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VICTOR MANUEL ESCALERA, and all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA
(UNLIMITED JURISDICTION)**

VICTOR MANUEL ESCALERA, on behalf of
himself and all others similarly situated, and
the general public, and as an “Aggrieved
Employee” on behalf of other “Aggrieved
Employees” under the Private Attorneys
General Act of 2004,

Plaintiff,

vs.

BAY PRO, a California corporation; and
DOES 1 to 25, inclusive,

Defendant(s).

Case No.: 25CV482730

CLASS ACTION

COMPLAINT FOR:

- 1) Failure to Pay All Wages Earned for All Hours Worked at the Correct Rates of Pay (Lab. Code §§ 510, 1194, 1197, and 1198);
- 2) Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198);
- 3) Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512 and 1198);
- 4) Failure to Indemnify (Lab. Code § 2802);
- 5) Failure to Provide Accurate Itemized Wage Statements (Lab. Code § 226);
- 6) Failure to Pay Wages Owed Every Pay Period (Lab. Code § 204);
- 7) Failure To Pay Wages When Employment Ends (Lab. Code §§ 201–203);
- 8) Civil Penalties (Lab. Code §§ 2698, *et seq.*); and
- 9) Unfair Competition (Bus. & Prof. Code, § 17200q.)

JURY TRIAL DEMANDED

1 Plaintiff, Victor Manuel Escalera (hereafter “Plaintiff”), on behalf of himself and all
2 others similarly situated, complains and alleges as follows:

3 **I. INTRODUCTION**

4 1. Plaintiff brings this class and representative action based on alleged violations
5 of the California Labor Code, Industrial Welfare Commission Order Nos. 5-2001 (hereafter
6 “the Wage Order”), and the California Business and Professions Code against BAY PRO and
7 DOES 1 to 25, inclusive (collectively “BAY PRO” or “Defendants”).

8 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
9 him and other similarly situated workers for unpaid wages, statutory penalties, civil penalties,
10 interest, and related relief. These claims are based on Defendants’ failures to:

11 (A) Pay all wages, including minimum, regular, overtime and doubletime
12 wages, earned for all hours worked at the correct rates of pay;

13 (B) Provide all meal periods;

14 (C) Authorize and permit all rest breaks;

15 (D) Pay premium wages for unprovided meal periods;

16 (E) Pay premium wages for unprovided rest breaks;

17 (F) Indemnify for necessary work-related expenditures;

18 (G) Issue only accurate and complete itemized wage statements; and

19 (H) Timely pay wages during and upon termination of employment.

20 Accordingly, Plaintiff now seeks to recover unpaid wages, interest, liquidated damages,
21 restitution, statutory penalties, civil penalties, attorneys’ fees, costs, and related relief through
22 this class and representative action.

23 **II. THE PARTIES**

24 3. Plaintiff Victor Manuel Escalera is a resident of California. At all relevant
25 times, Plaintiff was an “employee” within the meaning of Title 8 California Code of
26 Regulations Section 11050 and an “Aggrieved Employee” within the meaning of Labor Code
27 Section 2699(c).

28 4. At all times mentioned herein, Defendant BAY PRO is and was a California

1 corporation doing business in the county of Santa Clara, and which employed Plaintiff. As
2 such, it is a citizen of California based on Plaintiff's information and belief.

3 5. Plaintiff is ignorant of the true names, capacities, relationships, and extents of
4 participation in the conduct alleged herein, of the defendants sued as DOES 1-25, inclusive, but
5 is informed and believes and thereon alleges that said defendants are legally responsible for the
6 wrongful conduct alleged herein and therefore sues these defendants by such fictitious names.
7 Plaintiff will amend the Complaint to allege the true names and capacities of the DOE
8 defendants when ascertained.

9 6. Plaintiff is informed and believes and thereon alleges that, at all relevant times
10 herein, all Defendants were the agents, employees and/or servants, masters or employers of the
11 remaining defendants, and in doing the things hereinafter alleged, were acting within the course
12 and scope of such agency or employment, and with the approval and ratification of each of the
13 other Defendants.

14 7. At all relevant times, in perpetrating the acts and omissions alleged herein,
15 Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a
16 lack of a practice which resulted in Defendants not compensating Plaintiff and the other Class
17 Members or otherwise complying with their rights in accordance with applicable California
18 labor laws as alleged herein.

19 8. At all relevant times, in perpetrating the acts and omissions alleged herein,
20 Defendants and each of them acted pursuant to and in furtherance of a policy and/or practice,
21 or lack thereof, which resulted in Defendants not paying Plaintiff and other members of the
22 below-described class in accordance with applicable laws as alleged herein.

23 **III. CLASS ALLEGATIONS**

24 9. This action has been brought and may be maintained as a class action pursuant
25 to California Code of Civil Procedure section 382 because there is a well-defined community
26 of interest among the persons who comprise the readily ascertainable class defined below and
27 because Plaintiff is unaware of any difficulties likely to be encountered in managing this case
28 as a class action.

1 10. **Class Definition:** The Class is defined as follows: All persons Defendants
2 employed in California as hourly, non-exempt employees, at any time during the period
3 beginning four years prior to the filing of this action and ending on the date that final judgment
4 is entered in this action (“Class” or “Class Members”).

5 11. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves
6 the right to amend or modify the class definition with greater specificity, by further division
7 into subclasses and/or by limitation to particular issues.

8 12. **Numerosity:** The Class Members are so numerous that the individual joinder
9 of each individual Class Member is impractical. While Plaintiff does not currently know the
10 exact number of Class Members, Plaintiff is informed and believes that the actual number
11 exceeds the minimum required for numerosity under California laws.

12 13. **Commonality and Predominance:** Common questions of law and fact exist as
13 to all Class Members and predominate over any questions which affect only individual Class
14 Members. These questions include, but are not limited to:

15 A. Whether Defendants failed to pay all wages earned to Class Members for
16 all hours worked at the correct rates of pay, including minimum, regular, overtime, doubletime,
17 meal period premium and rest period premium wages;

18 B. Whether Defendants failed to provide the Class Members with all meal
19 periods in compliance with California law;

20 C. Whether Defendants failed to authorize and permit the Class Members to
21 take all rest periods in compliance with California law;

22 D. Whether Defendants failed to indemnify the Class Members for the
23 reasonable expenses they incurred during the course of performing their duties;

24 E. Whether Defendants knowingly and intentionally failed to provide the
25 class with accurate and complete itemized wage statements;

26 F. Whether Defendants willfully failed to provide the class with timely
27 wages during and upon termination of employment;

28 G. Whether Defendants engaged in unfair competition within the meaning of

1 Business and Professions Code sections 17200, et seq., with respect to the Class; and

2 H. Whether Class Members are entitled to restitution of money or property
3 that Defendants may have acquired from them through alleged Labor Code violations.

4 14. **Typicality:** Plaintiff's claims are typical of the other Class Members' claims.
5 Plaintiff is informed and believes and thereon alleges that Defendants have a policy and/or
6 practice, or lack thereof, which resulted in Defendants failing to comply with the California
7 Labor Code, the Wage Order, and the Business and Professions Code.

8 15. **Adequacy of Class Representative:** Plaintiff is an adequate class representative
9 in that he has no interests that are adverse to, or otherwise in conflict with, the interests of
10 absent Class Members. Plaintiff is dedicated to vigorously prosecuting this action on behalf of
11 Class Members. Plaintiff will fairly and adequately represent and protect the interests of Class
12 Members.

13 16. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in
14 that they have no known conflicts of interest with Plaintiff or absent Class Members, are
15 experienced in class action litigation, and are dedicated to vigorously prosecuting this action
16 on behalf of Plaintiff and absent Class Members.

17 17. **Superiority:** A class action is vastly superior to other available means for fair
18 and efficient adjudication of Class Members' claims and would be beneficial to the parties and
19 the Court. Class action treatment will allow a number of similarly situated persons to
20 simultaneously and efficiently prosecute their common claims in a single forum without the
21 unnecessary duplication of effort and expense that numerous individual actions would entail.
22 In addition, the monetary amounts due to many individual Class Members are likely to be
23 relatively small and would thus make it difficult, if not impossible, for individual Class
24 Members to both seek and obtain relief. Moreover, a class action will serve an important
25 public interest by permitting Class Members to effectively pursue the recovery of monies
26 owed to them. Further, a class action will prevent the potential for inconsistent or
27 contradictory judgments inherent in individual litigation.

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1 **IV. STATEMENT OF FACTS**

2 18. Wage Order 5-2001 applies to “all persons employed in the public
3 housekeeping industry,” where “Public Housekeeping Industry” includes “Establishments
4 contracting for development, maintenance or cleaning of grounds...” (Id., §§ 1 & 2(P)(6). At
5 all relevant times during the applicable limitations period, BAY PRO, Plaintiff, and the Class
6 Members were covered by the Wage Order because Plaintiff and the Class Members worked
7 for BAY PRO in landscape maintenance occupations. Accordingly, Plaintiff and the Class
8 Members are entitled to the protections provided under the Wage Orders.

9 19. BAY PRO first began to employ Plaintiff as a laborer on or around July 15,
10 2024. Plaintiff generally worked Monday through Friday from approximately 6:00 a.m. to
11 2:30 p.m. or later. Plaintiff’s rate of pay was \$24.00 per hour. Plaintiff’s employment ended
12 on or around September 29, 2025. At all relevant times, BAY PRO issued wages to Plaintiff
13 and all of the other Class Members on a biweekly basis and paid them by the hour. At all
14 relevant times, BAY PRO classified Plaintiff and all of the other Class Members as non-
15 exempt employees entitled to the protections of the Labor Code and the Wage Order.

16 20. BAY PRO failed to pay Plaintiff and the other Class Members for all time
17 worked or subject to its control. This is so because the company had a policy and practice of
18 rounding down work hours which led to Plaintiff and others not being paid for all hours
19 worked, which would include the minimum wage. There was no formal clock-in/clock-out and
20 timekeeping system at the workplace, and, as such, Plaintiff and all of the other Class
21 Members were not paid for all hours worked. Instead, they were instructed to complete
22 handwritten timesheets a few days prior to each payday. A review of Plaintiff’s paystubs
23 shows that his hours were consistently rounded. Additionally, Plaintiff typically arrived at the
24 yard prior to the gates opening and waited until they were unlocked, usually around 5:55 a.m.
25 Once the gates opened, Plaintiff and the crew gathered and loaded the necessary tools in
26 preparation for the day’s work. Upon arriving back to the yard at approximately 2:30 p.m.,
27 Plaintiff and the other Class Members would spend about 15 minutes unloading tools.
28 Management also required employees to attend biweekly meetings after 2:30 p.m., lasting

1 between 30 and 60 minutes. Plaintiff and the Class Members were not compensated for this
2 off-the-clock work. Furthermore, to the extent employees such as Plaintiff and others worked
3 through their meal periods and those meal periods were interrupted, they were not
4 compensated for that time, which would be akin to a minimum wage violation.

5 21. BAY PRO failed to pay Plaintiff and the Class Members properly-calculated
6 overtime wages even though they worked more than 8 hours per day and/or 40 hours per week
7 throughout their employment. Plaintiff's and the Class Members' actual work hours (including
8 the "off the clock" hours mentioned above) entitled them to overtime compensation. However,
9 BAY PRO did not compensate Plaintiff and the Class Members with the correct amount of
10 overtime. It was not company policy to keep accurate track of all hours worked and to pay
11 employees the accurate amount of overtime, especially since the "off the clock" work was not
12 factored into the equation. Furthermore, any incentive payments and/or bonus payments were
13 not factored into employees' regular rate of pay for purposes of deciphering the correct
14 overtime rate of pay. In addition, any bonus and/or incentive payments were not factored into
15 the correct sick pay wages and meal and rest break premium pay per *Ferra v. Loews*
16 *Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 863.

17 22. BAY PRO failed to provide all compliant meal periods and authorize and
18 permit all compliant rest periods to which Plaintiff and the other Class Members were entitled.
19 Plaintiff and the other Class Members were entitled to take off-duty, uninterrupted 30-minute
20 meal periods before the fifth and tenth hours of work and to take uninterrupted 10-minute rest
21 periods for every four hours or major fraction thereof worked. Due to the workload, Plaintiff
22 and the Class Members would not be able to take timely, uninterrupted meal periods before
23 the 5th or 10th hour worked. Although Plaintiff's shifts began at 6:00 a.m., he was not
24 provided timely meal periods. His actual meal breaks occurred between 11:00 a.m. and 12:00
25 p.m., though he was instructed to record them on his timesheets as occurring from 11:00 a.m.
26 to 11:30 a.m. Moreover, when Plaintiff and the other Class Members took their meal periods,
27 BAY PRO supervisors/managers, including Javier Mendoza and foreman Carlos, would
28 interrupt them with questions about work related matters or their meal periods were cut short

1 due to their work load. Since Plaintiff did not punch in or out for his meal periods, BAY PRO
2 did not keep track of Plaintiff's and the Class Members' meal periods. Per *Donohue v. AMN*
3 *Services, LLC*, (2021) 11 Cal.5th 58, where time records do not facially show an employee
4 took a compliant meal period, a rebuttable presumption arises that the employer failed to
5 provide it, giving rise to a meal period violation. Similarly, Plaintiff and the other Class
6 Members were not able to take compliant rest breaks. BAY PRO did not authorize and
7 Plaintiff and the other Aggrieved Employees did not take rest breaks. On information and
8 belief, BAY PRO did not provide premium wages for these meal and rest break violations; if
9 BAY PRO did provide premium wages, they were not paid at the correct rate, as explained
10 above.

11 23. BAY PRO failed to reimburse Plaintiff and the other Class Members for
12 business expenses they incurred in direct consequence of the discharge of their duties. During
13 his employment, Plaintiff was required to use his personal mobile phone to communicate with
14 management as management would contact him by phone or text message with instructions
15 and the addresses of assigned job sites. Accordingly, BAY PRO was in violation of California
16 Labor Code sections 2800 and 2802.

17 24. BAY PRO failed to pay its employees all wages due to them within any time
18 period specified by California Labor Code section 204, including the minimum wages and
19 overtime as described above as well as meal/rest break premiums.

20 25. BAY PRO did not provide Plaintiff and the other Class Members accurate,
21 itemized wage statements in violation of Labor Code 226. Wage statements must include all
22 hours worked, overtime hours worked, all applicable hourly rates, the correct legal name and
23 correct address of employer entity, gross wages earned, all deductions, net wages earned,
24 reimbursement for business expenses, the correct start and end of the applicable pay period,
25 the employee ID numbers or social security numbers, among other items. Labor Code §
26 226(a)(2). BAY PRO's failure to maintain accurate records as to the hours worked daily by
27 employees also constitutes a violation of Labor Code section 1174(d).

28 26. Finally, because BAY PRO did not properly pay all wages earned as explained

1 herein, BAY PRO also failed to pay final wages owed to the Class Members in violation of
2 Labor Code section 203. These earned but unpaid wages include minimum wages and
3 compensation for all hours worked, overtime compensation, premium pay for missed meal and
4 rest breaks, and business expense reimbursement, among others.

5 27. BAY PRO has also violated Labor Code section 558 and engaged in
6 business practices which violate Business and Professions Code Section 17200.

7 28. For the reasons stated herein, Plaintiff alleges that as a result of Defendants'
8 unlawful practices and policies, Plaintiff and the Class Members were:

- 9 A. Not provided with all off duty meal periods;
10 B. Not authorized and permitted to take all rest break periods;
11 C. Not paid one hour's pay for each workday in which Defendants failed to
12 authorize and permit them to take one or more timely rest periods;
13 D. Not paid one hour's pay for each workday in which Defendants failed to
14 provide them with one or more timely meal periods;
15 E. Not paid all wages earned, including, but not limited to, minimum,
16 regular, overtime, and doubletime wages for all work performed;
17 F. Not indemnified for all necessary business expenditures incurred during
18 the discharge of their duties;
19 G. Not provided with accurate and complete wage statements; and
20 H. Not timely paid all earned and unpaid wages during employment and at
21 the time their employment ended.

22 **FIRST CAUSE OF ACTION**

23 **FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED**

24 **AT THE CORRECT RATES OF PAY**

25 **(Lab. Code §§ 510, 1194, 1197, and 1198)**

26 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

27 29. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

28 30. At all relevant times, Plaintiff and the Class Members have been employees of

1 Defendants and entitled to the benefits and protections of California Labor Code §§ 510, 1194,
2 1197, and 1198, and the Wage Order.

3 31. Section 2(K) of the Wage Order defines “hours worked” as “the time during
4 which an employee is subject to the control of an employer, and includes all the time the
5 employee is suffered or permitted to work, whether or not required to do so.”

6 32. Section 3 of the Wage Order states:

7 (A) Daily Overtime - General Provisions

8 (1) The following overtime provisions are applicable to
9 employees 18 years of age or over and to employees 16 or
10 17 years of age who are not required by law to attend
11 school and are not otherwise prohibited by law from
12 engaging in the subject work. Such employees shall not
13 be employed more than eight (8) hours in any workday or
14 more than 40 hours in any workweek unless the employee
15 receives one and one-half (1 ½) times such employee’s
16 regular rate of pay for all hours worked over 40 hours in
17 the workweek. Eight (8) hours of labor constitutes a day’s
18 work. Employment beyond eight (8) hours in any
19 workday or more than six (6) days in any workweek is
20 permissible provided the employee is compensated for
21 such overtime at not less than:

22 (a) One and one-half (1 ½) times the employee’s
23 regular rate of pay for all hours worked in excess
24 of eight (8) hours up to and including 12 hours in
25 any workday, and for the first eight (8) hours
26 worked on the seventh (7th) consecutive day of
27 work in a workweek.

28 (b) Double the employee’s regular rate of pay for
all hours worked in excess of 12 hours in any
workday and for all hours worked in excess of
eight (8) hours on the seventh (7th) consecutive
day of work in a workweek.

(c) The overtime rate of compensation required to
be paid to a nonexempt full-time salaried
employee shall be computed by using the
employee’s regular hourly salary as one-fortieth
(1/40) of the employee’s weekly salary.

33. Section 4 of the Wage Order requires an employer to pay non-exempt employees

1 at least the minimum wage set forth therein for all hours worked, which consist of all hours that
2 an employer has actual or constructive knowledge that employees are working.

3 34. Labor Code section 510 states:

4 Eight hours of labor constitutes a day's work. Any work in excess of eight hours
5 in one workday and any work in excess of 40 hours in any one workweek and
6 the first eight hours worked on the seventh day of work in any one workweek
7 shall be compensated at the rate of no less than one and one-half times the
8 regular rate of pay for an employee. Any work in excess of 12 hours in one day
9 shall be compensated at the rate of no less than twice the regular rate of pay for
10 an employee. In addition, any work in excess of eight hours on any seventh day
11 of a workweek shall be compensated at the rate of no less than twice the regular
12 rate of pay of an employee. Nothing in this section requires an employer to
13 combine more than one rate of overtime compensation in order to calculate the
14 amount to be paid to an employee for any hour of overtime work.

15 35. California Labor Code § 1194 invalidates any agreement between an employer
16 and an employee to work for less than the minimum wage required under the applicable Wage
17 Order.

18 36. California Labor Code § 1197 makes it unlawful for an employer to pay an
19 employee less than the minimum wage required under the applicable Wage Order for all hours
20 worked during a payroll period.

21 37. California Labor Code § 1198 makes it unlawful for an employer to employ an
22 employee under conditions that violate the Wage Order.

23 38. In conjunction, these provisions of the California Labor Code require employers
24 to pay non-exempt employees no less than their agreed-upon or statutorily mandated wage rates
25 for all hours worked, including unrecorded hours when the employer knew or reasonably should
26 have known that employees were working during those hours. (*See Morillion v. Royal Packing*
27 *Co.* (2000) 22 Cal.4th 575, 585.)

28 39. With respect to overtime wages, the regular rate of pay under California law
must include "all remuneration for employment paid to, on behalf of, the employee." O.L.
2002.06.14 (quoting 29 U.S.C. § 207(e)). This requirement includes, but is not limited to
bonuses. *See, e.g., Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal. App. 4th 893,
904–05. Bonuses must be included in the regular rate whether they are the sole source of the

1 employee's compensation or are in addition to a guaranteed salary or hourly rate. 29 C.F.R. §§
2 778.117, 778.208. *See Oliver v. Mercy Med. Ctr., Inc.* (9th Cir. 1982) 695 F.2d 379.

3 40. As described above, at all relevant times during the applicable limitations
4 period, Defendants failed to compensate Plaintiff and the Class Members for all hours worked,
5 including, but not limited to minimum, regular, overtime and doubletime for all minimum,
6 regular, overtime and doubletime hours, respectively, that they worked at the correct rates of
7 pay.

8 41. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
9 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
10 failure to compensate Plaintiff and the other Class Members for all hours worked at the correct
11 rates of pay as required by California law.

12 **SECOND CAUSE OF ACTION**

13 **FAILURE TO PROVIDE REST BREAKS**

14 **(Lab. Code §§ 226.7 and 1198)**

15 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

16 42. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

17 43. At all relevant times during the applicable limitations period, Plaintiff and the
18 Class Members have been employees of Defendants and entitled to the benefits and
19 protections of California Labor Code §§ 226.7 and 1198, and the Wage Order.

20 44. In relevant part, Labor Code § 1198 states,

21 "The maximum hours of work and the standard conditions of labor
22 fixed by the commission shall be the maximum hours of work and the
23 standard conditions of labor for employees. The employment of any
employee for longer hours than those fixed by the order or under
conditions of labor prohibited by the order is unlawful."

24 45. In relevant part, Section 12 of the Wage Order states:

25 Rest Periods:

26 (A) Every employer shall authorize and permit all employees
27 to take rest periods, which insofar as practicable shall be in the
28 middle of each work period. The authorized rest period time
shall be based on the total hours worked daily at the rate often
(10) minutes net rest time per four (4) hours or major fraction

thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided.

46. In addition, Labor Code Section 226.7 states

(b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

47. Pursuant to the Wage Order, Plaintiff and the Class Members were entitled to be provided with net rest breaks of at least ten minutes for each four-hour period of work, or major fraction thereof.

48. Defendants intentionally failed to authorize and permit Plaintiff and the Class Members to take all 10-minute rest periods free from any work duties in accordance with the Wage Order.

49. At all relevant times, Defendants failed to authorize and permit Plaintiff and the Class Members to take all timely rest periods. Furthermore, Defendants failed to pay premium wages to Plaintiff and the Class Members for days on which they failed to authorize and permit Plaintiff and the other Class Members to take timely rest periods.

50. At all relevant times, Defendants failed to authorize and permit Plaintiff and the

1 Class Members to take ten-minute, paid, duty-free rest breaks every four hours worked or
2 major fraction thereof. Defendants did not seek an exemption from the rest period protections
3 of the Wage Order from the California Division of Labor Standards Enforcement. Moreover,
4 Defendants failed to pay Plaintiff and the Class Members premium wages on workdays they
5 failed to authorize and permit them to take 10-minute rest periods every four hours worked or
6 major fraction thereof.

7 51. Plaintiff is informed and believes and thereon alleges that, at all relevant times
8 within the applicable limitations period, Defendants had a policy, practice, or a lack of a
9 policy which resulted in Defendants not authorizing and permitting Plaintiff and the Class
10 Members to take all rest breaks required by California law.

11 52. Defendants failed to provide Plaintiff with all required rest breaks in
12 accordance with the Wage Order. Plaintiff is informed and believes and thereon alleges that, at
13 relevant times within the applicable limitations period, Defendants had a policy, practice, or a
14 lack of a policy which resulted in Defendants not providing the Class Members with all rest
15 breaks required by California law.

16 53. Defendants failed to pay Plaintiff the additional wages required by California
17 Labor Code § 226.7 for all rest breaks not provided to him. Plaintiff is informed and believes
18 and thereon alleges that, at relevant times within the applicable limitations period, Defendants
19 have maintained a policy, practice, or a lack of a policy which resulted in Defendants not
20 providing the Class Members with additional wages for all rest breaks not provided to them as
21 required by California Labor Code § 226.7.

22 54. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members
23 have suffered damages in amounts subject to proof to the extent they were not paid additional
24 wages owed for all rest breaks not provided to them.

25 55. By reason of the above, Plaintiff and the Class Members are entitled to
26 premium wages for workdays in which one or more rest breaks were not provided to them
27 pursuant to California Labor Code § 226.7.

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employee's regular rate of compensation for each workday that the meal period is not provided.

61. In relevant part, California Labor Code § 226.7 states:

(b) An employer shall not require an employee to work during a meal or rest period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal period or rest period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

62. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the Class Members were entitled to be provided with uninterrupted meal periods of at least 30 minutes for each day they worked five or more hours. Pursuant to California Labor Code § 512, they were also entitled to a second 30-minute meal period when they worked more than ten (10) hours in a workday.

63. As described above, Defendants intentionally failed to provide Plaintiff and the Class Members with all required 30-minute duty free meal periods in accordance with the Wage Order. Furthermore, Defendants failed to pay premium wages for days on which they failed to provide Plaintiff and the other Class Members with timely meal periods.

64. Plaintiff is informed and believes and thereon alleges that, at all relevant times within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy which resulted in Defendants not providing the and the Class Members with all off-duty meal periods required by California law.

65. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have suffered damages in amounts subject to proof to the extent they were not paid additional

1 wages owed for all meal periods not provided to them.

2 66. By reason of the above, Plaintiff and the Class Members are entitled to
3 premium wages for workdays in which one or more meal periods were not provided to them
4 pursuant to California Labor Code § 226.7.

5 **FOURTH CAUSE OF ACTION**

6 **FAILURE TO INDEMNIFY**

7 **(Lab. Code §§ 1198 & 2802)**

8 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

9 67. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

10 68. At all relevant times, Plaintiff and the Class Members were employees of
11 Defendants and entitled to the benefits and protections of the California Labor Code §§ 1198
12 and 2802, and the Wage Order.

13 69. In pertinent part, California Labor Code § 2802(a) states: “An employer shall
14 indemnify his or her employee[s] for all necessary expenditures incurred by the employee in
15 direct consequence of the discharge of his or her duties.” Additionally, the Wage Order states,

16 (A) When uniforms are required by the employer to be worn by the employee as
17 a condition of employment, such uniforms shall be provided and maintained by
18 the employer.

19 ...

20 (B) When tools or equipment are required by the employer or are necessary to
21 the performance of a job, such tools and equipment shall be provided and
22 maintained by the employer, except that an employee whose wages are at least
23 two (2) times the minimum wage provided herein may be required to provide
24 and maintain hand tools and equipment customarily required by the particular
25 trade or craft in conformity with Labor Code Section 2802.

26 Wage Order, § 9(A) and (B).

27 70. California Labor Code § 1198 prohibits employers from employing their
28 employees under conditions prohibited by the Wage Order.

71. As described above, at all relevant times, BAY PRO required Plaintiff and the
Class Members to incur certain business expenses in the course of performing their duties,
including but not limited to, use of their own personal mobile phones. However, BAY PRO did

1 not provide these items and did not reimburse Plaintiff and the Class Members for these
2 business expenses.

3 72. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
4 Defendants have maintained a policy, practice, or a lack of a policy which resulted in
5 Defendants' failure to indemnify Plaintiff and the Class Members for the reasonable expenses
6 they incurred during the course of performing their duties.

7 73. Accordingly, with respect to this cause of action, on behalf of himself and the
8 Class Members, Plaintiff prays for the above stated relief, costs, and all reasonable attorneys'
9 fees pursuant to Labor Code § 2802(c) and as otherwise permitted by law.

10 **FIFTH CAUSE OF ACTION**

11 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

12 **(California Labor Code Section 226)**

13 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

14 74. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

15 75. Pursuant to California Labor Code § 226(a), Plaintiff and the Class Members
16 were entitled to receive, semi-monthly or at the time of each payment of wages, an accurate
17 itemized statement showing:

18 A. Gross wages earned;

19 B. Total hours worked by the employee, except for any employee whose
20 compensation is solely based on a salary and who is exempt from payment of overtime under
21 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;

22 C. The number of piece rate units earned and any applicable piece rate if the
23 employee is paid on a piece-rate basis;

24 D. All deductions, provided that all deductions made on written orders of the
25 Employee may be aggregated and shown as one item;

26 E. Net wages earned;

27 F. The inclusive dates of the period for which the employee is paid;

28

1 G. The name of the employee and his or her social security number, except
2 that by January 1, 2008, only the last four digits of his or her social security number or an
3 employee identification number other than a social security number may be shown on the
4 itemized statement;

5 H. The name and address of the legal entity that is the employer; and

6 I. All applicable hourly rates in effect during the pay period and the
7 corresponding number of hours worked at each hourly rate by the employee.

8 76. Pursuant to California Labor Code § 226, an employee is deemed to suffer
9 injury if the employer fails to provide a wage statement. Also, an employee is deemed to
10 suffer injury if the employer fails to provide accurate and complete information as required by
11 California Labor Code § 226(a) and the employee cannot “promptly and easily determine”
12 from the wage statement alone one or more of the following:

13 A. The amount of the gross wages or net wages paid to the employee during
14 the pay period or any of the other information required to be provided on the itemized wage
15 statement pursuant to California Labor Code § 226(a);

16 B. Which deductions the employer made from gross wages to determine the
17 net wages paid to the employee during the pay period;

18 C. The name and address of the employer and, if the employer is a farm
19 labor contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the
20 name and address of the legal entity that secured the services of the employer during the pay
21 period;

22 D. The name of the employee and only the last four digits of his or her social
23 security number or an employee identification number other than a social security number; and

24 E. The number of piece-rate units earned and the piece rate.

25 77. “Promptly and easily determine,” as stated in California Labor Code § 226(e),
26 means a reasonable person would be able to readily ascertain the information without
27 reference to other documents or information.

28 78. As alleged herein, at all relevant times during the applicable limitations period,

1 Defendants violated California Labor Code section 226 because they did not properly and
2 accurately itemize each employee's gross wages earned, net wages earned, the total hours
3 worked, the corresponding number of hours worked at each rate by the employee and other
4 requirements of California Labor Code section 226. Defendants failed to state in the wage
5 statements they issued to Plaintiff and the other Class Members all their hours worked and
6 wages earned, including, but not limited to, regular and overtime wages for work they
7 performed off-the-clock after clocking-out (as described above). Defendants knowingly and
8 intentionally did not issue either as a detachable part of the check, draft, or voucher paying the
9 employee's wages, or separately if wages are paid by personal check or cash, statements to
10 Plaintiff and the Class Members that state all overtime wages earned, all minimum wages
11 earned, all regular wages earned, all meal period premium wages earned, all rest break
12 premium wages earned, gross wages earned, net wages earned, all hourly rates, and all hours
13 worked at each rate of pay.

14 79. Defendants' failure to provide Plaintiff and the other Class Members with
15 accurate wage statements was knowing and intentional. Defendants had the ability to provide
16 Plaintiff and the other Class Members with accurate wage statements but intentionally
17 provided wage statements that Defendants knew were not accurate.

18 80. As a result of being provided with inaccurate wage statements by Defendants,
19 Plaintiff and the other Class Members have suffered injury. Their legal rights to receive
20 accurate wage statements were violated and they were misled about the amount of wages they
21 had actually earned and were owed. In addition, the absence of accurate information on their
22 wage statements prevented immediate challenges to Defendants' unlawful pay practices, has
23 required discovery and mathematical computations to determine the amounts of wages owed,
24 has caused difficulty and expense in attempting to reconstruct time and pay records and/or has
25 led to the submission of inaccurate information about wages to state and federal government
26 agencies. Further, Plaintiff and the other Class Members were not able to ascertain from the
27 wage statements whether Defendants complied with their obligations under California Labor
28 Code section 226(a).

81. Pursuant to California Labor Code § 226(e), Plaintiff and the class are entitled to recover the greater of actual damages, or penalties of fifty dollars (\$50) for the initial pay period in which a violation of California Labor Code § 226(a) occurred and one hundred dollars for each violation of California Labor Code § 226(a) in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000) per class member, and are also entitled to an award of costs and reasonable attorneys' fees.

SIXTH CAUSE OF ACTION

FAILURE TO PAY WAGES OWED EVERY PAY PERIOD

(Lab. Code §§ 204)

(By Plaintiff, on behalf of himself and the Class, against all Defendants)

82. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

83. California Labor Code Section 204 establishes the fundamental right of all employees in the State of California to be paid wages in a timely fashion for their work.

84. At all times relevant during the liability period, Defendant failed to pay Plaintiff and the Class Members the full amount of all owed wages when due as required by California Labor Code Section 204.

85. Defendant failed to pay Plaintiff and the Class Members all wages earned each pay period. Plaintiff is informed, believes, and thereon alleges, that all times relevant during the liability period, Defendant maintained a policy or practice of not paying Plaintiff and the Class Members wages for all hours worked, including overtime hours and premium pay for missed rest breaks and meal breaks.

86. As a result of Defendant's unlawful conduct, Plaintiff and the Class Members have suffered damages in an amount, subject to proof, to the extent they were not paid all wages each pay period. The precise amount of unpaid wages is not presently known to Plaintiff but can be determined directly from Defendant's records or indirectly based on information from Defendant's records.

87. Under this cause of action, Plaintiff prays for penalties on behalf of himself and Class Members due under the statutes alleged along with any allowable interest, penalties,

1 attorney's fees, and costs according to proof at trial.

2 **SEVENTH CAUSE OF ACTION**

3 **FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS**

4 **(California Labor Code Sections 201-203)**

5 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

6 88. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

7 89. At all relevant times during the applicable limitations period, Plaintiff and the
8 Class have been employees of Defendants and entitled to the benefits and protections of
9 California Labor Code §§ 201–203, and the Wage Order.

10 90. Labor Code § 201 provides that all earned and unpaid wages of an employee
11 who is discharged are due and payable immediately at the time of discharge.

12 91. Labor Code § 202 provides that all earned and unpaid wages of an employee
13 who quits after providing at least 72-hours notice before quitting are due and payable at the
14 time of quitting and that all earned and unpaid wages of an employee who quits without
15 providing at least 72-hours notice before quitting are due and payable within 72 hours.

16 92. Labor Code § 203 provides that the wages of an employee continue on a daily
17 basis as a penalty for up to 30 days where an employer willfully fails to timely pay earned and
18 unpaid wages to the employee in accordance with Labor Code § 201 or § 202.

19 93. The Defendants failed to pay Plaintiff and all of the other Class Members
20 whose employment ended all of the earned but unpaid wages described above by the
21 conclusion of their employment with Defendants, including minimum wages, regular wages,
22 overtime wages, unprovided meal period premium wages, and unprovided rest break premium
23 wages. Additionally, the Defendants failed to issue to Plaintiff and all of the other Class
24 members whose employment ended their final paychecks within the required time periods.

25 94. By failing to pay such earned wages to Plaintiff and the Class Members,
26 Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code
27 § 201 or § 202.

28 95. Plaintiff is informed and believes that Defendants' failures to timely pay

1 Plaintiff and the Class Members all of their earned and unpaid wages (described above) have
2 been willful in that, at all relevant times, Defendants have deliberately maintained policies and
3 practices that violate the requirements of the Labor Code and the Wage Order, even though at
4 all relevant times, they have had the ability to comply with those legal requirements.

5 96. Pursuant to Labor Code § 203, Plaintiffs seeks waiting time penalties on behalf
6 of himself and the Class, in amounts subject to proof not to exceed 30 days of waiting time
7 penalties for each Class Member.

8 **EIGHTH CAUSE OF ACTION**

9 **CIVIL PENALTIES**

10 **(Lab. Code §§ 2698, *et seq.*)**

11 **(By Plaintiff and the Aggrieved Employees against all Defendants)**

12 97. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

13 98. The “Aggrieved Employees” are all members of the Class defined above who
14 Defendants employed during the period beginning October 9, 2024 and ending on the date that
15 final judgment is entered in this action.

16 99. Labor Code § 204 states

17 (a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1,
18 or 204.2, earned by any person in any employment are due and payable twice
19 during each calendar month, on days designated in advance by the employer as
20 the regular paydays. Labor performed between the 1st and 15th days, inclusive,
21 of any calendar month shall be paid for between the 16th and the 26th day of the
month during which the labor was performed, and labor performed between the
16th and the last day, inclusive, of any calendar month, shall be paid for
between the 1st and 10th day of the following month. ...

22 (b) (1) Notwithstanding any other provision of this section, all wages
23 earned for labor in excess of the normal work period shall be paid no later than
24 the payday for the next regular payroll period.

25 (2) An employer is in compliance with the requirements of subdivision (a)
26 of Section 226 relating to total hours worked by the employee, if hours worked
27 in excess of the normal work period during the current pay period are itemized
28 as corrections on the paystub for the next regular pay period. Any corrections set
out in a subsequently issued paystub shall state the inclusive dates of the pay
period for which the employer is correcting its initial report of hours worked.

1 (c) However, when employees are covered by a collective bargaining
2 agreement that provides different pay arrangements, those arrangements shall
apply to the covered employees.

3 (d) The requirements of this section shall be deemed satisfied by the
4 payment of wages for weekly, biweekly, or semimonthly payroll if the wages
5 are paid not more than seven calendar days following the close of the payroll
period.

6 100. Defendants paid wages to employees on regular intervals. Defendants,
7 however, failed to pay Plaintiff on such intervals for all wages earned and all hours worked.
8 On information and belief, Plaintiff alleges that Defendants also failed to pay the Aggrieved
9 Employees on such intervals for all wages earned and all hours worked.

10 101. Labor Code section 1174, which also pertains to recordkeeping, states:

11 Every person employing labor in this state shall

12 ...

13 (c) Keep a record showing the names and addresses of all employees employed
and the ages of all minors.

14 (d) Keep, at a central location in the state or at the plants or establishments at
15 which employees are employed, payroll records showing the hours worked
16 daily by and the wages paid to, and the number of piece-rate units earned by
17 and any applicable piece rate paid to, employees employed at the respective
18 plants or establishments. These records shall be kept in accordance with rules
19 established for this purpose by the commission, but in any case shall be kept on
file for not less than three years. An employer shall not prohibit an employee
from maintaining a personal record of hours worked, or, if paid on a piece-rate
basis, piece-rate units earned.

20 102. Defendants failed to compensate Plaintiff and all of the other Aggrieved
21 Employees for all hours worked at the correct rates of pay, including all minimum wages
22 earned, all regular wages earned, all overtime wages earned, all doubletime wages earned, all
23 meal period premium wages earned, all rest break premium wages earned, gross wages earned,
24 net wages earned, and related compensation. As a result, Defendants have failed to accurately
25 maintain all records required by section 1174 and the Wage Order, including but not limited to
26 Plaintiff and all of the other Aggrieved Employees' total hours worked, total wages paid, and
27 applicable hourly rates during each payroll period.

28 103. During the applicable time period, Defendants violated California Labor Code

1 §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 558.1, 1174, 1194, 1197, 1198, and 2802.

2 104. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on
3 behalf of themselves and other current or former employees, to bring a civil action to recover
4 civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

5 105. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Class
6 Members are entitled to recover civil penalties for each of the Defendants' violations of
7 California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 558.1, 1174, 1194,
8 1197, 1198, and 2802 during the applicable limitations period in the following amounts:

9 A. For violations of California Labor Code § 204, one hundred dollars
10 (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars
11 (\$200.00) for each Aggrieved Employee for each subsequent violation (penalty amounts
12 established by California Labor Code § 210).

13 B. For violations of California Labor Code § 226(a), two hundred fifty
14 dollars (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars
15 (\$1,000.00) for each Aggrieved Employee for each subsequent violation (penalty amounts
16 established by California Labor Code § 226.3).

17 C. For violations of California Labor Code §§ 510, 512, and 558.1, fifty
18 dollars (\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars
19 (\$100.00) for each Aggrieved Employee for each subsequent violation (penalty amounts
20 established by California Labor Code § 558).

21 D. For violations of California Labor Code § 1174, five hundred dollars
22 (\$500.00) for each Aggrieved Employee for each violation (penalty amounts established by
23 California Labor Code § 1174.5).

24 E. For violations of California Labor Code § 1197, one hundred dollars
25 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two
26 hundred fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation,
27 per pay period (regardless of whether the initial violations were intentionally committed)
28 (penalty amounts established by California Labor Code § 1197.1).

1 F. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194,
2 1198, 1771, and 2802, one hundred dollars (\$100.00) for each Aggrieved Employee per pay
3 period for each initial violation and two hundred dollars (\$200.00) for each Aggrieved
4 Employee per pay period for each subsequent violation (penalty amounts established by
5 California Labor Code § 2699(f)(2)).

6 106. Plaintiff has complied with the procedures for bringing suit specified in
7 California Labor Code § 2699.3. By letter dated October 9, 2025, Plaintiff filed written notice
8 online with the Labor and Workforce Development Agency (“LWDA”) and gave written notice
9 by certified mail to Defendants of the specific provisions of the California Labor Code alleged
10 to have been violated, including the facts and theories to support the alleged violations. Plaintiff
11 accompanied his LWDA notice with a fee in the amount of \$75.00. The LWDA has failed to
12 take action in response within 65 calendar days of the date of Plaintiff’s notice, but Plaintiff
13 anticipates that the LWDA will provide written notice to Plaintiff informing him that it does
14 not intend to investigate these allegations.

15 107. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved
16 Employees are entitled to an award of civil penalties and reasonable attorney’s fees and costs in
17 connection with their claims for civil penalties.

18 **NINTH CAUSE OF ACTION**

19 **UNFAIR COMPETITION**

20 **(Bus. & Prof. Code §§ 17200, *et seq.*)**

21 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

22 108. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

23 109. At all relevant times during the applicable limitations period, Plaintiff and the
24 Class Members have been employees of Defendants and entitled to the benefits and
25 protections of the Business and Professions Code §§ 17200, *et seq.*

26 110. The unlawful conduct of Defendants alleged herein amounts to and constitutes
27 unfair competition within the meaning of California Business & Professions Code §§ 17200,
28 *et seq.* Due to their unfair and unlawful business practices alleged herein, Defendants have

1 unfairly gained a competitive advantage over other comparable companies doing business in
2 California that comply with their legal obligations to compensate employees for all earned
3 wages.

4 111. As a result of Defendants' unfair competition as alleged herein, Plaintiff and
5 the Class Members have suffered injuries in fact and lost money or property. Plaintiff and the
6 Class Members were deprived of minimum wages, regular wages, overtime wages, missed
7 meal period premium wages, missed rest period premium wages, mobile phone, and other
8 expenses, and comparable money and property.

9 112. Pursuant to California Business & Professions Code § 17203, Plaintiff and the
10 Class Members are entitled to restitution of all monies rightfully belonging to them that
11 Defendants did not pay them or otherwise retained by means of their unlawful and unfair
12 business practices.

13 113. Plaintiff and the Class Members are entitled to reasonable attorneys' fees in
14 connection with their unfair competition claims pursuant to California Code of Civil
15 Procedure § 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

16 **V. PRAYER FOR RELIEF**

17 114. WHEREFORE, Plaintiff, on behalf of himself and the Class Members, prays
18 for relief and judgment against Defendants as follows:

19 A. An order that the action be certified as a class action with respect to
20 Plaintiff's claims for violations of California law;

21 B. An order that Plaintiff be appointed class representative;

22 C. An order that counsel for Plaintiff be appointed class counsel;

23 D. Unpaid wages, including minimum, regular, overtime, double-time, split
24 shift, vacation, missed meal period, missed rest period, nonproductive time, rest and recovery
25 time, and reporting time wages;

26 E. Liquidated damages;

27 F. Statutory penalties, including waiting time penalties;

28 G. Civil penalties;

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- H. Restitution;
- I. Declaratory relief;
- J. Actual damages;
- K. Pre-judgment interest;
- L. Costs of suit;
- M. Reasonable attorneys’ fees; and
- N. Such other relief as the Court deems just and proper.

VI. DEMAND FOR JURY TRIAL

Plaintiff, on behalf of himself and all other Class Members, hereby demands a jury trial on all issues so triable.

Dated: December 18, 2025	MM LAW, APC
	By <u>Maralle Messrelian</u>
	Maralle Messrelian, Esq.
	Attorneys for Plaintiff,
	VICTOR MANUEL ESCALERA, and all
	others similarly situated