

John H. Gomez, Esq. (SBN 171485)
Emilia A. Arutunian, Esq. (SBN: 305824)
John E. Solis, Esq. (SBN: 303917)
GOMEZ TRIAL ATTORNEYS
755 Front Street
San Diego, CA 92101
Telephone: (619) 237-3490
Facsimile: (619) 237-3496

Attorneys for Plaintiff,
HAJAR MUSTAFA

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Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Sophia Felix, Deputy Clerk

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

HAJAR MUSTAFA, individually, and on behalf
of all persons similarly situated,

Plaintiff,

v.

VIGILANT EYE SECURITY, INC. dba
VIGILANT EYE PRIVATE SECURITY, a
corporation; and DOES 1 to 20, inclusive,

Defendants.

Unlimited Civil

Case No.: 37-2023-00030830-CU-OE-CTL

CLASS ACTION COMPLAINT

- (1) Violation of Bus. & Prof. Code § 17200, et seq.
- (2) Failure to Pay Minimum Wage (Lab. Code §§ 1194, 1197, 1197.1);
- (3) Failure to Pay Overtime/Double-Time Wages (Lab. Code §§ 204, 510, 558.1, 1194);
- (4) Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512, 558, and 558.1);
- (5) Failure to Provide Rest Periods (Lab. Code §§ 226.7, 512, 558, 558.1);
- (6) Failure to Provide Accurate, Itemized Wage Statements (Lab. Code §§ 226, 558.1);
- (7) Failure to Pay Wages Promptly after Termination/Waiting Time Penalties (Lab. Code §§ 201, 203)
- (8) Retaliation for Complaint of Unlawful Acts (Lab. Code § 1102.5);

REPRESENTATIVE ACTION FOR PAGA PENALTIES

- (9) Violation of the Private Attorneys General Act of 2004, Labor Code §§ 2698, et seq.

1 Plaintiff Hajar Mustafa alleges on the basis of personal knowledge and/or information and belief:

2 **SUMMARY**

3 This is an action by plaintiff, Hajar Mustafa (“PLAINTIFF” or “Mr. Mustafa”), an individual, on
4 behalf of himself and all other similarly situated current and former employees and misclassified
5 employees of defendant Vigilant Eye Private Security, Inc. dba Vigilant Eye Private Security
6 (“DEFENDANT” or “VEPS”). Plaintiff brings this action against defendants for economic, non-
7 economic, compensatory, and punitive damages, pursuant to Civil Code section 3294, pre-judgment
8 interest pursuant to Code of Civil Procedure section 3291, penalties under the Private Attorneys General
9 Act (Labor Code §§ 2698, et seq.), and costs and reasonable attorneys’ fees pursuant to Government Code
10 section 12965(b), Labor Code section 1102.5(j), and Code of Civil Procedure section 1021.5.

11 **PARTIES**

12 1. At all relevant times, defendant VEPS is, and was, a corporation organized under the laws of the
13 State of California, licensed to do business therein and in fact does business in California, including within
14 the County of San Diego, California.

15 2. DEFENDANT is a provider of security guard services.

16 3. PLAINTIFF was employed by defendant and was at all times classified as a non-exempt employee,
17 paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum
18 and overtime wages due for all time worked.

19 4. PLAINTIFF brings this Class Action on behalf of himself and a California class, defined as all
20 individuals who are or previously were employed by defendant in California, including any employees
21 misclassified as independent contractors, employees staffed with defendant by a third party, and classified
22 as nonexempt employees (the “CALIFORNIA CLASS”) at any time during the period beginning four (4)
23 years prior to the filing of this Complaint and ending on the date as determined by the Court (the
24 “CALIFORNIA CLASS PERIOD”). The amount in controversy for the aggregate claim of CALIFORNIA
25 CLASS Members is under five million dollars (\$5,000,000.00).

26 5. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA CLASS in order
27 to fully compensate the CALIFORNIA CLASS for their losses incurred during the CALIFORNIA CLASS
28

1 PERIOD caused by DEFENDANT's policy and practice which failed to lawfully compensate these
2 employees.

3 6. DEFENDANT's policy and practice alleged herein was an unlawful, unfair and deceptive business
4 practice whereby DEFENDANT retained and continues to retain wages due PLAINTIFF and the other
5 members of the CALIFORNIA CLASS. PLAINTIFF and the other members of the CALIFORNIA
6 CLASS seek an injunction enjoining such conduct by DEFENDANT in the future, relief for the named
7 PLAINTIFF and the other members of the CALIFORNIA CLASS who have been economically injured
8 by DEFENDANT's past and current unlawful conduct, and all other appropriate legal and equitable relief.

9 7. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate or
10 otherwise of defendants DOES 1 through 20, inclusive, are presently unknown to PLAINTIFF who
11 therefore sues these Defendants by such fictitious names pursuant to Cal. Civ. Proc. Code § 474.
12 PLAINTIFF will seek leave to amend this Complaint to allege the true names and capacities of Does 1
13 through 20, inclusive, when they are ascertained. PLAINTIFF is informed and believes, and based upon
14 that information and belief alleges, that the Defendants named in this Complaint, including DOES 1
15 through 20, inclusive, are responsible in some manner for one or more of the events and happenings that
16 proximately caused the injuries and damages hereinafter alleged.

17 8. The agents, servants and/or employees of the Defendants and each of them acting on behalf of the
18 Defendants acted within the course and scope of his, her or its authority as the agent, servant and/or
19 employee of the Defendants, and personally participated in the conduct alleged herein on behalf of the
20 Defendants with respect to the conduct alleged herein. Consequently, the acts of each Defendant are
21 legally attributable to the other Defendants and all Defendants are jointly and severally liable to
22 PLAINTIFF and the other members of the CALIFORNIA CLASS, for the loss sustained as a proximate
23 result of the conduct of the Defendants' agents, servants and/or employees.

24 **DEFENDANT'S CONDUCT**

25 9. VEPS has violated and/or continues to violate, among other provisions of the California Labor
26 Code and applicable wage law, California Labor Code sections 201, 202, 203, 204, 210, 218.5, 221,
27 226(a), 226.3, 226.7, 246, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802,
28 and applicable IWC Wage Orders.

1 10. California Labor Code sections 510, 1194, and 1198 require employers to pay at least minimum
2 wage for all hours worked, pay time-and-a-half, or double-time overtime wages, and make it unlawful to
3 work employees for hours longer than eight hours in one day and/or over forty hours in one week without
4 paying the premium overtime rates. During the relevant time period, Mr. Mustafa and other class members
5 routinely worked in excess of 8 hours in a day and 40 hours in a week. VEPS failed to compensate Mr.
6 Mustafa and other class members for all hours worked and performing off-the-clock work, including pre-
7 and post-shift, and during meal breaks. VEPS also failed to include non-discretionary bonuses and
8 incentives in Mr. Mustafa and other class members' regular rate of pay for purposes of overtime
9 compensation. Therefore, Mr. Mustafa and other class members were entitled to receive certain wages for
10 overtime compensation, but they were not paid for all overtime hours worked.

11 11. California Labor Code section 246 requires that employers provide employees with paid sick leave
12 of not less than one hour per every 30 hours worked. California Labor Code section 246(1) also requires
13 that paid sick leave be paid at a non-exempt employee's regular rate of pay for the workweek in which the
14 employee uses paid sick time or at a rate calculated by dividing the employee's total wages, not including
15 overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days
16 of employment. During the relevant time period, VEPS failed to pay Mr. Mustafa and other class members
17 with paid sick leave that complied with California Labor Code section 246, by, for example, failing to pay
18 paid sick leave at non-exempt employee's regular rate of pay or at a rate calculated by dividing the
19 employee's total wages, not including overtime premium pay, by the employee's total hours worked in the
20 full pay periods of the prior 90 days of employment.

21 12. California Labor Code sections 226.7 and 512 require employers to pay an employee one
22 additional hour of pay at the employee's regular rate for each workday that a meal or rest break is not
23 provided. During the relevant time period, VEPS routinely required Mr. Mustafa and other class members
24 to work through, interrupt, cut short, and/or delay their meal and rest breaks to comply with VEPS's
25 policies and expectations. VEPS also failed to provide adequate coverage to Mr. Mustafa and other class
26 members so they may be relieved of all work duties and take legally mandated meal and rest breaks.
27 Moreover, VEPS also failed to authorize and permit Mr. Mustafa and other class members to take the
28 requisite number of meal and rest breaks, including second meal breaks and third rest breaks, when

1 working shifts exceeding 10 hours in length. Despite these facts, VEPS failed to compensate Mr. Mustafa
2 and other class members all the premium wages they were owed, including failing to pay premium wages
3 at Mr. Mustafa and other class members' regular rate of pay.

4 13. California Labor Code section 551 states "[e]very person employed in any occupation of labor is
5 entitled to one day's rest therefrom in seven." Section 552 further states no employer of labor shall cause
6 his employees to work more than six days in seven." VEPS required Mr. Mustafa and other class members
7 to work seven days in a row or more without one day's rest.

8 14. California Labor Code section 201 requires that if an employer discharges an employee, the wages
9 earned and unpaid at the time of discharge are due and payable immediately. California Labor Code
10 section 202 requires that if an employee not having a written contract for a definite period quits his or her
11 employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the
12 employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is
13 entitled to his or her wages at the time of quitting. California Labor Code section 203 provides that if an
14 employer willfully fails to pay, without abatement or reduction, in accordance with Labor Code sections
15 201.3, 201.5, 201.6, 201.8, 201.9, 202, and 205.5, any wages of an employee who is discharged or
16 who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same
17 rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30
18 days. During the relevant time period, VEPS failed to pay Mr. Mustafa and other class members all wages,
19 including for uncompensated off-the-clock work, unpaid overtime premiums and premium wages for
20 failing to provide legally mandated meal and rest breaks, due to them within any time period specified by
21 California Labor Code sections 201 and 203 and therefore is liable under California Labor Code section
22 203.

23 15. California Labor Code section 204 requires that all wages earned by any person in any employment
24 between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon
25 termination of an employee, are due and payable between the 16th and the 26th day of the month during
26 which the labor was performed, and that all wages earned by any person in any employment between the
27 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of
28 an employee, are due and payable between the 1st and the 10th day of the following month. California

1 Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period
2 shall be paid no later than the payday for the next regular payroll period. During the relevant time period,
3 VEPS failed to pay Mr. Mustafa and other class members all wages due to them, including for
4 uncompensated off-the-clock work, unpaid overtime premiums and premium wages for failing to provide
5 legally mandated meal and rest breaks within any time period specified by California Labor Code section
6 204,

7 16. California Labor Code section 226 requires employers to make, keep and provide complete and
8 accurate itemized wage statements to their employees. During the relevant time period, VEPS did not
9 provide Mr. Mustafa and other class members with complete and accurate itemized wage statements. The
10 wage statements they received from VEPS were in violation of California Labor Code section 226(a). The
11 violations include, but are not limited to, the failure to include (1) gross wages earned by Mr. Mustafa and
12 other class members, (2) total hours worked by Mr. Mustafa and other class members, (3) the number of
13 piece-rate units earned and any applicable piece rate by Mr. Mustafa and other class members (4) all
14 deductions for Mr. Mustafa and other class members, (5) net wages earned by Mr. Mustafa and other class
15 members, (6) the inclusive dates of the period for which Mr. Mustafa and other class members are paid,
16 (7) the name of the aggrieved employee and only the last four digits of his or her social security number
17 or an employee identification number other than a social security number, (8) the name and address of the
18 legal entity that is the employer and (9) all applicable hourly rates in effect during the pay period and the
19 corresponding number of hours worked at each hourly rate by Mr. Mustafa and other class members.

20 17. California Labor Code section 558 allows recovery of penalties. (a) Any employer or other person
21 acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any
22 provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be
23 subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid
24 employee for each pay period for which the employee was underpaid in addition to an amount sufficient
25 to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each
26 underpaid employee for each pay period for which the employee was underpaid in addition to an amount
27 sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the
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1 affected employee. Mr. Mustafa and other class members have been denied their wages and premium
2 wages and, therefore, are entitled to penalties.

3 18. California Labor Code sections 1174(d) requires an employer to keep, at a central location in the
4 state or at the plants or establishments at which employees are employed, payroll records showing the
5 hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any
6 applicable piece rate paid to, employees employed at the respective plants or establishments. These records
7 shall be kept with rules established for this purpose by the commission, but in any case, shall be kept on
8 file for not less than two years During the relevant time period, VEPS failed to keep accurate and complete
9 payroll records showing the hours worked daily and the wages paid, to Mr. Mustafa and other class
10 members.

11 19. California Labor Code sections 1194, 1197 and 1197.1 provide the minimum wage to be paid to
12 employees, and the payment of a lesser wage than the minimum so fixed is unlawful. During the relevant
13 time period, VEPS did not provide Mr. Mustafa and other class members with the minimum wages to
14 which they were entitled despite constructive and actual knowledge of off-the-clock work, including pre-
15 and post-shift, and during meal breaks.

16 20. California Labor Code sections 2800 and 2802 require an employer to reimburse its employee for
17 all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her
18 job duties or in direct consequence of his or her obedience to the directions of the employer. During their
19 employment, Mr. Mustafa and other class members incurred necessary business-related expenses and
20 costs that were not fully reimbursed by VEPS, including for purchasing equipment and tools they were
21 required to use/wear while working, and using their personal cellular phones for work related purposes.

22 **JURISDICTION AND VENUE**

23 21. This Court has jurisdiction over this Action pursuant to California Code of Civil Procedure,
24 Section 410.10 and California Business & Professions Code, Section 17203. This action is brought as a
25 Class Action on behalf of PLAINTIFF and similarly situated employees of DEFENDANT pursuant to
26 Cal. Code of Civ. Proc. § 382.

27 22. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections 395 and
28 395.5, because PLAINTIFF worked in this County for DEFENDANT and DEFENDANT (i) currently

maintains and at all relevant times maintained offices and facilities in this County and/or conducts substantial business in this County, and (ii) committed the wrongful conduct herein alleged in this County against members of the CALIFORNIA CLASS.

THE CALIFORNIA CLASS

23. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, et seq. (the "UCL") as a Class Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all individuals who are or previously were employed by DEFENDANT in California, including any employees staffed with DEFENDANT by a third party, and classified as non-exempt employees, and any such employees misclassified as independent contractors (the "CALIFORNIA CLASS") at any time during the period beginning four (4) years prior to the filing of this Complaint and ending on the date as determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

24. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted accordingly.

25. DEFENDANT, as a matter of company policy, practice and procedure, and in violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order requirements, and the applicable provisions of California law, intentionally, knowingly, and willfully, engaged in a practice whereby DEFENDANT failed to record all meal and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS Members, even though DEFENDANT enjoyed the benefit of this work, required employees to perform this work and permits or suffers to permit this work.

26. DEFENDANT has the legal burden to establish that each and every CALIFORNIA CLASS Member was paid accurately for all meal and rest breaks missed as required by California laws. The DEFENDANT, however, as a matter of policy and procedure failed to have in place during the CALIFORNIA CLASS PERIOD and still fails to have in place a policy or practice to ensure that each and every CALIFORNIA CLASS Member is paid as required by law. This common business practice is applicable to each and every CALIFORNIA CLASS Member can be adjudicated on a class-wide basis as

1 unlawful, unfair, and/or deceptive under Cal. Business & Professions Code §§ 17200, et seq. (the "UCL")
2 as causation, damages, and reliance are not elements of this claim.

3 27. The CALIFORNIA CLASS is so numerous that joinder of all CALIFORNIA CLASS members is
4 impracticable.

5 28. DEFENDANT violated the rights of the CALIFORNIA CLASS under California law by

6 a. Committing an act of unfair competition in violation of Cal. Bus. & Prof. Code §§ 17200, et
7 seq. (the "UCL"), by unlawfully, unfairly and/or deceptively having in place company policies,
8 practices and procedures that failed to record and pay PLAINTIFF and the other members of
9 the CALIFORNIA CLASS for all time worked, including minimum wages owed and overtime
10 wages owed for work performed by these employees; and

11 b. Committing an act of unfair competition in violation of the UCL by failing to provide the
12 PLAINTIFF and other members of the CALIFORNIA CLASS with legally required meal and
13 rest periods.

14 29. This Class Action meets the statutory prerequisites for the maintenance of a Class Action as set
15 forth in Cal. Code of Civ. Proc. § 382, in that:

16 a. The persons who comprise the CALIFORNIA CLASS are so numerous that they joinder of all
17 such persons is impracticable and the disposition of their claims as a class will benefit the
18 parties and the Court;

19 b. Nearly all factual, legal, statutory, declaratory, and injunctive relief issues that are raised in
20 this Complaint are common to the CALIFORNIA CLASS and will apply to every member of
21 the CALIFORNIA CLASS;

22 c. The claims of the representative PLAINTIFF are typical of the claims of each member of the
23 CALIFORNIA CLASS. PLAINTIFF, like all members of the CALIFORNIA CLASS, was
24 subject to DEFENDANT's deceptive practice and policy which failed to provide legally
25 required meal and rest periods, minimum wages, and overtime wages, and thereby underpaid
26 compensation to PLAINTIFF and the CALIFORNIA CLASS. PLAINTIFF sustained
27 economic injury as a result of DEFENDANT's employment practices. PLAINTIFF and the
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1 other member of the CALIFORNIA CLASS were and are similarly or identically harmed by
2 the same unlawful, deceptive, and unfair misconduct engaged in by DEFENDANT; and

3 d. The representative PLAINTIFF will fairly and adequately represent and protect the interest of
4 the CALIFORNIA CLASS, and has retained counsel who are competent and experienced in
5 Class Action Litigation. There are no material conflicts between the claims of the
6 representative PLAINTIFF and members of the CALIFORNIA CLASS that would make class
7 certification inappropriate. Counsel for the CALIFORNIA CLASS will vigorously assert the
8 claims of all CALIFORNIA CLASS members.

9 30. In addition to meeting the statutory prerequisites to a Class Action, this action is properly
10 maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

11 a. Without class certification and determination of declaratory, injunctive, statutory and other
12 legal questions within the class format, prosecution of separate actions by individual members
13 of the CALIFORNIA CLASS will create the risk of:

14 i. Inconsistent or varying adjudications with respect to individual members of the
15 CALIFORNIA CLASS which would establish incompatible standards of conduct for the
16 parties opposing the CALIFORNIA CLASS; and/or

17 ii. Adjudication with respect to individual members of the CALIFORNIA CLASS which
18 would as a practical matter be dispositive of interests of the other members not party to
19 the adjudication or substantially impair or impede their ability to protect their interests.

20 b. The parties opposing the CALIFORNIA CLASS have acted or refused to act on grounds
21 generally applicable to the CALIFORNIA CLASS, making appropriate class-wide relief with
22 respect to the CALIFORNIA CLASS as a whole in that DEFENDANT failed to pay all wages
23 due to members of the CALIFORNIA CLASS as required by law;

24 i. With respect to the First Cause of Action, the final relief on behalf of the CALIFORNIA
25 CLASS sought does not relate exclusively to restitution because through this claim
26 PLAINTIFF seeks declaratory relief holding that the DEFENDANT's policy and
27 practices constitute unfair competition, along with declaratory relief, injunctive relief,
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1 and incidental equitable relief as may be necessary to prevent and remedy the conduct
2 declared to constitute unfair competition;

3 c. Common questions of law and fact exist as to the members of the CALIFORNIA CLASS, with
4 respect to the practices and violations of California law as listed above, and predominate over
5 any question affecting only individual CALIFORNIA CLASS Members, and a Class Action
6 is superior to other available methods for the fair and efficient adjudication of the controversy,
7 including consideration of:

8 i. The interests of the members of the CALIFORNIA CLASS in individually controlling
9 the prosecution or defense of separate actions in that the substantial expense of individual
10 actions will be avoided to recover the relatively small amount of economic losses
11 sustained by the individual CALIFORNIA CLASS Members when compared to the
12 substantial expense and burden of individual prosecution of this litigation;

13 ii. Class certification will obviate the need for unduly duplicative litigation that would create
14 the risk of:

15 1. Inconsistent or varying adjudications with respect to individual members of the
16 CALIFORNIA CLASS, which would establish incompatible standards of
17 conduct for the DEFENDANT; and/or,

18 2. Adjudications with respect to individual members of the CALIFORNIA
19 CLASS would as a practical matter be dispositive of the interests of the other
20 members not parties to the adjudication or substantially impair or impede their
21 ability to protect their interests;

22 iii. In the context of wage litigation because a substantial number of individual
23 CALIFORNIA CLASS Members will avoid asserting their legal rights out of fear of
24 retaliation by DEFENDANT, which may adversely affect an individual's job with
25 DEFENDANT or with a subsequent employer, the Class Action is the only means to
26 assert their claims through a representative; and,

27 iv. A class action is superior to other available methods for the fair and efficient adjudication
28 of this litigation because class treatment will obviate the need for unduly and unnecessary

1 duplicative litigation that is likely to result in the absence of certification this action
2 pursuant to Cal. Code of Civ. Proc. § 382.

3 31. This Court should permit this action to be maintained as a Class Action pursuant to the Cal. Code
4 of Civ. Proc. § 382 because:

- 5 a. The questions of law and fact common to the CALIFORNIA CLASS predominate over any
6 question affecting only individual CALIFORNIA CLASS Members because the
7 DEFENDANT's employment practices are applied with respect to the CALIFORNIA CLASS;
- 8 b. A Class Action is superior to any other available method for the fair and efficient adjudication
9 of the claims of the members of the CALIFORNIA CLASS because in the context of
10 employment litigation a substantial number of individual CALIFORNIA CLASS Members
11 will avoid asserting their rights individually out of fear of retaliation or adverse impact on their
12 employment;
- 13 c. The members of the CALIFORNIA CLASS are so numerous that it is impractical to bring all
14 members of the CALIFORNIA CLASS before the Court;
- 15 d. PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be able to obtain
16 effective and economic legal redress unless the action is maintained as a Class Action;
- 17 e. There is a community of interest in obtaining appropriate legal and equitable relief for the acts
18 of unfair competition, statutory violations and other improprieties, and in obtaining adequate
19 compensation for the damages and injuries which DEFENDANT's actions have inflicted upon
20 the CALIFORNIA CLASS;
- 21 f. There is a community of interest in ensuring that the combined assets of DEFENDANT are
22 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries
23 sustained;
- 24 g. DEFENDANT has acted or refused to act on grounds generally applicable to the
25 CALIFORNIA CLASS, thereby making final class-wide relief appropriate with respect to the
26 CALIFORNIA CLASS as a whole;
- 27 h. The members of the CALIFORNIA CLASS are readily ascertainable from the business records
28 of DEFENDANT; and,

- 1 i. Class treatment provides manageable judicial treatment calculated to bring a efficient and rapid
2 conclusion to all litigation of all wage and hour related claims arising out of the conduct of
3 DEFENDANT as to the members of the CALIFORNIA CLASS.

4 32. DEFENDANT maintains records from which the Court can ascertain and identify by job title each
5 of DEFENDANT's employees who have been intentionally subjected to DEFENDANT's company
6 policy, practices and procedures as herein alleged. PLAINTIFF will seek leave to amend the Complaint
7 to include any additional job titles of similarly situated employees when they have been identified.

8 **THE CALIFORNIA LABOR SUB-CLASS**

9 33. PLAINTIFF brings the Second through Ninth Causes of Action on behalf of a California sub-class,
10 defined as all members of the CALIFORNIA CLASS who are or previously were employed by
11 DEFENDANT in California, including any employees staffed with DEFENDANT by a third party, and
12 classified as non-exempt employees, and any such employees misclassified as independent contractors
13 (the "CALIFORNIA LABOR SUB-CLASS") at any time during the period beginning three (3) years prior
14 to the filing of this Complaint and ending on the date as determined by the Court (the "CALIFORNIA
15 LABOR SUB-CLASS PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA
16 CLASS Members is under five million dollars (\$5,000,000.00).

17 34. DEFENDANT, in violation of applicable Labor Codes and IWC Wage Order requirements, and
18 the applicable provisions of California law, intentionally, knowingly, and willfully engaged in a practice
19 whereby DEFENDANT failed to correctly calculate compensation for time worked by PLAINTIFF and
20 other members of the CALIFORNIA LABOR SUB-CLASS and reporting time wages owed to these
21 employees, even though DEFENDANT enjoyed the benefit of this work, required employees to perform
22 this work and permitted or suffered to permit this work. DEFENDANT has denied these CALIFORNIA
23 LABOR SUB-CLASS members wages to which these employees are entitled in order to unfairly cheat
24 the competition and unlawfully profit.

25 35. To the extent equitable tolling operates to toll claims by the CALIFORNIA LABOR SUB-CLASS
26 against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted
27 accordingly.
28

1 36. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all CALIFORNIA
2 LABOR SUB-CLASS members is impracticable.

3 37. Common questions of law and fact exist as to the members of the CALIFORNIA LABOR SUB-
4 CLASS:

- 5 a. Whether DEFENDANT unlawfully failed to correctly calculate and pay compensation due to
6 members of the CALIFORNIA LABOR SUB-CLASS for missed meal and rest breaks;
- 7 b. Whether DEFENDANT failed to provide PLAINTIFF and other members of the
8 CALIFORNIA LABOR SUB-CLASS with accurate and itemized wage statements;
- 9 c. Whether DEFENDANT paid PLAINTIFF and other members of the CALIFORNIA LABOR
10 SUB-CLASS minimum and overtime wages commensurate with work performed;
- 11 d. Whether DEFENDANT has engaged in unfair competition by the above-listed conduct;
- 12 e. The proper measure of damages and penalties owed to members of the CALIFORNIA LABOR
13 SUB-CLASS; and
- 14 f. Whether DEFENDANT's conduct was willful.

15 38. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS under California
16 Law by:

- 17 a. Violating Cal. Lab. Code § 510, by failing to correctly pay the PLAINTIFF and the members
18 of the CALIFORNIA LABOR SUB-CLASS all wages due for overtime worked, for which
19 DEFENDANT is liable pursuant to Cal. Lab. Code § 1194;
- 20 b. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 et seq., by failing to accurately pay
21 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct
22 minimum wage pay for which DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and
23 1197;
- 24 c. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the members of the
25 CALIFORNIA LABOR SUB-CLASS with an accurate itemized statement in writing showing
26 the corresponding correct amount of wages earned by the employee;
- 27
- 28

- d. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with all legally required off-duty, uninterrupted thirty (30) minute meal breaks and the legally required off-duty rest breaks;
- e. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an employee is discharged or quits from employment, the employer must pay the employee all wages due without abatement, by failing to tender full payment and/or restitution of wages owed or in the manner required by California law to the members of the CALIFORNIA LABOR SUB-CLASS who have terminated their employment; and,
- f. Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members with necessary expenses incurred in the discharge of their job duties.

39. This Class Action meets the statutory prerequisites for the maintenance of a Class Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

- a. The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members is impracticable and the disposition of their claims as a class will benefit the parties and the Court;
- b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this Complaint are common to the CALIFORNIA LABOR SUB-CLASS and will apply to every member of the CALIFORNIA LABOR SUB-CLASS;
- c. The claims of the representative PLAINTIFF are typical of the claims of each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the other members of the CALIFORNIA LABOR SUB-CLASS, was subjected to the DEFENDANT's practice and policy which failed to pay the correct amount of wages due to the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF sustained economic injury as a result of DEFENDANT's employment practices. PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS were and are similarly or identically harmed by the same unlawful, deceptive, and unfair misconduct engaged in by DEFENDANT; and,

- 1 d. The representative PLAINTIFF will fairly and adequately represent and protect the interest of
2 the CALIFORNIA LABOR SUB-CLASS, and has retained counsel who are competent and
3 experienced in Class Action litigation. There are no material conflicts between the claims of
4 the representative PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS
5 that would make class certification inappropriate. Counsel for the CALIFORNIA LABOR
6 SUB-CLASS will vigorously assert the claims of all CALIFORNIA LABOR SUB-CLASS
7 Members.

8 40. In addition to meeting the statutory prerequisites to a Class Action, this action is properly
9 maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

- 10 a. Without class certification and determination of declaratory, injunctive, statutory and other
11 legal questions within the class format, prosecution of separate actions by individual members
12 of the CALIFORNIA LABOR SUB-CLASS will create the risk of:
- 13 i. Inconsistent or varying adjudications with respect to individual members of the
14 CALIFORNIA LABOR SUB-CLASS which would establish incompatible standards of
15 conduct for the parties opposing the CALIFORNIA LABOR SUB-CLASS; and/or
16 ii. Adjudication with respect to individual members of the CALIFORNIA LABOR SUB-
17 CLASS which would as a practical matter be dispositive of interests of the other members
18 not party to the adjudication or substantially impair or impede their ability to protect their
19 interests.
- 20 b. The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or refused to act on
21 grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, making appropriate
22 class-wide relief with respect to the CALIFORNIA LABOR SUB-CLASS as a whole in that
23 DEFENDANT failed to pay all wages due to members of the CALIFORNIA LABOR SUB-
24 CLASS as required by law;
- 25 c. Common questions of law and fact exist as to the members of the CALIFORNIA LABOR
26 SUB-CLASS, with respect to the practices and violations of California law as listed above,
27 and predominate over any question affecting only individual CALIFORNIA LABOR SUB-
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1 CLASS Members, and a Class Action is superior to other available methods for the fair and
2 efficient adjudication of the controversy, including consideration of:

3 i. The interests of the members of the CALIFORNIA LABOR SUB-CLASS in individually
4 controlling the prosecution or defense of separate actions in that the substantial expense
5 of individual actions will be avoided to recover the relatively small amount of economic
6 losses sustained by the individual CALIFORNIA LABOR SUB-CLASS Members when
7 compared to the substantial expense and burden of individual prosecution of this
8 litigation;

9 ii. Class certification will obviate the need for unduly duplicative litigation that would create
10 the risk of:

11 1. Inconsistent or varying adjudications with respect to individual members of the
12 CALIFORNIA LABOR SUB-CLASS, which would establish incompatible
13 standards of conduct for the DEFENDANT; and/or,

14 2. Adjudications with respect to individual members of the CALIFORNIA
15 LABOR SUB-CLASS would as a practical matter be dispositive of the interests
16 of the other members not parties to the adjudication or substantially impair or
17 impede their ability to protect their interests;

18 iii. In the context of wage litigation because a substantial number of individual
19 CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their legal rights out
20 of fear of retaliation by DEFENDANT, which may adversely affect an individual's job
21 with DEFENDANT or with a subsequent employer, the Class Action is the only means
22 to assert their claims through a representative; and,

23 iv. A class action is superior to other available methods for the fair and efficient adjudication
24 of this litigation because class treatment will obviate the need for unduly and unnecessary
25 duplicative litigation that is likely to result in the absence of certification this action
26 pursuant to Cal. Code of Civ. Proc. § 382.

27 41. This Court should permit this action to be maintained as a Class Action pursuant to the Cal. Code
28 of Civ. Proc. § 382 because:

- a. The questions of law and fact common to the CALIFORNIA LABOR SUB-CLASS predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS Members;
- b. A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA LABOR SUB-CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- c. The members of CALIFORNIA LABOR SUB-CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS before the Court;
- d. PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
- e. There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA LABOR SUB-CLASS;
- f. There is a community of interest in ensuring that the combined assets of DEFENDANT are sufficient to adequately compensate the members of the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- g. DEFENDANT has acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
- h. The members of the CALIFORNIA LABOR SUB-CLASS are readily ascertainable from the business records of DEFENDANT; and,
- i. Class treatment provides manageable judicial treatment calculated to bring an efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of DEFENDANT as to the members of the CALIFORNIA LABOR SUB-CLASS.

1 **PRIVATE ATTORNEYS GENERAL ACT (PAGA)**

2 42. Separate and apart from the above-listed class action claims, PLAINTIFF brings his Complaint as
3 a representative action pursuant to the Private Attorneys General Act, California Labor Code §§ 2698, et
4 seq. (“PAGA”), against DEFENDANT for engaging in a pattern and practice of wage and hour violations
5 under the California Labor Code and applicable Wage Orders. Plaintiff brings this action on behalf of all
6 other current and former non-exempt employees, including such employees misclassified as independent
7 contractors, of DEFENDANT in the State of California who have suffered at least one of the Labor Code
8 violations described herein during the applicable time period.

9 43. DEFENDANT’s pattern of wage and hour violations toward Plaintiff and other aggrieved
10 employees (as set forth in the attached LWDA Notice Letter) include but are not limited to failure to pay
11 all wages owed, including overtime and double-time wages; failure to pay minimum wages; failure to
12 provide proper meal and rest periods; failure to timely pay proper wages due upon separation of
13 employment; and failure to provide accurate and itemized wage statements.

14 44. Specifically, DEFENDANT has violated and/or continues to violate, among other provisions of
15 the California Labor Code and applicable wage law, California Labor Code sections 201, 202, 203, 204,
16 210, 218.5, 221, 226(a), 226.3, 226.7, 246, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198,
17 2800 and 2802, and the IWC Wage Orders. Plaintiff accordingly seeks unpaid wages, premium wages,
18 interest, attorneys’ fees, liquidated damages, penalties, and costs pursuant to these code sections.

19 45. Plaintiff reserves the right to name additional representatives throughout the State of California.

20 **FIRST CAUSE OF ACTION**

21 **Unlawful Business Practices**

22 **Cal. Bus. And Prof. Code §§ 17200, et seq.**

23 **By PLAINTIFF and the CALIFORNIA CLASS against All Defendants**

24 46. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by
25 this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

26 47. DEFENDANT is a “person” as that term is defined under Cal. Bus. and Prof. Code § 17021.
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1 48. California Business & Professions Code §§ 17200, et seq. (the “UCL”) defines unfair competition
2 as any unlawful, unfair, or fraudulent business act or practice. Section 17203 authorizes injunctive,
3 declaratory, and/or other equitable relief with respect to unfair competition as follows:

4 Any person who engages, has engaged, or proposes to engage in unfair competition may
5 be enjoined in any court of competent jurisdiction. The court may make such orders or
6 judgments, including the appointment of a receiver, as may be necessary to prevent the use
7 or employment by any person of any practice which constitutes unfair competition, as
defined in this chapter, or as may be necessary to restore to any person in interest any
money or property, real or personal, which may have been acquired by means of such unfair
competition.

8 Cal. Bus. & Prof. Code§ 17203.

9 49. By the conduct alleged herein, DEFENDANT engaged and continues to engage in a business
10 practice which violates California law, including but not limited to the applicable Wage Orders, California
11 Codes of Regulations, and California Labor Code including sections 204, 210, 221, 226.7, 246, 510, 512,
12 1194, 1197, 1197.1, 1198, 2802 and the Fair Labor Standards Act and federal regulations promulgated
13 thereunder, for which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus.
14 & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair
15 competition, including restitution of wages wrongfully withheld.

16 50. By the conduct alleged herein, DEFENDANT’s practices were unlawful and unfair in that these
17 practices violate public policy, were immoral, unethical, oppressive, unscrupulous or substantially
18 injurious to employees, and were without valid justification or utility for which this Court should issue
19 equitable and injunctive relief pursuant to Section 17203 of the California Business & Professions Code,
20 including restitution of wages wrongfully withheld.

21 51. By the conduct alleged herein, DEFENDANT’s practices were deceptive and fraudulent in that
22 DEFENDANT’s policy and practice failed to provide the legally mandated meal and rest periods, the
23 required amount of compensation for missed meal and rest periods and overtime and minimum wages
24 owed, failed to timely pay wages, and failed to reimburse all necessary business expenses incurred, and
25 failed to provide Fair Labor Standards Act overtime wages due for overtime worked as a result of failing
26 to include non- discretionary incentive compensation into their regular rates of pay for purposes of
27 computing the proper overtime pay due to a business practice that cannot be justified, pursuant to the
28 applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of Cal. Bus. Code

1 §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable relief, pursuant to Cal.
2 Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

3 52. By the conduct alleged herein, DEFENDANT's practices were also unlawful, unfair and deceptive
4 in that DEFENDANT's employment practices caused PLAINTIFF and the other members of the
5 CALIFORNIA CLASS to be underpaid during their employment with DEFENDANT.

6 53. By the conduct alleged herein, DEFENDANT's practices were also unlawful, unfair and deceptive
7 in that DEFENDANT's policies, practices and procedures failed to provide all legally required meal
8 breaks to PLAINTIFF and the other members of the CALIFORNIA CLASS as required by Cal. Lab. Code
9 §§ 226.7 and 512.

10 54. Therefore, PLAINTIFF demands on behalf of himself and on behalf of each CALIFORNIA
11 CLASS Member, one (1) hour of pay for each workday in which an off-duty meal period was not timely
12 provided for each five (5) hours of work, and/or one (1) hour of pay for each workday in which a second
13 off-duty meal period was not timely provided for each ten (10) hours of work.

14 55. PLAINTIFF further demands on behalf of himself and each member of the CALIFORNIA
15 LABOR SUB-CLASS, one (1) hour of pay for each workday in which an off duty paid rest period was
16 not timely provided as required by law.

17 56. By and through the unlawful and unfair business practices described herein, DEFENDANT has
18 obtained valuable property, money and services from PLAINTIFF and the other members of the
19 CALIFORNIA CLASS, including earned wages for all time worked, and has deprived them of valuable
20 rights and benefits guaranteed by law and contract, all to the detriment of these employees and to the
21 benefit of DEFENDANT so as to allow DEFENDANT to unfairly compete against competitors who
22 comply with the law.

23 57. All the acts described herein as violations of, among other things, the Industrial Welfare
24 Commission Wage Orders, the California Code of Regulations, and the California Labor Code, were
25 unlawful and in violation of public policy, were immoral, unethical, oppressive and unscrupulous, were
26 deceptive, and thereby constitute unlawful, unfair and deceptive business practices in violation of Cal.
27 Bus. & Prof. Code §§ 17200, *et seq.*

1 58. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to, and do, seek
2 such relief as may be necessary to restore to them the money and property which DEFENDANT has
3 acquired, or of which PLAINTIFF and the other members of the CALIFORNIA CLASS have been
4 deprived, by means of the above described unlawful and unfair business practices, including earned but
5 unpaid wages for all time worked.

6 59. PLAINTIFF and the other members of the CALIFORNIA CLASS are further entitled to, and do,
7 seek a declaration that the described business practices are unlawful, unfair and deceptive, and that
8 injunctive relief should be issued restraining DEFENDANT from engaging in any unlawful and unfair
9 business practices in the future.

10 60. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain, speedy and/or
11 adequate remedy at law that will end the unlawful and unfair business practices of DEFENDANT. Further,
12 the practices herein alleged presently continue to occur unabated. As a result of the unlawful and unfair
13 business practices described herein, PLAINTIFF and the other members of the CALIFORNIA CLASS
14 have suffered and will continue to suffer irreparable legal and economic harm unless DEFENDANT is
15 restrained from continuing to engage in these unlawful and unfair business practices.

16 **SECOND CAUSE OF ACTION**

17 **FAILURE TO PAY MINIMUM WAGES**

18 **Cal. Lab. Code §§ 1194, 1197, and 1197.1**

19 **By PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Against All Defendants**

20 61. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB- CLASS, reallege and
21 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

22 62. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB- CLASS bring a claim
23 for DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial
24 Welfare Commission requirements for DEFENDANT's failure to accurately calculate and pay minimum
25 wages to PLAINTIFF and CALIFORNIA CLASS Members.

26 63. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public policy, an
27 employer must timely pay its employees for all hours worked.
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1 64. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the commission is the
2 minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed in
3 unlawful.

4 65. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages, including
5 minimum wage compensation and interest thereon, together with the costs of suit.

6 66. DEFENDANT maintained a wage practice of paying PLAINTIFF and the other members of the
7 CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of time they work. As set
8 forth herein, DEFENDANT's policy and practice was to unlawfully and intentionally deny timely payment
9 of wages due to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS.

10 67. DEFENDANT's unlawful wage and hour practices manifested, without limitation, applicable to
11 the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of implementing a policy and practice
12 that denies accurate compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR
13 SUB-CLASS in regards to minimum wage pay.

14 68. In committing these violations of the California Labor Code, DEFENDANT inaccurately
15 calculated the correct time worked and consequently underpaid the actual time worked by PLAINTIFF
16 and other members of the CALIFORNIA LABOR SUB-CLASS. DEFENDANT acted in an illegal
17 attempt to avoid the payment of all earned wages, and other benefits in violation of the California Labor
18 Code, the Industrial Welfare Commission requirements and other applicable laws and regulations.

19 69. As a direct result of DEFENDANT's unlawful wage practices as alleged herein, PLAINTIFF and
20 the other members of the CALIFORNIA LABOR SUB-CLASS did not receive the correct minimum wage
21 compensation for their time worked for DEFENDANT.

22 70. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT required, permitted or
23 suffered PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members to work without paying them
24 for all the time they were under DEFENDANT's control. During the CALIFORNIA LABOR SUB-
25 CLASS PERIOD, PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS were
26 paid less for time worked that they were entitled to, constituting a failure to pay all earned wages.

27 71. By virtue of DEFENDANT's unlawful failure to accurately pay all earned compensation to
28 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB- CLASS for the true time they

1 worked, PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS have suffered
2 and will continue to suffer an economic injury in amounts which are presently unknown to them and which
3 will be ascertained according to proof at trial.

4 72. DEFENDANT knew or should have known that PLAINTIFF and the other members of the
5 CALIFORNIA LABOR SUB-CLASS were under compensated for their time worked. DEFENDANT
6 elected, either through intentional malfeasance or gross nonfeasance, to not pay employees for their labor
7 as a matter of company policy, practice and procedure, and DEFENDANT perpetrated this scheme by
8 refusing to pay PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the
9 correct minimum wages for their time worked.

10 73. In performing the acts and practices herein alleged in violation of California labor laws, and
11 refusing to compensate the members of the CALIFORNIA LABOR SUB- CLASS for all time worked and
12 provide them with the requisite compensation, DEFENDANT acted and continues to act intentionally,
13 oppressively, and maliciously toward PLAINTIFF and the other members of the CALIFORNIA LABOR
14 SUB-CLASS with a conscious and utter disregard for their legal rights, or the consequences to them, and
15 with the despicable intent of depriving them of their property and legal rights, and otherwise causing them
16 injury in order to increase company profits at the expense of these employees.

17 74. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB- CLASS therefore request
18 recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment of any
19 statutory penalties against DEFENDANT, in a sum as provided by the California Labor Code and/or other
20 applicable statutes. To the extent minimum wage compensation is determined to be owed to the
21 CALIFORNIA LABOR SUB-CLASS Members who have terminated their employment, DEFENDANT's
22 conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled to
23 waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these
24 CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT's conduct as alleged herein was willful,
25 intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS
26 Members are entitled to seek and recover statutory costs.

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1 **THIRD CAUSE OF ACTION**

2 **FAILURE TO PAY OVERTIME COMPENSATION**

3 **Cal. Lab. Code § 510**

4 **By PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Against All Defendants**

5 75. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB- CLASS, reallege and
6 incorporate by this reference, as though full set forth herein, the prior paragraphs of this Complaint.

7 76. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB- CLASS bring a claim
8 for DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial
9 Welfare Commission requirements for DEFENDANT's failure to pay these employees for all overtime
10 worked, including, work performed in excess of eight (8) hours in a workday, and/or twelve (12) hours in
11 a workday, and/or forty (40) hours in any workweek.

12 77. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public policy, an
13 employer must timely pay its employees for all hours worked.

14 78. Cal. Lab. Code § 510 further provides that employees in California shall not be employed more
15 than eight (8) hours per workday and more than forty (40) hours per workweek unless they receive
16 additional compensation beyond their regular wages in amounts specified by law.

17 79. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages, including
18 minimum wage and overtime compensation and interest thereon, together with the costs of suit. Cal. Lab.
19 Code § 1198 further states that the employment of an employee for longer hours than those fixed by the
20 Industrial Welfare Commission is unlawful.

21 80. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and CALIFORNIA
22 LABOR SUB-CLASS Members were required, permitted or suffered by DEFENDANT to work for
23 DEFENDANT and were not paid for all the time they worked, including overtime work.

24 81. DEFENDANT's unlawful wage and hour practices manifested, without limitation, applicable to
25 the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of implementing a policy and practice
26 that failed to accurately record overtime worked by PLAINTIFF and other CALIFORNIA LABOR SUB-
27 CLASS Members and denied accurate compensation to PLAINTIFF and the other members of the
28 CALIFORNIA LABOR SUB- CLASS for overtime worked, including, the overtime work performed in

1 excess of eight (8) hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in
2 any workweek.

3 82. In committing these violations of the California Labor Code, DEFENDANT inaccurately recorded
4 overtime worked and consequently underpaid the overtime worked by PLAINTIFF and other
5 CALIFORNIA LABOR-SUB CLASS Members. DEFENDANT acted in an illegal attempt to avoid the
6 payment of all earned wages, and other benefits in violation of the California Labor Code, the Industrial
7 Welfare Commission requirements and other applicable laws and regulations. As a direct result of
8 DEFENDANT's unlawful wage practices as alleged herein, the PLAINTIFF and the other members of the
9 CALIFORNIA LABOR SUB-CLASS did not receive full compensation for overtime worked.

10 83. Cal. Lab. Code § 515 sets out various categories of employees who are exempt from the overtime
11 requirements of the law. None of these exemptions are applicable to the PLAINTIFF and the other
12 members of the CALIFORNIA LABOR SUB-CLASS. Further, PLAINTIFF and the other members of
13 the CALIFORNIA LABOR SUB-CLASS were not subject to a valid collective bargaining agreement that
14 would preclude the causes of action contained herein this Complaint. Rather, PLAINTIFF brings this
15 Action on behalf of himself and the CALIFORNIA LABOR SUB-CLASS based on DEFENDANT's
16 violations of non-negotiable, non-waivable rights provided by the State of California.

17 84. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the other members
18 of the CALIFORNIA LABOR SUB-CLASS have been paid less for overtime worked that they are entitled
19 to, constituting a failure to pay all earned wages.

20 85. DEFENDANT failed to accurately pay the PLAINTIFF and the other members of the
21 CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was in excess of
22 the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 & 1198, even though
23 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS were required to work,
24 and did in fact work, overtime as to which DEFENDANT failed to accurately record and pay as evidenced
25 by DEFENDANT's business records and witnessed by employees.

26 86. By virtue of DEFENDANT's unlawful failure to accurately pay all earned compensation to
27 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB- CLASS for the true amount of
28 time they worked, PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS have

suffered and will continue to suffer an economic injury in amounts which are presently unknown to them and which will be ascertained according to proof at trial.

87. DEFENDANT knew or should have known that PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS were under compensated for all overtime worked. DEFENDANT elected, either through intentional malfeasance or gross nonfeasance, to not pay employees for their labor as a matter of company policy, practice and procedure, and DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS for overtime worked.

88. In performing the acts and practices herein alleged in violation of California labor laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for all overtime worked and provide them with the requisite overtime compensation, DEFENDANT acted and continues to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with a conscious of and utter disregard for their legal rights, or the consequences to them, and with the despicable intent of depriving them of their property and legal rights, and otherwise causing them injury in order to increase company profits at the expense of these employees.

89. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS therefore request recovery of all overtime wages, according to proof, interest, statutory costs, as well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided by the California Labor Code and/or other applicable statutes. To the extent minimum and/or overtime compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS Members who have terminated their employment, DEFENDANT's conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT's conduct as alleged herein was willful, intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

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1 **FOURTH CAUSE OF ACTION**

2 **Failure to Provide Proper Meal Periods**

3 **Cal. Lab. Code §§ 226.7, 512, 558, and 558.1**

4 **By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Against All Defendants**

5 90. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB- CLASS, reallege and
6 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

7 91. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to time failed to provide
8 all the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA LABOR SUB-
9 CLASS Members as required by the applicable Wage Order and Labor Code. The nature of the work
10 performed by PLAINTIFF and CALIFORNIA LABOR SUB-CLASS MEMBERS did not prevent these
11 employees from being relieved of all of their duties for the legally required off-duty meal periods. As a
12 result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS
13 Members were from time to time not fully relieved of duty by DEFENDANT for their meal periods.
14 Additionally, DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA LABOR SUB-
15 CLASS Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced by
16 DEFENDANT's business records from time to time. Further, DEFENDANT failed to provide
17 PLAINTIFF and CALIFORNIA CLASS Members with a second off-duty meal period in some workdays
18 in which these employees were required by DEFENDANT to work ten (10) hours of work from time to
19 time. As a result, PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS therefore
20 forfeited meal breaks without additional compensation and in accordance with DEFENDANT's strict
21 corporate policy and practice.

22 92. DEFENDANT further violates California Labor Code §§ 226.7 and the applicable IWC Wage
23 Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members who
24 were not provided a meal period, in accordance with the applicable Wage Order, one additional hour of
25 compensation at each employee's regular rate of pay for each workday that a meal period was not
26 provided.

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1 93. As a proximate result of the aforementioned violations, PLAINTIFF and CALIFORNIA LABOR
2 SUB-CLASS Members have been damaged in an amount according to proof at trial, and seek all wages
3 earned and due, interest, penalties, expenses and costs of suit.

4 **FIFTH CAUSE OF ACTION**

5 **Failure to Provide Proper Rest Periods**

6 **Cal. Lab. Code §§ 226.7, 512, 558, and 558.1**

7 **By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Against All Defendants**

8 94. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB- CLASS, reallege and
9 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

10 95. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were from time to time
11 required to work in excess of four (4) hours without being provided ten (10) minute rest periods. Further,
12 these employees from time to time were denied their first rest periods of at least ten (10) minutes for some
13 shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10) minutes
14 for some shifts worked of between six (6) and eight (8) hours, and a first, second and third rest period of
15 at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time. PLAINTIFF
16 and other CALIFORNIA LABOR SUB-CLASS Members were also not provided with one-hour wages in
17 lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA LABOR
18 SUB-CLASS Members were periodically denied their proper rest periods by DEFENDANT and
19 DEFENDANT's managers.

20 96. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable IWC Wage
21 Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members who
22 were not provided a rest period, in accordance with the applicable Wage Order, one additional hour of
23 compensation at each employee's regular rate of pay for each workday that rest period was not provided.

24 97. As a proximate result of the aforementioned violations, PLAINTIFF and CALIFORNIA LABOR
25 SUB-CLASS Members have been damaged in an amount according to proof at trial, and seek all wages
26 earned and due, interest, penalties, expenses and costs of suit.

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1 **SIXTH CAUSE OF ACTION**

2 **Failure to Provide Accurate Itemized Wage Statements**

3 **Cal. Lab. Code § 226**

4 **By Plaintiff and the CALIFORNIA LABOR SUB-CLASS Against All Defendants**

5 98. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB- CLASS, reallege and
6 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

7 99. Cal. Labor Code § 226 provides that an employer must furnish employees with an “accurate
8 itemized” statement in writing showing:

- 9 a. gross wages earned,
- 10 b. total hours worked by the employee, except for any employee whose compensation is solely
11 based on a salary and who is exempt from payment of overtime under subdivision (a) of Section
12 515 or any applicable order of the Industrial Welfare Commission,
- 13 c. the number of piece rate units earned and any applicable piece rate if the employee is paid on
14 a piece-rate basis,
- 15 d. all deductions, provided that all deductions made on written orders of the employee may be
16 aggregated and shown as one item,
- 17 e. net wages earned,
- 18 f. the inclusive dates of the period for which the employee is paid,
- 19 g. the name of the employee and his or her social security number, except that by January 1, 2008,
20 only the last four digits of his or her social security number or an employee identification
21 number other than a social security number may be shown on the itemized statement,
- 22 h. the name and address of the legal entity that is the employer, and during the pay period and the
23 corresponding hours worked at each hourly rate by the employee.

24 100. From time to time, DEFENDANT also failed to provide PLAINTIFF and the other members of
25 the CALIFORNIA LABOR SUB-CLASS with complete and accurate wage statements which failed to
26 show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226 provides that
27 every employer shall furnish each of his or her employees with an accurate itemized wage statement in
28 writing showing, among other things, gross wages earned and all applicable hourly rates in effect during

1 the pay period and the corresponding amount of time worked at each hourly rate. PLAINTIFF and
2 CALIFORNIA LABOR SUB-CLASS Members were paid on an hourly basis. As such, the wage
3 statements should reflect all applicable hourly rates during the pay period and the total hours worked, and
4 the applicable pay period in which the wages were earned pursuant to California Labor Code Section
5 226(a). The wage statements DEFENDANT provided to PLAINTIFF and other CALIFORNIA LABOR
6 SUB-CLASS Members failed to identify such information. More specifically, the wage statements failed
7 to identify the accurate total hours worked each pay period. When the hours shown on the wage statements
8 were added up, they did not equal the actual total hours worked during the pay period in violation of Cal.
9 Lab. Code 226(a)(2). Aside, from the violations listed above in this paragraph, DEFENDANT failed to
10 issue to PLAINTIFF an itemized wage statement that lists all the requirements under California Labor
11 Code 226 *et seq.* As a result, DEFENDANT from time to time provided PLAINTIFF and the other
12 members of the CALIFORNIA LABOR SUB- CLASS with wage statements which violated Cal. Lab.
13 Code § 226.

14 101. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code § 226, causing
15 injury and damages to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS.
16 These damages include, but are not limited to, costs expended calculating the correct wages for all missed
17 meal and rest breaks and the amount of employment taxes which were not properly paid to state and federal
18 tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFF and the other members
19 of the CALIFORNIA LABOR SUB-CLASS may elect to recover liquidated damages of fifty dollars
20 (\$50.00) for the initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for
21 each violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, in an amount according to
22 proof at the time of trial (but in no event more than four thousand dollars (\$4,000.00) for PLAINTIFF and
23 each respective member of the CALIFORNIA LABOR SUB-CLASS herein).

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1 **SEVENTH CAUSE OF ACTION**

2 **FAILURE TO PAY WAGES UPON TERMINATION (WAITING TIME PENALTIES)**

3 **Cal. Lab. Code §§ 201, 202, 203**

4 **By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Against All Defendants**

5
6 102. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB- CLASS, reallege and
7 incorporate by reference, as though fully set forth herein, the prior paragraphs of this Complaint.

8 103. Cal. Lab. Code § 200 provides, in relevant part, that:

9 a. As used in this article:

10 "Wages" includes all amounts for labor performed by employees of every description,
11 whether the amount is fixed or ascertained by the standard of time, task, piece, Commission
12 basis, or other method of calculation.

13 "Labor" includes labor, work, or service whether rendered or performed under contract,
14 subcontract, partnership, station plan, or other the labor to be paid for is performed personally
15 by the person demanding payment.

16 104. Cal. Lab. Code § 201 provides, in relevant part, "that If an employer discharges an employee, the
17 wages earned and unpaid at the time of discharge are due and payable immediately."

18 105. Cal. Lab. Code § 202 provides, in relevant part:

19 If an employee not having a written contract for a definite period quits his or her
20 employment, his or her wages shall become due and payable not later than 72 hours
21 thereafter, unless the employee has given 72 hours previous notice of his or her intention
22 to quit, in which case the employee is entitled to his or her wages at the time of quitting.
23 Notwithstanding any other provision of law, an employee who quits without providing a
72- hour notice shall be entitled to receive payment by mail if he or she so requests and
designates a mailing address. The date of the mailing shall constitute the date of payment
for purposes of the requirement to provide payment within 72 hours of the notice of
quitting.

24 106. There was no definite term in PLAINTIFF's or any CALIFORNIA LABOR SUB-CLASS
25 Members' employment contract.

26 107. Cal. Lab. Code § 203 provides, in relevant part, that:

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1 If an employer willfully fails to pay, without abatement or reduction, in accordance with
2 Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who
3 quits, the wages of the employee shall continue as a penalty from the due date thereof at
4 the same rate until paid or until an action therefor is commenced; but the wages shall not
continue for more than 30 days.

5 108. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-CLASS Members has
6 terminated and DEFENDANT has not tendered payment of all wages owed as required by law.

7 109. Therefore, as provided by Cal Lab. Code § 203, on behalf of himself and the members of the
8 CALIFORNIA LABOR SUB-CLASS whose employment has terminated and who have not been fully
9 paid their wages due to them, PLAINTIFF demands thirty days of pay as penalty for not paying all wages
10 due at time of termination for all employees who terminated employment during the CALIFORNIA
11 LABOR SUB-CLASS PERIOD and demands an accounting and payment of all wages due, plus interest
12 and statutory costs as allowed by law.

13 **NINTH CAUSE OF ACTION**

14 **RETALIATION FOR COMPLAINT OF UNLAWFUL ACTS**

15 **Cal. Labor Code § 1102.5**

16 **By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Against All Defendants**

17 110. Labor Code § 1102.5(b) provides, among other things, that “[a]n employer, or any person
18 acting on behalf of the employer, shall not retaliate against an employee for disclosing information
19 . . . to a person with authority over the employee or another employee who has the authority to
20 investigate, discover, or correct the violation or noncompliance . . . if the employee has reasonable cause
21 to believe that the information discloses a violation of state or federal statute, or a violation of or
22 noncompliance with a local, state, or federal rule or regulation.”

23 111. PLAINTIFF and members of the CALIFORNIA SUB-CLASS complained on numerous occasions
24 about Defendants’ failure to pay compensation due, wages due, and violations of related Labor Code
25 sections, as set out more fully herein. PLAINTIFF and members of the CALIFORNIA SUB-CLASS had
26 reasonable cause to believe that the complained-of activities were unlawful.
27
28

1 112. DEFENDANTS retaliated against PLAINTIFF and members of the CALIFORNIA SUB-CLASS
2 as described in the instant complaint, including by cancelling shifts and failing to assign shifts to such
3 employees who complained.

4 113. As a result, PLAINTIFF and the CALIFORNIA SUB-CLASS have suffered and will continue to
5 suffer humiliation, mental anguish and emotional distress, and loss of future earnings, status, employment
6 benefits, and opportunities, on account of which PLAINTIFF and the CALIFORNIA SUB-CLASS are
7 entitled to reasonable attorney's fees and actual damages in an amount to be established according to proof
8 at trial pursuant to Labor Code §§ 1102.5 and 1105.

9 114. PLAINTIFF and the CALIFORNIA SUB-CLASS are entitled to civil penalties of \$10,000 for
10 each retaliatory action pursuant to Labor Code § 1102.5(f) against DEFENDANTS.

11 115. DEFENDANTS' harassment and retaliation against PLAINTIFF and the CALIFORNIA SUB-
12 CLASS was intentional, malicious, wanton, and oppressive, with a conscious disregard for PLAINTIFF
13 and the CALIFORNIA SUB-CLASS' rights and with the intent to vex, injure, punish, and annoy the
14 complaining parties so as to cause their injuries alleged herein. Such acts amount to oppression and malice
15 as described in Civil Code § 3294. DEFENDANTS are therefore liable for punitive or exemplary damages
16 in an amount sufficient to punish and make an example of DEFENDANTS.

17 **NINTH CAUSE OF ACTION**

18 **PRIVATE ATTORNEYS GENERAL ACT (PAGA)**

19 **Cal. Labor Code §§ 2698. et seq.**

20 **By PLAINTIFF Against All Defendants**

21 116. PLAINTIFF re-alleges and incorporates by reference the foregoing allegations as though set forth
22 herein.

23 117. Plaintiff further re-alleges and incorporates by reference the attached LWDA Notice Letter.

24 118. PAGA is a mechanism by which the State of California itself can enforce state labor laws through
25 the employee suing under the PAGA who do so as the proxy or agent of the state's labor law enforcement
26 agencies. An action to recover civil penalties under PAGA is fundamentally a law enforcement action
27 designed to protect the public and not to benefit private parties. The purpose of the PAGA is not to
28 recover damages or restitution, but to create a means of "deputizing" citizens as private attorneys general

1 to enforce the Labor Code. In enacting PAGA, the California Legislature specified that "it was ... in the
2 public interest to allow aggrieved employees, acting as private attorneys general to recover civil penalties
3 for Labor Code violations ..." Stats. 2003, ch. 906, § 1.

4 119. PLAINTIFF, and such persons that may be added from time to time who satisfy the requirements
5 and exhaust the administrative procedures under the Private Attorney General Act, brings this
6 Representative Action on behalf of the State of California with respect to himself and all individuals who
7 are or previously were employed by DEFENDANT in California, including any employees staffed with
8 DEFENDANT by a third party, and classified as non-exempt employees, and such employees
9 misclassified as independent contractors ("AGGRIEVED EMPLOYEES") during the time period of
10 commencing one year prior to PLAINTIFF notifying the LWDA of his claims until a date as determined
11 by the Court (the "PAGA PERIOD").

12 120. On April 12th of 2023, PLAINTIFF gave written notice by electronic mail to the Labor and
13 Workforce Development Agency (the "Agency") and by certified mail to the employer of the specific
14 provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See Exhibit #1,
15 attached hereto and incorporated by this reference herein. The statutory waiting period for PLAINTIFF to
16 add these allegations to the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF
17 may now commence a representative civil action under PAGA pursuant to Section 2699 as the proxy of
18 the State of California with respect to all AGGRIEVED EMPLOYEES as defined.

19 121. The policies, acts and practices heretofore described were and are an unlawful business act or
20 practice because DEFENDANT (a) failed to provide PLAINTIFF and the AGGRIEVED EMPLOYEES
21 accurate itemized wage statements, (b) failed to properly record and provide legally required meal and
22 rest periods, (c) failed to pay minimum wages, (d) failed to pay overtime wages and sick pay wages, (e)
23 failed to reimburse employees for required expenses, and (f) failed to provide suitable seating, all in
24 violation of the applicable Labor Code sections listed in Labor Code §§ 201, 202, 203, 204 *et seq.*, 210,
25 218, 221, 226(a), 226.7, 227.3, 246 *et seq.*, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802,
26 California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of
27 Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), and the applicable Wage Order(s),
28 and thereby gives rise to civil penalties as a result of such conduct.¹ PLAINTIFF hereby seeks recovery

1 of only civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the
2 representative of the State of California for the illegal conduct perpetrated on PLAINTIFF and the
3 AGGRIEVED EMPLOYEES.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, PLAINTIFF prays for judgement against each Defendant, jointly and severally,
6 as follows:

7 1. On behalf of the CALIFORNIA CLASS:

- 8 a. That the Court certify the First Cause of Action asserted by the CALIFORNIA
9 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
10 b. An order temporarily, preliminarily and permanently enjoining and restraining
11 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
12 c. An order requiring DEFENDANT to pay all wages and all sums unlawfully
13 withheld from compensation due to PLAINTIFF and the other members of the
14 CALIFORNIA CLASS; and,
15 d. Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund for
16 restitution of the sums incidental to DEFENDANT's violations due to
17 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

18 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:

- 19 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth,
20 Ninth, and Tenth Causes of Action asserted by the CALIFORNIA LABOR SUB-
21 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
22 b. Compensatory damages, according to proof at trial, including compensatory
23 damages for minimum and overtime compensation due PLAINTIFF and the other
24 members of the CALIFORNIA LABOR SUB-CLASS, during the applicable
25 CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the
26 statutory rate;
27 c. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
28 which a violation occurs and one hundred dollars (\$100) per each member of the

CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226;

- d. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order;
- e. For liquidated damages pursuant to California Labor Code Sections 1194.2 and 1197;
- f. The amount of the expenses PLAINTIFF and each member of the CALIFORNIA LABOR SUBCLASS incurred in the course of their job duties, plus interest, and costs of suit.; and,
- g. The wages of all terminated employees in the CALIFORNIA LABOR SUB-CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.

3. On all claims:

- a. An award of interest, including prejudgment interest at the legal rate;
- b. Such other and further relief as the Court deems just and equitable; and, an award of penalties, attorneys' fees and cost of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code §221, §226, §1194, and/or §2802.
- c. Applicable PAGA penalties pursuant to Labor Code §§ 2698 et seq.

DATE: 07/20/2023

GOMEZ TRIAL ATTORNEYS



John E. Solis, Esq.
Attorney for Plaintiff,
Hajar Mustafa

VIA ELECTRONIC SUBMISSION

PAGAfilings@dir.ca.gov

State of California Labor & Workforce Development Agency

800 Capitol Mall, MIC-55

Sacramento, California 95814

Copy Sent Via Certified Mail to:

Steven K. Taft
28790 Las Haciendas,
Temecula, CA 92590²

Norman Traner¹
28790 Las Haciendas,
Temecula, CA 92590

Re: Eco Farms Avocados, Inc.
Eco Farms Field Inc.
Eco Farms Investment Holdings, LLC.
Eco Farms Real Estate, LLC.
Eco Farms Trading Operations, LLC.

Dear PAGA Administrator:

This office, along with our co-counsel, Rosenberg, Shpall & Zeigen, APLC, represents Plaintiff Ricardo Ruiz ("Mr. Ruiz" or "Plaintiff"), and a proposed group of current and former joint employees, who are aggrieved joint employees working for Eco Farms Avocados, Inc., Eco Farms Field Inc., Eco Farms Investment Holdings, LLC, Eco Farms Real Estate, LLC, Eco Farms Trading Operations, LLC (including any and all affiliates, managers, members, subsidiaries, and parents, and their shareholders, officers, directors, and employees), any individual, owner, officer and managing agent, DOES 1-10 as an "Employer" or person acting on behalf of an "Employer" pursuant to California Labor Code section 558.1, and DOES 11-20³ for violations of California wage-and-hour laws (hereinafter collectively referred to as "Eco Farms").

The California Supreme Court set out the factors that can create a joint employer relationship in *Martinez v. Combs*, 49 Cal. 4th 35, 59, 231 P.3d 259, 274 (2010), as modified (June 9, 2010). Under this test, to "employ" means (1) "to exercise control over... wages, hours or working conditions," (2) "to suffer or permit to work," or (3) "to engage, thereby creating a common law employment relationship." Eco Farms Avocados, Inc., Eco Farms Field Inc., Eco Farms Investment Holdings, LLC, Eco Farms Real Estate, LLC, Eco Farms Trading Operations, LLC., exercised control over Plaintiff's wages, hours and working conditions, and these entities

¹ Mr. Traner is the agent for service of process for Eco Farms Field Inc.

² Mr. Steven Taft is the agent for service of process for Eco Farms Avocados, Inc., Eco Farms Investment Holdings, LLC., Eco Farms Real Estate, LLC, and Eco Farms Trading Operations, LLC.

³ Mr. Ruiz does not know the true names or capacities, whether individual, partner or corporate, of DOES 1 through 20, inclusive, and for that reason, said DOES are designated under such fictitious names. Mr. Mustafa will amend this notice when the true names and capacities are known. Mr. Ruiz is informed and believes that each DOE was responsible in some way for the matters alleged herein and proximately caused Mr. Ruiz and other current and former aggrieved employees to be subject to the illegal employment practices, wrongs and injuries complained of herein.

jointly employed Plaintiff and the aggrieved employees. Management and supervisors of Defendants exercised control over Plaintiff and the aggrieved employees, and made decisions that affected Plaintiff and the aggrieved employees' employment such that all defendants jointly employed Plaintiff and the aggrieved employees at all times mentioned herein.

Mr. Ruiz is pursuing his California Labor Code section 2698, *et seq.*, Private Attorneys General Act of 2004 ("PAGA") claim on a representative basis. Therefore, Mr. Ruiz may seek penalties and wages for violations of the Labor Code on behalf of the State of California and aggrieved employees, which are recoverable under PAGA. This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3.

Eco Farms Avocados, Inc., is a California corporation with a principal address of 28790 Las Haciendas, Temecula, CA 92590.

Eco Farms Field Inc., is a California corporation with a principal address of 28790 Las Haciendas, Temecula, CA 92590.

Eco Farms Investment Holdings, LLC, is a Delaware Limited Liability Company with a principal address of 28790 Las Haciendas, Temecula, CA 92590.

Eco Farms Real Estate, LLC., is a Delaware Limited Liability Company with a principal address of 28790 Las Haciendas, Temecula, CA 92590.

Eco Farms Trading Operations, LLC., is a Delaware Limited Liability Company with a principal address of 28790 Las Haciendas, Temecula, CA 92590.

Eco Farms employed Mr. Ruiz as an hourly-paid non-exempt warehouse inventory staff within one year of the date of this letter (until in or around January of 2023) in the State of California.

Eco Farms directly controlled the wages, hours and/or working conditions of Mr. Ruiz and other aggrieved employees' employment, including direction, retention, scheduling, supervision, and termination.

The "aggrieved employees" that Mr. Ruiz may seek penalties on behalf of are all current and former hourly-paid or non-exempt employees (whether hired directly or through a staffing agency) of Eco Farms within the State of California, including but not limited to all warehouse managers, dispatchers, fruit pickers, truck drivers, boom truck drivers, bagging machine workers, warehouse floor workers, and administrative staff.

Eco Farms failed to properly pay its hourly-paid or non-exempt employees for all hours worked, failed to properly provide or compensate minimum and overtime wages and for meal and rest breaks, failed to issue compliant wage statements and failed to reimburse for all necessary business-related costs and expenses, thus resulting in other Labor Code violations as stated below.

Pursuant to *Huff v. Securitas Security Services*, 23 Cal. App. 5th 745, 751 (2018), an employee who brings a representative action and was affected by at least one of the violations alleged in the complaint has standing to pursue penalties on behalf of the state not only for that

violation, but for violations affecting other employees as well. Accordingly, Mr. Ruiz has standing to pursue penalties on behalf of the state for violations affecting all the aggrieved employees at Eco Farms, regardless of their classification, job title, location, or whether they were hired directly or through a staffing agency.

Eco Farms has violated and/or continues to violate, among other provisions of the California Labor Code and applicable wage law, California Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 226(a), 226.3, 226.7, 246, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and the IWC Wage Orders.

California Labor Code sections 510, 1194, and 1198 require employers to pay at least minimum wage for all hours worked, pay time-and-a-half, or double-time overtime wages, and make it unlawful to work employees for hours longer than eight hours in one day and/or over forty hours in one week without paying the premium overtime rates. During the relevant time period, Mr. Ruiz and other aggrieved employees routinely worked in excess of 8 hours in a day and 40 hours in a week. Eco Farms failed to compensate Mr. Ruiz and other aggrieved employees for all hours worked and performing off-the-clock work, including pre- and post-shift, and during meal breaks. Eco Farms also failed to include non-discretionary bonuses and incentives in Mr. Ruiz and other aggrieved employees' regular rate of pay for purposes of overtime compensation. Therefore, Mr. Ruiz and other aggrieved employees were entitled to receive certain wages for overtime compensation, but they were not paid for all overtime hours worked.

California Labor Code section 246 requires that employers provide employees with paid sick leave of not less than one hour per every 30 hours worked. California Labor Code section 246(1) also requires that paid sick leave be paid at a non-exempt employee's regular rate of pay for the workweek in which the employee uses paid sick time or at a rate calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment. During the relevant time period, Eco Farms failed to pay Mr. Ruiz and other aggrieved employees with paid sick leave that complied with California Labor Code section 246, by, for example, failing to pay paid sick leave at non-exempt employee's regular rate of pay or at a rate calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.

California Labor Code sections 226.7 and 512 require employers to pay an employee one additional hour of pay at the employee's regular rate for each workday that a meal or rest break is not provided. During the relevant time period, Eco Farms routinely required Mr. Ruiz and other aggrieved employees to work through, interrupt, cut short, and/or delay their meal and rest breaks to comply with Eco Farms policies and expectations. Eco Farms also failed to provide adequate coverage to Mr. Ruiz and other aggrieved employees so they may be relieved of all work duties and take legally mandated meal and rest breaks. Moreover, Eco Farms also failed to authorize and permit Mr. Ruiz and other aggrieved employees to take the requisite number of meal and rest breaks, including second meal breaks and third rest breaks, when working shifts exceeding 10 hours in length. Despite these facts, Eco Farms failed to compensate Mr. Ruiz and other aggrieved

employees all the premium wages they were owed, including failing to pay premium wages at Mr. Ruiz and other aggrieved employees' regular rate of pay.

California Labor Code section 551 states "[e]very person employed in any occupation of labor is entitled to one day's rest therefrom in seven." Section 552 further states that no employer of labor shall cause his employees to work more than six days in seven." Eco Farms required Mr. Ruiz and other aggrieved employees to work seven days in a row or more without one day's rest.

California Labor Code section 201 requires 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 section 202 requires that if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. California Labor Code section 203 provides that if an employer willfully fails to pay, without abatement or reduction, in accordance with Labor Code sections 201, 201.3, 201.5, 201.6, 201.8, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. During the relevant time period, Eco Farms failed to pay Mr. Ruiz and other aggrieved employees all wages, including for uncompensated off-the-clock work, unpaid overtime premiums and premium wages for failing to provide legally mandated meal and rest breaks, due to them within any time period specified by California Labor Code sections 201 and 203 and therefore is liable under California Labor Code section 203.

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. During the relevant time period, Eco Farms failed to pay Mr. Ruiz and other aggrieved employees all wages due to them, including for uncompensated off-the-clock work, unpaid overtime premiums and premium wages for failing to provide legally mandated meal and rest breaks within any time period specified by California Labor Code section 204,

California Labor Code section 226 requires employers to make, keep and provide complete and accurate itemized wage statements to their employees. During the relevant time period, Eco Farms did not provide Mr. Ruiz and other aggrieved employees with complete and accurate itemized wage statements. The wage statements they received from Eco Farms were in violation of California Labor Code section 226(a). The violations include, but are not limited to, the failure to include (1) gross wages earned by Mr. Ruiz and other aggrieved employees, (2) total hours worked by Mr. Ruiz and other aggrieved employees, (3) the number of piece-rate units earned and

any applicable piece rate by Mr. Ruiz and other aggrieved employees (4) all deductions for Mr. Ruiz and other aggrieved employees, (5) net wages earned by Mr. Ruiz and other aggrieved employees, (6) the inclusive dates of the period for which Mr. Ruiz and other aggrieved employees are paid, (7) the name of the aggrieved employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by Mr. Ruiz and other aggrieved employees.

California Labor Code section 558 allows recovery of penalties. (a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected employee. Mr. Ruiz and other aggrieved employees have been denied their wages and premium wages and, therefore, are entitled to penalties.

California Labor Code sections 1174(d) requires an employer to keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than two years During the relevant time period, Eco Farms failed to keep accurate and complete payroll records showing the hours worked daily and the wages paid, to Mr. Ruiz and other aggrieved employees.

California Labor Code sections 1194, 1197 and 1197.1 provide the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful. During the relevant time period, Eco Farms did not provide Mr. Ruiz and other aggrieved employees with the minimum wages to which they were entitled despite constructive and actual knowledge of off-the-clock work, including pre- and post-shift, and during meal breaks.

California Labor Code sections 2800 and 2802 require an employer to reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. During their employment, Mr. Ruiz and other aggrieved employees incurred necessary business-related expenses and costs that were not fully reimbursed by Eco Farms, including for purchasing equipment and tools they were required to use/wear while working, and using their personal cellular phones and laptops for work related purposes.

We believe that Mr. Ruiz and other current and former California-based hourly-paid or non-exempt employees are entitled to penalties as allowed under California Labor Code section 2698, et seq. for violations of Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 226(a), 226.3, 226.7, 246, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and the IWC Wage Orders.

California Labor Code section 2699.3 requires that a claimant send a certified letter to the employer in questions and the California Labor & Workforce Development Agency setting forth the claims, and the basis for the claims, thereby giving the California Labor & Workforce Development Agency an opportunity to investigate the claims and/or take any action it deems appropriate.

The purpose of this letter is to satisfy the requirement created by California Labor code section 2699 prior to seeking penalties allowed by law for the aforementioned statutory violations. We look forward to determining whether California Labor & Workforce Development Agency intends to take any action in reference to these claims. We kindly request that you respond to this notice according to the time frame contemplated by the California Labor Code.

Mr. Ruiz will seek these penalties on his own behalf and on behalf of other similarly situated California-based hourly-paid or non-exempt employees of Eco Farms within one year of the date of this letter, as allowed by law.

Therefore, pursuant to Labor Code § 2699.3, we write to inform you and the Labor and Workforce Development Agency, with whom this PAGA Notice has been filed, of our intent to pursue a PAGA representative action and a Class Action against Defendants, on a joint employer basis, seeking PAGA penalties under Labor Code § 2699 to be brought by Plaintiff, individually and on behalf of the aggrieved employees, as defined above. Notably, under Labor Code § 1197.1 and the recent case of *Atempa v. Pedrazzani*, 27 Cal. App. 5th 809 (2018), all Defendants are liable under PAGA for the Labor Code violations described herein.

Nevertheless, it is the policy of our firms to attempt to negotiate an early resolution of all matters where possible and beneficial to the aggrieved employees and all putative class members. If Defendants are interested in attempting to resolve this matter on a class-wide basis, including the PAGA claims, please contact me or have your lawyer contact me so that we can discuss an informal discovery plan and the possibility of early mediation on or before July 15, 2023. If we do not hear from you on or before July 15, 2023, we will proceed with this matter with the understanding that Defendants do not wish to negotiate an early resolution of this matter.

If you have any questions or require additional information, please do not hesitate to contact us.

Respectfully,

A handwritten signature in black ink, appearing to read "John E. Solis". The signature is fluid and cursive, with the first name "John" being more prominent and the last name "Solis" following in a similar style.

John E. Solis, Esq.

CC: (By Certified US Mail Only)

Dalia Hannosh

From: John Solis <jsolis@getgomez.com>
Sent: Thursday, July 20, 2023 12:04 PM
To: Dalia Hannosh
Subject: FW: Thank you for submission of your PAGA Case.

-----Original Message-----

From: noreply@salesforce.com <noreply@salesforce.com> On Behalf Of LWDA DO NOT REPLY
Sent: Wednesday, April 12, 2023 2:19 PM
To: John Solis <jsolis@getgomez.com>
Subject: Thank you for submission of your PAGA Case.

4/12/2023

LWDA Case No. LWDA-CM-948107-23
Law Firm : Gomez Trial Attorneys
Plaintiff Name : Hajar Mustafa
Employer: Vigilant Eye Security, Inc
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm