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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO

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BY 
MEJALEE GAY, Deputy

Attorneys for Plaintiff, on a representative basis and on behalf of all others similarly situated

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

JUAN CARLOS BAUTISTA and JAIME
CERVANTES, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

SERVICEFIRST RESTORATION, INC., a
California Corporation; and DOES 1 through
20, inclusive;

Defendants.

Case No.: CIVSB2302978
[Assigned to Hon. Joseph Ortiz, Dept S17, for
all purposes]

FIRST AMENDED COMPLAINT

CLASS ACTION CLAIMS

- (1) Failure to Pay Minimum Wages;
- (2) Failure to Pay Overtime Wages;
- (3) Failure to Pay for Rest Periods and Nonproductive Time (L.C. § 226.2);
- (4) Failure to Provide Meal Periods;
- (5) Failure to Provide Rest Breaks;
- (6) Failure to Reimburse Bus. Expenses;
- (7) Failure to Timely Pay Final Wages;
- (8) Failure to Provide Accurate Itemized Wage Statements;
- (9) Unfair and Unlawful Competition;

PAGA CLAIMS

- (10) Willful Misclassification;
- (11) Failure to Pay Minimum Wages;
- (12) Failure to Pay Overtime Wages;
- (13) Violations of L.C. § 226.2;
- (14) Failure to Provide Meal Periods;
- (15) Failure to Provide Rest Breaks;
- (16) Failure to Reimburse Bus. Expenses;
- (17) Failure to Timely Pay Wages;
- (18) Failure to Timely Pay Final Wages; and
- (19) Failure to Provide Accurate Itemized Wage Statements

1 Plaintiffs Juan Carlos Bautista and Jaime Cervantes (“Plaintiffs”) on behalf of
2 themselves, on a representative basis, and on behalf of others similarly situated, complain and
3 allege as follows.

4 **I. INTRODUCTION AND GENERAL ALLEGATIONS**

5 1. Plaintiffs bring this action against their employer(s), Defendants ServiceFirst
6 Restoration, Inc., and DOES 1 through 20, inclusive, (collectively, “Defendants”) on behalf of
7 all current and former nonexempt employees employed by Defendants in California (the “Class”
8 or “Represented Employees”), including (1) all individuals who Defendants classified as
9 nonexempt employees, and (2) all individuals who performed services for Defendants in the
10 State of California and who Defendants classified as 1099 independent contractors.

11 2. Plaintiffs allege that they and the Represented Employees were subjected to
12 violations of the California Labor Code, including Defendants’ willful misclassification of
13 certain employees as independent contractors, failure to pay all wages owed, including
14 minimum, regular, and overtime wages, failure to provide separation compensation for
15 nonproductive time and rest and recovery periods as required by Labor Code § 226.2, failure to
16 provide meal periods and rest breaks, failure to reimburse business expenses, failure to timely
17 pay wages upon separation of employment, and failure to provide accurate itemized wage
18 statements.

19 3. Plaintiffs were employed by Defendants from approximately 2019 through 2022.

20 4. Plaintiffs alleges on information and belief that the Represented Employees were
21 subjected to the same policies, working conditions, and corresponding wage and hour violations
22 to which Plaintiffs were subjected during employment.

23 5. At all relevant times, Plaintiffs and the Represented Employees performed various
24 duties for Defendants as employees. However, Defendants have maintained policies and
25 practices based on or including the willful misclassification of Plaintiffs and the Represented
26 Employees as independent contractors despite that, under applicable standards of law, Plaintiffs
27 and all Represented Employees are, or were during their employment with Defendants,
28 employees, and not independent contractors.

1 6. Defendants engaged in a practice of willfully misclassifying Plaintiffs and the
2 Represented Employees as independent contractors despite that Plaintiffs and the Represented
3 Employees are/were employees of Defendants because they (A) are/were subject to the control
4 and direction of Defendants in connection with the performance of their work, both under
5 contract and in fact, (B) performed work that was the core business of Defendants (*e.g.*,
6 providing home repair and remodeling services, among other related tasks), and therefore the
7 Represented Employees' tasks were not outside the usual course of the Company's business, and
8 (C) were not customarily engaged in an independently established trade, occupation, or business
9 of the same nature as the work performed by Defendants.

10 7. Also, Plaintiffs and the Represented Employees were subject to the direction and
11 control of Defendants in regard to work assignments, scheduling requirements, and days of work.
12 Furthermore, Defendants directly and indirectly exercised control over the wages, hours, and
13 working conditions of Plaintiffs and the Represented Employees. At all relevant times, the daily
14 schedule for Plaintiffs and the Represented Employees was controlled solely by Defendants, and
15 Defendants told them the exact time and location for all jobs. Furthermore, through the
16 performance of their job duties, Plaintiffs and the Represented Employees performed an integral
17 and entirely essential aspect of Defendants' business. In fact, Plaintiffs and the Represented
18 Employees were tasked to perform the one and only service that Defendants provided: home
19 repair and remodeling services, among other related tasks. Additionally, the customers are
20 and/or were Defendants' customers, not those of Plaintiffs or the Represented Employees.
21 Plaintiffs and the Represented Employees were also prohibited from performing similar services
22 for other companies and, thus, were not engaged in an independently established trade,
23 occupation or business of the same nature as the work performed by Defendants. And, perhaps
24 most importantly, Defendants retained the right to terminate Plaintiffs and the Represented
25 Employees' working relationship without cause and at its discretion.

26 8. Despite the facts discussed herein, Defendants misclassified Plaintiffs and the
27 Represented Employees as independent contractors rather than as employees, leading to
28 violations of the California Labor Code and IWC Wage Orders discussed below.

1 9. In addition to the misclassification claims, Plaintiffs and the Represented
2 Employees were subjected to a multitude of Labor Code violations discussed herein.

3 10. Plaintiffs and the Represented Employees were not provided all minimum,
4 regular, and overtime wages due to Defendants' failure to accurately record and compensate for
5 all hours worked. This violates California law. *Troester v. Starbucks Corporation* (2018) 5
6 Cal.5th 829 (California law "do[es] not allow employers to require employees to routinely work
7 for minutes off the clock without compensation"); *Frlekin v. Apple Inc* (2020) 8 Cal.5th 1038
8 (tasks are compensable when employee is under company's control and where the tasks served
9 the employer's interests).

10 11. Also, at all relevant times, Defendants paid Plaintiffs and the Represented
11 Employees on a piece-rate basis. However, under this pay plan, Defendants failed to comply
12 with the requirements of Labor Code § 226.2 to provide separate hourly compensation at the
13 appropriate rate for "nonproductive" time and all rest and recovery periods. Notably, Defendants
14 failed to provide any separate hourly compensation for rest breaks or for nonproductive time
15 (*i.e.*, time spent under the Company's direction and control but when the Aggrieved Employees
16 could not generate piece-rate compensation, such as meetings, travel time, time spent getting
17 and/or purchasing materials, and so forth). And Defendants did not pay any overtime to the
18 Represented Employees, despite that they often worked in excess of 8 and/or 12 hours per day.

19 12. Furthermore, Defendants failed to pay proper overtime to Plaintiffs and the
20 Represented Employees. At all relevant times, Plaintiffs and the Represented Employees were
21 paid on an hourly basis plus additional earned nondiscretionary compensation. However, on the
22 occasions when Plaintiffs and the Represented Employees worked overtime hours and received
23 additional earned compensation during the same workweek, Defendants failed to include these
24 amounts in the calculations for the regular rate of pay – in violation of California law.

25 13. Plaintiffs and the Represented Employees were also denied 30-minute off-duty
26 meal periods, as mandated by California law. As a result of Defendants' policies and practices,
27 the Represented Employees were subjected to meal period violations when they were: (1) unable
28 to take a meal period due to workload, (2) forced to take an on-duty meal period while under the

1 control of Defendants, (3) forced to take a shortened meal period, (4) forced to take a meal
2 period after the 5th hour of work, and (5) not provided mandated second meal periods for shifts
3 in excess of 10 hours.

4 14. Defendants also failed to provide Plaintiffs and the Represented Employees with
5 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as
6 mandated by California law. Defendants did not schedule rest breaks for Plaintiffs and the
7 Represented Employees, and the Represented Employees were often not authorized and/or
8 permitted to take mandated rest breaks due to being overwhelmed by their hectic workload.
9 Furthermore, at all relevant times, Plaintiffs and the Represented Employees were denied paid
10 rest breaks by virtue of Defendants' policy that only paid on a piece-rate basis. As Plaintiffs and
11 the Represented Employees could not generate piece-rate pay during a rest break, Plaintiffs and
12 the Represented Employees were illegally denied paid rest breaks.

13 15. Also, Defendants required Plaintiffs and the Represented Employees to incur
14 substantial business-related expenses and costs to carry out their duties for Defendants without
15 reimbursement without reimbursement. For example, Plaintiffs and the Represented Employees
16 were required to incur substantial expense purchasing supplies to perform their tasks, using their
17 personal vehicles and tools to perform work for Defendants, among other expenses, yet
18 Defendants did not reimburse for such expenses.

19 16. Plaintiffs also allege that they and the Represented Employees were not paid all
20 wages due and owing each pay period (Labor Code § 204) and upon separation of employment
21 within the time required by Labor Code §§ 201 – 203. Plaintiffs further allege that Defendants
22 engaged in the practice of failing to pay all wages due and owing to Plaintiffs and the
23 Represented Employees at the time their employment ended with Defendants, including, but not
24 limited to minimum, regular, and overtime wages, vacation and sick wages, wage premiums,
25 among others.

26 17. Plaintiffs further allege that Defendants failed to provide accurate itemized wage
27 statements that fully complied with the requirements of Labor Code § 226(a).
28

1 18. Plaintiffs allege that Defendants' violations of the wage and hour components of
2 the Labor Code and IWC Wage Orders enabled them to decrease expenses and to increase their
3 level of productivity and profits, thereby allowing Defendants to gain an unfair advantage over
4 its competitors.

5 19. At all material times, Defendants and DOES 1 through 20 were and/or are the
6 Represented Employees' employers or persons acting on behalf of the Represented Employees'
7 employer, within the meaning of California Labor Code § 558, who violated or caused to be
8 violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating
9 hours and days of work in an IWC Wage Order and, as such, are subject to penalties for each
10 underpaid employee as set forth in Labor Code § 558 and under California law.

11 20. Plaintiffs bring this lawsuit seeking declaratory, injunctive, equitable, and
12 monetary relief against Defendants and each of them, on behalf of themselves and the
13 Represented Employees to recover, among other things, unpaid wages and benefits, interest,
14 attorneys' fees, penalties, costs and expenses pursuant to California Labor Code §§ 200, 201,
15 202, 203, 204, 208, 210, 218.6, 226, 226.2, 226.3, 226.7, 226.8, 227.3, 246, 510, 512, 558, 1194,
16 1194.2, 1197, 1197.1, 1198, 1199, and 2802, among possibly other sections inadvertently
17 omitted. Plaintiffs also reserve the right to name additional representatives throughout the State
18 of California.

19 **II. JURISDICTION**

20 21. This Court has jurisdiction over the claims for relief of Plaintiffs and the
21 Represented Employees pursuant to the Labor Code and the IWC Wage Orders.

22 **III. VENUE**

23 22. Venue as to each Defendant is proper in this Court pursuant to Code of Civil
24 Procedure § 395(a). Defendants transact business in San Bernardino County and the unlawful
25 acts alleged herein have a direct effect on Plaintiffs and the Represented Employees in San
26 Bernardino County. Furthermore, Defendants employed or employ Represented Employees in
27 San Bernardino County.
28

1 **IV. PARTIES**

2 **Plaintiff**

3 23. Plaintiff and Class Representative Juan Carlos Bautista was employed by
4 Defendants from approximately 2019 through 2022 and performed work for Defendants in the
5 City of Ontario, which is in San Bernardino County.

6 24. Plaintiff and Class Representative Jaime Cervantes was employed by Defendants
7 from approximately 2019 through 2022 and performed work for Defendants in San Bernardino
8 County.

9 **Defendants**

10 25. Plaintiffs are informed and believe and thereon allege that Defendant ServiceFirst
11 Restoration, Inc. is a California corporation that maintains operations and employs the
12 Represented Employees throughout California, including San Bernardino County.

13 26. Plaintiffs are ignorant of the true names, capacities, relationships, and extent of
14 participation in the conduct herein alleged, of Defendants sued herein as DOES 1 through 20,
15 inclusive, but on information and belief allege that those Defendants are legally responsible for
16 the payment of penalties and damages to Plaintiffs and all Represented Employees by virtue of
17 Defendants' unlawful actions and practices and therefore sue these Defendants by such fictitious
18 names. Plaintiffs will amend this complaint to allege the true names and capacities of the DOE
19 Defendants when ascertained.

20 27. Plaintiffs are informed and believe and thereon allege that they and the
21 Represented Employees worked under the joint direction and control of Defendants and that
22 Defendants, and each of them, acted in all respects pertinent to this action as the agent of the
23 other Defendants, carried out a joint scheme, business plan or policy in all respect pertinent
24 hereto, and the acts of each Defendant are legally attributable to the other Defendants. On
25 information and belief, a unity of interest and ownership between each Defendant exists such
26 that all Defendants acted as a single employer of Plaintiffs and other Represented Employees.

27 28. Furthermore, Plaintiffs are informed and believe and thereon allege that
28 Defendants, and each of them, are an integrated enterprise and should be treated as a single

1 employer because these entities share an interrelation of operations, with common human
2 resources and personnel policies and shared common offices and facilities. Additionally,
3 Defendants also have a shared website, common management, a centralized control of labor
4 operations, and common ownership or financial control.

5 29. Plaintiffs are informed and believe and thereon allege that, in conducting
6 themselves in the manner described herein, Defendants, and each of them, were acting in active
7 concert with one another such that the acts of each were and are fully attributable to the others in
8 all material respects. Plaintiffs are further informed and believe that at all relevant times
9 Defendants and each of them are now, and at all material times herein mentioned were, the
10 agents, servants, employees, partners, affiliates, and/or representatives of each of their remaining
11 co-Defendants, and were, at all times herein mentioned, acting within the course, scope, and
12 purpose of such relationship(s) and with the knowledge, consent and/or ratification of each of
13 their remaining co-Defendants.

14 30. Plaintiffs are further informed and believe that at all relevant times, Defendants
15 have been inadequately capitalized to conduct business, have failed to follow appropriate
16 corporate formalities, and have simply been a shell and instrumentality through which
17 Defendants DOES 11 through 20, inclusive, have conducted their personal affairs. Accordingly,
18 the corporate veil should be pierced, and any liability attached to Defendants should be imposed
19 jointly and severally against Defendants DOES 11 through 20. Adherence to the fiction of the
20 separate existence of these corporate entities would permit abuse of the corporate privilege,
21 thereby sanctioning fraud and promoting injustice.

22 **V. CLASS ACTION ALLEGATIONS**

23 31. Plaintiffs incorporate the preceding paragraphs of the First Amended Complaint
24 as if fully alleged herein.

25 32. Plaintiffs bring this action on behalf of themselves and all others similarly situated
26 as a class action, pursuant to Code of Civil Procedure § 382.

27 33. The relevant time period for this class action is defined as the period beginning
28 four years prior to the filing of this action until class certification (the “Relevant Time Period”).

1 34. The Class, also referred to as the “Represented Employees,” that Plaintiffs seek to
2 represent is defined as follows:

3 All current and former nonexempt employees employed by
4 Defendants in California during the Relevant Time Period.

5 35. Plaintiffs also seek to represent the following subclasses:

6 **Meal Break Subclass**

7 All Represented Employees who worked a shift in excess of
8 5 hours during the Relevant Time Period.

9 **Rest Break Subclass**

10 All Represented Employees who worked a shift of at least
11 3.5 hours during the Relevant Time Period.

12 **Unreimbursed Expense Subclass**

13 All Represented Employees who were required to incur
14 expenses to discharge their duties for Defendants without
15 reimbursement during the Relevant Time Period.

16 **Waiting Time Penalties Subclass**

17 All Represented Employees who separated from their
18 employment with Defendants during the period three years
19 before the filing of this action and ending when final
20 judgment is entered.

21 **Wage Statement Penalties Subclass**

22 All Represented Employees during the period one year
23 before the filing of this action and ending when final
24 judgment is entered.

25 36. Plaintiffs reserve the right to amend or modify the class description with greater
26 specificity or further division into subclasses or limitation to particular issues as appropriate.

27 37. Plaintiffs, as Class Representatives, are members of the class and subclasses that
28 they seek to represent.

1 38. This action has been brought and may properly be maintained as a class action
2 under Code of Civil Procedure § 382 because there is a well-defined community of interest in the
3 litigation and the proposed class is easily ascertainable from Defendants' records.

4 39. **Numerosity:** The potential members of the Class as defined are so numerous that
5 a joinder of all Represented Employees is impracticable. Although the exact number is currently
6 unknown to Plaintiff, this information is easily ascertainable from Defendants' records.

7 40. **Commonality:** There are questions of law and fact common to the class which
8 predominate over any questions affecting only individual members of the class, including
9 without limitation:

10 i. Whether Defendants violated the California Labor Code and applicable
11 IWC Wage Order by failing to pay wages to Plaintiffs and the Represented Employees for all
12 hours worked;

13 ii. Whether Defendants violated the California Labor Code and applicable
14 IWC Wage Order by failing to pay proper overtime wages to Plaintiffs and the Represented
15 Employees for hours above 8 and/or 12 per day and/or 40 per week;

16 iii. Whether Defendants violated California Labor Code and IWC Wage
17 Order by paying the Represented Employees on a piece-rate basis yet not providing separate
18 hourly compensation for rest breaks and "nonproductive" time;

19 iv. Whether Defendants violated the California Labor Code and applicable
20 IWC Wage Order by failing to provide compliant meal periods to Plaintiffs and the Meal Break
21 Subclass and whether Defendants failed to compensate Plaintiffs and the Meal Break Subclass
22 with one additional hour of wages at the regular rate of pay for each instance when a compliant
23 meal period was not provided;

24 v. Whether Defendants violated the California Labor Code and applicable
25 IWC Wage Order by failing to provide compliant rest breaks to Plaintiffs and the Rest Break
26 Subclass and whether Defendants failed to compensate Plaintiffs and the Rest Break Subclass
27 with one additional hour of wages at the regular rate of pay for each instance when a paid rest
28 break was not provided;

1 vi. Whether Defendants violated the California Labor Code and applicable
2 IWC Wage Order by failing to reimburse Plaintiffs and the Unreimbursed Expense Subclass for
3 business expenses incurred while discharging their duties or in obedience to the directions of
4 their employer;

5 vii. Whether Defendants violated the California Labor Code by failing to
6 timely pay all wages due upon separation of employment between Defendants and Plaintiffs and
7 the Waiting Time Penalties Subclass, whether such separation was voluntary or involuntary;

8 viii. Whether Defendants violated the California Labor Code by failing to
9 provide Plaintiffs and the Wage Statement Penalties Subclass with complete, accurate, itemized
10 wage statements;

11 ix. Whether Defendants violated California Business & Professions Code §§
12 17200 *et seq.* due to the: failure to pay all wages owed, failure to provide mandated paid rest
13 breaks, failure to provide mandated meal periods, failure to reimburse business expenses, and
14 failure to timely pay final wages; and

15 x. Whether Plaintiffs and Represented Employees are entitled to equitable
16 relief pursuant to California Business & Professions Code §§ 17200 *et seq.*

17 41. **Typicality:** Plaintiffs' claims, as the Class Representatives, are typical of the
18 claims of The Class. Plaintiffs, like other members of The Class, were subjected to Defendants'
19 ongoing Labor Code and Wage Order violations including pertaining to the failure to pay all
20 wages owed, failure to provide mandated meal periods and rest breaks, failure to reimburse
21 business expenses, failure to timely pay wages upon separation of employment, and failure to
22 provide accurate itemized wage statements.

23 42. **Adequacy of Representation.** Plaintiffs, as the Class Representatives, will fairly
24 and adequately represent and protect the interests of the Class. Plaintiffs' interests are not in
25 conflict with those of the Class. Class Representatives' counsel are competent and experienced in
26 litigating large employment class actions and other complex litigation matters, including cases
27 like this case.
28

1 43. **Superiority of Class Action.** Class certification is appropriate because a class
2 action is superior to other available means for the fair and efficient adjudication of this
3 controversy. Individual joinder of all Represented Employees is not practicable, and questions of
4 law and fact common to the Class predominate over any questions affecting only individual
5 members of the Class. Each Represented Employee has been damaged and is entitled to
6 recovery by reason of Defendants' illegal policies and practices set forth above. Class action
7 treatment will allow those similarly situated persons to litigate their claims in the manner that is
8 most efficient and economical for the parties and the judicial system.

9 **FIRST CAUSE OF ACTION**

10 **FAILURE TO PAY MINIMUM WAGES**

11 (Labor Code §§ 200, 1194, 1194.2, 1197; IWC Wage Order § 4)

12 *Plaintiffs and the Represented Employees Against All Defendants*

13 44. Plaintiffs incorporate the preceding paragraphs of the First Amended Complaint
14 as if fully alleged herein.

15 45. Plaintiffs and the Represented Employees were not exempt from the requirement
16 to be paid at least the applicable California minimum wage throughout the statutory period for
17 each hour worked.

18 46. Plaintiffs and the Represented Employees were not provided proper minimum and
19 regular wages due to Defendants' failure to accurately record and compensate for all hours
20 worked. As a result of this policy and practice, Plaintiffs and the Represented Employees were
21 required to perform off-the-clock work that Defendants either knew or should have known they
22 were performing.

23 47. As a result of these policies and practices, Defendants failed to pay Plaintiffs and
24 the Represented Employees for all hours worked.

25 48. Consequently, Defendants violated California Labor Code laws and minimum
26 wage laws, *inter alia*, Labor Code §§ 200, 221, 222, 223, 1197, IWC Wage Order 9, § 4, and
27 Cal. Code Regs., tit. 8, section 11090, subds. 1 and 4(B).
28

1 49. Plaintiffs are informed and believe and thereon allege that Defendants
2 intentionally, willfully, and improperly failed to pay wages to Plaintiffs and the Represented
3 Employees for each hour worked in violation of Labor Code §§ 221-223, 1194 and 1197.

4 50. Defendants' conduct was willful, as Defendants knew that Plaintiffs and the
5 Represented Employees were entitled to be paid wages throughout the statutory period for each
6 hour worked, including proper minimum and regular wages, yet Defendants chose not to pay
7 them in accordance thereto.

8 51. At all material times, Defendants DOES 1 through 20 were and/or are the
9 employer of Plaintiffs and the Represented Employees or were persons acting on behalf of said
10 employer(s), within the meaning of California Labor Code § 558, who violated or caused to be
11 violated Labor Code § 204 and a provision or provisions of Part 2, Chapter 1 of the California
12 Labor Code regulating hours and days of work respectively.

13 52. During employment of Plaintiffs and the Represented Employees, Defendants
14 failed to pay them all wages to which they were entitled, thereby receiving an economic benefit.

15 53. As a result of the Defendants' wrongful conduct, Plaintiffs and the Represented
16 Employees have been damaged in amounts to be proven at trial.

17 54. Plaintiffs, on behalf of themselves and the Represented Employees, seek recovery
18 of all unpaid minimum wages, liquidated damages, penalties, interest, attorneys' fees and costs
19 of suit, pursuant to Labor Code §§ 1194 and 1194.2, against Defendants in an amount to be
20 proven at trial.

21 **SECOND CAUSE OF ACTION**

22 **FAILURE TO PAY OVERTIME WAGES**

23 (Labor Code §§ 204 and 510; IWC Wage Order § 3(A))

24 *Plaintiffs and the Represented Employees Against All Defendants*

25 55. Plaintiffs incorporate the preceding paragraphs of the First Amended Complaint
26 as if fully alleged herein.

27 56. Plaintiffs and the Represented Employees were employees of Defendants who did
28 not receive proper protections and benefits of the laws governing payment of overtime wages.

1 57. Labor Code § 204 requires that the employer timely pay all overtime wages to its
2 employees. Labor Code § 510(a) and the applicable IWC Wage Order § 3(A) provide that any
3 work performed in excess of eight (8) hours in one workday or in excess of forty (40) hours in
4 any one workweek shall be compensated at the rate of no less than one and one-half times the
5 regular rate of pay for an employee. Furthermore, any work performed in excess of twelve (12)
6 in one workday shall be compensated at twice the regular rate of pay for an employee.

7 58. At all relevant times, Plaintiffs and the Represented Employees were required by
8 Defendants to work hours in excess of 8 and/or 12 per day and/or 40 per week. However, due to
9 Defendants' failure to accurately record and compensate for all hours worked, Plaintiffs and the
10 Represented Employees did not receive proper overtime compensation.

11 59. Additionally, at all relevant times, Plaintiffs and the Represented Employees were
12 paid on an hourly basis plus additional earned nondiscretionary compensation. However, on the
13 occasions when Plaintiffs and the Represented Employees worked overtime hours and received
14 additional earned compensation during the same workweek, Defendants failed to properly
15 include these amounts in the calculations for the regular rate of pay – violating the well-
16 established rule that overtime must always be paid at time and one-half the regular rate of pay.

17 60. As a result of these policies and practices, Defendants failed to pay Plaintiffs and
18 the Represented Employees for all overtime hours worked.

19 61. Defendants violate Labor Code §§ 204 and 510 and the applicable IWC Wage
20 Order § 3(A) every pay period with respect to Plaintiffs and the Represented Employees because
21 Defendants required its employees to work hours in excess of 8 and/or 12 per day and/or 40 per
22 week without proper overtime compensation.

23 62. Plaintiffs are informed and believe and thereon allege that Defendants
24 intentionally, willfully, and improperly failed to pay proper overtime wages to Plaintiffs and the
25 Represented Employees in violation of Labor Code §§ 204, 221-223, 510, 1194 and 1197.

26 63. Defendants' conduct was willful, as Defendants knew that Plaintiffs and the
27 Represented Employees were entitled to be paid proper overtime wages throughout the statutory
28 period, yet Defendants chose not to pay them in accordance thereto.

1 64. At all material times, Defendants DOES 1 through 20 were and/or are the
2 employer of Plaintiffs and the Represented Employees or were persons acting on behalf of said
3 employer(s), within the meaning of California Labor Code § 558, who violated or caused to be
4 violated Labor Code § 204 and a provision or provisions of Part 2, Chapter 1 of the California
5 Labor Code regulating hours and days of work respectively.

6 65. During the employment of Plaintiffs and the Represented Employees, Defendants
7 failed to pay them all wages to which they were entitled, thereby receiving an economic benefit.

8 66. As a result of Defendants' wrongful conduct, Plaintiffs and the Represented
9 Employees have been damaged in amounts to be proven at trial.

10 67. Plaintiffs, on behalf of themselves and the Represented Employees, seeks
11 recovery of all unpaid overtime wages, penalties, interest, attorneys' fees, and costs of suit
12 against Defendants in an amount to be proven at trial.

13 **THIRD CAUSE OF ACTION**

14 **FAILURE TO PAY FOR REST BREAKS AND NONPRODUCTIVE TIME**

15 (Labor Code § 226.2)

16 *Plaintiffs and the Represented Employees Against All Defendants*

17 68. Plaintiffs incorporate the preceding paragraphs of the First Amended Complaint
18 as if fully alleged herein.

19 69. Plaintiffs and the Represented Employees are and/or were employees of
20 Defendants who were paid on a piece-rate basis.

21 70. Labor Code § 226.2 requires employers that pay their employees on a piece-rate
22 basis to provide separate payment for rest and recovery periods at a regular hourly rate that is no
23 less than the higher of the applicable minimum wage or "an average hourly rate determined by
24 dividing the total compensation for the workweek, exclusive of compensation for rest and
25 recovery periods and any premium compensation for overtime, by the total hours worked during
26 the workweek, exclusive of rest and recovery periods." Labor Code § 226.2(a)(3)(A).
27
28

1 71. Furthermore, Labor Code § 226.2 requires employers that pay their employees on
2 a piece-rate basis to provide separate payment for nonproductive time at an hourly rate that is no
3 less than the applicable minimum wage. Labor Code § 226.2(a)(4).

4 72. At all relevant times herein, Defendants failed to compensate the Represented
5 Employees for all rest and recovery periods and all other nonproductive time separate from any
6 piece-rate compensation at the rate required by Labor Code § 226.2. Therefore, Defendants
7 violates Labor Code § 226.2 every pay period with respect to the Represented Employees.

8 73. As a result of Defendant's violation of Labor Code § 226.2, Plaintiffs and the
9 Represented Employees seek to recover, in a civil action, the unpaid balance of the full amount
10 of unpaid payments for rest and recovery periods and other nonproductive time, including
11 interest thereon, reasonable attorneys' fees, and costs of suit.

12 **FOURTH CAUSE OF ACTION**

13 **FAILURE TO PROVIDE MEAL PERIODS**

14 (Labor Code §§ 226.7 and 512; IWC Wage Order § 11, 12)

15 *Plaintiffs and the Meal Break Subclass Against All Defendants*

16 74. Plaintiffs incorporate the preceding paragraphs of the First Amended Complaint
17 as if fully alleged herein.

18 75. Plaintiffs and the Meal Break Subclass are and/or were employees of Defendants
19 who did not receive proper protections and benefits of the laws governing mandatory meal
20 periods.

21 76. Labor Code § 226.7 requires employers, including Defendants, to provide
22 employees with meal periods as mandated by the Industrial Welfare Commission.

23 77. Labor Code § 512(a), in part, provides that employers, including Defendants, may
24 not employ an employee for a work period of more than five hours per day without providing an
25 employee the opportunity to take an uninterrupted meal period of not less than 30 minutes,
26 except that if the total work period per day of the employee is no more than six hours, the meal
27 period may be waived by mutual consent of both the employer and the employee. Employers
28 may not employ an employee for a work period more than 10 hours per day without providing

1 the employee with a second meal period of not less than 30 minutes.

2 78. Pursuant to Labor Code § 226.7(b) and the applicable IWC Wage Order § 11(B),
3 Defendants shall pay an employee one additional hour of pay at the employee's regular rate of
4 pay for each meal period that is missed.

5 79. At all relevant times herein, Plaintiffs and the Meal Break Subclass were denied
6 the 30-minute meal periods to which they were entitled. As a result of Defendants' policies and
7 practices, Plaintiffs and the Represented Employees were subjected to meal period violations
8 when they were: (1) unable to take a meal period due to workload, (2) forced to take an on-duty
9 meal period while under the control of Defendants, (3) forced to take a shortened meal period,
10 (4) forced to take a meal period after the 5th hour of work, and (5) not provided mandated
11 second meal periods for shifts in excess of 10 hours.

12 80. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage
13 Order every pay period because Plaintiffs and the Meal Break Subclass were not provided with
14 all mandatory meal periods and Defendants failed to pay Plaintiffs and the Meal Break Subclass
15 one additional hour of compensation at the regular rate of pay in lieu thereof.

16 81. At all relevant times herein, Defendants failed to provide Plaintiffs and the Meal
17 Break Subclass all mandated meal periods and failed to pay wage premiums in lieu of mandated
18 meal or rest periods, thereby receiving an economic benefit.

19 82. On information and belief, Plaintiffs and the Meal Break Subclass did not
20 voluntarily or willfully waive the mandated meal periods. Any expressed or implied waivers
21 obtained from Plaintiffs and the Meal Break Subclass were not willfully obtained, were not
22 voluntarily agreed to, were a condition of employment, or were a part of a contract of an
23 unlawful adhesion. Defendants did not permit or authorize Plaintiffs and the Meal Break
24 Subclass to take meal periods in accordance with California law.

25 83. By their failure to provide Plaintiffs and the Meal Break Subclass with meal
26 periods as required by California law, and failing to pay one hour of additional wages in lieu of
27 each meal period not provided, Defendants willfully violated Labor Code §§ 226.7 and 512, and
28 IWC Wage Order § 11. Accordingly, Defendants are liable for one hour of additional wages at

1 the employee's regular rate of compensation for each work day that a meal period was not
2 lawfully provided in an amount to be proven at time of trial.

3 84. Also, as a direct result of Defendants' violations of Labor Code §§ 226.7 and 512,
4 and IWC Wage Order § 11, Defendants, and each of them, are liable to Plaintiffs and the Meal
5 Break Subclass for unpaid wage premiums, penalties, costs, and interest.

6 **FIFTH CAUSE OF ACTION**

7 **FAILURE TO PROVIDE REST BREAKS**

8 (Labor Code §§ 226.7 and 512; IWC Wage Order § 12)

9 *Plaintiffs and the Rest Break Subclass Against All Defendants*

10 85. Plaintiffs incorporate the preceding paragraphs of the First Amended Complaint
11 as if fully alleged herein.

12 86. Plaintiffs and the Rest Break Subclass are and/or were employees of Defendants
13 who did not receive proper protections and benefits of the laws governing mandatory rest breaks.

14 87. Labor Code § 226.7 requires employers, including Defendants, to provide rest
15 breaks to its employees as mandated by Order of the Industrial Welfare Commission.

16 88. The IWC Wage Order § 12 states, in part, that every employer shall authorize and
17 permit all employees to take rest periods, which insofar as practicable shall be in the middle of
18 each work period. Employees shall receive a 10-minute rest period every four hours or major
19 fraction thereof that they are required to work. Authorized rest period time shall be counted, as
20 hours worked, for which there shall be no deduction from wages.

21 89. Pursuant to Labor Code § 226.7(b) and Section 12(B) of the applicable Wage
22 Order, Defendants shall pay Plaintiffs and the Represented Employees one additional hour of pay
23 at his regular rate of compensation for each day that the rest period is not provided.

24 90. At all relevant times, Defendants also failed to provide Plaintiffs and the Rest
25 Break Subclass with 10 minutes of net rest break time for every 4 hours worked, or major
26 fraction thereof, as mandated by California law. Defendants did not schedule rest breaks for the
27 Rest Break Subclass and the Rest Break Subclass were often not authorized and/or permitted to
28 take mandated rest breaks due to being overwhelmed by their hectic workload. Furthermore, on

occasions when the Rest Break Subclass worked longer shifts, Defendants failed to authorize and/or permit mandated third or fourth rest breaks. Also, at all relevant times, Plaintiffs and the Rest Break Subclass were denied paid rest breaks by virtue of Defendants' policy that only paid on a piece-rate basis. As Plaintiffs and the Rest Break Subclass could not generate piece-rate pay during a rest break, they were illegally denied paid rest breaks.

91. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage Order every pay period because Plaintiffs and the Rest Break Subclass were not provided with all mandatory rest periods and Defendants failed to pay Plaintiffs and the Represented Employees one additional hour of compensation in lieu thereof.

92. At all relevant times herein, Defendants failed to provide Plaintiffs and the Rest Break Subclass all mandated rest breaks and failed to pay wage premiums in lieu of mandated rest periods, thereby receiving an economic benefit.

93. By their failure to provide Plaintiffs and the Rest Break Subclass with rest breaks as required by California law, and failing to pay one hour of additional wages in lieu of each rest break not provided, Defendants willfully violated Labor Code §§ 226.7 and 512, and IWC Wage Order § 12. Accordingly, Defendants are liable for one hour of additional wages at the employee's regular rate of compensation for each workday that a paid rest break was not lawfully provided in an amount to be proven at time of trial.

94. Also, as a direct result of Defendants' violations of Labor Code §§ 226.7 and 512, and IWC Wage Order § 12, Defendants, and each of them, are liable to Plaintiffs and the Rest Break Subclass for unpaid wage premiums, penalties, costs, and interest.

SIXTH CAUSE OF ACTION

FAILURE TO REIMBURSE BUSINESS EXPENSES

(Labor Code § 2802)

Plaintiffs and the Unreimbursed Expense Subclass against All Defendants

95. Plaintiffs incorporate the preceding paragraphs of the First Amended Complaint as if fully alleged herein.

1 96. Plaintiffs and the Unreimbursed Expense Subclass are and/or were employees of
2 Defendants who did not receive proper protections and benefits of the laws governing
3 reimbursement of business expenses.

4 97. Labor Code § 2802(a) requires that the employer indemnify its employees for
5 expenses incurred while discharging their duties or in obedience to directions of their employer.

6 98. At all relevant times herein mentioned, as a condition of employment, Defendants
7 required Plaintiffs and the Unreimbursed Expense Subclass to incur substantial business-related
8 expenses and costs without reimbursement.

9 99. At all relevant times herein, Defendants violated Labor Code § 2802(a) when they
10 failed to reimburse Plaintiffs and the Unreimbursed Expense Subclass for expenses incurred as a
11 direct consequence of their employment with Defendants and/or under the direction of
12 Defendants.

13 100. At all relevant times herein, Defendants failed to reimburse the Unreimbursed
14 Expense Subclass, including Plaintiffs, for expenses incurred while discharging duties to
15 Defendants, thereby receiving an economic benefit.

16 101. As a direct result of Defendants' violation of Labor Code § 2802 and IWC Wage
17 Order § 9(B), Plaintiffs and the Unreimbursed Expense Subclass have suffered, and continue to
18 suffer, substantial losses related to such incurred expenses, expenses, and attorney's fees in
19 seeking to compel Defendants to fully perform their obligations under the law, all in an amount
20 to be proved at time of trial.

21 102. Labor Code § 2802(b) states that "[a]ll awards made by a Court for
22 reimbursement of necessary expenditures" shall carry interest, at the same rate as judgments in
23 civil actions, and said interest will accrue from the date on which the employee incurred the
24 necessary expenditure or loss including, but not limited to, reasonable costs and attorney's fees
25 incurred by the employee enforcing the rights granted pursuant to Labor Code § 2802. The exact
26 amount of the necessary expenditures or losses is in an amount to be proven at time of trial.

27 103. Furthermore, Labor Code § 2802(c) states that "[f]or the purposes of this section,
28 the term 'necessary expenditures or losses' shall include all reasonable costs, including, but not

1 limited to, attorney's fees incurred by the employee in enforcing the rights granted by this
2 section." Therefore, Plaintiffs and the Represented Employees seek to recover the unreimbursed
3 expenses, interest on the unreimbursed expenses, and the costs and attorney's fees necessarily
4 incurred in pursuing same. The exact amount of reimbursements, interest, costs, and attorney's
5 fees will be in an amount to be proved at the time of trial.

6 **SEVENTH CAUSE OF ACTION**

7 **FAILURE TO TIMELY PAY FINAL WAGES**

8 (Labor Code §§ 201 – 203)

9 *Plaintiffs and the Waiting Time Penalties Subclass against All Defendants*

10 104. Plaintiffs incorporate the preceding paragraphs of the First Amended Complaint
11 as if fully alleged herein.

12 105. Plaintiffs and the Waiting Time Penalties Subclass are and/or were employees of
13 Defendants who did not receive proper protections and benefits of the laws governing the timing
14 and payment of wages.

15 106. Labor Code § 201 requires that the employer immediately pay any wages, without
16 abatement or reduction, to any employee who is discharged.

17 107. Labor Code § 202 requires that the employer pay all wages earned and unpaid,
18 without abatement or reduction, no later than 72 hours of receiving an employee's notice of
19 intent to quit or immediately at the time of quitting if at least a 72-hour notice was provided.

20 108. Labor Code §§ 201-203 cause the unpaid wages of the employee to continue as a
21 penalty from the due date thereof at the same rate until paid or until an action therefore is
22 commenced, but the wages shall not continue for more than thirty (30) days.

23 109. At all relevant times, Defendants employed a policy and practice whereby
24 Plaintiffs and the Waiting Time Penalties Subclass were not paid all wages due and owing upon
25 separation of employment within the time required by Labor Code §§ 201 and 202.

26 110. Also, at all relevant times, Defendants engaged in the practice of failing to pay all
27 wages due and owing to Plaintiffs and the Waiting Time Penalties Subclass upon separation of
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1 employment, including, but not limited to, minimum, regular, and overtime wages, vacation
2 wages, as well as meal and rest period premiums.

3 111. Furthermore, Defendants failed to pay all wages due and owing to the Waiting
4 Time Subclass because of the failure to pay all required sick pay wages. Labor Code § 246(l)(1)
5 provides that paid sick time for non-exempt employees must be “calculated in the same manner
6 as the regular rate of pay for the workweek in which the employee uses paid sick time, whether
7 or not the employee actually works overtime in that workweek.” Additionally, Labor Code §
8 246(l)(2) states that the paid sick time must be “calculated by dividing the employee’s total
9 wages, not including overtime premium pay, by the employee’s total hours worked in the full
10 pay periods of the prior 90 days of employment.” Here, Defendants only calculated and paid sick
11 pay at the base rate of pay, rather than at the rate required by Labor Code § 246, leading to
12 unpaid sick pay and violations of Labor Code §§ 201 – 203.

13 112. Plaintiffs alleges that, at all times material to this action, Defendants had a
14 planned pattern and practice of failing to timely pay Plaintiffs and the Waiting Time Penalties
15 Subclass all wages due and owing upon separation of employment as required by Labor Code §§
16 201 and 202. Consequently, pursuant to Labor Code § 203, Defendants owe Plaintiffs and the
17 Waiting Time Penalties Subclass the above-described waiting time penalty, all in an amount to
18 be shown according to proof at trial and within the jurisdiction of this Court.

19 **EIGHTH CAUSE OF ACTION**

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

21 (Labor Code § 226)

22 *Plaintiffs and the Wage Statement Penalties Subclass against All Defendants*

23 113. Plaintiffs incorporate the preceding paragraphs of the First Amended Complaint
24 as if fully alleged herein.

25 114. Plaintiffs and the Wage Statement Penalties Subclass are and/or were employees
26 of Defendants who did not receive proper protections and benefits of the laws governing the
27 provision of accurate itemized wage statements.
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1 115. Labor Code § 226(a) requires an employer to provide its employees with itemized
2 wage statements accurately stating gross wages earned, all deductions, net wages earned, the
3 inclusive dates of the pay period, the employee's name and the last four digits of his or her
4 Social Security number (or employee identification number), the name and address of the legal
5 entity that is the employer, and all applicable hourly rates in effect during the pay period and the
6 corresponding number of hours worked at each hourly rate by the employee.

7 116. Defendants violates Labor Code § 226(a) every pay period with respect to
8 Plaintiffs and the Represented Employees because Defendants failed to provide any document
9 that could constitute a wage statement within the meaning of Labor Code § 226.

10 117. Additionally, Defendants violate Labor Code § 226(a) every pay period with
11 respect to Plaintiffs and the Wage Statement Penalties Subclass due to violations including:
12 failure to accurately state total hours worked (for example, the wage statements failed to
13 accurately reflect the compensable hours worked); failure to accurately state gross wages earned;
14 failure to accurately state all deductions; failure to accurately state net wages earned; failure to
15 state the inclusive dates of the pay period; failure to state the applicable hourly rates (including
16 the accurate overtime rate of pay); failure to accurately state the corresponding number of hours
17 worked at each hourly rate; and failure to accurately identify the name and address of the legal
18 entity of the employer.

19 118. Additionally, Defendants' wage statements directly violated Labor Code § 226(a)
20 each period due to the failure to pay and report premium wages for denied meal periods and rest
21 breaks under § 226.7.

22 119. Therefore, Defendants violate Labor Code § 226(a) every pay period with respect
23 to Plaintiffs and the Wage Statement Penalties Subclass because Defendants failed to provide a
24 wage statement to Plaintiffs and the Wage Statement Penalties Subclass that complied with the
25 requirements of Labor Code § 226(a).

26 120. Defendants' failure to provide the required writing deprived Plaintiffs and the
27 Wage Statement Penalties Subclass of the ability to know, understand, and question the
28 calculation and rate of pay and hours used to calculate the wages paid by Defendants. Therefore,

1 Plaintiffs and the Wage Statement Penalties Subclass had no way to dispute the resulting
2 miscalculation of wages, all of which resulted in an unjustified economic enrichment to said
3 Defendants. As a direct result, Plaintiffs and the Wage Statement Penalties Subclass have
4 suffered and continue to suffer, substantial losses related to the use and enjoyment of such
5 wages, lost interest on such wages and expenses and attorney's fees in seeking to compel
6 Defendants to fully perform its obligation under state law, all to their respective damages in
7 amounts according to proof at trial.

8 121. As a result of Defendants' knowing and intentional failure to comply with Labor
9 Code § 226(a), Plaintiffs and the Wage Statement Penalties Subclass have suffered an injury in
10 that each was prevented from knowing, understanding and disputing the wage payments paid to
11 them. Furthermore, Plaintiffs and the Wage Statement Penalties Subclass have each suffered an
12 injury in that the failure to show all wages earned on the itemized wage statements resulted in
13 Plaintiffs and the Represented Employees being denied all necessary deductions, payments, and
14 withholdings owed by the employer, including, but not limited to, the failure to make all
15 necessary contributions for unemployment benefits, social security benefits, proper payment of
16 taxes and withholdings, and other mandated state and federal benefits.

17 122. Plaintiffs have also been injured as a result of having to bring this action to
18 attempt to obtain correct wage information following Defendants' refusal to comply with many
19 of the mandates of California's Labor Code and related laws and regulations.

20 123. Labor Code § 226(e) requires Defendants to pay the greater of all actual damages
21 or fifty dollars (\$50.00) per employee for the initial pay period in which a violation occurred, and
22 one hundred dollars (\$100.00) per employee for each violation in subsequent pay periods, plus
23 attorney's fees and costs, to Plaintiffs and the Wage Statement Penalties Subclass who were
24 injured by Defendants' failure to comply with Labor Code § 226(a). The exact amount of the
25 applicable penalty is all in an amount to be shown according to proof at trial.

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1 Plaintiffs seek to enforce important rights affecting the public interest within the meaning of
2 Code of Civil Procedure § 1021.5.

3 132. A violation of California Business & Professions Code § 17200, et seq. may be
4 predicated on the violation of any state or federal law. All of the acts described herein as
5 violations of, among other things, the California Labor Code and IWC Wage Orders, are
6 unlawful and in violation of public policy, and in addition are immoral, unethical, oppressive,
7 fraudulent and unscrupulous, and thereby constitute unfair, unlawful and/or fraudulent business
8 practices in violation of California Business and Professions Code §§ 17200, et seq.

9 133. Plaintiff, individually, and on behalf of the Represented Employees, has no plain,
10 speedy, and/or adequate remedy at law to redress the injuries which they have suffered as a
11 consequence of Defendants' unfair, unlawful and/or fraudulent business practices. As a result of
12 the unfair, unlawful and/or fraudulent business practices described above, Plaintiff, individually,
13 and on behalf of the Represented Employees, has suffered and will continue to suffer irreparable
14 harm unless Defendants, and each of them, are restrained from continuing to engage in said
15 unfair, unlawful and/or fraudulent business practices.

16 134. Plaintiff, individually, and on behalf of the Represented Employees, is entitled to,
17 and does, seek such relief as may be necessary to disgorge the profits which Defendants have
18 acquired, or of which Plaintiffs and Represented Employees have been deprived, by means of the
19 above-described unfair, unlawful and/or fraudulent business practices. Plaintiffs and the
20 Represented Employees are not obligated to establish individual knowledge of the unfair
21 practices of Defendants in order to recover restitution.

22 135. Plaintiffs, individually, and on behalf of the Represented Employees, are further
23 entitled to and do seek a declaration that the above-described business practices are unfair,
24 unlawful and/or fraudulent, and injunctive relief restraining Defendants, and each of them, from
25 engaging in any of the above-described unfair, unlawful and/or fraudulent business practices in
26 the future.

27 136. Pursuant to Business & Professions Code §§ 17200, et seq., Plaintiffs and
28 Represented Employees are entitled to restitution of the wages withheld and retained by

Defendants during a period that commences four years prior to the filing of this complaint; a permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiffs and Represented Employees; an award of attorneys' fees pursuant to California Code of Civil Procedure § 1021.5 and other applicable laws; and an award of costs.

VI. PAGA CAUSES OF ACTION (Cal. Lab. Code §§ 2698 – 2699.5)

137. Plaintiffs are “aggrieved employees” under the PAGA as they were employed by Defendants during the applicable statutory period and suffered one or more of the Labor Code violations alleged herein. As such, Plaintiffs may recover the remedies described herein in a civil action filed on behalf of herself and all other similarly situated current and former aggrieved employees in California against whom one or more of the alleged violations was committed (hereinafter the “Aggrieved Employees”).

138. Plaintiffs seek to recover all applicable and available PAGA remedies pursuant to Labor Code § 2699, as well as attorneys' fees, costs, and/or other damages as permitted by PAGA through a representative action pursuant to the PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal. 4th 969. Therefore, Plaintiffs are not required to, nor do they, seek class certification of the PAGA claims under Code of Civil Procedure § 382.

139. Pursuant to Labor Code § 2699.3(a), Plaintiffs gave written notice by online filing to the Labor and Workforce Development Agency (“LWDA”) and by certified mail to Defendants of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. More than sixty-five (65) days have elapsed since the date Plaintiffs provided the written notice of the claims alleged herein without the LWDA assuming jurisdiction over the claims alleged. Accordingly, Plaintiffs have fully satisfied the administrative prerequisites to suit under the PAGA.

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1 and entirely essential aspect of Defendants' business. In fact, Plaintiffs and the Aggrieved
2 Employees were tasked to perform the one and only service that Defendants provided: home
3 repair and remodeling services, among other related tasks. Additionally, the customers are
4 and/or were Defendants' customers, not those of Plaintiffs or the Aggrieved Employees.
5 Plaintiffs and the Aggrieved Employees were also prohibited from performing similar services
6 for other companies and, thus, were not engaged in an independently established trade,
7 occupation or business of the same nature as the work performed by Defendants. And, perhaps
8 most importantly, Defendants retained the right to terminate Plaintiffs and the Aggrieved
9 Employees' working relationship without cause and at its discretion.

10 144. Despite the facts discussed herein, Defendants misclassified Plaintiffs and the
11 Represented Employees as independent contractors rather than as employees.

12 145. Labor Code § 226.8(a) states "It is unlawful for any person or employer to engage
13 in any of the following activities: (1) Willful misclassification of an individual as an independent
14 contractor."

15 146. Labor Code § 226.8(b) states that if "a person or employer has engaged in any of
16 the enumerated violations of subdivision (a), the person or employer shall be subject to a civil
17 penalty of not less than five thousand dollars (\$5,000) and not more than fifteen thousand dollars
18 (\$15,000) for each violation, in addition to any other penalties or fines permitted by law."

19 147. Labor Code § 226.8(c) further states that if "a person or employer has engaged in
20 any of the enumerated violations of subdivision (a) and the person or employer has engaged in or
21 is engaging in a pattern or practice of these violations, the person or employer shall be subject to
22 a civil penalty of not less than ten thousand dollars (\$10,000) and not more than twenty-five
23 thousand dollars (\$25,000) for each violation, in addition to any other penalties or fines
24 permitted by law.

25 148. At all relevant times herein, Defendants engaged in a pattern and practice of
26 willfully and knowingly misclassifying Plaintiffs and the Aggrieved Employees as independent
27 contractors. Therefore, Plaintiffs and the Aggrieved Employees are entitled to the stepped-up
28 penalties as set forth in Labor Code § 226.8(c).

1 149. As a result of the unlawful employment practices alleged herein, Plaintiffs seek
2 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
3 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

4 **ELEVENTH CAUSE OF ACTION**

5 **PAGA ASSESSMENT FOR FAILURE TO PAY MINIMUM WAGES**

6 (Labor Code §§ 200, 1194, 1194.2, 1197; IWC Wage Order § 4)

7 *Plaintiffs and the Aggrieved Employees against All Defendants*

8 150. Plaintiffs incorporate the preceding paragraphs of the First Amended Complaint
9 as if fully alleged herein.

10 151. Plaintiffs and the Aggrieved Employees were not exempt from the requirement to
11 be paid at least the applicable California minimum wage throughout the statutory period for each
12 hour worked.

13 152. As a result of the Defendants' policies and practices alleged herein, Plaintiffs and
14 the Aggrieved Employees were not provided proper minimum and regular wages. Thus, the
15 Aggrieved Employees were required to perform off-the-clock work that Defendants either knew
16 or should have known they were performing and, as a result of these policies and practices,
17 Defendants failed to pay Plaintiffs and the Aggrieved Employees for all hours worked.

18 153. Consequently, Defendants violated California Labor Code laws and minimum
19 wage laws, *inter alia*, Labor Code §§ 200, 221, 222, 223, 1197, IWC Wage Order 9, § 4, and
20 Cal. Code Regs., tit. 8, section 11090, subds. 1 and 4(B).

21 154. Plaintiffs are informed and believe and thereon allege that Defendants
22 intentionally, willfully, and improperly failed to pay wages to Plaintiffs and the Aggrieved
23 Employees for each hour worked in violation of Labor Code §§ 221-223, 1194 and 1197.

24 155. As a result of the unlawful employment practices alleged herein, Plaintiffs seek
25 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
26 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

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1 **TWELFTH CAUSE OF ACTION**

2 **PAGA ASSESSMENT FOR FAILURE TO PAY OVERTIME WAGES**

3 (Labor Code §§ 204 and 510; IWC Wage Order § 3(A))

4 *Plaintiffs and the Aggrieved Employees against All Defendants*

5 156. Plaintiffs incorporate the preceding paragraphs of the First Amended Complaint
6 as if fully alleged herein.

7 157. Plaintiffs and the Aggrieved Employees were employees of Defendants who did
8 not receive proper protections and benefits of the laws governing payment of overtime wages.

9 158. Labor Code § 204 requires that the employer timely pay all overtime wages to its
10 employees. Labor Code § 510(a) and the applicable IWC Wage Order § 3(A) provide that any
11 work performed in excess of eight (8) hours in one workday or in excess of forty (40) hours in
12 any one workweek shall be compensated at the rate of no less than one and one-half times the
13 regular rate of pay for an employee. Furthermore, any work performed in excess of twelve (12)
14 in one workday shall be compensated at twice the regular rate of pay for an employee.

15 159. At all relevant times, Plaintiffs and the Aggrieved Employees were required by
16 Defendants to work hours in excess of 8 and/or 12 per day and/or 40 per week. However, due to
17 Defendants' policies and practices alleged herein, Defendants failed to compensate Plaintiffs and
18 the Aggrieved Employees for all required overtime compensation.

19 160. Defendants violate Labor Code §§ 204 and 510 and the applicable IWC Wage
20 Order § 3(A) every pay period with respect to Plaintiffs and the Aggrieved Employees because
21 Defendants required its employees to work hours in excess of 8 and/or 12 per day and/or 40 per
22 week without proper overtime compensation.

23 161. Plaintiffs are informed and believe and thereon allege that Defendants
24 intentionally, willfully, and improperly failed to pay proper overtime wages to Plaintiffs and the
25 Aggrieved Employees in violation of Labor Code §§ 204, 221-223, 510, 1194 and 1197.

26 162. As a result of the unlawful employment practices alleged herein, Plaintiffs seek
27 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
28 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

1 **THIRTEENTH CAUSE OF ACTION**

2 **PAGA ASSESSMENT FOR FAILURE TO PROVIDE SEPARATE COMPENSATION**
3 **FOR REST BREAKS AND OTHER NONPRODUCTIVE TIME**

4 (Labor Code § 226.2)

5 *Plaintiffs and the Aggrieved Employees against All Defendants*

6 163. Plaintiffs incorporate the preceding paragraphs of the First Amended Complaint
7 as if fully alleged herein.

8 164. Labor Code § 226.2 requires employers that pay their employees on a piece-rate
9 basis to provide separate payment for rest and recovery periods at a regular hourly rate that is no
10 less than the higher of the applicable minimum wage or “an average hourly rate determined by
11 dividing the total compensation for the workweek, exclusive of compensation for rest and
12 recovery periods and any premium compensation for overtime, by the total hours worked during
13 the workweek, exclusive of rest and recovery periods.” Labor Code § 226.2(a)(3)(A).

14 165. Furthermore, Labor Code § 226.2 requires employers that pay their employees on
15 a piece-rate basis to provide separate payment for nonproductive time at an hourly rate that is no
16 less than the applicable minimum wage. Labor Code § 226.2(a)(4).

17 166. At all relevant times, Defendants paid the Aggrieved Employees on a piece-rate
18 basis failed to compensate them for all rest and recovery periods and all other nonproductive
19 time separate from any piece-rate compensation at the rate required by Labor Code § 226.2.
20 Therefore, Defendants violate Labor Code § 226.2 every pay period with respect to the
21 Aggrieved Employees.

22 167. As a result of the unlawful employment practices alleged herein, Plaintiffs seek
23 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
24 and seeks to recover all attorneys’ fees, costs, and/or any other damages permitted under PAGA.

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1 **FOURTEENTH CAUSE OF ACTION**

2 **PAGA ASSESSMENT FOR FAILURE TO PROVIDE COMPLIANT MEAL PERIODS**

3 (Labor Code § 226.7 and 512; IWC Wage Order § 11, 12)

4 *Plaintiffs and the Aggrieved Employees against All Defendants*

5 168. Plaintiffs incorporate the preceding paragraphs of the First Amended Complaint
6 as if fully alleged herein.

7 169. Plaintiffs and the Aggrieved Employees are and/or were employees of Defendants
8 who did not receive proper protections and benefits of the laws governing meal periods.

9 170. Labor Code § 226.7 requires employers, including Defendants, to provide
10 employees with meal periods as mandated by the Industrial Welfare Commission.

11 171. Labor Code § 512(a), in part, provides that employers, including Defendants, may
12 not employ an employee for a work period of more than five hours per day without providing an
13 employee the opportunity to take an uninterrupted meal period of not less than 30 minutes,
14 except that if the total work period per day of the employee is no more than six hours, the meal
15 period may be waived by mutual consent of both the employer and the employee. Employers
16 may not employ an employee for a work period more than 10 hours per day without providing
17 the employee with a second meal period of not less than 30 minutes.

18 172. Pursuant to Labor Code § 226.7(b) and the applicable IWC Wage Order § 11(B),
19 Defendants shall pay an employee one additional hour of pay at the employee's regular rate of
20 pay for each meal period that is missed.

21 173. At all relevant times herein, and based on the allegations herein, Plaintiffs and the
22 Aggrieved Employees were denied the meal periods to which they were entitled. Therefore,
23 Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage Order every pay
24 period because Plaintiffs and the Aggrieved Employees were not provided with all mandatory
25 meal periods and Defendants failed to pay Plaintiffs and the Aggrieved Employees one
26 additional hour of compensation at the regular rate of pay in lieu thereof.

27 174. On information and belief, Plaintiffs and the Aggrieved Employees did not
28 voluntarily or willfully waive the mandated meal periods. Any expressed or implied waivers

1 obtained from Plaintiffs and the Aggrieved Employees were not willfully obtained, were not
2 voluntarily agreed to, were a condition of employment, or were a part of a contract of an
3 unlawful adhesion. Defendants did not permit or authorize Plaintiffs and the Aggrieved
4 Employees to take meal periods in accordance with California law.

5 175. As a result of the unlawful employment practices alleged herein, Plaintiffs seeks
6 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
7 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

8 **FIFTEENTH CAUSE OF ACTION**

9 **PAGA ASSESSMENT FOR FAILURE TO PROVIDE REST BREAKS**

10 (Labor Code § 226.7 and 512; IWC Wage Order § 12)

11 *Plaintiffs and the Aggrieved Employees against All Defendants*

12 176. Plaintiffs incorporate the preceding paragraphs of the First Amended Complaint
13 as if fully alleged herein.

14 177. Plaintiffs and the Aggrieved Employees are and/or were employees of Defendants
15 who did not receive proper protections and benefits of the laws governing mandatory rest breaks.

16 178. Labor Code § 226.7 requires employers, including Defendants, to provide rest
17 breaks to its employees as mandated by Order of the Industrial Welfare Commission.

18 179. The IWC Wage Order § 12 states, in part, that every employer shall authorize and
19 permit all employees to take rest periods, which insofar as practicable shall be in the middle of
20 each work period. Employees shall receive a 10-minute rest period every four hours or major
21 fraction thereof that they are required to work. Authorized rest period time shall be counted, as
22 hours worked, for which there shall be no deduction from wages.

23 180. Pursuant to Labor Code § 226.7(b) and Section 12(B) of the applicable Wage
24 Order, Defendants shall pay Plaintiffs and the Aggrieved Employees one additional hour of pay
25 at his regular rate of compensation for each day that the rest period is not provided.

26 181. At all relevant times, and based on the allegations herein, Defendants failed to
27 provide Plaintiffs and the Aggrieved Employees with 10 minutes of net rest break time for every
28 4 hours worked, or major fraction thereof, as mandated by California law. Thus, Defendants

1 violated Labor Code §§ 226.7, 512, and the applicable IWC Wage Order every pay period
2 because Plaintiffs and the Aggrieved Employees were not provided with all mandatory rest
3 periods and Defendants failed to pay Plaintiffs and the Aggrieved Employees one additional hour
4 of compensation in lieu thereof.

5 182. As a result of the unlawful employment practices alleged herein, Plaintiffs seek
6 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
7 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

8 **SIXTEENTH CAUSE OF ACTION**

9 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

10 (Labor Code § 2802)

11 *Plaintiffs and the Aggrieved Employees against All Defendants*

12 183. Plaintiffs incorporate the preceding paragraphs of the First Amended Complaint
13 as if fully alleged herein.

14 184. Plaintiffs and the Aggrieved Employees are and/or were employees of Defendants
15 who did not receive proper protections and benefits of the laws governing reimbursement of
16 business expenses.

17 185. Labor Code § 2802(a) requires that the employer indemnify its employees for
18 expenses incurred while discharging their duties or in obedience to directions of their employer.

19 186. At all relevant times herein mentioned, as a condition of employment, Defendants
20 required Plaintiffs and the Aggrieved Employees to incur substantial business-related expenses
21 and costs without reimbursement. Thus, Defendants violated Labor Code § 2802(a) when they
22 failed to reimburse Plaintiffs and the Aggrieved Employees for expenses incurred as a direct
23 consequence of their employment with Defendant and/or under the direction of Defendants.

24 187. As a result of the unlawful employment practices alleged herein, Plaintiffs seek
25 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
26 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

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1 **SEVENTEENTH CAUSE OF ACTION**

2 **PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY WAGES EACH PERIOD**

3 (Labor Code § 204)

4 *Plaintiffs and the Aggrieved Employees against All Defendants*

5 188. Plaintiffs incorporate the preceding paragraphs of the First Amended Complaint
6 as if fully alleged herein.

7 189. Plaintiffs and the Aggrieved Employees are and/or were employees of Defendants
8 who did not receive proper protections and benefits of the laws regarding the timing of payment
9 of wages each period.

10 190. Labor Code § 204(a) states that all wages earned by a person are due and payable
11 twice during each calendar month, and further states that wages earned during the first through
12 fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that
13 wages earned between the sixteenth and last day of the month must be paid by the tenth day of
14 the following month.

15 191. Furthermore, Labor Code § 204(d) states “[t]he requirements of this section shall
16 be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if
17 the wages are paid not more than seven calendar days following the close of the payroll period.”

18 192. At all relevant times herein, Defendants did not provide Plaintiffs and the
19 Aggrieved Employees with all wages due and owing each period within the time required by
20 Labor Code § 204. Moreover, Defendants did not provide Plaintiffs and the Aggrieved
21 Employees with all wages due and owing each pay period, including, but not limited to,
22 minimum, regular, and overtime wages, as well as meal and rest period premiums and sick time
23 at the proper rate, within the time specified by Labor Code § 204.

24 193. As a result of the unlawful employment practices alleged herein, Plaintiffs seek
25 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
26 and seeks to recover all attorneys’ fees, costs, and/or any other damages permitted under PAGA.

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1 **EIGHTEENTH CAUSE OF ACTION**

2 **PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY FINAL WAGES**

3 (Labor Code §§ 201 – 203)

4 *Plaintiffs and the Aggrieved Employees against All Defendants*

5 194. Plaintiffs incorporate the preceding paragraphs of the First Amended Complaint
6 as if fully alleged herein.

7 195. Plaintiffs and the Aggrieved Employees are and/or were employees of Defendants
8 who did not receive proper protections and benefits of the laws governing the timing and
9 payment of final wages.

10 196. Labor Code § 201 requires that the employer immediately pay any wages, without
11 abatement or reduction, to any employee who is discharged.

12 197. Labor Code § 202 requires that the employer pay all wages earned and unpaid,
13 without abatement or reduction, no later than 72 hours of receiving an employee's notice of
14 intent to quit or immediately at the time of quitting if at least a 72-hour notice was provided.

15 198. Labor Code §§ 201-203 cause the unpaid wages of the employee to continue as a
16 penalty from the due date thereof at the same rate until paid or until an action therefore is
17 commenced, but the wages shall not continue for more than thirty (30) days.

18 199. At all relevant times here, Defendants did not provide Plaintiffs and the
19 Aggrieved Employees with all wages due and owing upon separation of employment, including,
20 but not limited to, minimum, regular, and overtime wages, vacation and sick pay at the proper
21 rates, and meal and rest period premiums, within the time specified by Labor Code §§ 201 – 203.

22 200. Plaintiffs allege that, at all times material to this action, Defendants had a planned
23 pattern and practice of failing to timely pay to Plaintiffs and the Aggrieved Employees all wages
24 due and owing upon separation of employment as required by Labor Code §§ 201 and 202.

25 201. As a result of the unlawful employment practices alleged herein, Plaintiffs seek
26 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
27 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

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1 **NINETEENTH CAUSE OF ACTION**

2 **PAGA ASSESSMENT FOR**

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

4 (Labor Code §§ 226 and 226.3)

5 *Plaintiffs and the Aggrieved Employees against All Defendants*

6 202. Plaintiffs incorporate the preceding paragraphs of the First Amended Complaint
7 as if fully alleged herein.

8 203. Plaintiffs and the Aggrieved Employees are and/or were employees of Defendants
9 who did not receive proper protections and benefits of the laws governing the provision of
10 accurate itemized wage statements.

11 204. Labor Code § 226(a) requires an employer to provide its employees with itemized
12 wage statements accurately stating gross wages earned, all deductions, net wages earned, the
13 inclusive dates of the pay period, the employee's name and the last four digits of his or her
14 Social Security number (or employee identification number), the name and address of the legal
15 entity that is the employer, and all applicable hourly rates in effect during the pay period and the
16 corresponding number of hours worked at each hourly rate by the employee.

17 205. Defendants violates Labor Code § 226(a) every pay period with respect to
18 Plaintiffs and the Aggrieved Employees because Defendants failed to provide any document that
19 could constitute a wage statement within the meaning of Labor Code § 226.

20 206. Additionally, Defendants violate Labor Code § 226(a) every pay period with
21 respect to Plaintiffs and the Aggrieved Employees due to violations including: failure to
22 accurately state total hours worked (for example, the wage statements failed to accurately reflect
23 the compensable hours worked); failure to accurately state gross wages earned; failure to
24 accurately state all deductions; failure to accurately state net wages earned; failure to state the
25 inclusive dates of the pay period; failure to state the applicable hourly rates (including the
26 accurate overtime rate of pay); failure to accurately state the corresponding number of hours
27 worked at each hourly rate; and failure to accurately identify the name and address of the legal
28 entity of the employer.

207. Additionally, Defendants' wage statements directly violated Labor Code § 226(a) each period due to the failure to pay and report premium wages for denied meal periods and rest breaks under § 226.7.

208. As a result of the unlawful employment practices alleged herein, Plaintiffs seek the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699, and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves, on a representative basis, and all others similarly situated, prays for judgment and relief against Defendants, jointly and severally, as follows:

1. As to the Tenth through Nineteenth Causes of Action, the assessment of all applicable and available remedies under PAGA;
2. For reasonable attorneys' fees and costs as permitted under PAGA;
3. That the First through Ninth Causes of Action be certified as a class action;
4. That Plaintiffs be appointed as Class Representatives;
5. That counsel for Plaintiffs be appointed Class Counsel;
6. For all applicable statutory penalties recoverable under the First through Ninth Causes of Action to the extent permitted by law, including those pursuant to Labor Code and Orders of the Industrial Welfare Commission;
7. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted by law, including those pursuant to the Labor Code;
8. For injunctive relief and/or restitution as provided by the Labor Code and Business and Professions Code § 17200, *et seq.*;
9. For a declaratory judgment that Defendants have violated Labor Code §§ 200, 201, 202, 203, 204, 208, 210, 218.6, 221, 226, 226.2, 226.3, 226.7, 226.8, 227.3, 246, 510, 512, 558, 1194, 1197, 1198, 1199, and 2802, among other sections inadvertently omitted;

1 10. For an award of damages in the amount of unpaid compensation including, but
2 not limited to, unpaid wages, benefits, and penalties according to proof, including interest
3 thereon;

4 11. For pre- and post-judgment interest; and

5 12. For such other relief as the Court deems just and proper.

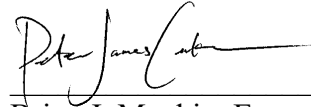
6 **DEMAND FOR JURY TRIAL**

7 WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated,
8 hereby demands a jury trial as to the First through Ninth Causes of Action pled herein.

9
10 Dated: August 7, 2023

LAUBY, MANKIN & LAUBY LLP

11
12 BY:



13 Brian J. Mankin, Esq.
14 Peter J. Carlson, Esq.
15 Attorneys for Plaintiff
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PROOF OF SERVICE
(Pursuant to CCP §§ 1013(a)(1) and 2015.5)

STATE OF CALIFORNIA)
) ss.
COUNTY OF RIVERSIDE)

I am employed in the County of Riverside, State of California. I am over the age of 18 and not a party to the within action; my business address is 5198 Arlington Avenue, PMB 513, Riverside, CA 92504.

On September 21, 2023, I caused to be served the foregoing document(s) described as follows:

FIRST AMENDED COMPLAINT

I declare that I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ **By Mail** I deposited such envelope in the mail at Riverside, California. The envelope was mailed with postage thereon fully prepaid.

☐ **By Facsimile** I sent this document via fax to all parties as listed on attached service list, on

☐ **By Overnight Service** I deposited such envelope in a facility regularly maintained by the United Parcel Service for receipt of items for overnight delivery, with overnight delivery expenses prepaid, addressed to the person to be served.

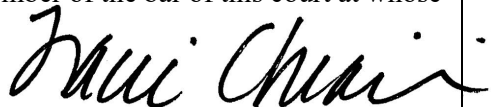
☒ **By Email or Electronic Transmission:** Pursuant to CCP § 1010.6 or an agreement of the parties to accept service by email or electronic transmission, I caused the document(s) to be sent from email address tracie@lmlfirm.com to the persons at the electronic notification address listed in the service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was not successful.

☐ **By Certified Mail-Return Receipt Requested** I caused such envelope with postage fully prepaid thereon, to be placed in the United States mail at Riverside, California

☐ **By Personal Service** I caused said document(s) to be personally served by hand on the parties listed on the attached service list.

☒ **State** I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on September 21, 2023, Riverside, California.

☐ **Federal** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.



Tracie Chiarito, Declarant

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