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Attorneys for Plaintiff JOSE LUIS DE JESUS
 JIMENEZ on behalf of himself and others similarly
 situated

SUPERIOR COURT OF CALIFORNIA**COUNTY OF LOS ANGELES**

JOSE LUIS DE JESUS JIMENEZ, on behalf
 of himself and all others similarly situated,

Plaintiff,

v.

GRACE STAFFING LLC., a California
 limited liability company; RADIANT
 SERVICES CORP., a California corporation;
 and DOES 1 to 10, inclusive,

Defendants.

CASE NO. 23STCV10897

[Assigned to Hon. Maren Nelson, Dept. 17]

**FIRST AMENDED CLASS ACTION
 COMPLAINT:**

- 1. Failure to Pay Overtime Wages in Violation of Labor Code sections 510 and 1198**
- 2. Failure to pay all Wages and Minimum Wages in Violation of Labor Code sections 1182, 1194, 1197, 1198;**
- 3. Failure to Provide Compliant Meal Breaks in Violation of Labor Code section 226.7;**
- 4. Failure to Provide Compliant Rest Breaks in Violation of Labor Code section 226.7;**
- 5. Failure to Provide COVID-19**

08/15/2023

David W. Slayton, Executive Officer / Clerk of Court

By: D. Tamayo Deputy

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- Supplemental Paid Sick Leave in Violation of Labor Code section 248.6;
6. Failure to Timely Pay Wages During Employment in Violation of Labor Code section 204;
 7. Failure to Timely Furnish Accurate Itemized Wage Statements in Violation of Labor Code section 226(a) and Failure to Maintain Accurate Records;
 8. Waiting Time Penalties Pursuant to Labor Code sections 201, 203;
 9. Failure to Provide Suitable Seating in Violation of Labor Code section 1198;
 10. Failure to Adopt Standards that Minimize Excessive Indoor Heat in Violation of California Labor Code §§ 6720, 226.7;
 11. Failure to Produce Records in Violation of Labor Code sections 226(b)(c), 1198.5 and 432;
 12. Violations of Business & Professions Code section 17200 et seq.;
 13. Civil Penalties Pursuant to PAGA Labor Code §§ 2698, et seq.

DEMAND FOR JURY TRIAL

1 Plaintiff, JOSE LUIS DE JESUS JIMENEZ (hereinafter “Plaintiff”) hereby submits his
2 First Amended Complaint against Defendants GRACE STAFFING LLC, a California limited
3 liability company; RADIANT SERVICES CORP., a California corporation and DOES 1 to 10
4 (hereinafter referred to as “Defendants”) on behalf of himself and the class of all other similarly
5 situated current and former employees of Defendants as follows:

6 **NATURE OF THE CASE**

7 1. This is a class action arising out of Defendants’ failure to provide their non-exempt
8 employees with all wages, compliant meal and rest breaks, failure to provide, pay all wages during
9 employment and at time of separation of employ, failure to provide compliant wage statements,
10 adequate seating and Covid-19 supplemental pay.

11 2. Grace Staffing is a staffing agency offering temporary staffing, direct hires,
12 independent consultants and third-party staffing options. Grace Staffing is headquartered in
13 Anaheim, California. Grace Staffing staffs Radiant Services Corp in Gardena, California. Radiant
14 Services is a commercial laundry and dry-cleaning facility. At all relevant times, Defendants issued
15 and maintained uniform, standardized scheduling and timekeeping practices and procedures for all
16 non-exempt, hourly paid employees in California, including Plaintiff and others similarly situated,
17 regardless of their position.

18 3. Defendants have maintained practices which have failed and continue to fail to pay
19 Plaintiff and other non-exempt employees all wages. Specifically, Defendants have a company-
20 wide policy of failing to pay all overtime. Rather, Defendants incorrectly calculate overtime.
21 Moreover, when clocking-in at the beginning of a shift and clocking-out for meals, Plaintiff alleges
22 there would be a line of people and would have to wait approximately five minutes. This time was
23 unpaid and off-the-clock.

24 4. Defendants also failed to provide Plaintiff and non-exempt employees with
25 compliant meal and rest breaks. Plaintiff alleges meal breaks were short as a result of walking a
26 long distance to the breakroom. Specifically, Plaintiff was required to clock-out and then walk to
27 the breakroom. This walking time should have been time that was paid. Rest breaks are also short
28 due to the walking time.

1 5. Moreover, Defendants failed to provide any seating for Plaintiff and other non-
2 exempt employees, and employees are required to stand for the duration of their shifts. Defendant
3 also maintains a very hot working environment and has not implemented standards to reduce heat
4 in the workplace.

5 6. In light of the foregoing, Defendants failed to provide Plaintiff and other non-
6 exempt employees with compliant wage statements and failed to timely pay wages during
7 employment in addition to final wages upon termination or separation from employment. Further,
8 Defendants provide non-compliant wage statements because wage statements are missing Covid-19
9 supplemental sick pay. Moreover, wage statements fail to correctly calculate overtime wages, fail
10 to state total hours worked and fail to state the company assigned. Defendants have also failed to
11 provide Plaintiff with any employment records.

12 7. Plaintiff brings Causes of Action One through Twelve (the “class claims”) as a class
13 action on behalf of himself and other similarly situated individuals who have worked for
14 Defendants in California, at any time from four-years prior to the filing of this complaint, through
15 the resolution of this action. Plaintiff, on his own behalf and on behalf of all Class Members, brings
16 the class claims pursuant to Labor Code sections 200-203, 204, 226, 226.7, 248, 432, 510, 1174,
17 1194, 1194.2, 1197, 1198, 6720, the applicable Industrial Welfare Commission (“IWC”) wage
18 order and under Business & Professions Code sections 17200-17208, for unfair competition due to
19 Defendants’ unlawful, unfair and fraudulent business acts and practices.

20 8. Plaintiff brings Cause of Action Thirteen as a proxy of the State of California on
21 behalf of other aggrieved employees for penalties under the Private Attorneys General Act
22 (PAGA). PAGA provides that any civil penalty assessed and collected by the Labor and Workforce
23 Development Agency (LWDA) for violations of applicable provisions of the California Labor
24 Code may, as an alternative, be recovered through a civil action brought by an aggrieved employee
25 on behalf of himself and other current or former employees pursuant to procedures outlined in
26 California Labor Code § 2699.3. PAGA also provides that an aggrieved employee can bring a civil
27 action on behalf of other aggrieved employees for violation of any other Labor Code provision that
28 does not itself contain a civil penalty, in which case the civil penalties are assessed at \$100 for each

aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation.

9. On May 15, 2023, Plaintiff provided written notice to the LWDA and by certified mail to Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. More than 65 calendar days have passed since the date notice was provided to the LWDA and Defendant. Accordingly, Plaintiff has satisfied the administrative prerequisites under California Labor Code Section 2699.3(a) to recover civil penalties against Defendants for violations of California Labor Code identified in this First Amended Complaint.

10. Plaintiff is informed and believes, and based thereon alleges, that Defendants have engaged in, among other things a system of willful violations of the Labor Code and the applicable IWC wage orders by creating and maintaining policies, practices and customs that knowingly deny employees the above stated rights and benefits.

11. Plaintiff is informed and believes, and based thereon alleges, that Defendants have engaged in, among other things a system of willful violations of the Labor Code and the applicable IWC wage orders by creating and maintaining policies, practices and customs that knowingly deny employees the above stated rights and benefits.

PARTIES

12. Plaintiff, JOSE LUIS DE JESUS JIMENEZ is an individual over the age of eighteen (18) and is now, and/or at all relevant times mentioned in this Complaint was, a resident and domiciliary of the State of California. During the relevant time period, Plaintiff worked for Defendants in Gardena, California from approximately July 2022 through approximately November 22, 2022. Plaintiff was hired by Grace Staffing and was assigned to Radiant Services. Plaintiff earned approximately \$16.25 per hour.

13. Plaintiff is informed and believes, and based thereon alleges, that Defendant GRACE STAFFING LLC., is a California limited liability company. Plaintiff is further informed and believes that at all times relevant hereto, Defendant has transacted, and continues to transact, business throughout the State of California.

1 14. Plaintiff is informed and believes, and based thereon alleges, that Defendant
2 RADIANT SERVICES CORP., is a California corporation. Plaintiff is further informed and
3 believes that at all times relevant hereto, Defendant has transacted, and continues to transact,
4 business throughout the State of California.

5 15. Plaintiff is informed and believes, and based upon such information and belief
6 alleges, that Defendants are, now and/or at all times mentioned in this Complaint were in some
7 manner legally responsible for the events, happenings and circumstances alleged in this Complaint.

8 16. Plaintiff is further informed and believes, and based upon such information and
9 belief alleges, that at all times herein mentioned, Defendants proximately caused Plaintiff, all
10 others similarly situated, and the general public to be subjected to the unlawful practices, wrongs,
11 complaints, injuries and/or damages alleged in this Complaint.

12 17. Plaintiff is informed and believes and based thereon alleges that at all times herein
13 mentioned Defendants and DOES 1 through 10, are and were corporations, business entities,
14 individuals, and partnerships, licensed to do business and actually doing business in the State of
15 California.

16 18. Plaintiff does not know the true names or capacities, whether individual, partner or
17 corporate, of the Defendants sued herein as DOES 1 through 10, inclusive, and for that reason, said
18 Defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this
19 complaint when the true names and capacities are known. Plaintiff is informed and believes and
20 based thereon alleges that each of said fictitious Defendants were responsible in some way for the
21 matters alleged herein and proximately caused Plaintiff and members of the general public and
22 class to be subject to the illegal employment practices, wrongs and injuries complained of herein.

23 19. At all times herein mentioned, each of said Defendants participated in the doing of
24 the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
25 Defendants, and each of them, were the agents, servants and employees of each of the other
26 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were acting
27 within the course and scope of said agency and employment.

28 20. At all times herein mentioned, the acts and omissions of various Defendants, and

1 each of them, concurred and contributed to the various acts and omissions of each and all of the
2 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
3 herein mentioned, Defendants, and each of them, ratified each and every act or omission
4 complained of herein. At all times herein mentioned, the Defendants, and each of them, aided and
5 abetted the acts and omissions of each and all of the other Defendants in proximately causing the
6 damages as herein alleged.

7 21. The members of the classes (as defined below), including the representative Plaintiff
8 named herein, have been employed during the Class Period in California. The practices and policies
9 which are complained of by way of this Complaint are enforced throughout the State of California.

10 **JURISDICTION AND VENUE**

11 22. The Court has jurisdiction over this class action pursuant to article 6, section 10 of
12 the California Constitution and California Code of Civil Procedure section 410.10.

13 23. Additionally, this Court has jurisdiction over Plaintiff's and the Class' claims for
14 injunctive relief, including restitution of earned wages, arising from Defendants' unfair
15 competition under Business & Professions Code sections 17203 and 17204. The Court also has
16 jurisdiction over Plaintiff's and the Class' claims as pursuant to the applicable Labor Code
17 provisions.

18 24. The Court has jurisdiction over Defendants because they are authorized to do
19 business in the State of California and are registered with the California Secretary of State.
20 Defendants do sufficient business with sufficient minimum contacts in California, and/or otherwise
21 intentionally avails itself of the California market through the advertising, marketing and sale of
22 goods and services, to render the exercise of jurisdiction over Defendants by the California court
23 consistent with traditional notions of fair play and substantial justice.

24 25. Venue is proper in Los Angeles County because the acts which give rise to this
25 litigation occurred in this county and because Defendants have employed class members in this
26 county and transacts business in this county.

27 **FACTUAL ALLEGATIONS**

28 26. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

27. Defendants have engaged in, and continue to engage in, unfair business practices in California by practicing, employing and utilizing the employment practices and policies outlined above.

Defendant's Failure to Pay Overtime Wages

28. During the Class Period, upon information and belief, Defendants have, and continue to have, a company-wide policy of discouraging and impeding Plaintiff and other non-exempt employees from recording hours worked that were outside of their scheduled shifts in order to limit the amount of overtime employees could accrue. On information and belief, this policy of limiting overtime, led Plaintiff and other class members to work off-the-clock before and after their shifts, and during meal periods. When clocking-in at the beginning of a shift and clocking-out for meals, Plaintiff alleges there would be a line of people and would have to wait approximately five minutes. This time was unpaid and off-the-clock. Further, Plaintiff was required to clock-out and then walk a considerable distance to the break room. The time spent walking was unpaid and off-the-clock.

29. Defendants knew or should have known that as a result of these company-wide practices and/or policies, Plaintiff and members of the Classes were performing assigned duties off-the-clock and were suffered or permitted to perform work for which they were not paid. Because Plaintiff and members of the Classes worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Further, overtime wages are calculated incorrectly resulting in unpaid overtime wages. For example, on Plaintiff's wage statement dated 11/23/2022, Plaintiff worked 4.72 hours of overtime at a rate of \$24.38. Plaintiff was paid \$115.05 but should have been paid \$115.07. The incorrect calculation can be seen on all of Plaintiff's wage statements where overtime hours are worked.

30. Therefore, Plaintiff and members of the Classes were not paid overtime wages for all of the overtime hours they actually worked.

Defendants' Failure to Pay all Wages and Minimum Wages

31. As stated above, during the relevant time period, Defendants have a policy of subjecting Plaintiff and members of the Classes to work off-the-clock.

32. Thus, Defendants did not pay at least minimum wages for all hours worked by Plaintiff and members of the Classes.

Defendants' Failure to Provide Compliant Meal Breaks

33. Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC wage order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC wage order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1041-1042.

34. As stated above, Defendants failed to provide compliant meal breaks to Plaintiff and members of the Classes. Plaintiff alleges meal breaks were frequently late and short due to walking time. Further, second meal breaks were never provided. Plaintiff and members of the Classes are entitled to a meal premium for each shift that a meal period was non-compliant.

Defendants' Failure to Provide Compliant Rest Breaks

35. Labor Code sections 226.7, 516, and 1198, and the applicable IWC wage order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the IWC. The applicable IWC wage order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3½) hours.

36. To comply with its obligation to authorize and permit rest periods under Labor Code

1 section 226.7 and the applicable IWC wage order, an employer must “relinquish any control over
2 how employees spend their break time, and relieve their employees of all duties—including the
3 obligation that an employee remains on call. A rest period, in short, must be a period of rest.”
4 *Augustus, et al. v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 269-270.

5 37. Rest breaks were short due to walking time and Defendants failed to provide rest
6 break premiums.

7 38. Accordingly, Defendants failed to authorize and permit all rest periods in violation
8 of Labor Code sections 226.7, 516, and 1198.

9 ***Defendants’ Failure to Provide Compliant Wage Statements***

10 39. During the class period, Defendants have knowingly and intentionally provided
11 Plaintiff and other non-exempt employees with uniform, incomplete, and inaccurate wage
12 statements. For example, Defendants issued uniform wage statements to Plaintiff and members of
13 the Classes that fail to correctly list: gross wages earned; total hours worked; net wages earned; and
14 all applicable hourly rates in effect during the pay period, including rates of pay for overtime
15 wages and/or meal period premiums, and the corresponding number of hours worked at each
16 hourly rate. Further, Defendants provide non-compliant wage statements because wage statements
17 are missing sick pay and Covid-19 supplemental sick pay. Moreover, wage statements do not
18 provide total hours worked, the company assigned to and supplemental sick pay.

19 40. Because Defendants did not record the time Plaintiff and members of the Classes
20 spent working off-the-clock, Defendants did not list the correct amount of gross wages and net
21 wages earned by Plaintiff and other non-exempt employees in compliance with section 226(a)(1)
22 and section 226(a)(5), respectively.

23 41. Defendants also failed to list the total number of hours worked by Plaintiff and
24 members of the Classes and failed to list the applicable hourly rates of pay in effect during the pay
25 period and the corresponding accurate number of hours worked at each hourly rate.

26 42. Because Defendants failed to provide the correct net and gross wages earned,
27 applicable rates of pay, and number of total hours worked on wage statements, Plaintiff and
28 members of the Classes have been prevented from verifying, solely from information on the wage

1 statements themselves, that they were paid correctly and in full. Instead, Plaintiff and members of
2 the Classes have had to look to sources outside of the wage statements themselves and reconstruct
3 time records to determine whether in fact they were paid correctly and the extent of underpayment,
4 thereby causing them injury.

5 ***Defendants' Failure to Timely Pay all Wages During Employment***

6 43. Labor Code section 204 requires that all wages earned by any person in any
7 employment between the 1st and the 15th days, inclusive, of any calendar month, other than those
8 wages due upon termination of an employee, are due and payable between the 16th and the 26th
9 day of the month during which the labor was performed, and that all wages earned by any person in
10 any employment between the 16th and the last day, inclusive, of any calendar month, other than
11 those wages due upon termination of an employee, are due and payable between the 1st and the
12 10th day of the following month.

13 44. Labor Code section 204 also requires that all wages earned for labor in excess of the
14 normal work period shall be paid no later than the payday for the next regular payroll period.
15 Alternatively, Labor Code section 204 provides that the requirements of this section are deemed
16 satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are
17 paid not more than seven (7) calendar days following the close of the payroll period.

18 45. During the class period, Defendants willfully failed to pay Plaintiff and members of
19 the Classes all wages due including, but not limited to, minimum wages, and/or meal and rest
20 period premiums, within the time periods specified by Labor Code section 204.

21 ***Defendants' Failure to Timely Pay Final Wage Upon Termination***

22 46. Defendants willfully failed to pay Plaintiff and members of the Classes who are no
23 longer employed by Defendants the earned and unpaid wages set forth above, including but not
24 limited to, minimum wages, and/or meal rest period premiums, either at the time of discharge, or
25 within seventy-two (72) hours of their leaving Defendants' employ. Rather, Plaintiff received his
26 final wages late and was never paid his accrued vacation wages.

27 ***Defendants' Failure to Provide Covid-19 Supplemental Sick Pay***

28 47. As of 2022, employers must provide employees with written notice that sets forth

1 the amount of Covid-19 supplemental paid sick leave that the employee has used through the pay
2 period in which it was due to be paid and shall list zero if a worker has not used any Covid-19
3 supplemental paid sick leave. Defendants also fail to provide Plaintiff and class members with such
4 written notice that sets forth the amount of Covid-19 supplemental paid sick leave that they have
5 used or were entitled to on wage statements.

6 ***Defendants' Failure to Provide Suitable Seating***

7 48. In Defendants' location there was, and continues to be, space to allow for the
8 presence and use of a seat or stool by Plaintiff and class members (with reasonable or no
9 modification to these work areas) during the performance of their work duties. Defendants could
10 provide Plaintiff and class members with a seat or stool, but instead denies them seating and forces
11 aggrieved employees to stand throughout the day. Plaintiff and other class members spent a
12 substantial portion of their day standing, regardless of their actual job title or description. The
13 nature of the work of an employee performing their job duties can reasonably be accomplished
14 from a seated position. However, Defendant systematically, and on a company-wide basis, did not
15 provide seats or stools at or near counters, forcing Plaintiff and other class members to stand
16 throughout their work shifts.

17 49. Defendant did not provide Plaintiff and other class members with seats or stools in
18 reasonable proximity to their work areas to allow them to use seats when it would not interfere
19 with the performance of their duties for times when they were not engaged in active duties that
20 require standing. In other words, to the extent Plaintiff and class members engaged in duties in
21 which the nature of the work required standing, Defendant denied them the use of seats nearby
22 during lulls in their work duties. Moreover, Defendant did not inform Plaintiff and other class
23 members of their rights to a seat or stool under California law.

24 ***Defendants' Failure to Minimize Excessive Indoor Heat***

25 50. Defendant failed to comply with California Labor Code §§ 6720, 226.7 and the
26 applicable Wage Order section 15 because it provided employees with an excessively hot indoor
27 working environment. Defendant failed to implement indoor heat- related standards and increased
28 employees' risk of heat illnesses. Plaintiff and members of the Plaintiff Class had limited areas to

1 get relief from the heat.

2 ***Defendants' Failure to Permit Inspection of Employment Records***

3 51. Defendants have failed and refused to permit Plaintiff's inspection of his personnel
4 and payroll records and failed to provide a copy of Plaintiff's personnel and payroll records to him.
5 Plaintiff requested his personnel records and payroll records on December 20, 2022, and
6 Defendants failed to provide.

7 ***Facts Regarding Willfulness***

8 52. Plaintiff is informed and believes, and based thereon alleges, that Defendants are
9 and were advised by skilled lawyers, other professionals, employees with human resources
10 background and advisors with knowledge of the requirements of California wage and hour laws
11 and that at all relevant times, Defendants knew or should have known, that members of the Classes,
12 including Plaintiff, were entitled to receive one hour of pay at the employee's regular rate of
13 compensation for each day that a meal and/or rest period was not provided and were and are
14 entitled to received pay for all hours worked, accurate itemized wage statements, and final pay in a
15 timely manner.

16 ***Unfair Business Practices***

17 53. Defendants have further engaged in, and continue to engage in, unfair business
18 practices in California by practicing, employing and utilizing the unlawful employment practices
19 and policies outlined above.

20 54. As a direct result of the wage and hour violations herein alleged, Plaintiff and
21 members of the Classes have suffered, and continue to suffer substantial losses related to the use
22 and enjoyment of wages, lost interest on such wages, and expenses and attorneys' fees in seeking
23 to compel Defendants to perform their obligations under state law, all to Plaintiff's and members of
24 the Classes' respective damage in amounts according to proof at the time of trial.

25 ***Plaintiff's Exhaustion of Administrative Remedies***

26 55. Plaintiff has complied with the procedures for bringing suit specified in Labor Code
27 section 2699.3.

28 56. By letter dated May 15, 2023, required notice was provided to the Labor and

1 Workforce Development Agency (“LWDA”) and Defendants, of the specific provisions of the
2 Labor Code alleged to have been violated, including the facts and theories to support the alleged
3 violations.

4 57. More than sixty-five (65) days have passed since the date the notice was mailed to
5 Defendant and the LWDA, and Plaintiff has received no response from the LWDA indicating that
6 it plans to investigate.

7 58. Accordingly, Plaintiff has satisfied the administrative prerequisites under
8 California Labor Code Section 2699.3(a) to recover civil penalties against Defendant for
9 violations of California Labor Code identified in this First Amended Complaint

10 **CLASS ACTION ALLEGATIONS**

11 59. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

12 60. Pursuant to Code of Civil Procedure section 382, this action is brought and may be
13 properly maintained as a class action. This action satisfies the ascertainability, numerosity,
14 commonality, typicality, adequacy, predominance, and superiority requirements of those
15 provisions.

16 61. Plaintiff brings this suit as a class action on behalf of two classes of individuals
17 defined as follows (collectively the “Classes”):

18 62. Plaintiff Class: All persons who have been, or currently are, employed by Defendants
19 and who held, or hold, job positions which Defendants have classified as “non-exempt” employees in
20 the State of California, at any time since four years prior to filing this action, through the date
21 judgment is rendered in this action.

22 63. Terminated Sub Class: All members of the Plaintiff Class whose employment ended
23 during the Class Period.

24 64. Numerosity: Plaintiff is informed and believes, and on that basis alleges, that during
25 the class period hundreds of class members have been employed by Defendants as non-exempt
26 employees in the State of California. Because so many persons have been employed by Defendants
27 in this capacity, the members of the Plaintiff Class are so numerous that joinder of all members is
28 impossible and/or impracticable.

65. Common Questions of Law and/or Fact: Common questions of law and fact, exist as to all members of the Plaintiff Class and predominate over any questions affecting solely individual members of the Plaintiff Class. Among the questions of law and fact, that are relevant to the adjudication of Class Members' claims are as follows:

- a. Whether Plaintiff and Class Members are subject to and entitled to the benefits of California wage and hour statutes;
- b. Whether Defendants failed to pay Plaintiff and Class Members for all hours worked;
- c. Whether Defendants had a standard policy of not providing compliant meal breaks to Plaintiff and members of the Plaintiff Class;
- d. Whether Defendants had a standard policy of not providing compliant rest breaks to Plaintiff and members of the Plaintiff Class;
- e. Whether Defendants unlawfully and/or willfully failed to provide Plaintiff and members of the Plaintiff Class with true and proper wage statements upon payment of wages, in violation of Labor Code section 226;
- f. Whether Defendants unlawfully and/or willfully failed to maintain accurate records;
- g. Whether Defendants unlawfully/or willingly failed to timely pay Plaintiff and the Terminated Sub Class upon termination;
- h. Whether Defendants failed to timely pay wages to Plaintiff and members of the Plaintiff Class during their employment;
- i. Whether Defendants failed to provide Plaintiff and members of the Plaintiff Class with supplemental Covid-19 sick pay wages;
- j. Whether Defendants failed to provide Plaintiff's personnel records;
- k. Whether Defendants failed to provide Plaintiff and members of the Plaintiff Class with Covid-19 supplemental sick pay wages;
- l. Whether Plaintiff and members of the Plaintiff Class sustained damages, and if so, the proper measure of such damages, as well as interest, penalties,

costs, attorneys' fees, and equitable relief;

m. Whether Defendants' conduct as alleged herein violates the Unfair Business Practices Act of California (Bus. & Prof. Code, § 17200, et seq.)

66. Typicality: The claims of the named Plaintiff are typical of the claims of the members of the Plaintiff Class. Defendants' common course of conduct in failing to provide their non-exempt employees with meal and rest periods and all wages in compliance with the applicable wage order or premium compensation at the regular rate in lieu thereof, failing to provide them with compliant wage statements, failing to timely pay wages during employment and/or at termination, failing to provide Covid-19 sick pay, and failing to maintain heat-related procedures, has caused Plaintiff and the proposed Class to sustain the same or similar injuries and damages. Plaintiff's claims are thereby representative of and co-extensive with the claims of the proposed Class. Plaintiff and the proposed Class sustained the same or similar injuries and damages arising from Defendants' common policies, practices, procedures, protocols, routines, and rules which were applied to other class members as well as Plaintiff. Plaintiff seeks recovery for the same type of losses, injuries, and damages as were suffered by other members of the proposed class.

67. Adequacy of Representation: Plaintiff is an adequate representative of the proposed classes because he is a member of the class, and his interests do not conflict with the interests of the members he seeks to represent. Plaintiff has retained competent counsel, experienced in the prosecution of complex class actions, and together Plaintiff and his counsel intend to prosecute this action vigorously for the benefit of the classes. The interests of the Class Members will fairly and adequately be protected by Plaintiff and his attorneys.

68. Superiority of Class Action: A class action is superior to other available methods for the fair and efficient adjudication of this litigation since individual litigation of the claims of all Class Members is impracticable. It would be unduly burdensome to the courts if these matters were to proceed on an individual basis, because this would potentially result in hundreds of individual, repetitive lawsuits. Further, individual litigation presents the potential for inconsistent or contradictory judgments, and the prospect of a "race to the courthouse," and an inequitable allocation of recovery among those with equally meritorious claims. By contrast, the class action

1 device presents far fewer management difficulties, and provides the benefit of a single
2 adjudication, economics of scale, and comprehensive supervision by a single court.

3 69. The various claims asserted in this action are additionally or alternatively certifiable
4 under the provisions of the California Code of Civil Procedure section 382 because:

5 a. The prosecution of separate actions by hundreds of individual Class
6 Members would create a risk of varying adjudications with respect to
7 individual class members, thus establishing incompatible standards of
8 conduct for Defendants, and

9 b. The prosecution of separate actions by individual Class Members would also
10 create the risk of adjudications with respect to them that, as a practical
11 matter, would be dispositive of the interest of the other Class Members who
12 are not a party to such adjudications and would substantially impair or
13 impede the ability of such non-party class members to protect their interests.

14 **FIRST CAUSE OF ACTION**

15 **Unpaid Overtime**

16 **(By Plaintiff and Members of the Putative Class Against All Defendants)**

17 70. Plaintiff incorporates herein by reference the allegations set forth above.

18 71. At all times relevant herein, which comprise the time period not less than four (4)
19 years preceding the filing of this action, Defendants were required to compensate their hourly
20 employees for all overtime hours worked.

21 72. California Labor Code sections 510 and 1198 and the applicable IWC wage order
22 require employers to pay employees working more than eight (8) hours in a day or more than forty
23 (40) hours in a workweek at the rate of one-and-one-half (1 ½) times the regular rate of pay for all
24 hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek.
25 The applicable IWC wage order further provides that employers are required to pay employees
26 working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times
27 their regular rate of pay. An employee's regular rate of pay includes all remuneration for
28 employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and

1 incentive pay.

2 73. Defendants willfully failed to pay all overtime wages owed to Plaintiff and members
3 of the Classes. During the relevant time period, Plaintiff and members of the Classes were not paid
4 overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess
5 of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that
6 they worked were not recorded.

7 74. Defendants knew or should have known that as a result of company-wide practices
8 and/or policies, that prevents Plaintiff and members of the Classes from earning overtime as
9 alleged above. Because Plaintiff and members of the Classes worked shifts of eight (8) hours a day
10 or more or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime
11 premium pay. Therefore, Plaintiff and members of the Classes were not paid overtime wages for all
12 of the overtime hours they actually worked. This resulted in unpaid wages including overtime
13 wages.

14 75. Defendants' failure to pay Plaintiff and members of the Classes the balance of
15 overtime compensation, as required by California law, violates the provisions of Labor Code
16 sections 510 and 1198. Plaintiff and members of the Classes are entitled to recover civil penalties,
17 attorney's fees, costs, and interest thereon.

18 **SECOND CAUSE OF ACTION**

19 **Failure to Pay All Wages**

20 **(By Plaintiff and Members of the Putative Class Against All Defendants)**

21 76. Plaintiff incorporates herein by reference the allegations set forth above.

22 77. At all times relevant herein, which comprise the time period not less than four (4)
23 years preceding the filing of this action, Defendants were required to compensate their hourly
24 employees for all hours worked.

25 78. For at least the four (4) years preceding the filing of this action, Defendants failed to
26 compensate employees for all hours worked. Defendants implemented policies that actively
27 prevented employees from being compensated for all time worked by subjecting Plaintiff and
28 members of the Classes to work off-the-clock, rounding hours worked and failing to pay accrued

1 vacation wages.

2 79. Under the above-mentioned wage order and state regulations, Plaintiff and members
3 of the Classes are entitled to recover compensation for all hours worked, but not paid, for the four
4 (4) years preceding the filing of this action, in addition to reasonable attorney's fees and costs of
5 suit in accordance with Labor Code section 218.5, and penalties pursuant to Labor Code sections
6 203 and 206.

7 80. The applicable IWC wage order defines "hours worked" to mean "the time during
8 which an employee is subject to the control of an employer and includes all the time the employee
9 is suffered or permitted to work, whether or not required to do so."

10 81. Defendants suffered or permitted Plaintiff and members of the Classes to work
11 portions of the day for which Defendants failed to compensate them.

12 82. Labor Code section 1194(a) provides in relevant part: "[n]otwithstanding any
13 agreement to work for a lesser wage, any employee receiving less than the legal minimum wage ...
14 is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage
15 ... including interest thereon, reasonable attorney's fees, and costs of suit."

16 83. Labor Code section 1194.2(a) provides in relevant part: "[i]n any action under
17 section 1193.6 or section 1194 to recover wages because of the payment of a wage less than the
18 minimum wage fixed by an order of the commission, an employee shall be entitled to recover
19 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon."

20 84. Labor Code section 1197 provides: "[t]he minimum wage for employees fixed by
21 the commission is the minimum wage to be paid to employees, and the payment of a less wage
22 than the minimum so fixed is unlawful."

23 85. Plaintiff is informed and believes, and therefore alleges, that Defendants'
24 compensation schemes do not fairly compensate Plaintiff and members of the Classes for all hours
25 spent performing their job duties.

26 86. The failure to pay at least minimum wages to Plaintiff and members of the Plaintiff
27 Class for each and every hour worked violates Labor Code sections 1182.11-1182.12, 1194,
28 1194.2, and 1197; the applicable IWC wage order section 4; and Business & Professions Code.

87. The failure to pay designated wages to Plaintiff and members of the Classes for each and every hour worked violates Labor Code sections 221 and 223; the applicable IWC Wage Order; and Business & Professions Code.

88. During the applicable time period, Defendants have and continue to have a pattern and practice of not providing its employees all wages, by failing to include all compensable time, including time worked off-the-clock. Thus, Defendants did not pay at least minimum wages for all hours worked by Plaintiff and members of the Classes. To the extent that these off-the-clock hours did not qualify for overtime premium payment, Defendants did not pay at least minimum wages for those hours worked off-the-clock.

89. As a proximate result of the above-mentioned violations, Plaintiff and the members of the Classes have been damaged in an amount according to proof at time of trial.

THIRD CAUSE OF ACTION

Non-Compliant Meal Breaks in Violation of Labor Code sections 200, 226.7, 512

(By Plaintiff and Members of the Putative Class Against All Defendants)

90. Plaintiff hereby incorporates by reference each and every one of the allegations contained in the preceding paragraphs as if the same were fully set forth herein.

91. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and members of the Classes regularly worked more than five (5) hours per shift and were entitled to a meal period of not less than thirty (30) minutes without duty.

92. Nevertheless, Plaintiff is informed and believes, and thereon alleges, that Defendants routinely failed to provide Plaintiff and the members of the Classes with such meal periods without duty, notwithstanding the fact that Plaintiff and the members of the Classes had not waived their right to the same. Thus, Defendants failed to provide Plaintiff and the members of the Classes with meal periods required by Labor Code sections 226.7, 512, 516 and IWC wage order, section 11 and categorically failed to pay any and all meal period wages due.

93. Plaintiff and Class Members seek damages pursuant to Labor Code section 226.7(b) and IWC wage order section 11(D), in the amount of one additional hour of pay at the regular rate for each work day that the meal period is/was not provided to Plaintiff and any member of

1 members of the Classes, the cumulative sum of which is to be determined at trial.

2 94. Under the foregoing, California employers must provide meal periods and authorize
3 and permit rest periods to all employees during their shifts. In *Augustus v. ABM Security Services,*
4 *Inc.* (2016) 2 Cal.5th 257, the California Supreme Court reaffirmed that the required meal and rest
5 periods must be “off-duty,” which means that employees must be relieved of “all work-related
6 duties,” including the duty to remain “on call,” and they must be “free from employer control” over
7 how they “spend their time.” *Id.* at 264, 269. Employees must have the freedom to use meal and
8 rest periods for their own purposes. *Id.* at 270; *Brinker Rest. Corp. v. Superior Court* (2012) 53
9 Cal.4th 1004, 1038-39.

10 95. When employees must either “remain at the ready and capable of being summoned
11 to action,” “respond ... when the employer seeks contact with [them],” “perform ... other work if
12 the employer so requests,” and/or remain “on call” during their meal and rest periods, the
13 employees have not been “relieve[d] ... of all work-related duties and employer control.”
14 *Augustus, supra*, 2 Cal.5th at 270. Such a meal or rest period is not “off duty” and therefore is
15 “impermissible.” *Ibid.*

16 96. The Supreme Court’s decision in *Augustus* is just the latest in a series of meal and
17 rest break cases that have affirmed California’s broad, protective standard for employees.¹
18 Moreover, as the mere existence of a facially lawful meal and rest break policy is unavailing if
19 there are practical constraints and pressures on employees to perform their duties in ways that omit
20 breaks. *See Brinker, supra*, 53 Cal.4th at p. 1040.

21 97. Yet Defendants did and do not provide Plaintiff and members of the Plaintiff Class
22 with meal periods during which they are completely relieved of duty for at least thirty (30) minutes
23 by the fifth hour of work and again by the tenth hour of work as alleged above.

24 98. Thus, Defendants have failed to perform its obligations to provide Plaintiff and the

25
26 ¹ See, e.g., *Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004; *Lubin v.*
27 *Wackenhut Corp.* (2016) 5 Cal.App.5th 926, *reh'g denied* (Dec. 14, 2016); *Faulkinbury v. Boyd &*
28 *Assocs., Inc.*, 216 (2013) Cal.App.4th 220; *Berlanga v. Equilon Enterprises LLC* (N.D. Cal., Aug.
31, 2017, No. 17-cv-00282-MMC) 2017 WL 3782245 at *3 (a policy requiring employees to
“remain in contact with supervisors and other employees working in their units throughout their
shifts... would appear to be unlawful under [*Augustus*].”)

members of the Classes with off-duty meal periods by the end of the fifth hour of work and a second meal period by the end of the tenth hour of work. Defendants also have failed to pay Plaintiff and the members of the Plaintiff Class one (1) hour of pay at the regular rate for each non-compliant meal break.

99. On July 15, 2021, the California Supreme Court issued a decision in *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858 where the court unanimously held that employers must pay premium payments to employees for missed meal, rest, and recovery breaks at the employee's "regular rate of pay" instead of their base hourly rate. The regular rate of pay may be higher than the base hourly rate because the regular rate of pay must include all nondiscretionary incentive payments, including shift differential pay.

100. Plaintiff and members of the Plaintiff Class are thus entitled to compensation for Defendants' failure to provide compliant meal periods, plus interest, attorneys' fees, expenses, and costs of suit pursuant to Labor Code section 226.7(b) and the applicable wage order.

FOURTH CAUSE OF ACTION

Non-Compliant Rest Breaks in Violation of Labor Code sections 200, 226.7, 512

(By Plaintiff and Members of the Putative Class Against All Defendants)

101. Plaintiff hereby incorporates by reference each and every one of the allegations contained in the preceding paragraphs as if the same were fully set forth herein.

102. Plaintiff is informed and believes, and thereon allege, that Plaintiff and members of the Classes were entitled to a paid rest period of not less than ten (10) minutes without duty for each and every four (4) hours worked during the workday.

103. Nevertheless, Plaintiff is informed and believes, and thereon alleges, that Defendants routinely failed to provide Plaintiff and members of the Classes with such paid rest periods without duty, notwithstanding the fact that Plaintiff and members of the Classes had not waived their right to the same. Thus, Defendants failed to provide Plaintiff and Class Members with rest periods required by Labor Code sections 226.7, 512, and 516, IWC wage order, section 12 and categorically failed to pay any and all rest period wages due.

104. Plaintiff alleges that rest breaks were frequently late and missed as alleged above,

1 and second rest breaks were not provided.

2 105. Plaintiff and Class Members seek damages pursuant to Labor Code section 226.7(b)
3 and the applicable IWC wage order section 12(B), in the amount of one additional hour of pay at
4 the regular rate for each work day that the rest period is/was not provided or provided late to
5 Plaintiff and any member of the Classes, the cumulative sum of which is to be determined at trial.

6 106. Therefore, Plaintiff and members of the Plaintiff Class are entitled to compensation
7 for Defendants' failure to provide rest periods, plus interest, attorneys' fees, expenses, and costs of
8 suit pursuant to Labor Code sections 226.7(b) and the applicable wage order.

9 **FIFTH CAUSE OF ACTION**

10 **Failure to Provide COVID-19 Supplemental Paid Sick Leave**

11 **(By Plaintiff and Members of the Putative Class Against Defendant)**

12 107. Plaintiff hereby re-alleges and incorporates by reference the allegations set forth
13 above as if fully set forth herein.

14 108. California Labor Code sections 248.6 and 248.7 required Defendants to provide
15 California Supplemental Sick Paid Leave ("SSPL") through December 31, 2022.

16 109. Pursuant to subdivision (i) of Section 246 as it relates to this section, COVID-19
17 supplemental paid sick leave must be set forth separately from paid sick days. Defendants failed to
18 provide Plaintiff and the Plaintiff Class with written notice that sets forth the amount of COVID-19
19 supplemental paid sick leave that they had used or were entitled on wage statements.

20 110. The employer shall list zero hours used if a worker has not used any COVID-19
21 supplemental paid sick leave. This requirement is not enforceable until the next full pay period
22 following the date that this section takes effect.

23 111. Plaintiff and the Plaintiff class were entitled access to this supplemental paid leave
24 and whether any had been utilized if they experience a qualifying need for leave. However,
25 Defendants failed to Supplemental COVID-19 Sick pay or properly account for it on their wage
26 statements as provided by California law.

27 112. Defendants' unlawful acts deprived Plaintiff and the Class of all wages. Plaintiff seeks
28 to represent supplemental COVID-19 sick pay in amounts to be determined at trial, and Plaintiff and

the class are entitled to recover these amounts with interest, attorneys' fees, and costs.

SIXTH CAUSE OF ACTION

Failure to Timely Pay Wages During Employment

(By Plaintiff and Members of the Putative Class Against All Defendants)

113. Plaintiff hereby incorporates by reference each and every one of the allegations contained in the preceding paragraphs as if the same were fully set forth herein.

114. 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.

115. 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. Alternatively, Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

116. During the class period, Defendants willfully failed to pay Plaintiff and members of the Classes all wages due including, but not limited to, minimum wages, and/or meal and rest period premiums, within the time periods specified by Labor Code section 204.

117. As a proximate result of the above-mentioned violations, Plaintiff and the Plaintiff Class have been damaged in an amount according to proof at time of trial.

SEVENTH CAUSE OF ACTION

Failure to Furnish Accurate Itemized Wage Statements and Failure to Maintain Accurate Records

(By Plaintiff and Members of the Putative Class Against All Defendants)

118. Plaintiff hereby incorporates by reference each and every one of the allegations

1 contained in the preceding paragraphs as if the same were fully set forth herein.

2 119. Labor Code section 226(a) and the applicable IWC wage order section 7(B) requires
3 employers to furnish each employee with a statement itemizing, among other things, the total hours
4 worked by the employee, on a semi-monthly basis or at the time of each payment of wages.

5 120. Labor Code section 226(e) provides that if an employer fails to comply with
6 providing an employee with properly itemized wage statements as set forth in 226(a), then the
7 employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in
8 which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not
9 to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates
10 section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation
11 in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which
12 the employer fails to provide the employee a wage statement or fails to keep the required records
13 pursuant to section 226(a).

14 121. Defendants knowingly and intentionally failed to furnish Plaintiff and the members
15 of the Classes with timely, itemized statements in compliance with Labor Code section 226(a) and
16 the applicable IWC wage order section 7(B).

17 122. Plaintiff is informed and believes, and thereon alleges, that Defendants knowingly
18 and intentionally failed to furnish Plaintiff and members of the Classes with timely, itemized
19 statements showing (a) total hours, (b) gross wages earned, (c) all deductions, and/or (d) all
20 applicable hourly rates in effect during each respective pay period and the corresponding number
21 of hours worked at each hourly rate by each respective individual. This is a result of failing to pay
22 for all hours worked and for failing to provide meal and rest break premiums. Further, Defendants
23 provide non-compliant wage statements because wage statements are missing Covid-19
24 supplemental sick pay and total hours worked.

25 123. Plaintiff is informed and believes, and thereon alleges, that Defendants did not
26 maintain accurate business records pertaining to the total hours worked for Defendants by Plaintiff
27 and the members of the Classes as required under Labor Code section 1174.5. This is a result of
28 missing hours worked and missed meal and rest-break premiums.

124. As a result of not having kept accurate records, Plaintiff and the Class Members suffered injuries in the form of confusion over whether they received all wages owed to them, and difficulty and expense in reconstructing pay records in addition to other injuries which may come to light during the discovery process.

125. Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC wage order. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC wage order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period.

126. Plaintiff and the members of the Classes herein seek damages and penalties pursuant to Labor Code section 226(e) for Defendants' violations of Labor Code section 226(a).

127. Plaintiff and Class Members also seek preliminary and permanent injunctive relief and an award of reasonable attorneys' fees and costs pursuant to Labor Code section 226(h). Plaintiff and the members of the Classes also request relief as described below.

EIGHTH CAUSE OF ACTION

Waiting Time Penalties

(By Plaintiff and Members of the Terminated Sub Class Against All Defendants)

128. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set forth herein.

129. At all times, relevant herein, Defendants were required to pay their employees all wages owed in a timely fashion during and at the end of their employment, pursuant to Labor Code sections 201-203.

130. As a pattern and practice, Defendants regularly failed to pay Plaintiff and the members of the Terminated Sub Class their final wages pursuant to Labor Code sections 201-203, and accordingly owe waiting time penalties pursuant to Labor Code section 203.

131. Labor Code sections 201 and 202 provide that if an employer discharges an

1 employee, the wages earned and unpaid at the time of discharge are due and payable immediately,
2 and that if an employee voluntarily leaves his or her employment, his or her wages shall become
3 due and payable not later than seventy-two (72) hours thereafter, unless the employee has given
4 seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is
5 entitled to his or her wages at the time of quitting.

6 132. On information and belief, Defendants have a company-wide practice or policy of
7 paying departing employees their final wages late, instead of adhering to the time requirements set
8 forth in Labor Code sections 201 and 202.

9 133. Specifically, Defendants willfully failed to pay Plaintiff and members of the
10 Terminated Sub Class the earned and unpaid wages set forth above, including but not limited to,
11 minimum wages, and/or meal rest period premiums, either at the time of discharge, or within
12 seventy-two (72) hours of their leaving Defendants' employ.

13 134. Plaintiff and members of the Terminated Sub Class are entitled to recover civil
14 penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 256.

15 **NINTH CAUSE OF ACTION**

16 **Failure to Provide Suitable Seating**

17 **(By Plaintiff and Members of the Putative Class Against Defendant)**

18 135. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set
19 forth herein.

20 136. Labor Code section 1198 makes it illegal to employ an employee under conditions
21 of labor that are prohibited by the applicable wage order. Labor Code section 1198 requires that
22 "the standard conditions of labor fixed by the commission shall be the ... standard conditions of
23 labor for employees. The employment of any employee ... under conditions of labor prohibited by
24 the order is unlawful." Code of Regulations, title 8, section 11070(14)(A) provides that "[a]ll
25 working employees shall be provided with suitable seats when the nature of the work reasonably
26 permits the use of seats."

27 137. "The 'nature of the work' refers to an employee's tasks performed at a given
28 location for which a right to a suitable seat is claimed, rather than a 'holistic' consideration of the

entire range of an employee's duties anywhere on the jobsite during a complete shift. If the tasks being performed at a given location reasonably permit sitting, and provision of a seat would not interfere with performance of any other tasks that may require standing, a seat is called for." *Kilby v. CVS Pharmacy, Inc.* (2016) 63 Cal.4th 1, 8. "Whether the nature of the work reasonably permits sitting is a question to be determined objectively based on the totality of the circumstances. An employer's business judgment and the physical layout of the workplace are relevant but not dispositive factors. The inquiry focuses on the nature of the work, not an individual employee's characteristics." *Ibid.* The burden of proof to show suitable seating is not available is on the employer. *Id.* at 24. In other words, the employer must show that compliance is "infeasible because no suitable seating exists." See *ibid.*

138. Defendant violated Labor Code section 1198 and Code of Regulations, title 8, section 11070(14)(A) because Plaintiff and members of the Classes were not allowed to sit, even when it would not have interfered with the performance of their duties, nor were they provided with suitable seats within the facility. Defendant's management did not inform Plaintiff and members of the Classes that they were allowed to sit down, provide any means for them to sit down, or mention any policy regarding sitting.

139. As a result of Defendant's company-wide policy and/or practice of prohibiting employees from sitting during their shifts and company-wide failure to provide suitable seating, Plaintiff and members of the Classes were forced to stand during shifts and denied seats when working. Defendant's failure to provide suitable seating to Plaintiff and members of the Classes violates Labor Code section 1198 and the applicable IWC wage order section 14(A).

140. Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. Labor Code section 1198 requires that "the standard conditions of labor fixed by the commission shall be the ... standard conditions of labor for employees. The employment of any employee ... under conditions of labor prohibited by the order is unlawful." Code of Regulations, title 8, section 11070(14)(B) provides that "[w]hen employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to

1 the work area and employees shall be permitted to use such seats when it does not interfere with
2 the performance of their duties.”

3 141. The IWC states that section 14(B) applies during “lulls in operation” when an
4 employee, while still on the job, is not then actively engaged in any duties. *Kilby* citing IWC, 1976
5 Wage orders, Summary of Basic Provisions, Seats. When taken together, an employee is entitled to
6 a seat under section 14(A) if his or her actual tasks at a discrete location make seated work feasible,
7 while working there. *Ibid.* However, if other job duties take the employee to a different location
8 where he or she must perform tasks requiring standing, the employee would be entitled to a seat
9 under section 14(B) during “lulls in operation.” *Ibid.*

10 142. Defendant did not provide Plaintiff and members of the Classes with seats or stools
11 in reasonable proximity to their work areas to allow them to use seats when it would not interfere
12 with the performance of their duties for times when they were not engaged in active duties that
13 require standing.

14 143. As a result of Defendant’s company-wide policy and/or practice of prohibiting
15 employees from sitting at any time, even when they were not engaged in active duties requiring
16 standing, and company-wide failure to provide seats in reasonable proximity to their work areas,
17 Plaintiff and members of the Classes were forced to stand during shifts and denied seats.
18 Defendants’ failure to provide suitable seating to Plaintiff and members of the Classes violates
19 Labor Code section 1198 and the applicable IWC Wage order section 14(B).

20 144. Plaintiff and members of the Classes are therefore entitled to recover civil penalties,
21 attorney’s fees, costs, and interest thereon, and seek injunctive relief to bring Defendants into
22 compliance with California’s seating requirements, pursuant to Labor Code section 1194.5.

23 **TENTH CAUSE OF ACTION**

24 **Failure to Adopt Standards that Minimize Excessive Indoor Heat**

25 **(By Plaintiff and the Members of the Plaintiff Class Against Defendants)**

26 145. Plaintiff re-alleged and incorporates all preceding paragraphs as though fully set forth
27 herein.

28 146. California *Labor Code* § 6720 sets forth requirements for adapting a standard that

1 minimizes heat-related illness and injury among workers working in indoor places by January 1,
2 2019. The provision states the following: “[t]he standard shall be based on environmental
3 temperatures, work activity levels, and other factors.”

4 147. California *Labor Code* § 226.7(a) states “As used in this section, “recovery period”
5 means a cooldown period afforded an employee to prevent heat illness.” Section 226.7(c) states “If
6 an employer fails to provide an employee a meal or rest or recovery period in accordance with a state
7 law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of
8 the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the
9 Division of Occupational Safety and Health, the employer shall pay the employee one additional
10 hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest or
11 recovery period is not provided.”

12 148. The applicable Wage Order section 15(A) provides the following: “The temperature
13 maintained in each work area shall provide reasonable comfort consistent with industry-wide
14 standards for the nature of the process and the work performed.” Section 15(B) states “If excessive
15 heat or humidity is created by the work process, the employer shall take all feasible means to reduce
16 such excessive heat or humidity to a degree providing reasonable comfort.”

17 149. Defendants failed to comply with California *Labor Code* §§ 6720, 226.7(a), and the
18 applicable Wage Order, by maintaining an excessively hot working environment.

19 150. Defendants failed to provide Plaintiff and members of Plaintiff Class with a recovery
20 period and fails to adopt standards to reduce heat-related illnesses, and as a result, Defendants ha failed
21 to maintain a safe indoor working environment.

22 151. Plaintiff and Class Members request recovery and penalties according to proof, as well
23 as interest, attorneys’ fees and costs pursuant to California *Labor Code*.

24 **ELEVENTH CAUSE OF ACTION**

25 **Failure to Permit Inspection of Personnel and Payroll Records**

26 **(By Plaintiff and the Members of the Plaintiff Class Against All Defendants)**

27 152. Plaintiff re-alleged and incorporates all preceding paragraphs as though fully set forth
28 herein.

153. Labor Code § 1198.5 requires an employer, within thirty (30) days of a written request therefor, to inspect or receive a copy of an employee's personnel and payroll records. An employer's failure to do so subjects the employer to a \$750.00 penalty, payable to the employee.

154. Labor Code § 226(c) requires an employer, within twenty-one (21) days of a written request therefore, to inspect or receive a copy of an employee's payroll records. An employer's failure to do so subjects the employer to a \$750.00 penalty, payable to the employee, pursuant to Labor Code § 226(f).

155. Labor Code § 432 requires an employer, upon request, to give to an employee a copy of any instrument signed by the employee relating to the obtaining or holding of employment.

156. On October December 20, 2022, Plaintiff made a written request to inspect or receive a copy of his personnel and payroll records from Defendant.

157. Defendant failed and refused to permit Plaintiff's inspection of his personnel and payroll records and failed to provide a copy of Plaintiff's personnel and payroll records to him, within the time required by Labor Code § 1198.5 and § 226(c), or ever.

158. 61. As a result of Defendant's failure and refusal to comply with Labor Code § 1198.5, Plaintiff is entitled to recover from Defendant a civil penalty of \$750.00.

TWELFTH CAUSE OF ACTION

Violation of Business and Professions Code Section 17200 et seq.

(By Plaintiff and the Members of the Plaintiff Class Against All Defendants)

159. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set forth herein.

160. Business and Professions Code section 17200 defines unfair competition to include, “unlawful, unfair or fraudulent business practices.”

161. Plaintiff and all proposed Class Members are “persons within the meaning of Business and Professions Code section 17204, who have suffered injury in fact and have lost money or property as a result of Defendants’ unfair competition.

162. Defendants have been committing, and continue to commit, acts of unfair competition by engaging in the unlawful, unfair and fraudulent business practices and acts

described in this Complaint, including, but not limited to:

- a) Violations of Labor Code sections 510 and 1198.
- b) violations of Labor Code sections 1182.11-1182.12, 1194, 1194.2, 1197, 1198;
- c) violations of Labor Code sections 226.7, and 1198;
- d) violations of Labor Code section 226, 1174;
- e) violations of Labor Code sections 201 and 202;
- f) violations of Labor Code section 204;
- g) violations of Labor Code section 248;
- h) violations of Labor Code section 246;
- i) violations of Labor Code section 1198; and
- j) violations of the applicable wage order.

163. As a result of its unlawful, unfair, and/or fraudulent business acts and practices, Defendants have reaped and continue to reap unfair benefits and illegal profits at the expense of Plaintiff and proposed Class Members. Defendants' unlawful, unfair, and/or fraudulent conduct has also enabled Defendants to gain an unfair competitive advantage over law-abiding employers and competitors.

164. The Business and Professions Code section 17203 provides that the Court may restore to an aggrieved party any money or property acquired by means of the unlawful, unfair, and/or fraudulent business acts or practices.

165. Plaintiff seeks a court order enjoining Defendants from the unlawful, unfair, and/or fraudulent activity alleged herein.

166. Pursuant to Civil Code section 3287(a), Plaintiff and other members of the Plaintiff Class are entitled to recover pre-judgment interest on wages earned, but not paid.

167. Plaintiff further seeks an order requiring an audit and accounting of the payroll records to determine the amount of restitution of all unpaid wages owed to himself and members of the proposed Plaintiff Class, according to proof, as well as a determination of the amount of funds to be paid to current and former employees that can be identified and located pursuant to a court

1 order and supervision.

2 168. Plaintiff seeks restitution for himself and all others similarly situated of these
3 amounts, including all earned and unpaid wages and attorneys' fees and costs pursuant to Code of
4 Civil Procedure section 1021.5.

5 **THIRTEENTH CAUSE OF ACTION**

6 **Civil Penalties Pursuant to PAGA (Labor Code §§ 2698, et seq.)**

7 **(On Behalf of All Aggrieved Employees Against Defendant)**

8 169. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set
9 forth herein.

10 170. At all times set forth herein, the Private Attorneys General Act of 2004 (PAGA,
11 California Labor Code §§ 2698-99) applied to Defendant's employment of Plaintiff and the
12 proposed Class Members.

13 171. At all times set forth herein, California Labor Code § 2699(a) has provided that any
14 provision of law under the California Labor Code that provides for a civil penalty to be assessed
15 and collected by the Labor and Workforce Development Agency (LWDA) for violations of the
16 California Labor Code may, as an alternative, be recovered through a civil action brought by an
17 aggrieved employee on behalf of himself and other current or former employees pursuant to
18 procedures outlined in California Labor Code § 2699.3.

19 172. At all times set forth herein, the PAGA has also provided that for the violation of
20 any Labor Code provision that does not itself contain a civil penalty, there are established civil
21 penalties of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for
22 each aggrieved employee per pay period for each subsequent violation. Cal. Lab. C. § 2699(f).

23 173. A civil action under PAGA may be brought by an "aggrieved employee," any
24 person that was employed by the alleged violator and against whom one or more of the alleged
25 violations was committed.

26 174. Defendants have been committing, and continue to commit, violations of the
27 California Labor Code, including, but not limited to:

- 28 a. Violations of Labor Code sections 510 and 1198.

- b. violations of Labor Code sections 1182.11-1182.12, 1194, 1194.2, 1197, 1198;
- c. violations of Labor Code sections 226.7, and 1198;
- d. violations of Labor Code section 226, 1174;
- e. violations of Labor Code sections 201 and 202;
- f. violations of Labor Code section 204;
- g. violations of Labor Code section 248;
- h. violations of Labor Code section 246;
- i. violations of Labor Code section 1198; and
- j. violations of the applicable wage order.
- k. Plaintiff was employed by Defendants and the alleged violations have been committed against him during his time of employment and he is, therefore, an aggrieved employee. Plaintiff and other employees are “aggrieved employees” as defined by California Labor Code §2699(c) in that they are all current or former employees of Defendant, and one or more of the alleged violations were committed against them.

175. Pursuant to California Labor Code § 2699.3, aggrieved employees, including Plaintiff, may pursue a civil action arising under the PAGA after the following requirements have been met:

- a. The aggrieved employee shall give written notice (hereinafter “Employee’s Notice”) to the LWDA and the employer of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations;
- b. The LWDA shall provide notice (hereinafter “LWDA Notice”) to the employer and the aggrieved employee by certified mail that it does not intend to investigate the alleged violations sixty (60) calendar days of the postmark date of the Employee’s Notice. Upon receipt of the LWDA Notice, or if the LWDA Notice is not provided within sixty-five (65) calendar days of the postmark date of the Employee’s Notice, the aggrieved employee may commence a civil action

pursuant to California Labor Code §2699 to recover civil penalties in addition to any other penalties to which the employee may be entitled.

176. On May 15, 2023, Plaintiff provided written notice to the LWDA and by certified mail to Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.

177. More than 65 calendar days have passed since the date notice was provided to the LWDA and Defendant. Accordingly, Plaintiff has satisfied the administrative prerequisites under California Labor Code Section 2699.3(a) to recover civil penalties against Defendant for violations of California Labor Code identified in this First Amended Complaint.

178. Accordingly, Plaintiff and the other aggrieved employees are entitled to and seek to recover civil penalties for Defendant's violations of the Labor Code during the applicable limitations period.

179. Pursuant to California Labor Code Section 2699(g), Plaintiff, on behalf of himself and the other aggrieved employees, is entitled to an award of reasonable attorneys' fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, and the Class Members pray for judgment as follows:

1. For an order certifying the proposed Plaintiff Class and Terminated Sub-Class;
2. For an order that counsel for Plaintiff be appointed class counsel
3. Certification of this class action on behalf of the proposed Plaintiff Class and Terminated Sub-Class;
4. Designation of Plaintiff as the class representative of the Plaintiff and Terminated Sub Class;
5. For restitution of all monies due to Plaintiff and the members of the Plaintiff Class and disgorgement of all profits from the unlawful business practices of Defendants
6. Prejudgment and post judgment interest on all sums awarded;
7. For compensatory damages;
8. For penalties pursuant to Labor Code sections 2699, 200, 226, 226.7;
9. For interest accrued to date;

- 1 10. For costs of suit and expenses incurred herein pursuant to Labor Code sections 2699
2 (g)(1), 226 and 1194;
- 3 11. For reasonable attorneys' fees pursuant to Labor Code sections 218.5, 226,
4 2699(g)(1), and Code of Civil Procedure section 1021.5, and/or other applicable
5 law; and
- 6 12. A declaratory judgment that Defendants have knowingly and intentionally violated
7 the following provisions of law;
- 8 a. Labor Code sections 510 and 1198 for failure to pay overtime wages;
- 9 b. Labor Code sections 1182.11-1182.12, 1194, 1194.2, 1197, 1198 for failing
10 to pay all wages;
- 11 c. Labor Code sections 226.7, for failing to provide compliant meal and rest
12 breaks;
- 13 d. Labor Code section 246 for failing to pay sick pay wages;
- 14 e. Labor Code section 248 for failing to pay Covid-19 Supplemental sick pay;
- 15 f. Labor Code section 1198 for failing to provide suitable seating;
- 16 g. Labor Code section 226, 1174 for failing to provide compliant wage
17 statements and failing to maintain accurate records;
- 18 h. Labor Code section 204 for failing to timely pay wages during employment;
- 19 i. Labor Code sections 201 and 202 for failing to pay wages at termination;
- 20 j. Labor Code sections 226 and 6720 for maintaining an excessively hot indoor
21 working environment;
- 22 k. Labor Code section 226, 432, 1198.5 for failing to permit the inspection of
23 personnel records;
- 24 l. Business & Professions Code sections 17200-08 for violating the provisions
25 set forth herein above.
- 26 13. For all such other and further relief that the Court may deem just and proper.

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28 ///

1 DATED: August 15, 2023

2 **BRADLEY/GROMBACHER, LLP**
3 **MAJARIAN LAW GROUP APC**

4 By: 

5 Marcus Bradley, Esq.
6 Kiley Grombacher, Esq.
7 Lirit King, Esq.
8 Emilie MacLean, Esq.
9 Sahag Majarian, Esq.
10 Garen Majarian, Esq.

11 Attorneys for Plaintiff and others similarly
12 situated

13 **DEMAND FOR JURY TRIAL**

14 Plaintiff hereby demands trial of Plaintiff's and the members of the Classes' claims by jury
15 to the extent authorized by law.

16 DATED: August 15, 2023

17 **BRADLEY/GROMBACHER, LLP**
18 **MAJARIAN LAW GROUP APC**

19 By: 

20 Marcus Bradley, Esq.
21 Kiley Grombacher, Esq.
22 Lirit King, Esq.
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26 Attorneys for Plaintiff and others similarly
27 situated
28