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Attorney for Plaintiff,

Felipe Tiscareno, on behalf of himself and all others similarly situated, and on behalf of the
general public

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN JOAQUIN

FELIPE TISCARENO, on behalf of himself
and all others similarly situated, and on behalf
of the general public,

Plaintiff,

vs.

VAPORE TECHNOLOGY, INC., a
California Corporation, RAVELLO
PROPERTIES, LLC, a California Limited
Liability Company, and DOES 1 through 10,
inclusive.

Defendants.

CASE NO. STK-CV-UOE-2023-0003872

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

- 1. FAILURE TO PROVIDE MEAL PERIODS IN VIOLATION OF (LABOR CODE § 226.7, 512 and 558);**
- 2. FAILURE TO PROVIDE REST PERIODS IN VIOLATION OF (LABOR CODE § 226.7, 512 and 558);**
- 3. FAILURE TO PAY ALL WAGES IN VIOLATION OF (LABOR CODE §§ 510, 1194, 1194.2);**
- 4. KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED EMPLOYEE WAGE STATEMENT PROVISIONS (LABOR CODE § 226(a), (e), 1174(d);**
- 5. FAILURE TO TIMELY PAY WAGES DUE AT TERMINATION (LABOR CODE §§ 201-203);**
- 6. FAILURE TO TIMELY PAY EMPLOYEES IN VIOLATION OF LABOR CODE § 204(a)(b);**
- 7. FAILURE TO REIMBURSE FOR BUSINESS EXPENSES IN**

VIOLATION OF (LABOR CODE § 2802);

8. FAILURE TO PROVIDE ONE DAY'S REST THEREFROM SEVEN IN VIOLATION OF (LABOR CODE § 551)

9. FAILURE TO PAY FOR ALL HOURS WORKED, INCLUDING OVERTIME HOURS WORKED IN VIOLATION OF (LABOR CODE § 210, 218);

10. FAILURE TO PROVIDE PLACE OF EMPLOYMENT THAT IS SAFE AND HEALTHFUL IN VIOLATION OF (LABOR CODE §§ 6400, 6401, 6403, 6404, 6407, 8 CCR 3202);

11. VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200

12. PENALTIES PURSUANT TO LABOR CODE SECTION 2699(f) FOR VIOLATIONS OF LABOR CODE §§ 226.7, 512, 558, 510, 1194, 1194.2, 226(a),(e), 201-203, 204(a)(b), 2802, 551, 210, 218, 6400, 6401, 6403, 6404, 6407, 8 CCR 3202, 17200

DEMAND FOR JURY TRIAL

PLAINTIFF, Felipe Tiscareno ("Plaintiff"), on behalf of himself and other "aggrieved employees" complains of Defendants as follows:

I. INTRODUCTION

1. This is a Class and Representative Action, pursuant to Code of Civil Procedure § 382 on behalf of Plaintiff and certain individuals who are employed by, or were formerly employed by, Clayton Manufacturing Company and any subsidiaries or affiliated companies (hereinafter collectively referred to as "Defendants") within California.

2. For at least four (4) years prior to the filing of this action and continuing to the present (the "liability period").

1 3. Plaintiff and Defendants' California employees were routinely unable, and not
2 authorized to take their 10-minute rest periods and were also unable to take an uninterrupted 30-
3 minute meal break for every shift they worked. Specifically, Plaintiff and Defendants' California
4 employees were forced to continue working through their meal and rest breaks in order to assist
5 Defendant's needs. Because of this, Plaintiff and Defendants' California employees were unable to
6 take their required meal and rest breaks. Moreover, Defendants failed to pay premium wages of one
7 hour's pay for each missed meal and rest break to Plaintiff and Defendants' California employees
8 who were denied timely meal and rest breaks, in violation of Labor Code §§ 226.7, 512, and 558,
and IWC Order No. 5-2001, Section 12.

9 4. Plaintiff and Defendants' California employees were required to work off the clock
10 for Defendants. Plaintiff and Defendants' California employees were obligated to attend
11 training/orientation. It took Plaintiff on the average of 1.5 hours to complete these tasks. Moreover,
12 Plaintiff and Defendants' California employees were required to work off the clock for Defendants,
13 such as responding to work calls and completing his tasks. It took Plaintiff on the average of 10-20
14 minutes to complete these tasks. Defendants did not compensate Plaintiff and Defendants' California
15 employees if these tasks were completed outside of his regular work hours. These excess hours were
16 not recorded on our client's and Defendants' California employees wage statements. Plaintiff and
17 Defendants' California employees should have been compensated for that time, but he was not in
18 violation of Labor Code Sections 510, 1194, and 1194.2. As a result, Plaintiff and Defendants'
19 California employees were not paid for all hours worked including all straight time wages, and
overtime wages. These failures to pay wages constitute violations of Labor Code § 510 and 1194.
Plaintiff, on behalf of himself and all other California employees of Defendant claims that

20 5. Defendant has failed to pay all overtime wages due to non-exempt employees.
21 Defendant pays their employees bonuses and commissions which are not included in the employees
22 regular rate of pay for the purposes of computing the proper overtime rate. As a result, employees
23 are not properly compensated for work performed in excess of eight (8) hours in a workday and
24 work performed in excess of forty (40) hours in a workweek at a rate of no less than one and one-
25 half times the regular rate of pay. These failures to pay all overtime wages constitute violations of
Labor Code §§ 510, 1194, and 1194.2.

26 6. Additionally, Labor Code Section 1194(a) states: "[n]otwithstanding any agreement
27 to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal

1 overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid
2 balance of the full amount of this minimum wage or overtime compensation, including interest
3 thereon, reasonable attorney's fees, and costs of suit. Plaintiff and Defendants' California
4 employees claim that Defendants engaged in "rounding." This essentially means that the Defendant
5 underpaid Plaintiff by rounding the time Plaintiff worked in violation of Labor Code Section
6 1194(a).

7 7. Defendants failed to issue Plaintiff and Defendants' California employees accurately
8 itemized wage statements. As Defendants failed to compensate Plaintiff and Defendants' California
9 employees with all wages due, as detailed above, their wage statements failed to accurately state all
10 gross wages earned, in violation of Labor Code § 226(a)(1), total hours worked, in violation of
11 Labor Code § 226(a)(2), net wages earned, in violation of Labor Code § 226(a)(5). Moreover,
12 Plaintiff and the California employees wage statements' failed to accurately state the name and
13 address of the legal entity that is the employer in violation of Labor Code § 226(a)(8), and all
14 applicable hourly rates during the pay period and the corresponding number of hours worked, in
15 violation of Labor Code § 226(a)(9), as a result of Defendants' failure to pay all overtime wages
16 due. Since the wage statements provided to Plaintiff failed to accurately reflect the total number of
17 Plaintiff's worked hours, due to the rounding. These violations also violate Labor Code §§ 226(e)
18 and 226.3 with respect to Plaintiff and Defendants' California employees.

19 8. Defendants knowingly and intentionally failed to provide Plaintiff and Defendants'
20 California employees timely, accurate, itemized wage statements in accordance with Labor Code §
21 226 and keep accurate records as required by § 1174(d). The statements provided to Plaintiff and
22 Defendants' California employees, and the records maintained by Defendants, have not accurately
23 reflected actual gross wages earned, including pay for all hours worked, overtime, and meal/rest
24 premiums, and total hour worked.

25 9. Our client further alleges that Defendants paid him and Defendants' California
26 employees their final wages beyond the time frames set forth in Labor Code §§ 201 and 202. As
27 they were not paid all wages due and owing throughout the course of their employment as a result
28 of Defendants' failure to pay all premium wages as detailed above, at the time of their separation,
they were not paid all final wages due and owing for the entirety of their employment. This violates
Labor Code §§ 201-203.

1 10. Defendants pay Plaintiff and it's California employees on a bi-weekly basis and has
2 failed to comply with Labor Code § 204(a) which holds that wages earned on a bi-weekly basis
3 must be paid no later than seven calendar days following the close of the payroll period. Due to the
4 violations described above, Plaintiff and Defendant's California employees did not receive all of
5 their wages earned in a timely manner as required by Labor Code § 204(a)(b).

6 11. Defendants failed to reimburse Plaintiff and Defendants' California employees for the
7 equipment they purchased to perform work for Defendants such as face masks and tools. Moreover,
8 Defendant failed to reimburse Plaintiff and Defendants' California employees for uniform
9 maintenance. Defendants also failed to reimburse Plaintiff and Defendants' California employees
10 for the mileage they incurred performing certain tasks or running errands on behalf of Defendant.
11 Defendants further failed to reimburse its California employees for using their personal cell phones
12 for the benefit of Defendants. Labor Code section 2802 provides that "[a]n employer shall
13 indemnify his or her employee for all necessary expenditures or losses incurred by the employee in
14 direct consequence of the discharge of his or her duties." As such, Plaintiff and Defendants'
15 California employees have incurred reasonable and necessary expenses in the course of their job
16 duties, which were not reimbursed by Defendant, in violation of Labor Code § 2802.

17 12. Plaintiff alleges that Defendants did not provide Plaintiff and Defendants' California
18 employees with one day's rest in seven, in violation of California Labor Code § 551. Plaintiff was
19 required to work 7 consecutive days without a day of rest. California Labor Code § 551 provides
20 that "[e]very person employed in any occupation of labor is entitled to one day's rest therefrom in
21 seven." By failing to provide Plaintiff and Defendants' California employees with one day's rest in
22 seven Defendants violated California Labor Code § 551.

23 13. Defendants failed to continue to take precautions to ensure employee safety after the
24 onset of COVID. Under LC §6409.6(a)(1). "COVID-19" means severe acute respiratory syndrome
25 coronavirus 2 (SARS-CoV-2). Plaintiff and Defendants' California employees, directly after the
26 onset of COVID, were required to partake in mandatory temperature and health checks, but these
27 activities were not enforced or practiced quickly after the onset of COVID and when COVID was
28 still a health risk to the employees. Plaintiff and Defendants' California employees were also
required to provide their own masks at the workplace. As a result of these practices, Defendants
have violated Cal. Labor Code §§ 6400, 6401, 6402, 6403, 6404, and 6407 for failure to provide a

safe and healthful environment for their Employees, as outlines above. Defendants are liable for civil penalties pursuant to Cal. Labor Code § 2699 et seq.

14. Defendants failed to pay all wages earned to Plaintiff and Defendants' California employees as a result of the unlawful employment policies and practices herein. As a result of these practices, Plaintiff and Defendants' California employees were underpaid for hours worked, including overtime and penalty wages, and this underpayment resulted in a failure to pay all wages owed twice per month. Due to this failure, Defendants are liable under Labor Code § 210 for failure to pay wages as required by law.

15. Plaintiff and all other aggrieved employees bring this claim pursuant to Business & Professions Code § 17200, et seq. The conduct of all Defendants as alleged above has been and continues to be unfair, unlawful, and harmful to Plaintiff and Defendants' California employees.

16. Plaintiff, on behalf of himself and all proposed Plaintiff Class members (specifically, the "California Class" as defined herein), brings this action pursuant to Labor Code §§ 226.7, 512, and 558, Labor §§ 510, 1194, 1194.2, Labor § 226(a)(e), 1174(d), Labor Code § 201-203, Labor Code § 204(a)(b), Labor § 2802, Labor § 551, Labor § 210, 218, Labor § 6400.

17. Venue as to each Defendant is proper in this judicial district, pursuant to Code of Civil Procedure § 395. Defendants operate within the State of California. The unlawful acts alleged herein took place in Stockton, California.

II. PARTIES

A. PLAINTIFF

18. Plaintiff Felipe Tiscareno is a resident of Stockton, California. At all times relevant herein, he was employed by Defendants in San Joaquin County, California. Plaintiff was employed by Defendants as a non-exempt, hourly employee in California, including in and around the city of Stockton, County of San Joaquin. During Plaintiff's employment:

- A. Plaintiff did not receive final wages upon termination.
- B. Plaintiff and the Class were not paid in a timely manner pertaining to the waiting time penalties in accordance with Labor Code §§ 201-203.
- C. Plaintiff was forced to receive inaccurately itemized and deficient wage statements, in violation of Labor Code § 226(a).
- D. Plaintiff did not receive his compensation in accordance with Labor Code Section 204 in that Defendant failed to issues wages to its employees within seven (7) calendar days

after the pay period ended.

E. Plaintiff was required to work without meal and rest periods, nor compensation in lieu thereof, as required by the Labor Code and relevant Wage Orders.

F. Plaintiff was required to work either in excess of eight hours per workday or in excess of forty hours per workweek without receiving compensation at a rate of one and one half the regular rate of pay.

G. Defendant also failed to reimburse Plaintiff and Defendant's California employees for reasonable and necessary expenses in the course of their job duties, in violation of Labor Code § 2802.

B. DEFENDANTS

19. Defendant Vapore Technology, Inc. is doing business in Stockton, California. It operates within the State of California. Defendants employed Plaintiff and similarly situated employees within California. The violations alleged herein arose in Stockton, California.

20. Defendant Ravello Properties, LLC is doing business in Stockton, California. It operates within the State of California. Defendants employed Plaintiff and similarly situated employees within California. The violations alleged herein arose in Stockton, California.

21. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

22. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the employer and/or joint employer of Plaintiff and the proposed Class.

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FACTUAL ALLEGATIONS

23. Plaintiff and Defendants' California employees were routinely unable, and not authorized to take their 10-minute rest periods and were also unable to take an uninterrupted 30-minute meal break for every shift they worked. Specifically, Plaintiff and Defendants' California employees were forced to continue working through their meal and rest breaks in order to assist Defendant's needs. Because of this, Plaintiff and Defendants' California employees were unable to take their required meal and rest breaks. Moreover, Defendants failed to pay premium wages of one hour's pay for each missed meal and rest break to Plaintiff and Defendants' California employees who were denied timely meal and rest breaks, in violation of Labor Code §§ 226.7, 512, and 558, and IWC Order No. 5-2001, Section 12.

24. Plaintiff and Defendants' California employees were required to work off the clock for Defendants. Plaintiff and Defendants' California employees were obligated to attend training/orientation. It took Plaintiff on the average of 1.5 hours to complete these tasks. Moreover, Plaintiff and Defendants' California employees were required to work off the clock for Defendants, such as responding to work calls and completing his tasks. It took Plaintiff on the average of 10-20 minutes to complete these tasks. Defendants did not compensate Plaintiff and Defendants' California employees if these tasks were completed outside of his regular work hours. These excess hours were not recorded on our client's and Defendants' California employees wage statements. Plaintiff and Defendants' California employees should have been compensated for that time, but he was not in violation of Labor Code Sections 510, 1194, and 1194.2. As a result, Plaintiff and Defendants' California employees were not paid for all hours worked including all straight time wages, and overtime wages. These failures to pay wages constitute violations of Labor Code § 510 and 1194. Plaintiff, on behalf of himself and all other California employees of Defendant claims that

25. Defendant has failed to pay all overtime wages due to non-exempt employees. Defendant pays their employees bonuses and commissions which are not included in the employees regular rate of pay for the purposes of computing the proper overtime rate. As a result, employees are not properly compensated for work performed in excess of eight (8) hours in a workday and work performed in excess of forty (40) hours in a workweek at a rate of no less than one and one-half times the regular rate of pay. These failures to pay all overtime wages constitute violations of Labor Code §§ 510, 1194, and 1194.2.

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1 26. Additionally, Labor Code Section 1194(a) states: “[n]otwithstanding any agreement
2 to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal
3 overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid
4 balance of the full amount of this minimum wage or overtime compensation, including interest
5 thereon, reasonable attorney’s fees, and costs of suit. Plaintiff and Defendants’ California
6 employees claim that Defendants engaged in “rounding.” This essentially means that the Defendant
7 underpaid Plaintiff by rounding the time Plaintiff worked in violation of Labor Code Section
8 1194(a).

9 27. Defendants failed to issue Plaintiff and Defendants’ California employees accurately
10 itemized wage statements. As Defendants failed to compensate Plaintiff and Defendants’ California
11 employees with all wages due, as detailed above, their wage statements failed to accurately state all
12 gross wages earned, in violation of Labor Code § 226(a)(1), total hours worked, in violation of
13 Labor Code § 226(a)(2), net wages earned, in violation of Labor Code § 226(a)(5). Moreover,
14 Plaintiff and the California employees wage statements’ failed to accurately state the name and
15 address of the legal entity that is the employer in violation of Labor Code § 226(a)(8), and all
16 applicable hourly rates during the pay period and the corresponding number of hours worked, in
17 violation of Labor Code § 226(a)(9), as a result of Defendants’ failure to pay all overtime wages
18 due. Since the wage statements provided to Plaintiff failed to accurately reflect the total number of
19 Plaintiff’s worked hours, due to the rounding. These violations also violate Labor Code §§ 226(e)
20 and 226.3 with respect to Plaintiff and Defendants’ California employees.

21 28. Defendants knowingly and intentionally failed to provide Plaintiff and Defendants’
22 California employees timely, accurate, itemized wage statements in accordance with Labor Code §
23 226 and keep accurate records as required by § 1174(d). The statements provided to Plaintiff and
24 Defendants’ California employees, and the records maintained by Defendants, have not accurately
25 reflected actual gross wages earned, including pay for all hours worked, overtime, and meal/rest
26 premiums, and total hour worked.

27 29. Our client further alleges that Defendants paid him and Defendants’ California
28 employees their final wages beyond the time frames set forth in Labor Code §§ 201 and 202. As
they were not paid all wages due and owing throughout the course of their employment as a result
of Defendants’ failure to pay all premium wages as detailed above, at the time of their separation,

1 they were not paid all final wages due and owing for the entirety of their employment. This violates
2 Labor Code §§ 201-203.

3 30. Defendants pay Plaintiff and its California employees on a bi-weekly basis and has
4 failed to comply with Labor Code § 204(a) which holds that wages earned on a bi-weekly basis
5 must be paid no later than seven calendar days following the close of the payroll period. Due to the
6 violations described above, Plaintiff and Defendant's California employees did not receive all of
7 their wages earned in a timely manner as required by Labor Code § 204(a)(b).

8 31. Defendants failed to reimburse Plaintiff and Defendants' California employees for the
9 equipment they purchased to perform work for Defendants such as face masks and tools. Moreover,
10 Defendant failed to reimburse Plaintiff and Defendants' California employees for uniform
11 maintenance. Defendants also failed to reimburse Plaintiff and Defendants' California employees
12 for the mileage they incurred performing certain tasks or running errands on behalf of Defendant.
13 Defendants further failed to reimburse its California employees for using their personal cell phones
14 for the benefit of Defendants. Labor Code section 2802 provides that "[a]n employer shall
15 indemnify his or her employee for all necessary expenditures or losses incurred by the employee in
16 direct consequence of the discharge of his or her duties." As such, Plaintiff and Defendants'
17 California employees have incurred reasonable and necessary expenses in the course of their job
18 duties, which were not reimbursed by Defendant, in violation of Labor Code § 2802.

19 32. Plaintiff alleges that Defendants did not provide Plaintiff and Defendants' California
20 employees with one day's rest in seven, in violation of California Labor Code § 551. Plaintiff was
21 required to work 7 consecutive days without a day of rest. California Labor Code § 551 provides
22 that "[e]very person employed in any occupation of labor is entitled to one day's rest therefrom in
23 seven." By failing to provide Plaintiff and Defendants' California employees with one day's rest in
24 seven Defendants violated California Labor Code § 551.

25 33. Defendants failed to continue to take precautions to ensure employee safety after the
26 onset of COVID. Under LC §6409.6(a)(1). "COVID-19" means severe acute respiratory syndrome
27 coronavirus 2 (SARS-CoV-2). Plaintiff and Defendants' California employees, directly after the
28 onset of COVID, were required to partake in mandatory temperature and health checks, but these
activities were not enforced or practiced quickly after the onset of COVID and when COVID was
still a health risk to the employees. Plaintiff and Defendants' California employees were also
required to provide their own masks at the workplace. As a result of these practices, Defendants

1 have violated Cal. Labor Code §§ 6400, 6401, 6402, 6403, 6404, and 6407 for failure to provide a
2 safe and healthful environment for their Employees, as outlines above. Defendants are liable for
3 civil penalties pursuant to Cal. Labor Code § 2699 et seq.

4 34. Defendants failed to pay all wages earned to Plaintiff and Defendants' California
5 employees as a result of the unlawful employment policies and practices herein. As a result of these
6 practices, Plaintiff and Defendants' California employees were underpaid for hours worked,
7 including overtime and penalty wages, and this underpayment resulted in a failure to pay all wages
8 owed twice per month. Due to this failure, Defendants are liable under Labor Code § 210 for failure
9 to pay wages as required by law.

10 35. Plaintiff and all other aggrieved employees bring this claim pursuant to Business &
11 Professions Code § 17200, et seq. The conduct of all Defendants as alleged above has been and
12 continues to be unfair, unlawful, and harmful to Plaintiff and Defendants' California employees.

13 **CLASS ACTION ALLEGATIONS**

14 36. Plaintiff brings this action on behalf of himself and all others similarly situated as a
15 Class Action pursuant to § 382 of the Code of Civil Procedure.

16 37. Plaintiff seeks to represent a class composed of and defined as follows:

17 **THE CALIFORNIA CLASS**

18 38. All current and former California employees of Defendants since the date
19 four (4) year prior to the filing of this complaint.

20 39. Plaintiff reserves the right under Rule 3.765, California Rules of Court, to
21 amend or modify the class description with greater specificity or further division into
22 subclasses or limitation to particular issues.

23 40. This action has been brought and may properly be maintained as a class
24 action under the provisions of § 382 of the Code of Civil Procedure because there is a
25 well-defined community of interest in the litigation and the proposed Class is easily
26 ascertainable.

27 **A. NUMEROSITY**

28 41. The potential members of the proposed Class as defined are so numerous that joinder
of all the members of the proposed Class is impracticable. While the precise number of proposed
Plaintiff Class members has not been determined at this time, Plaintiff is informed and believes that
Defendants currently employ, and during the relevant time periods employed, over seventy-five (75)

1 Class members in the State of California.

2 42. Accounting for employee turnover during the relevant periods necessarily increases
3 this number substantially. Plaintiff alleges that Defendants' employment records would provide
4 information as to the number and location of all proposed Plaintiff Class members. Joinder of all
5 members of the proposed Class is not practicable.

6 **B. COMMONALITY**

7 43. There are questions of law and fact common to the proposed Class that predominate
8 over any questions affecting only individual Class members. These common questions of law and
9 fact include, without limitation, whether Defendants failed to provide members of the Class with
10 wage statements that fully and accurately itemize the requirements set forth in Labor Code §226(a),
11 accurate final wages, and final wages on the day of termination and or within seventy-two (72) hours
12 of separation and whether the rest periods were timely made available.

13 **C. TYPICALITY**

14 44. The claims of the named Plaintiff are typical of the claims of the proposed Class.
15 Plaintiff and all members of the proposed Class sustained injuries and damages arising out of and
16 caused by Defendants' common course of conduct in violation of laws, regulations that have the
17 force and effect of law, and statutes as alleged herein.

18 **D. ADEQUACY OF REPRESENTATION**

19 45. Plaintiff will fairly and adequately represent and protect the interests of the members
20 of the proposed Class. Counsel who represents Plaintiff is competent and experienced in litigating
21 large employment class actions.

22 **E. SUPERIORITY OF CLASS ACTION**

23 46. A class action is superior to other available means for the fair and efficient
24 adjudication of this controversy. Individual joinder of all proposed Plaintiff Class members is not
25 practicable, and questions of law and fact common to the proposed Class predominate over any
26 questions affecting only individual members of the proposed Class. Each member of the proposed
27 Class has been damaged and is entitled to recovery by reason of Defendant's failure to comply with
28 Labor Code 226(a).

47. Class action treatment will allow those similarly situated persons to litigate their
claims in the manner that is most efficient and economical for the parties and the judicial system.
Plaintiffs are unaware of any difficulties that are likely to be encountered in the management of this

1 action that would preclude its maintenance as a class action.

2 **CAUSES OF ACTION**

3 **FIRST CAUSE OF ACTION**

4 **FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF**
5 **(LABOR CODE §§ 226.7, 512 and 558)**

6 48. Plaintiff incorporates paragraphs 1 through 47 of this Complaint as though fully set forth herein.

7 49. Plaintiff is entitled to one hour of pay for each day that Defendants failed to properly provide one or more meal periods as set forth in the IWC Wage Orders and Labor Code §§ 226.7, 8 512 and 558.

9 50. Plaintiff and Defendant's California employees were routinely unable, and not 10 authorized to take an uninterrupted 30-minute meal break for every shift they worked. Specifically, 11 Plaintiff and Defendants' California employees were forced to continue working through their meal 12 breaks in order to assist Defendant's needs. Because of this, Plaintiff and Defendant's California 13 employees were unable to take their required meal breaks. Moreover, Defendants failed to pay 14 premium wages of one hour's pay for each missed meal and rest break to Plaintiff and Defendant's 15 California employees who were denied timely meal and rest breaks, in violation of Labor Code §§ 226.7, 512, and 558, and IWC Order No. 5-2001, Section 12.

16 51. Pursuant to Labor Code §§ 226.7, 512 and 558 Plaintiff seeks the payment of all meal 17 period compensations, which he was owed since he commenced to work for Defendant, according to 18 proof.

19 52. Additionally, Plaintiff is entitled to, and seeks, attorney's fees and costs, and 20 prejudgment interest.

21 53. Wherefore, Plaintiff seeks to represent request relief as described below.

22 **SECOND CAUSE OF ACTION**

23 **FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF**
24 **(LABOR CODE §§ 226.7, 512 and 558)**

25 54. Plaintiff incorporates paragraphs 1 through 53 of this Complaint as though fully set forth herein.

26 55. Plaintiff is entitled to one hour of pay for each day that Defendants failed to properly provide one or more rest periods as set forth in the IWC Wage Orders and Labor Code §§ 226.7, 512 27

and 558.

56. Plaintiff and Defendant's California employees were routinely unable, and not authorized to take their 10-minute rest periods for every shift they worked. Specifically, Plaintiff and Defendants' California employees were forced to continue working through their rest breaks in order to assist Defendant's needs. Because of this, Plaintiff and Defendant's California employees were unable to take their required rest breaks. Moreover, Defendants failed to pay premium wages of one hour's pay for each missed rest break to Plaintiff and Defendant's California employees who were denied timely rest breaks, in violation of Labor Code §§ 226.7, 512, and 558, and IWC Order No. 5-2001, Section 12.

57. Pursuant to Labor Code §§ 226.7, 512 and 558 Plaintiff seeks the payment of all rest period compensations, which he was owed since he commenced to work for Defendant, according to proof.

58. Additionally, Plaintiff is entitled to, and seeks, attorney's fees and costs, and prejudgment interest.

59. Wherefore, Plaintiff seeks to represent request relief as described below.

THIRD CAUSE OF ACTION

FAILURE TO PAY ALL WAGES IN VIOLATION OF (LABOR CODE §§ 510, 1194, 1194.2)

60. Plaintiff incorporates all preceding paragraphs of this Complaint as though fully set forth herein.

61. During the liability period, Defendant failed to pay all wages to Plaintiff and Defendant's California employees.

62. Plaintiff and Defendants' California employees were required to work off the clock for Defendants. Plaintiff and Defendants' California employees were obligated to attend training/orientation. It took Plaintiff on the average of 1.5 hours to complete these tasks. Moreover, Plaintiff and Defendants' California employees were required to work off the clock for Defendants, such as responding to work calls and completing his tasks. It took Plaintiff on the average of 10-20 minutes to complete these tasks. Defendants did not compensate Plaintiff and Defendants' California employees if these tasks were completed outside of his regular work hours. These excess hours were not recorded on our client's and Defendants' California employees wage statements. Plaintiff and Defendants' California employees should have been compensated for that time, but he was not in

1 violation of Labor Code Sections 510, 1194, and 1194.2. As a result, Plaintiff and Defendants'
2 California employees were not paid for all hours worked including all straight time wages, and
3 overtime wages. These failures to pay wages constitute violations of Labor Code § 510 and 1194.

4 63. Plaintiff, on behalf of himself and all other California employees of Defendant claims
5 that Defendant has failed to pay all overtime wages due to non-exempt employees. Defendant pays
6 their employees bonuses and commissions which are not included in the employees regular rate of
7 pay for the purposes of computing the proper overtime rate. As a result, employees are not properly
8 compensated for work performed in excess of eight (8) hours in a workday and work performed in
9 excess of forty (40) hours in a workweek at a rate of no less than one and one-half times the regular
10 rate of pay. These failures to pay all overtime wages constitute violations of Labor Code §§ 510,
11 1194, and 1194.2.

12 64. Additionally, Labor Code Section 1194(a) states: “[n]otwithstanding any agreement
13 to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal
14 overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid
15 balance of the full amount of this minimum wage or overtime compensation, including interest
16 thereon, reasonable attorney’s fees, and costs of suit. Plaintiff and Defendants’ California employees
17 claim that Defendants engaged in “rounding.” This essentially means that the Defendant underpaid
18 Plaintiff by rounding the time Plaintiff worked in violation of Labor Code Section 1194(a).

19 65. As a result, Plaintiff and Defendant’s California employees were not paid for all
20 hours worked including all straight time wages, and overtime wages. These failures to pay wages
21 constitute violations of Labor Code § 510 and 1194.

22 66. As a result of the unlawful acts of Defendants in willfully failing to pay all alleges,
23 Plaintiff and Defendant’s California employees have been deprived of wages in amounts to be
24 determined at trial, and are entitled to restitution and recovery of such amounts, plus interest thereon,
25 attorneys’ fees, and costs pursuant to Labor Code § 1194 and liquidated damages pursuant to Labor
26 Code § 1194.2.

27 **FOURTH CAUSE OF ACTION**

28 **KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED EMPLOYEE WAGE STATEMENT PROVISIONS (LABOR CODE § 226(a),(e), 1174(d))**

67. Plaintiff incorporates all preceding paragraphs of this Complaint as though fully set
forth herein.

1 68. Section 226(a) of the California Labor Code requires Defendants to provide wage
2 statements to employees. In those wage statements, Defendants must accurately set forth, among
3 other things, the total gross and net wages earned, and all hourly rates in effect, for Plaintiff.
4 Defendants have knowingly and intentionally failed to comply with Labor Code § 226(a).

5 69. Defendants failed to issue Plaintiff and Defendants' California employees accurately
6 itemized wage statements. As Defendants failed to compensate Plaintiff and Defendants' California
7 employees with all wages due, as detailed above, their wage statements failed to accurately state all
8 gross wages earned, in violation of Labor Code § 226(a)(1), total hours worked, in violation of
9 Labor Code § 226(a)(2), net wages earned, in violation of Labor Code § 226(a)(5). Moreover,
10 Plaintiff and the California employees wage statements' failed to accurately state the name and
11 address of the legal entity that is the employer in violation of Labor Code § 226(a)(8), and all
12 applicable hourly rates during the pay period and the corresponding number of hours worked, in
13 violation of Labor Code § 226(a)(9), as a result of Defendants' failure to pay all overtime wages due.
14 Since the wage statements provided to Plaintiff failed to accurately reflect the total number of
15 Plaintiff's worked hours, due to the rounding. These violations also violate Labor Code §§ 226(e)
16 and 226.3 with respect to Plaintiff and Defendants' California employees.

17 70. Defendants knowingly and intentionally failed to provide Plaintiff and Defendant's
18 California employees timely, accurate, itemized wage statements in accordance with Labor Code §
19 226 and keep accurate records as required by § 1174(d). The statements provided to Plaintiff and
20 Defendant's California employees, and the records maintained by Defendants, have not accurately
21 reflected actual gross wages earned, including pay for all hours worked, overtime, and meal/rest
22 premiums, and total hour worked.

23 71. The wage statements provided to Plaintiff and members of the Class fail to accurately
24 itemize in wage statements total gross and net wages earned, and all hourly rates in effect for
25 Plaintiff. Defendants' violations of Labor Code § 226(a) are knowing and intentional, and Plaintiff
26 has suffered injury as a result of the receipt of defective wage statements, thereby entitling them to
27 penalties pursuant to Labor Code § 226(e).

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FIFTH CAUSE OF ACTION

**FAILURE TO PAY WAGES DUE AT THE TIME OF DISCHARGE IN VIOLATION
OF LABOR CODE §§ 201-202, RESULTING IN SECTION 203 WAGES AND
PENALTIES (WAITING TIME PENALTIES)**

72. Plaintiff hereby incorporates preceding paragraphs of this Complaint as though fully set forth herein.

73. At all times material herein, the California Labor Code Sections 201, 202, and 203 were in effect and binding on Defendant.

74. California Labor Code § 202 requires employers to pay employees all wages due within seventy-two (72) hours of resignation. California Labor Code § 201 states in pertinent part that “if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” California Labor Code § 203 provides that if an employer willfully fails to timely pay such wages the employer must, as penalty, continue to pay the subject employee’s wages until the back wages are paid in full or an action is commenced. The penalty cannot exceed 30 days of wages.

75. Plaintiff was entitled to compensation for unpaid wages, but to date has not received such compensation. Specifically, Defendant failed to pay Plaintiff all wages due to Plaintiff at the time of his separation of employment from Defendant’s. Thus, since Defendant failed to promptly pay Plaintiff all wages due to Plaintiff at the time of his separation of employment, Defendant violated Section 201 of the Labor Code and Plaintiff is therefore entitled to wages and penalties pursuant to Labor Code Section 203.

76. More than 30 days have passed since Plaintiff’s employment ended with Defendant.

77. As a consequence of Defendant’s willful conduct in not paying wages owed to Plaintiff, Plaintiff is entitled to 30 days of wages as a penalty pursuant to Labor Code § 203 for Defendant’s failure to timely pay legal wages, together with attorney’s fees and cost of suit, and interest pursuant to California Labor Code Section 218.5.

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SIXTH CAUSE OF ACTION

FAILURE TO TIMELY PAY EMPLOYEES IN VIOLATION OF LABOR CODE § 204(a)(b)

78. Plaintiff incorporates all preceding paragraphs of this Complaint as though fully set forth herein.

79. At all times relevant herein, Labor Code § 204 was in full force and effect and binding on Defendants.

80. Wages must be paid according to a regularly set schedule. (Labor Code § 204). All earned wages must be paid at least twice a month, on days designated in advance by the employer. Work performed between the 1st and the 15th days, inclusive, of any calendar month must be paid between the 16th and 26th day of the same month. Work performed between the 16th and the last day of the month must be paid between the 1st and 10th day of the following month. (Labor Code § 204). Weekly or bi-weekly (every two weeks) payroll must be paid within seven (7) days of the end of the pay period in which the wages were earned (Labor Code §§ 204(a), 204(b)).

81. Defendants pay Plaintiff and its California employees on a bi-weekly basis and have failed to comply with Labor Code § 204(a) which holds that wages earned on a bi-weekly basis must be paid no later than seven calendar days following the close of the payroll period. Due to the violations described above, Plaintiff and Defendant's California employees did not receive all of their wages earned in a timely manner as required by Labor Code § 204(a)(b).

82. Defendants have failed to comply with the above-section because they waited longer than ten days from the close of the pay period to pay its bi-weekly paid employees.

SEVENTH CAUSE OF ACTION

FAILURE TO REIMBURSE FOR BUSINESS EXPENSES IN VIOLATION OF CALIFORNIA LABOR CODE § 2802

83. Plaintiff hereby incorporates preceding paragraphs of this Complaint as though fully set forth herein.

84. Labor Code § 2802 provides that "[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties."

85. Defendants failed to reimburse Plaintiff and Defendants' California employees for the equipment they purchased to perform work for Defendants such as face masks and tools. Moreover, Defendant failed to reimburse Plaintiff and Defendants' California employees

1 for uniform maintenance. Defendants also failed to reimburse Plaintiff and Defendants'
2 California employees for the mileage they incurred performing certain tasks or running errands
3 on behalf of Defendant. Defendants further failed to reimburse its California employees for
4 using their personal cell phones for the benefit of Defendants. Labor Code section 2802
5 provides that "[a]n employer shall indemnify his or her employee for all necessary expenditures
6 or losses incurred by the employee in direct consequence of the discharge of his or her duties."
7 As such, Plaintiff and Defendants' California employees have incurred reasonable and
8 necessary expenses in the course of their job duties, which were not reimbursed by Defendant,
9 in violation of Labor Code § 2802.

10 86. Plaintiff is entitled to reimbursement for these necessary expenditures, plus
11 interest and attorneys' fees and cost, under Labor Code § 2802.

12 87. Plaintiff also requests relief as described below.

13 **EIGHTH CAUSE OF ACTION**

14 **FAILURE TO PROVIDE ONE DAY'S REST THEREFROM SEVEN IN VIOLATION**
15 **OF LABOR CODE § 551**

16 88. Plaintiff incorporates all preceding paragraphs of this Complaint as though fully
17 set forth herein.

18 89. At times relevant to this Complaint, Plaintiff and Defendant's California
19 employees were non-exempt employees of Defendants, covered by California Labor Code
20 section 551.

21 90. California Labor Code section 551 states in relevant part

22 "[e]very person employed in any occupation of labor is entitled to one day's rest
23 therefrom in seven."

24 91. Plaintiff alleges that Defendants did not provide Plaintiff and Defendant's
25 California employees with one day's rest in seven, in violation of California Labor Code § 551.
26 Plaintiff was required to work 7 consecutive days without a day of rest. California Labor Code
27 § 551 provides that "[e]very person employed in any occupation of labor is entitled to one
28 day's rest therefrom in seven." By failing to provide Plaintiff and Defendant's California
employees with one day's rest in seven Defendant violated California Labor Code § 551.

92. Wherefore, Plaintiff and the Class he seeks to represent request relief as described
below.

NINTH CAUSE OF ACTION

**FAILURE TO PAY FOR ALL HOURS WORKED, INCLUDING OVERTIME HOURS
WORKED IN VIOLATION OF (LABOR CODES §§ 210, 218)**

93. Plaintiff incorporates all preceding paragraphs of this Complaint as though fully set forth herein.

94. Section 2(K) or Wage Order 5 defines “hours worked” as “the rime during which an employee is subject to the control of an employer, and including all the time the employee is suffered or permitted to work, whether or not required to do so.” Labor Code §§ 1194 and 1197 required employers to compensate Plaintiff for all hours worked at least at a minimum wage ad established by the Wage Order. Defendants did not pay for all hours worked and frequently required Plaintiff to work off the clock. Defendants have been engaged in many unlawful employment practices which resulted in underpayment for hours worked each pay period as more set forth below:

95. Failure to Pay All Wages Owed Twice Per Month. Defendants were required to pay Plaintiff all wages earned twice during each calendar month pursuant to Labor Code § 204(a). Defendants failed to pay all wages earned to Plaintiff as a result of the unlawful employment policies and practices herein. As a result of these practices, Plaintiff was underpaid for hours worked, including overtime and penalty wages, and this underpayment resulted in a failure to pay all wages owed twice per month. Due to this failure, Defendants are liable under Labor Code § 210 for failure to pay wages as required by law.

TENTH CAUSE OF ACTION

**FAILURE TO PROVIDE PLACE OF EMPLOYMENT THAT IS SAFE AND
HEALTHFUL IN VIOLATION OF
(LABOR CODE §§ 6400, 6401, 6402, 6403, 6404, 6407, 8 CCR 3202)**

96. Plaintiff incorporates all preceding paragraphs of this Complaint as though fully set forth herein.

97. Cal. Labor Code § 6400(a) provides that every employer shall furnish employment and a place of employment that is safe and healthful for Plaintiff therein. Cal. Labor Code § 6401 provides that “every employer shall furnish and use safety devices and safeguard, and shall adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render such employment and place of employment safe and

1 healthful. Every employer.

2 98. Pursuant to Cal. Labor Code § 6402, no employer shall require, or permit any
3 employee to go or be in any employment or place of employment which is not safe and
4 healthful. Cal. Labor Code § 6403 states that no employer shall fail or neglect to provide and
5 use safety devices and safeguard reasonably adequate to render the employment and place of
6 employment safe, or adopt and use methods and processes reasonably necessary to protect the
7 life, safety, and health of Plaintiff and Defendant's California employees.

8 99. Cal. Labor Code § 6404 provides that no employer shall occupy or maintain any
9 place of employment that is not safe and healthful. Cal. Labor Code § 6407 provides that every
10 employer and every employee shall comply with occupational safety and health standards, with
11 Section 25910 of the Health and Safety Code, and with all rules, regulations, and orders
12 pursuant to this division which are applicable to his own actions and conduct. Defendants failed
13 to continue to take precautions to ensure employee safety after the onset of COVID. Under LC
14 §6409.6(a)(1). "COVID-19" means severe acute respiratory syndrome coronavirus 2 (SARS-
15 CoV-2). Plaintiff, directly after the onset of COVID, were required to partake in mandatory
16 temperature and health checks, but these activities were not enforced or practiced quickly after
17 the onset of COVID and when COVID was still a health risk to Plaintiff and Defendant's
18 California employees. Plaintiff and Defendant's California employees was also required to
19 provide their own masks at the workplace.

20 100. As a result of these practices, Defendants have violated Cal. Labor Code §§
21 6400, 6401, 6402, 6403, 6404, and 6407 for failure to provide a safe and healthful environment
22 for Plaintiff, as outlines above.

23 **ELEVENTH CAUSE OF ACTION**

24 **UNFAIR COMPETITION PURSUANT TO** 25 **BUSINESS & PROFESSIONS CODE § 17200**

26 101. Plaintiff incorporates all preceding paragraphs of this Complaint as though fully
27 set forth herein.

28 102. This is an Action for Unfair Business Practices. Plaintiff Felipe Tiscareno brings
this claim pursuant to *Business & Professions Code* § 17200, et seq. The conduct of all
Defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and
harmful to Plaintiff and Defendant's California employees as a result of Defendant's failure to

1 comply with the labor code sections as set out above including but not limited to Labor Code
2 Sections 6400, 6401, 6402, 6403, 6404, 6407. Plaintiff and Defendant's California employees
3 seek to enforce important rights affecting the public interest within the meaning of *Code of*
4 *Civil Procedure* § 1021.5.

5 103. Plaintiff is a "person" within the meaning of *Business & Professions Code* §
6 17204, and therefore has standing to bring this cause of action for injunctive relief, restitution,
7 and other appropriate equitable relief.

8 104. *Business & Profession Code* § 17200 *et. seq.* prohibits unlawful and unfair
9 business practices.

10 105. Defendants have violated statutes and public policies. Through the conduct
11 alleged in this Complaint, Defendants, and each of them, have acted contrary to these public
12 policies, have violated specific provisions of the *Labor Code*, and have engaged in other
13 unlawful and unfair business practices in violation of *Business & Professions Code* § 17200, *et*
14 *seq.*, depriving Plaintiff, of rights, benefits, and privileges guaranteed to Plaintiff under law.

15 106. Defendants' conduct, as alleged herein, constitutes unfair competition in
16 violation of § 17200 *et. seq.* of the *Business & Professions Code*.

17 107. As a proximate result of the above mentioned acts of Defendants, Plaintiff has
18 been damaged in a sum as may be proven.

19 108. Unless restrained by this Court, Defendants will continue to engage in the
20 unlawful conduct as alleged above. Pursuant to *Business & Professions Code*, this Court should
21 make such orders or judgments, including the appointment of a receiver, as may be necessary
22 to prevent the use or employment, by Defendants, their agents, or Plaintiff, of any unlawful or
23 deceptive practice prohibited by the *Business & Professions Code*, and/or, including but not
24 limited to, disgorgement of profits which may be necessary to restore Plaintiff to the money
25 Defendants have unlawfully failed to pay.

26 **TWELVETH CAUSE OF ACTION**

27 **PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF LABOR** 28 **CODE §§ 226.7, 512, 558, 510, 1194, 1194.2, 226(a), (e), 1174(d), 201-203, 204(a)(b), 2802, 551,** **210, 218, 6400, 6401, 6403, 6404, 6407, 8 CCR 3202, 17200**

29 109. Plaintiff incorporates all preceding paragraphs of this Complaint as though fully set
30 forth herein.

110. As a result of the acts alleged herein, Plaintiff seeks penalties under Labor Code § 2698 *et seq.* because of Defendants' violations of Labor Code §§ 226.7, 512, 558, 510, 1194, 1194.2, 226(a), (e), 201-203, 204(a)(b), 1174(d), 2802, 551, 210, 218, 222, 6400, 6401, 6403, 6404, 6407, 8 CCR 3202, 17200.

111. For each such violation, Plaintiff and all aggrieved employees are entitled to penalties in an amount to be shown at the time of trial subject to the following formula:

- a. With respect to the violation of Labor Code § 2699(f) for violations of Labor Code §§ 226.7, 512, 558, 510, 1194, 1194.2, 226(a), (e), 1174(d), 201-203, 204(a)(b), 2802, 551, 210, 218, 222, 6400, 6401, 6403, 6404, 6407, 8 CCR 3202, 17200 \$100 for the initial violation per employee per pay period and \$200 for each subsequent violation per employee per pay period.

112. These penalties will be allocated 75% to the Labor Workforce Development Agency, and 25% to the affected employees.

113. On April 17, 2023, Plaintiff sent a letter, by certified mail, return receipt requested, to the LWDA and Defendants setting forth the facts and theories of the violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.* (**Exhibit "A"**). Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA within sixty-five (65) calendar days of April 17, 2023. Plaintiff may therefore commence this action to seek penalties pursuant to Labor Code § 2698 *et seq.*

114. Wherefore, Plaintiff and the aggrieved employees he seeks to represent request relief as described herein.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For a money judgment representing compensatory damages including lost wages, earnings, retirement benefits and other employee benefits, and all other sums of money, together with interest on these amounts, according to proof;
2. That Defendants are found to have violated the requirements of Labor Code § 203 for failure to timely pay wages due at termination.
3. That Defendants are found to have violated the requirements of Labor Code § 226(e) for failure to comply with itemized employee wage statement provisions.

1 4. That Defendants are found to have violated the requirements of Labor Code §
2 1174(d) for failure to comply with itemized employee wage statement provisions.

3 5. That Defendants are found to have violated the requirements of Labor Code § 226.7
4 for failure to provide meal and rest periods or compensation in lieu thereof.

5 6. That Defendants are found to have violated the requirements of Labor Code § 510 for
6 failure to pay all wages.

7 7. That Defendants are found to have violated the requirements of Labor Code § 1194.2
8 for failure to pay all wages.

9 8. That Defendants are found to have violated the requirements of Labor Code § 204(b)
10 for failure to timely pay employees.

11 9. That Defendants are found to have violated the requirements of Labor Code § 2802
12 for failure to reimburse for business expenses.

13 10. That Defendants are found to have violated the requirements of Labor Code § 210 for
14 failure to pay all hours worked, including overtime hours worked.

15 11. That Defendants are found to have violated the requirements of Labor Code § 6400
16 for failure to provide a place of employment that is safe and healthful.

17 12. That Defendants are found to have violated the requirements of Labor Code § 551

18 13. That Defendants are found to have violated the requirements of Business and
19 Professions Code § 17200 et seq.;

20 14. For penalties and other relief pursuant to Labor Code § 2698 et seq. for Plaintiff and
21 all other aggrieved employees;

22 15. An award providing for payment of costs of suit pursuant to Labor Code §
23 2699(g)(1);

24 16. An award of attorneys' fees pursuant to Labor Code § 2699(g)(1);

25 17. An award of prejudgment and post-judgment interest;

26 18. An award providing for payment of costs of suit;

27 19. An award of attorneys' fees; and

28 20. Such other and further relief as this Court may deem just and proper.

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1 Dated: June 22, 2023

OTKUPMAN LAW FIRM,
A Law Corporation

2
3
4 By: 

5 ROMAN OTKUPMAN
6 Attorneys for Plaintiff

7 **DEMAND FOR JURY TRIAL**

8 Plaintiff hereby demands a trial of his claims by jury to the extent authorized by law.

9 Dated: June 22, 2023

OTKUPMAN LAW FIRM,
A Law Corporation

10
11
12 By: 

13 ROMAN OTKUPMAN
14 Attorneys for Plaintiff
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EXHIBIT A

OTKUPMAN LAW FIRM, A LAW CORPORATION

5743 Corsa Ave, Suite 123
Westlake Village, CA 91362
Tel.: 818-293-5623
Fax: 888-850-1310

April 17, 2023

VIA ELECTRONIC FILING

Labor & Workforce Development Agency

VIA CERTIFIED MAIL

Vapore Technology, Inc.
7101 Oakmont Dr
Modesto, CA 95356
Defendant certified mail # 7022 2410 0001 4137 9513

VIA CERTIFIED MAIL

Agent for Service of Process
Jeff Podesto
7101 Oakmont Dr
Modesto, CA 95356
Agent certified mail # 7022 2410 0001 4137 9735

VIA CERTIFIED MAIL

Ravello Properties, LLC
7101 Oakmont Dr
Modesto, CA 95356
Defendant certified mail # 7022 2410 0001 4137 9728

VIA CERTIFIED MAIL

Agent for Service of Process
John Jeffrey Podesto
7101 Oakmont Dr
Modesto, CA 95356
Agent certified mail # 7022 2410 0001 4137 9711

VIA CERTIFIED MAIL

Pacific Spray Dry
PO Box 600
Salida, CA 95368
Defendant certified mail # 7022 2410 0001 4137 9704

Labor & Workforce Development Agency
Vapore Technology, Inc.
Ravello Properties, LLC
Pacific Spray Dry
April 17, 2023
Page 2

VIA CERTIFIED MAIL

Pacific Spray Dry
818 McCloy Ave
Stockton, CA 95203
Defendant certified mail # 7022 2410 0001 4137 9798

Re: ***Felipe Tiscareno v. Vapore Technology, Inc., Ravello Properties, LLC, Pacific Spray Dry – Labor Code Violations of Vapore Technology, Inc., Ravello Properties, LLC, Pacific Spray Dry – Compliance Letter of California Labor Code § 2698 – Private Attorneys General Act***

Dear Sir or Madam:

This office represents Felipe Tiscareno (“Plaintiff”), a former California employee of Vapore Technology, Inc., Ravello Properties, LLC, Pacific Spray Dry (“Defendants”). The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698 et seq.

Our client works for Defendants in Northern California. Herein we set forth the facts and theories of California Labor Code violations which we allege Defendants engaged in with respect to our client and other of its California non-exempt employees.

Plaintiff began working for Defendants on or about April 1, 2017. While working for Defendants as a Assistant Plant Manager, Plaintiff was earning (\$30.00) dollars per hour.

Plaintiff and Defendants’ California employees were routinely unable, and not authorized to take their 10-minute rest periods and were also unable to take an uninterrupted 30-minute meal break for every shift they worked. Specifically, Plaintiff and Defendants’ California employees were forced to continue working through their meal and rest breaks in order to assist Defendant’s needs. Because of this, Plaintiff and Defendants’ California employees were unable to take their required meal and rest breaks. Moreover, Defendants failed to pay premium wages of one hour’s pay for each missed meal and rest break to Plaintiff and Defendants’ California employees who were denied timely meal and rest breaks, in violation of Labor Code §§ 226.7, 512, and 558, and IWC Order No. 5-2001, Section 12.

Plaintiff and Defendants’ California employees were required to work off the clock for Defendants. Plaintiff and Defendants’ California employees were obligated to attend training/orientation. It took Plaintiff on the average of 1.5 hours to complete these tasks. Moreover, Plaintiff and Defendants’ California employees were required to work off the clock for Defendants, such as responding to work calls and completing his tasks. It took Plaintiff on the average of 10-20 minutes to complete these tasks. Defendants did not compensate Plaintiff and

Defendants' California employees if these tasks were completed outside of his regular work hours. These excess hours were not recorded on our client's and Defendants' California employees wage statements. Plaintiff and Defendants' California employees should have been compensated for that time, but he was not in violation of Labor Code Sections 510, 1194, and 1194.2. As a result, Plaintiff and Defendants' California employees were not paid for all hours worked including all straight time wages, and overtime wages. These failures to pay wages constitute violations of Labor Code § 510 and 1194.

Plaintiff, on behalf of himself and all other California employees of Defendant claims that Defendant has failed to pay all overtime wages due to non-exempt employees. Defendant pays their employees bonuses and commissions which are not included in the employees regular rate of pay for the purposes of computing the proper overtime rate. As a result, employees are not properly compensated for work performed in excess of eight (8) hours in a workday and work performed in excess of forty (40) hours in a workweek at a rate of no less than one and one-half times the regular rate of pay. These failures to pay all overtime wages constitute violations of Labor Code §§ 510, 1194, and 1194.2.

Additionally, Labor Code Section 1194(a) states: "[n]otwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit. Plaintiff and Defendants' California employees claim that Defendants engaged in "rounding." This essentially means that the Defendant underpaid Plaintiff by rounding the time Plaintiff worked in violation of Labor Code Section 1194(a).

Defendants failed to issue Plaintiff and Defendants' California employees accurately itemized wage statements. As Defendants failed to compensate Plaintiff and Defendants' California employees with all wages due, as detailed above, their wage statements failed to accurately state all gross wages earned, in violation of Labor Code § 226(a)(1), total hours worked, in violation of Labor Code § 226(a)(2), net wages earned, in violation of Labor Code § 226(a)(5). Moreover, Plaintiff and the California employees wage statements' failed to accurately state the name and address of the legal entity that is the employer in violation of Labor Code § 226(a)(8), and all applicable hourly rates during the pay period and the corresponding number of hours worked, in violation of Labor Code § 226(a)(9), as a result of Defendants' failure to pay all overtime wages due. Since the wage statements provided to Plaintiff failed to accurately reflect the total number of Plaintiff's worked hours, due to the rounding. These violations also violate Labor Code §§ 226(e) and 226.3 with respect to Plaintiff and Defendants' California employees.

Defendants knowingly and intentionally failed to provide Plaintiff and Defendants' California employees timely, accurate, itemized wage statements in accordance with Labor Code § 226 and keep accurate records as required by §1174(d). The statements provided to Plaintiff and Defendants' California employees, and the records maintained by Defendants, have not accurately

reflected actual gross wages earned, including pay for all hours worked, overtime, and meal/rest premiums, and total hour worked.

Our client further alleges that Defendants paid him and Defendants' California employees their final wages beyond the time frames set forth in Labor Code §§ 201 and 202. As they were not paid all wages due and owing throughout the course of their employment as a result of Defendants' failure to pay all premium wages as detailed above, at the time of their separation, they were not paid all final wages due and owing for the entirety of their employment. This violates Labor Code §§ 201-203.

Defendants pay Plaintiff and its California employees on a bi-weekly basis and has failed to comply with Labor Code § 204(a) which holds that wages earned on a bi-weekly basis must be paid no later than seven calendar days following the close of the payroll period. Due to the violations described above, Plaintiff and Defendant's California employees did not receive all of their wages earned in a timely manner as required by Labor Code § 204(a)(b).

Defendants failed to reimburse Plaintiff and Defendants' California employees for the equipment they purchased to perform work for Defendants such as face masks and tools. Moreover, Defendant failed to reimburse Plaintiff and Defendants' California employees for uniform maintenance. Defendants also failed to reimburse Plaintiff and Defendants' California employees for the mileage they incurred performing certain tasks or running errands on behalf of Defendant. Defendants further failed to reimburse its California employees for using their personal cell phones for the benefit of Defendants. Labor Code section 2802 provides that "[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties." As such, Plaintiff and Defendants' California employees have incurred reasonable and necessary expenses in the course of their job duties, which were not reimbursed by Defendant, in violation of Labor Code § 2802.

Plaintiff alleges that Defendants did not provide Plaintiff and Defendants' California employees with one day's rest in seven, in violation of California Labor Code § 551. Plaintiff was required to work 7 consecutive days without a day of rest. California Labor Code § 551 provides that "[e]very person employed in any occupation of labor is entitled to one day's rest therefrom in seven." By failing to provide Plaintiff and Defendants' California employees with one day's rest in seven Defendants violated California Labor Code § 551.

Defendants failed to continue to take precautions to ensure employee safety after the onset of COVID. Under LC § 6409.6(a)(1). "COVID-19" means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2). Plaintiff and Defendants' California employees, directly after the onset of COVID, were required to partake in mandatory temperature and health checks, but these activities were not enforced or practiced quickly after the onset of COVID and when COVID was still a health risk to the employees. Plaintiff and Defendants' California employees were also

Labor & Workforce Development Agency
Vapore Technology, Inc.
Ravello Properties, LLC
Pacific Spray Dry
April 17, 2023
Page 5

required to provide their own masks at the workplace. As a result of these practices, Defendants have violated Cal. Labor Code §§ 6400, 6401, 6402, 6403, 6404, and 6407 for failure to provide a safe and healthful environment for their Employees, as outlines above. Defendants are liable for civil penalties pursuant to Cal. Labor Code § 2699 *et seq.*

Defendants failed to pay all wages earned to Plaintiff and Defendants' California employees as a result of the unlawful employment policies and practices herein. As a result of these practices, Plaintiff and Defendants' California employees were underpaid for hours worked, including overtime and penalty wages, and this underpayment resulted in a failure to pay all wages owed twice per month. Due to this failure, Defendants are liable under Labor Code § 210 for failure to pay wages as required by law.

Plaintiff and all other aggrieved employees bring this claim pursuant to *Business & Professions Code* § 17200, *et seq.* The conduct of all Defendants as alleged above has been and continues to be unfair, unlawful, and harmful to Plaintiff and Defendants' California employees.

We invite Defendants or its attorney(s) to contact our office to discuss this matter, including whether an early resolution of the claims can be reached.

Our office awaits your response.

Very truly yours,

OTKUPMAN LAW FIRM


ROMAN OTKUPMAN