLAINTIFFS and CLASS MEMBERS' minimum wages for all

1 hours worked and failed to pay overtime compensation for all hours worked in excess of 40
2 hours in a workweek.

3 102. Based on information and belief, DEFENDANTS knew or should have known
4 that, as a result of company-wide practices and/or policies, PLAINTIFFS and CLASS
5 MEMBERS were performing their assigned duties off the clock before and after their shifts and
6 during meal periods.

7 103. DEFENDANTS have knowingly and willfully failed and continues to willfully
8 fail to record, report, and/or preserve accurate records of all hours worked by PLAINTIFFS and
9 CLASS MEMBERS. By failing to record, report, and/or preserve records of all hours worked by
10 PLAINTIFFS and CLASS MEMBERS, DEFENDANTS have further violated the FLSA, 29
11 U.S.C. §§ 201, et seq.

12 104. As a result of these violations, PLAINTIFFS and CLASS MEMBERS seek to
13 recover their respective unpaid wages, overtime compensation, liquidated damages, interest,
14 attorneys' fees and costs pursuant to 29 U.S.C. § 216(b), and any other relief the Court deems
15 just and proper.

16
17 **FIFTEENTH CAUSE OF ACTION**

18 **Violations of the Investigative Consumer Reporting Agencies Act**

19 **[Cal. Civ. Code §§ 1786 et seq.]**

20 **(Against all DEFENDANTS)**

21 105. PLAINTIFFS re-allege and incorporate all preceding paragraphs as though fully
22 set forth herein.

23 106. At all relevant times, PLAINTIFFS and CLASS MEMBERS were current,
24 former, and prospective employees of DEFENDANTS covered by the ICRAA, California Civil
25 Code §§ 1786, et seq.

26 107. PLAINTIFFS are informed and believes that PLAINTIFFS and CLASS
27 MEMBERS are "consumers" within the meaning of Section 1786.2(b) of the ICRAA, because
28 they are "individuals."

1 108. Section 1786.2(c) of the ICRAA defines an “investigative consumer report” as “a
2 consumer report in which information on a consumer’s character, general reputation, personal
3 characteristics, or mode of living is obtained through any means.”

4 109. PLAINTIFFS are informed and believes that DEFENDANTS obtained
5 background checks from PLAINTIFFS and CLASS MEMBERS, which qualify as an
6 “investigative consumer report” under the ICRAA.

7 110. PLAINTIFFS are informed and believes that DEFENDANTS violated Section
8 1786.16(a)(2) of the ICRAA by failing to obtain compliant disclosures and/or by including
9 extraneous information in a disclosure form. For example, DEFENDANTS have, at times, failed
10 to make a “clear and conspicuous” disclosure in writing to PLAINTIFFS and CLASS
11 MEMBERS at any time before the report is or was procured or caused to be made in a document
12 that consists solely of the disclosure, that: identified the name, address, and telephone number of
13 the investigative consumer reporting agency conducting the investigation; notified PLAINTIFFS
14 and CLASS MEMBERS in writing of the nature and scope of the investigation requested; and
15 notified PLAINTIFFS and CLASS MEMBERS of the internet web site of the investigative
16 consumer reporting agency.

17 111. PLAINTIFFS are informed and believes that DEFENDANTS willfully violated
18 the strict disclosure and authorization requirements of the ICRAA.

19 112. As a result of DEFENDANTS’ unlawful procurement of background reports by
20 way of its inadequate disclosures and authorizations, as set forth above, PLAINTIFFS and
21 CLASS MEMBERS have been deprived of their consumer rights and prevent from making
22 informed decisions about whether to permit DEFENDANTS to obtain their personal information.

23 113. PLAINTIFFS, on behalf of themselves and CLASS MEMBERS, seek all
24 available remedies pursuant to, without limitation, California Civil Code § 1786.50, including
25 statutory damages and/or actual damages, punitive damages, and attorneys’ fees and costs.

1 **SIXTEENTH CAUSE OF ACTION**

2 **Unfair and Unlawful Business Practices**

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

4 **(Against all DEFENDANTS)**

5 114. PLAINTIFFS incorporate herein by specific reference, as though fully set forth,
6 the allegations in all preceding paragraphs.

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

17 116. DEFENDANTS' violations of California wage and hour laws constitute a
18 business practice because DEFENDANTS' aforementioned acts and omissions were done
19 repeatedly over a significant period of time, and in a systematic manner, to the detriment of
20 PLAINTIFFS and CLASS MEMBERS.

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

26 118. As a result of DEFENDANTS' unfair and unlawful business practices,
27 DEFENDANTS have reaped unfair and illegal profits during the CLASS PERIOD at the
28 expense of PLAINTIFFS, CLASS MEMBERS, and members of the public. DEFENDANTS

1 should be made to disgorge their ill-gotten gains and to restore them to PLAINTIFFS and
2 CLASS MEMBERS.

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

10
11 **SEVENTEENTH CAUSE OF ACTION**

12 **Violation of the Private Attorneys General Act**

13 **(Labor Code sections 2698, *et seq.*)**

14 **(Against all Defendants)**

15 120. PLAINTIFFS incorporate herein by specific reference, as though fully set forth,
16 the allegations in all preceding paragraphs.

17 **Failure to Keep Accurate Records**

18 121. California Labor Code § 1174 requires employers to keep "accurate and
19 complete" payroll records showing, among other things, the hours worked daily by all non-
20 exempt employees. All applicable Wage Orders § 7 similarly requires employers to keep time
21 records reflecting the times during which all owed meal periods were provided each day.

22 122. At all relevant times, DEFENDANTS failed, and continue to fail, to keep accurate
23 and complete records as required by law, including but not limited to the following records: total
24 daily hours worked, applicable rates of pay, time records showing when PLAINTIFFS and other
25 Aggrieved Employees began and ended each work period, time records of meal periods, and
26 accurate itemized wage statements.

27 123. DEFENDANTS' failure to keep "accurate and complete" payroll records for
28 PLAINTIFFS and other Aggrieved Employees violates Labor Code §§ 1174, 1198, 1199, and all

1 applicable Wage Orders, section 7. These violations subject DEFENDANTS to civil penalties
2 under Labor Code §§ 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section
3 and Wage Order provision results in a separate civil penalty, for each Aggrieved Employee for
4 each pay period during which the referenced statutes and Wage Order provisions were violated.¹

5 **Failure to Produce Records in Violation of Labor Code §§ 226(b)-(c), 1198.5, and 432**

6 124. Time and Pay Records: Labor Code section 226 and all applicable IWC Wage
7 Orders, section 7 require that employers keep the following information on file for each
8 employee for a minimum of three years: The employee's dates of employment; the employee's
9 hourly rates and the corresponding number of hours worked by the employee at each hourly rate,
10 when the employee begins and ends each work period (including meal periods) and split
11 intervals; total hours worked by the employee; all deductions; gross wages earned; and net wages
12 earned.

13 125. Section (b) of Labor Code section 226 further requires employers to "afford
14 current and former employees the right to inspect or receive a copy of records pertaining to their
15 employment upon reasonable request to the employer." Section (c) of Labor Code section 226
16 provides that, "an employer who receives a written or oral request to inspect or receive a copy of
17 records pursuant to subdivision (b) pertaining to a current or former employee shall comply with
18 the request as soon as practicable, but no later than 21 calendar days from the date of the request.
19 A violation of this subdivision is an infraction." An employer's failure to comply within this
20 timeframe entitles a current or former employee to recover a seven hundred fifty-dollar (\$750)
21 penalty from the employer. Lab. Code section 226(f).

22 126. Personnel Records. In addition to their right to time and pay records, employees,
23 and their representatives, have the right to inspect and receive a copy of their personnel files

24
25 ¹ Labor Code § 2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period");
26 Labor Code § 558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which
27 the employee was underpaid"); All applicable wage orders, § 20 (establishing that "[i]n addition to any other civil
28 penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or
causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee
for each pay period during which the employee was underpaid") (emphasis added).

1 pursuant to Labor Code section 1198.5. This statute applies to both former and current
2 employees. Labor Code section 432 further specifies that employers must furnish copies of all
3 employment records bearing the employee's signature. Labor Code section 1198.5 also requires
4 that the file be made available for inspection or receipt within a "reasonable" amount of time, but
5 "not later than 30 calendar days from the date the employer receives a written request." An
6 employer's failure to comply within this timeframe likewise entitles a current or former
7 employee to recover a seven hundred fifty-dollar (\$750) penalty from the employer. Lab. Code
8 section 1198.5(k).

9 127. Based on information and belief, DEFENDANTS fail to timely produce or make
10 available Aggrieved Employees' personnel records and/or payroll records when requested
11 pursuant to Labor Code sections 226, 1198.5, 432, and/or the applicable Wage Order. These
12 violations subject DEFENDANTS to penalties under Labor Code sections 226, 1198.5, and
13 2699.

14 **Meal Period Violations**

15 128. California law requires employers to provide employees a duty-free, uninterrupted
16 thirty (30) minute meal period when an employee works more than five (5) hours in a workday,
17 and it must be provided within the first five (5) hours the employee works. Lab. Code section
18 512 (and all applicable IWC Wage Orders), section 11(A) and (C); *Brinker Restaurant Corp. v.*
19 *Superior Court* (2012) 53 Cal.4th 1004.

20 129. Employers must also provide employees with a second duty-free, uninterrupted
21 thirty (30) minute meal period when an employee works more than (10) hours in a workday, and
22 it must be provided before the end of the 10th hour of work. *Ibid.*

23 130. Employers covered by any and all applicable IWC Wage Orders have an
24 obligation to both (1) relieve their employees for at least one meal period for shifts over five
25 hours (see above), and (2) to record having done so. If the employer fails to properly record a
26 valid meal period, it is presumed that no meal period was provided. All applicable IWC Wage
27 Orders, section 7(A)(3) ("Meal periods . . . shall also be recorded"); *Brinker, supra*, 53 Cal.4th
28 1004, 1052-1053, citing section 7(A)(3) ("If an employer's records show no meal period for a

1 given shift over five hours, a rebuttable presumption arises that the employee was not relieved of
2 duty and no meal period was provided”).

3 131. Employers must pay employees an additional hour of wages at the employees’
4 regular rate of pay for each missed or unlawful meal period (e.g., less than 30 minutes,
5 interrupted meal period, first meal period provided after five (5) hours, second meal period
6 provided after 10 hours). Lab. Code § 226.7; all applicable IWC Wage Orders, §11(B) (“If an
7 employer fails to provide an employee a meal period in accordance with the applicable provision
8 of this Order, the employer shall pay the employee one (1) hour of pay at the employee’s regular
9 rate of compensation for each workday that the meal period is not provided”); Brinker, supra, 53
10 Cal.4th 1004.

11 132. As explained above, Aggrieved Employees that worked in a non-driver position
12 were consistently unable to take timely, off duty, thirty-minute, uninterrupted first and second
13 meal periods, often being forced to take late meal periods, interrupted meal periods, and/or work
14 through part or all of their meal periods due to understaffing, the nature and constraints of their
15 job duties, and/or commentary from supervisors pressuring them to take non-compliant meal
16 periods or skip meal periods completely.

17 133. Based on information and belief, DEFENDANTS had and continue to have a
18 policy of rounding the start and end times of employees’ meal periods and/or automatically
19 deducting thirty minutes per shift despite having actual and/or constructive knowledge that
20 PLAINTIFFS and Aggrieved Employees did not receive compliant meal periods.

21 134. Moreover, based on information and belief, Aggrieved Employees did not receive
22 a timely, uninterrupted second meal period when working shifts over ten (10) hours in a
23 workday.

24 135. PLAINTIFFS are informed and believes and thereon allege that DEFENDANTS
25 had actual and/or constructive knowledge that its time-rounding and auto-deduction policies and
26 practices, other unlawful policies and practices resulted in the denial of compliant meal periods
27 in violation of California's meal period laws.

28 136. DEFENDANTS also failed to pay premiums for missed/otherwise unlawful meal

1 periods in violation of California law and/or failed to pay the proper meal period premium for
2 failure to incorporate all non-discretionary remuneration including but not limited to, bonuses,
3 shift differential pay and/or other non-discretionary compensation into the regular rate or
4 compensation for purposes of calculating the owed meal period premium.

5 137. These unlawful meal period policies and practices result in violations of Labor
6 Code sections 226.7, 512, and 1198-1199, and all applicable wage orders, § 11. These violations
7 subject DEFENDANTS to civil penalties under Labor Code §§ 558, 558.1 and 2699, and all
8 applicable Wage Orders, § 20. These practices result in further violations such as violations of
9 Labor Code § 1174 as discussed above, 1198-1199, 226.6 and other violations discussed below.

10 **Rest Period Violations**

11 138. Labor Code section 226.7 and all applicable IWC Wage Orders require an
12 employer to authorize or permit an employee to take a rest period of ten (10) net minutes for
13 every four hours worked or major fraction thereof. Such rest periods must be in the middle of the
14 four-hour period “insofar as practicable.” In *Brinker v. Superior Court*, 53
15 Cal.4th 1004 (2012), the California Supreme Court held that employees are entitled to a 10-
16 minute paid rest period for shifts from 3 ½ to 6 hours in a length, two 10-minute rest periods for
17 shifts more than 6 hours up to 10 hours, and three 10-minute rest periods for shifts of more than
18 10 hours up to 14 hours. (*Id.* at 1029). The rest period requirement obligates employers to permit
19 and authorize employees to take off-duty rest periods, meaning employers must relieve
20 employees of all duties and relinquish control over how employees spend their time. *Augustus v.*
21 *ABM Security Services, Inc.*, (2016) 5 Cal.5th 257. If the employer fails to provide any required
22 rest period, the employer must pay the employee one hour of pay at the employee’s regular rate
23 of compensation for each workday the employer did not provide at least one legally required rest
24 period, pursuant to Labor Code section 226.7, and applicable IWC Wage Order, §12(B).

25 139. Moreover, under California law rest periods must be a “net” ten minutes in a
26 suitable rest area. *Id.* at 268 (relying on January 3, 1986 and February 22, 2002 Division of
27 Labor Standards Enforcement (DLSE) Letters wherein the DLSE ruled that the net ten-minute
28 language for rest periods means ten minutes of time in a rest area and cannot include time it takes

1 to get to and from the rest area). The employer must show that it clearly articulates the right to a
2 net ten minutes, which means it must clearly communicate what “net” ten minutes means (i.e.,
3 regardless of what happens along the way to and from a rest area, employees are entitled to a full
4 ten minutes of rest in the rest area). Id.; see also, *Bufile v. Dollar Fin. Grp., Inc.*, (2008) 162 Cal.
5 App. 4th 1193, 1199 (the “onus is on the employer to clearly communicate the authorization and
6 permission [to take rest periods] to its employees.”).

7 140. Aggrieved Employees that were employed in a non-driver position did not receive
8 legally compliant, timely 10-minute rest periods for every four (4) hours worked or major
9 fraction thereof. As explained above, any purported rest periods were late, interrupted, cut short,
10 on duty, and/or otherwise subject to DEFENDANTS’ control due to the nature and constraints of
11 Aggrieved Employees’ job duties, understaffing, and/or commentary from supervisors pressuring
12 PLAINTIFFS and Aggrieved Employees to skip rest periods completely or otherwise take non-
13 compliant rest periods.

14 141. Based on information and belief, DEFENDANTS implemented policies and/or
15 practices that failed to relieve PLAINTIFFS and other Aggrieved Employees of all duties and
16 employer control during rest periods. Based on further information and belief, Aggrieved
17 Employees were pressured to complete their work duties according to a designated schedule such
18 that rest periods were only taken once tasks were completed, and/or as time permitted.

19 142. As a result, PLAINTIFFS and Aggrieved Employees did not receive legally
20 compliant first, second, or third rest periods as required by California law.

21 143. Moreover, based on information and belief, DEFENDANTS failed to pay a rest
22 period premium to PLAINTIFFS and other Aggrieved Employees for each workday in which
23 there was a missed or otherwise unlawful rest period. Based on further information and belief,
24 when a rest premium was paid, DEFENDANTS failed to include non-discretionary
25 compensation including but not limited to, bonuses, shift differential pay, and/or other non-
26 discretionary compensation into the regular rate of compensation for purposes of determining the
27 owed rest period premium.

28 144. As such, DEFENDANTS violated Labor Code sections 226.7, and 1198-1199,

1 and all applicable IWC Wage Orders, §12. These violations subject DEFENDANTS to civil
2 penalties under Labor Code §§ 558 and 2699, and all applicable Wage Orders, §20.

3 **Minimum and Overtime Wage Violations**

4 145. California law provides that employees in California must be paid for all hours
5 worked, up to forty (40) hour per week or eight (8) hours per day, at a regular rate that is no less
6 than the mandated minimum wage. See Labor Code section 1197 and the applicable Wage
7 Order. The minimum wage standard applies to each hour employees worked for which they were
8 not paid. Therefore, an employer's failure to pay for any particular hour worked by an employee
9 is unlawful even if averaging an employee's total pay over all hours worked, paid or not, results
10 in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135
11 Cal.App.4th 314, 324.

12 146. California law also provides that employees in California must be paid overtime,
13 equal to 1.5 times the employee's regular rate of pay for all hours worked in excess of 40 hours
14 per week or 8 hours per day. See Labor Code 510 and the applicable Wage Order section 3.
15 Employers must pay overtime equal to double the regular hourly rate of pay for each hour
16 worked beyond twelve (12) hours per workday and for all hours worked in excess of eight (8)
17 hours on the seventh consecutive day of work in a work week. *Ibid.*

18 147. As explained above, DEFENDANTS violated California's minimum and
19 overtime wage laws by failing to compensate Aggrieved Employees for all hours worked by
20 virtue of, among other things, DEFENDANTS' time rounding policies and practices (for shift
21 start and end times and meal period start and end times), payment according to scheduled hours
22 worked, automatic deduction for meal periods, and/or off-the-clock/unpaid work completed
23 during meal periods, and/or other otherwise off-the-clock work (described above), and/or other
24 unlawful policies and/or practices described above which resulted in unpaid minimum and
25 overtime wages.

26 148. DEFENDANTS had and continue to have a policy of failing to pay PLAINTIFFS
27 and Aggrieved Employees for all hours worked.

28 149. Based on information and belief, DEFENDANTS had actual or constructive

1 knowledge that its time-rounding policies and practices, auto-deduction policies and practices for
2 meal periods, payment according to scheduled hours, failure to relieve employees of all duties
3 and employer control during unpaid meal periods, and/or other off-the-clock work resulted in the
4 underpayment of minimum and overtime wages owed to PLAINTIFFS and other Aggrieved
5 Employees.

6 150. Based on information and belief, DEFENDANTS failed to pay twice Aggrieved
7 Employees' regular rate(s) of pay for time worked beyond twelve (12) hours per workday and
8 for time worked beyond eight (8) hours on the seventh consecutive day of work in a work week,
9 in violation of California's overtime laws.

10 151. Based on information and belief, DEFENDANTS further violated California's
11 overtime wage laws by failing to incorporate all non-discretionary compensation, including but
12 not limited to, non-discretionary bonus compensation, shift differentials, and/or other non-
13 discretionary compensation into the regular rate of pay used to calculate the overtime rate of pay.
14 Failing to include non-discretionary compensation into the regular rate of pay resulted in a
15 miscalculation of the overtime wage rate, resulting in the underpayment of overtime wages owed
16 to Aggrieved Employees that worked in a non-driver position.

17 152. This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1,
18 1194, 1197, 1198-1199, and all applicable Wage Orders. These violations subject
19 DEFENDANTS to civil penalties under Labor Code sections 218.5, 558, 558.1, 1197.1, 2699,
20 and all applicable IWC Wage Orders, section 20.

21 **Statutory Wage Violations**

22 153. California Labor Code section 223 makes it unlawful for an employer to secretly
23 pay wages lower than required by statute while purporting to pay legal wages. As described
24 above, DEFENDANTS willfully and systematically denied PLAINTIFFS and Aggrieved
25 Employees of all earned minimum and overtime compensation for all hours worked which
26 resulted in the payment of less than statutorily required wages. DEFENDANTS acted with the
27 intent to deprive them of statutory wages, including, but not limited to, minimum and overtime
28 wages, to which they were entitled to under California law. Thus, DEFENDANTS paid

1 PLAINTIFFS and other Aggrieved Employees lower wages than those they were entitled to
2 while purporting that PLAINTIFFS and other Aggrieved Employees were properly paid. As a
3 result, PLAINTIFFS and other Aggrieved Employees are entitled to recover penalties, attorney's
4 fees, costs, and interest thereon, pursuant to Labor Code § 2699(f)-(g).

5 **Refusal to Make Payment**

6 154. Labor Code section 216 declares unlawful an employer's refusal to pay wages due
7 and payable and/or the denial of the validity of any claim to wages due. DEFENDANTS violated
8 and continue to violate this section by failing to pay PLAINTIFFS and Aggrieved Employees for
9 all hours worked at the proper wage rate and by failing to pay an additional hour of pay for each
10 meal/rest period not provided or that was otherwise unlawful. Gould v. Maryland Sound
11 Industries, Inc. (1995) 31 Cal.App.4th 1137, 1154-1155. These violations subject
12 DEFENDANTS to civil penalties under Labor Code section 225.5. Each violation results in a
13 separate civil penalty, for each Aggrieved Employee, for each pay period during which the
14 statute provisions were violated.²

15 **Standard Conditions of Labor Violations**

16 155. Together, Labor Code sections 1198 and 1199 make unlawful any employment of
17 any employee under conditions of labor prohibited by the Wage Orders, and any violation,
18 refusal, or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code,
19 including sections 1174, 1197, and 1198, or order or ruling of the commission. Therefore,
20 DEFENDANTS' violations with respect to meal periods, rest periods, record keeping provisions,
21 business expenses, minimum/overtime wages and other violations described herein result in
22 separate violations of sections 1198 and 1199, which subject DEFENDANTS to civil penalties
23 under Labor Code sections 1197.1 and 2699.

25
26 ² Labor Code § 225.5 (establishing that “[i]n addition to, and entirely independent and apart
27 from, any other penalty provided in this article, every person who unlawfully withholds wages
28 due any employee in violation of sections 212, 216, 221, 222, or 223 shall be subject to a civil
penalty...for each failure to pay each employee”) (emphasis added).

Business Expense Violations

156. California law requires employers to indemnify their employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of their duties or of their obedience to the directions of the employer. See Cal. Lab. Code s. 2802 and all applicable Wage Orders section 9(b). Furthermore, “for purposes of [section 2802], the term ‘necessary expenditure or losses’ shall include all reasonable costs, including, but not limited to, attorneys’ fees incurred by the employee enforcing the rights granted by this section.”

157. Among other things, under California law, when employees must use their personal cellphones for work-related purposes, the employer must reimburse them for a reasonable percentage of their cell phone bills. See *Cochran v. Schwan’s Home Services, Inc.* (2014) 228 Cal.App.4th 1137, 1140. To show liability, an employee will only need to show that he or she was required to use their personal cellphone for work-related purposes and not reimbursed for the use. *Id.* 1144-1145. California law also requires employers to reimburse employees for automobile expenses incurred for the business use of personal vehicles, such as for mileage, gas, and the wear and tear on the vehicle. See *Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554.

158. Further, “any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled to under the laws of this State.” See Cal. Lab. Code section 2804.

159. As described above, PLAINTIFFS and the Aggrieved Employees were improperly required to pay for business expenses that are legally the responsibility of the employer.

160. DEFENDANTS’ failure to provide PLAINTIFFS and the Aggrieved Employees with full reimbursement for all reasonable expenses associated with carrying out their duties required that PLAINTIFFS and the Aggrieved Employees subsidize and/or carry the burden of business expenses in violation of Labor Code section 2802.

161. As a result of DEFENDANTS’ unlawful conduct, PLAINTIFFS and other

1 Aggrieved Employees have suffered injury in that they were not completely reimbursed as
2 mandated by California law.

3 162. DEFENDANTS' failure to provide PLAINTIFFS and the Aggrieved Employees
4 with full reimbursement for all reasonable expenses associated with carrying out their duties
5 required that PLAINTIFFS and the Aggrieved Employees subsidize and/or carry the burden of
6 business expenses in violation of Labor Code section 2802.

7 163. As a result of DEFENDANTS' unlawful conduct, PLAINTIFFS and the
8 Aggrieved Employees have suffered injury in that they were not completely reimbursed as
9 mandated by California law.

10 164. Despite being aware of these business expenses, DEFENDANTS failed to
11 reimburse PLAINTIFFS and other Aggrieved Employees for such expenses in violation of
12 California Labor Code § 2802. In turn, there constitutes a PAGA violation based on violations of
13 California Labor Code § 2802 and the applicable Wage Order.

14 **Wage Statement Violations**

15 165. California law requires every employer semi-monthly or at the time of each
16 payment of wages to furnish its employees with an accurate itemized wage statement in writing
17 that contains the following: (1) gross wages earned; (2) total hours worked by the employee; (3)
18 the number of piece-rate units earned and any applicable piece rate if the employee is paid on a
19 piece-rate basis; (4) all deductions; (5) net wages earned; (6) the inclusive dates of the period for
20 which the employee is paid; (7) the name of the employee and only the last four digits of his or
21 her social security number or an employee identification number other than a social security
22 number; (8) the name and address of the legal entity that is the employer; and (9) all applicable
23 hourly rates in effect during the pay period and the corresponding number of hours worked at
24 each hourly rate. Lab. Code § 226.

25 166. As DEFENDANTS failed to provide PLAINTIFFS and other Aggrieved
26 Employees with meal and rest periods that complied with Labor Code section 226.7, the wage
27 statements DEFENDANTS issued to PLAINTIFFS and other Aggrieved Employees failed and
28 continue to fail to correctly set forth (a) the gross wages earned, in violation of Labor Code

1 section 226(a)(1); (b) the total hours worked by the employee in violation of Labor Code section
2 226(a)(2); (c) the net wages earned, in violation of Labor Code section 226(a)(5); and (d) all
3 applicable hourly rates in effect during the pay period and the corresponding number of hours
4 worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9).

5 167. Moreover, due to violations detailed above, including but not limited to,
6 DEFENDANTS' failure to pay regular and overtime wages for all hours worked, failure to
7 provide meal and rest break premiums, and failure to pay all sick leave wages at the proper rates,
8 DEFENDANTS have violated California Labor Code § 226 by willfully failing to furnish
9 PLAINTIFFS and other Aggrieved Employees with accurate, itemized wage statements that
10 listed the gross and net wages earned and the correct applicable rates of pay for all hours worked.
11 Based on information and belief, DEFENDANTS failed to incorporate all forms of non-
12 discretionary compensation earned during the pay period into the regular rate of pay for purposes
13 of calculating the owed overtime rate, and as such, failed to display the proper overtime rate(s)
14 for each hour of overtime worked by PLAINTIFFS and other Aggrieved Employees.

15 168. As explained above, wage statements issued by DEFENDANTS failed to list the
16 "total hours worked" by PLAINTIFFS and Aggrieved Employees (by virtue of rounded time
17 entries, automatic deduction for meal periods/failure to relieve Aggrieved Employees of all
18 duties and employer control during unpaid meal periods, and/or other off-the-clock work policies
19 and practices described above), which results in a violation of Labor Code section 226(a). Failure
20 to list all hours worked on a wage statement, gives rise to an inference of injury under Labor
21 Code Section 226 (Maldonado v. Epsilon Plastics, Inc., (2018) 22 Cal.App.5th 1308, 1337).

22 169. Based on information and belief, wage statements issued by DEFENDANTS
23 failed to list all applicable hourly rates in effect during the pay period and the corresponding
24 number of hours worked at each hourly rate by the employee, in violation of, including but not
25 limited to, Labor Code section 226(a)(9).

26 170. Separately, and independent from the above allegations, based on information and
27 belief, DEFENDANTS issued wage statements to PLAINTIFFS and Aggrieved Employees that
28 violate Labor Code section 226(a)(8), by failing to list the correct name and/or address of the

1 legal entity that is the employer.

2 171. Based on information and belief, wage statements issued by DEFENDANTS
3 failed to list the inclusive dates of the pay period for which the Class Member is being paid.

4 172. DEFENDANTS' failure to accurately list all hours worked on all wage statements
5 caused confusion to PLAINTIFFS and caused and continues to cause confusion to other
6 Aggrieved Employees over whether they received all wages owed to them.

7 173. As a result, PLAINTIFFS and other Aggrieved Employees have suffered injury as
8 they could not easily determine whether they received all wages owed to them and whether they
9 were paid for all hours worked.

10 174. Moreover, as a result of DEFENDANTS' failure to list the correct name and/or
11 address of the legal entity that is the employer, PLAINTIFFS and Aggrieved Employees have
12 suffered injury as they could not contact their employer regarding any question(s) they had about
13 wages paid.

14 175. DEFENDANTS' knowingly and intentionally failed to provide PLAINTIFFS and
15 Aggrieved Employees with accurate, itemized wage statements.

16 176. As a result of DEFENDANTS' unlawful conduct, PLAINTIFFS and Aggrieved
17 Employees have suffered injury. The absence of accurate information on their wage statements
18 has prevented earlier challenges to DEFENDANTS' unlawful pay practices, will require
19 discovery and mathematical computations to determine the amount of wages owed, and will
20 cause difficulty and expense in attempting to reconstruct time and pay records. DEFENDANTS'
21 conduct led to the submission of inaccurate information about wages and amounts deducted from
22 wages to state and federal government agencies. As a result, PLAINTIFFS and Aggrieved
23 Employees are required to participate in this lawsuit and create more difficulty and expense from
24 having to reconstruct time and pay records than if DEFENDANT had complied with its legal
25 obligations.

26 177. These violations subject DEFENDANTS to civil penalties under Labor Code §
27 226. Each violation results in a separate civil penalty, for each Aggrieved Employee, for each
28

1 pay period during which the statute provisions were violated. 3

2 **Sick Leave Violations**

3 178. DEFENDANTS violated California's paid sick leave laws including, Labor Code
4 section 245-248.5 and 233-234. DEFENDANTS either failed to provide sick leave pay to
5 PLAINTIFFS and other Aggrieved Employees or failed to properly accrue paid sick leave due to
6 DEFENDANTS' failure to account for actual hours worked (as explained above), and/or failure
7 to incorporate multiple rates of pay and/or all forms of non-discretionary remuneration including
8 but not limited to, non-discretionary bonuses, shift differential pay, and/or other non-
9 discretionary compensation into the sick leave pay rate calculation.

10 179. DEFENDANTS further failed to give PLAINTIFFS and other Aggrieved
11 Employees notice of their paid sick leave rights – or thereby putting their entitlement to sick
12 leave in a Labor Code section 2810.5 notice. In addition, DEFENDANTS failed to maintain
13 accurate records of used sick leave and the balance of paid sick leave left to the employees,
14 which affected PLAINTIFFS and Aggrieved Employees' intelligent exercise of their paid sick
15 leave.

16 180. But for this failure, PLAINTIFFS and other Aggrieved Employees would have
17 used their paid sick leave at least prior to their respective separations, for as on several occasions
18 thereafter, he or she would have been entitled to use the banked sick leave and earn appropriate
19 compensation.

20 181. In violation of Labor Code section 247.5, DEFENDANTS failed to maintain
21 records documenting the hours worked and paid sick days accrued and used by PLAINTIFFS
22 and all Aggrieved Employees, permitting the presumption that PLAINTIFFS and all Aggrieved
23 Employees were entitled to the maximum number of hours accruable.

24 182. Upon information and belief, DEFENDANTS failed and continue to fail to
25 comply with Labor Code section 246, by failing to provide PLAINTIFFS and all Aggrieved
26 Employees with a Labor Code section 226 wage statement, or separate writing containing the

27 _____
28 3 Labor Code § 226.3 (establishing that the civil penalty is "per employee per violation").

1 amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick
2 leave, at the time it pays wages.

3 183. These practices violated California's sick leave laws, Labor Code section 245, et
4 seq.

5 184. On information and belief, PLAINTIFFS allege that all of these practices were
6 experienced and continue to be experienced by other Aggrieved Employees.

7 185. Accordingly, PLAINTIFFS seek all appropriate relief under the PAGA, the
8 aforementioned code provisions including but not limited to Labor Code section 233 and 234,
9 and seeks injunctive relief, attorney's fees, declaratory relief, and penalties as permitted by law.

10 **Failure To Provide Supplemental Paid Sick Leave**

11 186. Labor Code § 248.2 provides that all employers with 26 or more employees are
12 required to provide up to 80 hours for covered employees to take 2021 COVID-19 Supplemental
13 Paid Sick Leave to care for themselves, to care for a family member or if it is vaccine-related.
14 DEFENDANTS violated Labor Code § 248.2 by not providing PLAINTIFFS and other
15 Aggrieved Employees with required 2021 COVID-19 Supplemental Paid Sick Leave. Based on
16 information and belief, DEFENDANTS failed to provide Supplemental Paid Sick Leave in 2022
17 in violation of Labor Code section 248.6.

18 **Failure to Pay Vested Vacation/Paid Time Off**

19 187. California Labor Code section 227.3 provides that when an employer policy
20 provides for paid vacations and/or paid time off, and an employee is terminated without having
21 taken off his, her, or their vested vacation time, all vested vacation shall be paid to the employee
22 as wages at the employee's final rate in accordance with such contract of employment or
23 employer policy respecting eligibility or time served and that there shall be no forfeiture of
24 vested vacation time or paid time off upon termination.

25 188. Based on information and belief, DEFENDANTS had and continue to have a
26 uniform policy and practice of failing to allow Aggrieved Employees to use their earned
27 vacation/paid time off during their employment and failing to pay all vested, accrued paid time
28 off to Aggrieved Employees upon separation of employment, in violation of California law,

including but not limited to, Labor Code section 227.3.

Untimely Payment of Final Wages

189. California Labor Code section 201(a) provides, in relevant part, that “[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” California Labor Code section 202(a) provides, in relevant part, that “[i]f an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.”

190. Pursuant to Labor Code section 203, an employer that willfully fails to pay wages due an employee who is terminated or resigns must pay (in addition to the unpaid wages) a penalty equal to the employee's daily wages for each day, not exceeding 30 days, that the wages are unpaid. Case law clarifies this 30-day waiting time penalty is recoverable under the PAGA via Labor Code section 256. See, *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348 (2014); see also, *Caliber Bodyworks, Inc. v. Superior Court*, 134 Cal. App. 4th 365 (2005).

191. Based in information and belief, DEFENDANTS failed and continue to fail to timely pay final wages to PLAINTIFFS and Aggrieved Employees upon separation of employment in violation of Labor Code section 201-202. Moreover, final paychecks once provided to PLAINTIFFS and Aggrieved Employees did not include all wages owed as they are devoid of, including but not limited to, all owed minimum wages, overtime wages, premium wages, vacation pay, and all owed sick leave and/or paid time off wages at the properly accrued rates.

192. As a result, DEFENDANTS violated Labor Code sections 201, 202, and 203. These violations subject DEFENDANTS to civil penalties under Labor Code sections 203, 210, and/or 256.

193. Unlawful Agreements/ Unlawful Criminal History Inquiries

194. Unlawful Agreements. Labor Code section 432.5 provides that “no employer...shall require any employee or applicant for employment to agree, in writing, to any

1 term or condition which is known by such employer...to be prohibited by law.” DEFENDANTS
2 required and continue to require PLAINTIFFS and Aggrieved Employees to agree in writing to
3 unlawful conditions of employment including but not limited to unlawful criminal and/or
4 financial checks as a condition of obtaining and/or continuing employment in violation of Labor
5 Code section 432.5.

6 195. The California Labor Code places certain procedural and substantive limits on an
7 employers’ ability to conduct employee background checks and on how employers can use the
8 information they obtain through those background checks. Labor Code section 1024.5 states that
9 employers, except for financial institutions, may order a credit check only if the individual works
10 (or is applying to work) in certain positions (e.g., managerial positions, financially-related
11 positions, and certain government positions). Additionally, the Investigative Consumer
12 Reporting Agencies Act (ICRAA- CA Civil Code section 1786, et seq.) and the Fair Credit
13 Reporting Act (FCRA - 15 U.S.C. section 1681, et seq.) mandate several requirements prior to
14 and following an employee background check, including but not limited to identifying an
15 appropriate reason for the background check, a separate consent form with required disclosures
16 and certain formatting requirements, additional forms such as a summary of rights, a way by
17 which to request a copy of the report, as well as proper notice of adverse actions taken, among
18 other statutory requirements.

19 196. Based on information and belief, DEFENDANTS ordered unlawful financial
20 credit checks on Aggrieved Employees, in violation of Labor Code section 1024.5, and required
21 them to provide ongoing written consent to the unlawful credit checks as a condition of
22 employment, in violation of California and Federal law, which results in a violation of Labor
23 Code section 432.5.

24 197. Based on information and belief, DEFENDANTS required Aggrieved Employees
25 to submit and/or agree to submit in writing to unlawful criminal background checks as a
26 condition of obtaining and/or holding employment in violation of the ICRAA and the FCRA as
27 alleged above.

28 198. Based on further information and belief, DEFENDANTS required Aggrieved

1 Employees to agree in writing to provide DEFENDANTS with ongoing consent to conduct
2 background checks throughout the duration of employment, in violation of the ICRAA and/or
3 FCRA and/or other applicable laws, resulting in a further violation of Labor Code section 432.5,
4 by requiring applicants and employees to agree to an unlawful provision as a condition of
5 employment.

6 199. Based on further information and belief, DEFENDANTS knew that requiring
7 Aggrieved Employees to agree to unlawful criminal and/or financial background checks as a
8 condition of obtaining and/or holding employment was unlawful.

9 200. By requiring that Aggrieved Employees sign off on the illegal background and/or
10 financial checks, DEFENDANTS violated Labor Code section 432.5.

11 **Unlawful Inquires into Criminal History**

12 201. Labor Code section 432.7 prohibits an employer from asking applicants about
13 past arrest(s) unless they resulted in conviction(s) and even then, certain limitations apply. Based
14 on information and belief, DEFENDANTS asked Aggrieved Employees about arrests not
15 resulting in convictions on its employment application, in violation of California law.

16 202. Upon information and belief, DEFENDANTS, in violation of California law,
17 including but not limited to the Fair Chance Act/the California Fair Employment and Housing
18 Act (“FEHA”), asked Aggrieved Employees about convictions prior to extending an offer of
19 employment and/or otherwise impermissibly inquired into criminal history on its employment
20 application in violation of California law.

21 203. By asking about arrests not resulting in convictions, DEFENDANTS violated
22 Labor Code section 432.7. By asking about convictions at the application phase or prior to
23 extending an employment offer, DEFENDANTS violated California’s Fair Chance Act, and
24 thereby violated Labor Code section 432.5 by unlawfully requiring Aggrieved Employees to
25 agree in writing to disclose arrests and/or convictions as a condition of employment.

26 **Unlawful PAGA Waiver**

27 204. Additionally, DEFENDANTS violated Labor Code section 432.5 by requiring
28 PLAINTIFFS and other Aggrieved Employees to agree in writing to other unlawful agreements,

1 including but not limited to, an unlawful waiver of PAGA and/or representative actions as a
2 condition of employment.

3 205. An action pursuant to PAGA “...is a representative action on behalf of the state”
4 Kim v Reins Int’l California, Inc., (2020) 9 Cal. 5th 73, 86-87. It is well settled that agreements
5 purporting to waive an employee’s right to a trial of PAGA claims is contrary to California law
6 and unenforceable. See Iskanian v CLS Transportation Los Angeles, LLC (2014) 59 Cal. 4th
7 348, 384 (“We conclude that where, as here, an employment agreement compels the waiver of
8 representative claims under the PAGA, it is contrary to public policy and unenforceable as a
9 matter of state law.”)

10 206. Moreover, the California Supreme Court has ruled that a court cannot compel
11 arbitration of an aggrieved employee’s individual PAGA claim because there is no such thing as
12 an individual PAGA claim. Kim v Reins Int’l California, Inc., (2020) 9 Cal. 5th 73, 86-87
13 (“There is no individual component to a PAGA action because ‘every PAGA action ... is a
14 representative action on behalf of the state.’”)

15 207. Upon information and belief, DEFENDANTS required some Aggrieved
16 Employees to agree in writing to waive their right to a trial of PAGA claims in violation of
17 California law. By requiring PLAINTIFFS and other Aggrieved Employees to agree, in writing,
18 to an unlawful PAGA waiver, DEFENDANTS required written agreement to an unlawful
19 provision as a condition of employment which is a violation of labor code section 432.5.

20 208. Under the provisions of PAGA and the above mentioned Labor Code sections,
21 including but not limited to Labor Code sections 201-203, 210, 216, 221-223, 225.5, 226, 226.7,
22 245-248.6, 256, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1197.1,
23 1198, 1198.5, 1199, 2699, 2699.3, 2802, 2810.5 and all applicable Wage Orders as well as all
24 interpretations of these laws by California Courts and administrative bodies, as well as any other
25 law that is enforceable through PAGA, DEFENDANTS are liable for the following penalties:

26 209. All statutorily-specified penalties recoverable under PAGA as enumerated in the
27 relevant California Labor Code provisions listed herein only if permitted by the PAGA statute,
28 pursuant to Labor Code section 2699(a); and

1 210. Default PAGA penalties for any violation of the enumerated list of Labor Code
2 violations without a civil penalty recoverable under the PAGA, all in the default amounts
3 provided by Labor Code section 2699(f).

4 211. The proper measure of penalties under PAGA is the number of violations,
5 whether those violations were committed as against PLAINTIFFS or any Aggrieved Employee,
6 whether a party to this action or not.

7 212. Pursuant to Labor Code section 2699(g), and/or any and all other applicable laws,
8 PLAINTIFFS are entitled to recover civil penalties, costs, and attorney's fees.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFFS, individually and on behalf of all other persons similarly situated, respectfully pray for relief against DEFENDANTS and DOES 1 through 100, inclusive, 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 the unfair and unlawful business practices of DEFENDANTS;
3. For meal and rest period compensation pursuant to California Labor Code § 226.7 and IWC Wage Order Nos. 4 and 9;
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 Wager 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 §§ 210, 226.3, 226(e), 558, 1197.1, and 2699, the FCRA, FLSA, and ICRAA;
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, FLSA, and/or any other applicable provision providing for pre-judgment interest;
9. For reasonable attorneys' fees and costs pursuant to California Labor Code §§ 218.5, 1021.5, 1194, 2699, 2802, California Civil Code § 1021.5, the FCRA, FLSA, and ICRAA, and/or 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, Ninth, Tenth, Eleventh, Twelfth, Thirteenth, Fourteenth, Fifteenth, and Sixteenth 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.

DATED: June 16, 2025

Respectfully submitted,

SOLOUKI | SAVOY, LLP

By: /s/ Shoham J. Solouki
SHOHAM J. SOLOUKI
GRANT JOSEPH SAVOY
Attorneys for Plaintiffs

CROSNER LEGAL, PC

By: /s/ Brandon Brouillette
Brandon Brouillette
Zachary Crosner
Attorneys for Plaintiffs

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DEMAND FOR JURY TRIAL

PLAINTIFFS, on behalf of themselves and all others similarly situated, hereby demand a jury trial with respect to all issues triable of right by jury.

DATED: June 16, 2025

Respectfully submitted,

SOLOUKI | SAVOY, LLP

By: /s/ Shoham J. Solouki
SHOHAM J. SOLOUKI
GRANT JOSEPH SAVOY
Attorneys for Plaintiffs

CROSNER LEGAL, PC

By: /s/ Brandon Brouillette
Brandon Brouillette
Zachary Crosner
Attorneys for Plaintiffs

1 **PROOF OF SERVICE**

2 I am a resident of the State of California, over eighteen years of age, and not a party to this
3 action. My business address is 316 W. 2nd Street, Suite 1200, Los Angeles, CA 90012.

4 On, August 26, 2025, I served the following documents:

5
6 **FIRST AMENDED CLASS ACTION AND REPRESENTATIVE ACTION COMPLAINT**

7 ☒ BY ELECTRONIC SERVICE: I caused the documents to be sent to the persons at the
8 email addressed listed below via email, as ordered by the court. I did not receive, within a
9 reasonable time after the transmission, any electronic message or other indication that the
10 transmission was unsuccessful.

11 ☐ BY MAIL: I am “readily familiar” with the office’s practice of collection and
12 processing of correspondence for mailing. It is deposited in a sealed envelope with the U.S.
13 Postal Service on that same day with postage thereon fully prepaid, at Los Angeles, CA, in
14 the ordinary course of business, addressed as set forth below.

15
16
17 **[SEE ATTACHED SERVICE LIST]**

18
19
20 I certify (or declare), under penalty of perjury of the laws of the State of California, that the
21 foregoing is true and correct.

22
23 Executed on August 26, 2025, at Los Angeles, California.

24
25 
26 Shoham Solouki

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SERVICE LIST

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