

November 16, 2023

VIA ON-LINE SUBMISSION AND MAIL:

<https://dir.tfaforms.net/128> (copy by certified mail to all Defendants)

Private Attorneys General Act
Attn. PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Zepexco, Inc. dba Zephyr Express
CT Corporation System, Agent for Service of Process
330 North Brand Boulevard Suite 700
Glendale, CA 91203
Certified Mail Tracking Number: 9414 8112 0620 4851 1561 69

Zepexco, Inc. dba Zephyr Express
4301 Industrial Way
Benicia, CA 94510
Certified Mail Tracking Number: 9414 8112 0620 4851 1516 07

Winebow, Inc. dba Winebow
CT Corporation System, Agent for Service of Process
330 North Brand Boulevard Suite 700
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Winebow, Inc. dba Winebow
20 Hook Mountain Road Suite 103 A
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Central Coast Wine Company
CT Corporation System, Agent for Service of Process
330 North Brand Boulevard Suite 700
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Central Coast Wine Company
4301 Industrial Way
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**Re: Labor Code § 2698, et seq. Penalties – PAGA Notice Letter to the LWDA
*Melissa Josephine Fluty v. Zepexco, Inc., et al.***



Gentlepersons:

This office represents Plaintiff Melissa Josephine Fluty (“Plaintiff”) and other similarly situated aggrieved employees (collectively “Aggrieved Employees”) for violations of California Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, 2699, *et seq.*, and 2802; provisions of the Industrial Welfare Commission (IWC) Wage Order(s); and California Business & Professions Code § 17200 *et seq.*

The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698 *et. seq.* (“the Act”). Unless specified below, Plaintiff would like to bring a representative action, pursuant to the Act, on behalf of himself and all other similarly situated, Aggrieved Employees, and the State of California, against Defendants, Zepexco, Inc. dba Zephyr Express, Winebow, Inc. dba Winebow, Central Co, and DOES 1 through 50 inclusive (all defendants being referred to herein collectively as “Defendants”).

Additionally, this correspondence will serve to satisfy the notice requirements under the Act, along Plaintiff’s Class Action Complaint, which is attached hereto and incorporated by reference herein. The Complaint is being concurrently filed in Solano County Superior Court and will be assigned a local case number. The Complaint allegations and claims are incorporated into this Notice Letter.

We also set forth herein the facts and theories and the California Labor Code violations which Defendants engaged in with respect to Plaintiff and all of their Aggrieved Employees in California. The Class Action Complaint provides the details of Plaintiff’s class-wide claims and claims under the Act, and the applicable California law governing them. It, along with this Notice Letter, addresses in detail numerous violations that subject Defendants to civil and statutory penalties under the Act.

Relevant Facts

Plaintiff was employed by Defendants as a non-exempt hourly employee in California. Aggrieved Employees include all non-exempt hourly employees of Defendants within the state of California from one year prior to the date of this letter and continuing through the present (Plaintiff and Aggrieved Employees are collectively referred to herein as “Aggrieved Employees”).

Aggrieved Employees were consistently required to perform work, off-the-clock, for which they were not paid wages. Aggrieved Employees were consistently required to don and doff required protective gear and equipment before clocking in and after clocking out. Aggrieved Employees were also consistently required to take calls and other forms of mobile communication from supervisors before clocking in and after clocking out. Further, Aggrieved Employees’ unpaid meal periods were systematically interrupted, and Aggrieved Employees were required to work during these mandated, duty-free and unpaid meal periods. Aggrieved Employees were further detrimentally harmed as a result of Defendants’ systematic practice of editing timesheets to reflect less hours than actually worked. The foregoing and uncompensated time was under the direction and control of Defendants.

This uncompensated time caused Aggrieved Employees to work in excess of eight (8), ten (10) and/or twelve (12) hours a day and/or forty (40) hours a week, entitling Aggrieved Employees to



minimum and overtime wages, which they were systemically denied.

Defendants had a common policy and practice of systemically denying Aggrieved Employees the opportunity to take meal periods in compliance with California Law. Specifically, Aggrieved Employees were denied the opportunity to take timely and duty-free meal periods, of at least 30 minutes, to which they were entitled. Aggrieved Employees' unpaid meal periods were regularly interrupted by mandatory work-related activities. Additionally, Aggrieved Employees were not afforded the opportunity to take full 30-minute meal periods as required.

Aggrieved Employees were not provided with meal periods of at least thirty (30) minutes for each five (5) hour work period due to (1) Defendants' policy of not scheduling each meal period as part of each work shift; (2) no formal written meal policy that encouraged employees to take their meal periods, or that advised Aggrieved Employees of their meal and rest period rights; and (3) Defendants' practice of requiring Aggrieved Employees to continue working through their meal and rest periods due to the excessive workload.

Defendants had a common policy and practice of systemically denying Aggrieved Employees the opportunity to take rest breaks in compliance with the California Law. Aggrieved Employees were not provided with rest periods of at least ten (10) minutes for each four (4) hour work period, or major fraction thereof, due to (1) Defendants' policy of not scheduling each rest period as part of each work shift, including second rest breaks for shifts of six (6) hours or more; (2) no formal compliant written rest period policy that encouraged employees to take their rest periods, or that properly advised Aggrieved Employees of their rest period rights; (3) Defendants' policy and practice of requiring Aggrieved Employees to skip and continue working through their rest breaks due to the excessive workload; (4) Defendants' systematic practice of not permitting and rejecting Aggrieved Employees from taking legally compliant rest periods; and (5) Defendants' systematic policy and practice of exercising and subjecting control over Aggrieved Employees during rest periods by not permitting Aggrieved Employees to leave the business premises.

Defendants also consistently failed to issue accurate itemized wage statements as required by Labor Code § 226(a). Specifically, the wage statements given to Aggrieved Employees failed to accurately account for unpaid wages and overtime because their actual hours worked were under-reported due to off the clock work. Additionally, the wage statements given to Aggrieved Employees failed to accurately account for premium pay for deficiently provided meal periods and rest breaks.

Additionally, Defendants failed to pay Aggrieved Employees all wages owed, as detailed above, at the time of their termination or within seventy-two (72) hours of their resignation, as required under Labor Code § 203. Specifically, Aggrieved Employees were not paid all regular and overtime wages because Defendants failed to pay for all hours worked, required off the clock work to the detriment of Aggrieved Employees. Additionally, Defendants failed to pay premium wages owed for unprovided meal periods and rest periods. Defendants' failure to pay said wages within the required time was willful within the meaning of Labor Code § 203.

Aggrieved Employees were not reimbursed for business expenses incurred in executing their duties under Defendant's employ. Specifically, Aggrieved Employees were required to use their



personal cellphones and internet usage plans. Defendants have failed to fully reimburse Aggrieved Employees for these necessary work expenses.

PAGA Claim Details, Legal Bases for Violations and Penalties:

As addressed above and in further detail in the Class Action Complaint, the Aggrieved Employees complain of the following violations committed by Defendants:¹

Failure to Pay Minimum Wages

Defendants violated the law by failing to pay Aggrieved Employees minimum wages for all hours worked. California Labor Code § 1197, entitled “Pay of Less Than Minimum Wage” states, “[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.” The applicable minimum wages fixed by the commission for work during the relevant period is found in the Wage Orders.

In California, employees must be paid at least the then applicable state minimum wage for all hours worked, including under Labor Code § 1197, IWC Wage Order MW-2014, and paragraphs 2(K), 2(S), and 4(A)-4(C) of the applicable IWC Wage Orders. Paragraph 2(H) of the applicable IWC Wage Orders defines “Hours Worked” as “the time during which an employee is subject to the control of an employer and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Additionally, pursuant to Labor Code § 204, other applicable laws and regulations, and public policy, an employer must timely pay its employees for all hours worked. Defendants failed to do so.

California Labor Code § 1197, entitled “Pay of Less Than Minimum Wage” states: “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.” The minimum wage provisions of California Labor Code are enforceable by private civil action pursuant to Labor Code § 1194(a) which states: “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees and costs of suit.”

As described in California Labor Code §§ 1185 and 1194.2, any action for wages incorporates the applicable Wage Order of the California Industrial Welfare Commission. Also, California Labor Code §§ 1194, 1197, 1197.1 and those Industrial Welfare Commission Wage Orders entitle non-exempt employees to an amount equal to or greater than the minimum wage for all hours worked. All hours must be paid at the statutory or agreed rate, or at the minimum rate in the absence of a contractually agreed upon one. The underpayment of wages to Aggrieved Employees is and has been a direct consequence of Defendants’ unlawful compensation policies and practices, which

¹ Plaintiff hereby reserves the right to seek penalties on behalf of all Aggrieved Employees, for Defendants’ violations of the applicable provisions of the Labor Code, suffered by Aggrieved Employees, but not directly suffered by Plaintiff under *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745.



applied uniformly to the Aggrieved Employees working at locations and work sites throughout California.

Aggrieved Employees were consistently required to perform work, off-the-clock, for which they were not paid wages. Aggrieved Employees were consistently required to don and doff required protective gear and equipment before clocking in and after clocking out. Aggrieved Employees were also consistently required to take calls and other forms of mobile communication from supervisors before clocking in and after clocking out. Further, Aggrieved Employees' unpaid meal periods were systematically interrupted, and Aggrieved Employees were required to work during these mandated, duty-free and unpaid meal periods. Aggrieved Employees were further detrimentally harmed as a result of Defendants' systematic practice of editing timesheets to reflect less hours than actually worked. The foregoing and uncompensated time was under the direction and control of Defendants.

Defendants have the ability to pay minimum and overtime wages for all time worked and have willfully refused to pay such wages with the intent to secure for Defendants a discount upon this indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Aggrieved Employees.

In light of the forgoing, the Aggrieved Employees seek to recover wages and penalties. Aggrieved Employees are entitled to recover the unpaid minimum wages (including double minimum wages), liquidated damages in an amount equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney's fees and costs of suit pursuant to California Labor Code § 1194(a). the other Aggrieved Employees further request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment of any statutory and civil penalties against Defendants, in a sum as provided by the California Labor Code and/or other applicable statutes, including pursuant to Labor Code § 558, and Wage Order provisions. To the extent minimum wage compensation is determined to be owed to the Aggrieved Employees who have terminated their employment, Defendants' conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties under California Labor Code § 203, which penalties are sought herein on behalf of these Aggrieved Employees. Defendants' failure to timely pay all wages owed also violated Labor Code § 204 and resulted in violations of Labor Code § 226 because they resulted in the issuance of inaccurate wage statements. Defendants' conduct as alleged herein was willful, intentional and not in good faith. Further, other Aggrieved Employees are entitled to seek and recover statutory costs.

Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties available and applicable under Labor Code §§ 510, 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Pay Wages and Overtime in Violation of Labor Code § 510

Defendants violated the law by failing to pay Aggrieved Employees earned wages and overtime. Specifically, Aggrieved Employees consistently worked in excess of eight (8), ten (10), and twelve (12) hours a day, and/or forty (40) hours a week. However, Aggrieved Employees were not paid overtime wages for hours worked in excess of 8 hours a day. Moreover, the uncompensated time, discussed above caused Aggrieved Employees to work in excess of eight (8), ten (10), and twelve



(12) hours a day and/or 40 hours a week, further entitling Aggrieved Employees overtime wages which they were consistently denied, all in violation of Labor Code § 510 and applicable Wage Orders.

Defendants have violated Labor Code § 1194 and Labor Code § 510 (and paragraphs 2(K), 2(S), 3(A) and 4(A)-4(B) of the relevant orders of the Industrial Welfare Commission) by failing to pay Employees: (a) time and one-half their regular hourly rates for hours worked in excess of eight hours in a workday or in excess of forty hours in any workweek or for the first eight hours worked on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours worked in excess of twelve hours in any one day or for hours worked in excess of eight hours on any seventh day of work in a workweek. Defendants had a consistent policy of not paying Employees wages for all hours worked, including by requiring off the clock work as addressed above and by under-reporting actual hours worked. With work shifts generally requiring eight hours or more of work on a given day, this unpaid off the clock work resulted in Aggrieved Employees working past eight hours on a shift or more than forty hours in a week, which required that they be paid at the correct overtime rate of 1.5 times their regular rate.

When considered in combination with the other wage violations addressed above, Aggrieved Employees were not properly compensated, nor were they paid overtime and double time rates for hours worked in excess of 8, 10, and 12 hours in a given day, and/or forty hours in a given week. Defendants did not make available to Employees a reasonable protocol for correcting time records when Employees worked overtime hours or to fix incorrect time entries or those that Defendants unlawfully under-recorded to the Employee's detriment. Defendants have also violated these provisions by requiring other similarly situated Aggrieved Employees to work through meal periods when they were required to be clocked out or to otherwise work off the clock to complete their daily job duties.

In light of the forgoing, Aggrieved Employees seek to recover wages and penalties pursuant to the California Labor Code, including Labor Code §§ 204, 510, 558, 1174, 1194, 1198, 1199, and the relevant paragraphs of the IWC Wage Orders, including paragraphs 2(K), 2(S), 3(A), 4, and 20. Defendants are liable to Employees for the full amount of all their unpaid wages and overtime compensation, with interest, plus their reasonable attorneys' fees and costs, as well as the assessment of any statutory penalties against Defendants, and each of them, and any additional sums as provided by the Labor Code and/or other statutes and Wage Order provisions.

Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties available and applicable under Labor Code §§ 510, 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Meal-Period Liability Under Labor Code §§ 226.7 and 512 and Penalties

Defendants had a common policy and practice of systemically denying Aggrieved Employees the opportunity to take meal periods in compliance with California Law. Specifically, Aggrieved Employees were denied the opportunity to take timely and duty-free meal periods, of at least 30 minutes, to which they were entitled. Aggrieved Employees' unpaid meal periods were regularly interrupted by mandatory work-related activities. Additionally, Aggrieved Employees were not afforded the opportunity to take full 30-minute meal periods as required.



Aggrieved Employees were not provided with meal periods of at least thirty (30) minutes for each five (5) hour work period due to (1) Defendants' policy of not scheduling each meal period as part of each work shift; (2) no formal written meal policy that encouraged employees to take their meal periods, or that advised Aggrieved Employees of their meal and rest period rights; and (3) Defendants' practice of requiring Aggrieved Employees to continue working through their meal and rest periods due to the excessive workload.

Defendants also failed to pay Aggrieved Employees "premium pay," i.e. one hour of wages at each Aggrieved Employee's effective regular rate of pay, for each meal period that Defendants failed to provide or deficiently provided, including by miscalculating any premium payments they did make. Therefore, pursuant to Labor Code § 226.7 and paragraphs 11 and 20 of the applicable IWC Wage Order, Aggrieved Employees are entitled to damages in an amount equal to one hour of wages at their correctly calculated regular rate of compensation for each meal period not provided or deficiently provided, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code, including Labor Code § 558 and other applicable statutes and Wage Order provisions.

Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties and wages as available and applicable under Labor Code §§ 226.7, 512, 558, including sections 558(a)(1)-(3), 1199, 2699(f)(2) and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Rest-Break Liability Under Labor Code § 226.7 and Penalties

Defendants have consistently failed to provide Aggrieved Employees with paid rest breaks of not less than 10 minutes for every work period of 4 or more consecutive hours, as required by Labor Code. Aggrieved Employees were not provided with rest periods of at least ten (10) minutes for each four (4) hour work period, or major fraction thereof, due to (1) Defendants' policy of not scheduling each rest period as part of each work shift, including second rest breaks for shifts of six (6) hours or more; (2) no formal compliant written rest period policy that encouraged employees to take their rest periods, or that properly advised Aggrieved Employees of their rest period rights; (3) Defendants' policy and practice of requiring Aggrieved Employees to skip and continue working through their rest breaks due to the excessive workload; (4) Defendants' systematic practice of not permitting and rejecting Aggrieved Employees from taking legally compliant rest periods; and (5) Defendants' systematic policy and practice of exercising and subjecting control over Aggrieved Employees during rest periods by not permitting Aggrieved Employees to leave the business premises. Also, under *Augustus v. ABM Security Services, Inc.*, 2 Cal.5th 257, 260 (2016) "[D]uring required rest periods, employers must relieve their employees of all duties and relinquish any control over how employees spend their break time." As Defendants' did not allow Aggrieved Employees to leave the Defendants' location and this is directly at odds with *Augustus*, as it "tethered [employees] by time and policy to a particular location" and therefore fails to relieve employees of all work duties and employer control during rest periods. *Augustus*, 2 Cal.5th at 269.

Defendants also failed to pay Aggrieved Employees premium pay for each day on which requisite rest breaks were not provided or were deficiently provided, or miscalculated any premiums paid. Therefore, pursuant to Labor Code § 226.7 and paragraphs 12 and 20 of the applicable IWC Wage



Order, Aggrieved Employees are entitled to damages in an amount equal to one hour of wages at their correctly calculated regular rate of compensation for each rest period not provided or deficiently provided, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code, including Labor Code § 558 and other applicable statutes and Wage Order provisions.

Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties and wages as available and applicable under Labor Code §§ 226.7, 512, 558, including sections 558(a)(1)-(3), 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Reimburse for Necessary Business Expenditures in Violation of Labor Code § 2802

Defendants have consistently required Aggrieved Employees to incur necessary business expenses in the execution of their duties under Defendants' employ. Specifically, Aggrieved Employees were required to use their personal cellphones and internet usage plans. Defendants have failed to fully reimburse Aggrieved Employees for these necessary work expenses

Defendants systematically and uniformly failed to reimburse those lawful and necessary work related expenses or losses incurred in direct discharge of their job duties during employment with Defendants and at the direction of the Defendants pursuant to Labor Code § 2802(a) and the applicable IWC Wage Orders, paragraph 9. Defendants are liable for PAGA penalties resulting from their failure to reimburse necessary business expenses incurred by the Aggrieved Employees. Accordingly, Aggrieved Employees are entitled to recover, and hereby seek through this Representative Action, all civil and statutory penalties authorized for violations of California Labor Code §§ 1198 and 2802, and Section 9(B) of the applicable IWC Wage Orders, and Plaintiff seeks all civil and statutory penalties available and applicable under Labor Code §§ 2802 and 2699(f)(2), and also attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Issue Accurate and Itemized Wage Statements in Violation of Labor Code § 226

California Labor Code § 226(a) requires an employer to furnish each employee with an accurate, itemized wage statements in writing. These statements must be appended to the detachable part of the check, draft, voucher, or whatever else serves to pay the employee's wages; or, if wages are paid by cash or personal check, these statements may be given to the employee separately from the payment of wages; in either case the employer must give the employee these statements twice a month or each time wages are paid. As a direct and proximate cause of Defendants' violation of Labor Code § 226(a), Aggrieved Employees suffered injuries, including among other things confusion over whether they received all wages owed them, the difficulty and expense involved in reconstructing pay records, and forcing them to make mathematical computations to analyze whether the wages paid in fact compensated them correctly for all hours worked.

Defendants failed to provide Aggrieved Employees with accurate itemized wage statements in writing, as required by the Labor Code. Specifically, Defendants failed to provide Employees with accurate itemized wage statements in writing, as required by the Labor Code. The wage statements given to Aggrieved Employees failed to accurately account for unpaid wages, overtime, premium pay for deficiently provided meal periods and rest breaks.



Additionally, for the purposes of Subsection (a)(9), Plaintiff seeks to expand the scope of the Aggrieved Employees she seeks to represent to extend to all individuals employed by Defendants during the applicable period. The wage statements issued to Aggrieved Employees failed to state all applicable hourly rates for which Aggrieved Employees were paid as required by Labor Code § 226(a)(9).

In light of these violations, and pursuant to Labor Code §§ 226(a) and 226(e) and paragraphs 4(b), 7, and 20 of the applicable IWC Wage Orders, Aggrieved Employees are entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an award of costs and reasonable attorneys' fees.

Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to provide Aggrieved Employees with accurate, itemized wage statements and failure to maintain employment records for Aggrieved Employees under Labor Code §§ 226, 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties and wages available and applicable under Labor Code §§ 226(e), 226.3, 558, 1174.5, 1199, and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by providing inaccurate wage statements and failing to maintain records as required under Labor Code § 226(a), Defendants committed ongoing violations giving rise to civil penalties under Labor Code § 226.3, which in addition to other penalties provided by law, subjects Defendants to "a penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, ..."

Failure to Issue Semimonthly Payments in Violation of Labor Code § 204

In failing to pay Aggrieved Employees wages, overtime, premium pay, etc., and failing to provide them with checks and wage statements, Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required under Labor Code § 204. Defendants failed to maintain records showing accurate hours worked daily and the wages paid to Aggrieved Employees, as well as the meal and rest periods taken by Aggrieved Employees, as required by Labor Code § 1174 and the applicable IWC wage orders.

Defendants also required Aggrieved Employees to work hours off the clock for which they were not compensated, including during interrupted or otherwise on-duty meal and rest periods. Defendants also failed to pay all overtime premium wages owed for work conducted on a work shift and a workday as addressed above. Therefore, when Aggrieved Employees received wage statements and pay checks, they did not compensate all hours worked on a timely basis, resulting in Defendants' systematic failure to pay all wages owed to Aggrieved Employees twice monthly in accordance with the requirements of Labor Code § 204. Additionally, by not providing wage statements as required under section 204, Defendants systematically violated Labor Code § 204 and § 226.



Given the above described off the clock work, Plaintiff was not paid at the correct overtime rate for all hours she worked after eight hours into a shift or over forty in a work week and that she was not paid all double time owed either. Defendants' uniformly applied payroll policies and practices thus resulted in further systematic and ongoing violations of the requirements of Labor Code § 204.

In light of the foregoing, Aggrieved Employees seek to recover wages and penalties, interest, fees and costs pursuant to Labor Code §§ 201.3, 210, 218.5, 558, and 1194. In failing to pay Aggrieved Employees minimum wages and overtime, off the clock work, by not providing proper meal and rest periods, failing to provide accurate itemized wage statements, and failing to pay Employees wages upon termination or timely upon resignation, all discussed above, Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required under Labor Code § 204. Defendants also failed to maintain records showing accurate hours worked daily and the wages paid to Aggrieved Employees, as required by Labor Code § 1174 and paragraph 7 of the applicable IWC Wage Orders, entitling Aggrieved Employees to recover penalties pursuant to paragraph 20 of the applicable IWC Wage Orders.

Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to timely pay all wages owed, including at least semi-monthly and upon separation or termination, under Labor Code §§ 203, 204, 2926, 2927, and 2699.5 seeking all civil penalties available and applicable under Labor Code §§ 204, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Keep Records In Accordance With Labor Code § 1174

Labor Code § 1174 requires employers to keep records showing payroll data and the hours worked daily by and the wages paid to employees. By failing to pay Aggrieved Employees proper wages, overtime, double time, premium pay, etc., and by not recording meal period start and end times, all discussed herein, Defendants failed to maintain proper employment records in accordance with Section 1174. In light of the foregoing, Aggrieved Employees seek to recover penalties pursuant to Labor Code §§ 1174.5 and 2699, *et seq.* Defendants have also failed to comply with paragraph 7 of the applicable California IWC Wage Orders by failing to maintain time records showing when the employee begins and ends each work period, meal periods, wages earned pursuant to Labor Code § 226.7, and total daily hours worked by itemizing in wage statements all deductions from payment of wages and accurately reporting total hours worked by the Aggrieved Employees, and they are entitled to recover penalties pursuant to paragraph 20 of the applicable IWC Wage Orders.

Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to provide the Aggrieved Employees with accurate, itemized wage statements and failure to maintain employment records for Aggrieved Employees under Labor Code §§ 226, 1174, 1198, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties and wages available and applicable under Labor Code §§ 558, 1174.5, 1199, and 2699(f)(2), 2699.5, and paragraph 20 of the applicable IWC Wage Order, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).



Waiting Time Penalties Pursuant to Labor Code § 203

Some Aggrieved Employees no longer work for Defendants; they either resigned or were terminated from Defendants' employ. Based on the forgoing, Defendants have had a consistent policy of failing to pay all wages earned by and owed to Aggrieved Employees at the time of their termination of within seventy-two hours of their resignation, as required by California under Labor Code § 203. In light of the forgoing, Aggrieved Employees seek to recover wages and penalties pursuant to Labor Code § 558 and further specifically seek penalties and wages under Labor Code § 203, which provides that an employee's wages shall continue until paid for up to thirty (30) days from the date they were due.

Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to timely pay all wages owed, including at least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199, 2699(f)(2), 2699.5, and paragraph 20 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Unfair Competition Under Business and Professions Code § 17200, et seq.

Consequently, Defendants' conduct has been and continues to be unfair, unlawful, and harmful to Aggrieved Employees and the general public in violation of Business & Professions Code § 17200 *et seq.*

Plaintiff's PAGA Claim under Labor Code § 2698 et seq. and Recovery Bases:

After complying with the notice procedures of Labor Code § 2699.3 and the running of the notice period after the filing of the Class Action Complaint, Plaintiff will file an amended Complaint asserting, as a representative action on behalf of the California Attorney General and the other similarly Aggrieved Employees, a PAGA claim for violations of the above addressed underlying claims and seeking penalties as specified by the applicable corresponding provisions.

The Aggrieved Employees seek penalties under Labor Code §§ 2698 and 2699 for Defendants' violation of Labor Code provisions included under Labor Code § 2699.5, including the penalty provisions, without limitation, based, *inter alia*, on the following California Labor Code sections: §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, 2699, *et seq.*, and 2802, including as follows:

(a) **Wage Claims:** For failure to provide the Aggrieved Employees all earned regular pay and minimum wages for regular hours worked and for failure to pay overtime premium wages for overtime hours worked, failure to pay proper reporting time and sick pay under Labor Code §§ 510, 1194(a), 1197, and 1198, and paragraphs 2(K), 3(A), 4(A), 4(B) and 20 of the applicable IWC Wage Order(s) seeking all civil and statutory penalties available and applicable under Labor Code §§ 510, 558, 1194.2, 1197.1, 1198, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(b) **Meal and Rest Period Claims:** For failure to provide the Aggrieved Employees off-duty, timely, and unpaid meal periods and failure to authorize and permit them to take off-



duty, timely, and paid rest periods, or pay one hour of regular pay in lieu thereof, under Labor Code §§ 512, 1198, and 226.7, and Sections 11, 12(A), and 12(B) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties available and applicable, including under paragraph 20 of the applicable IWC Wage Orders, and wages under Labor Code §§ 226.7, 512, 558, including sections 558(a)(1)-(3), 1199 and 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(c) Inaccurate Wage Statements and Failure to Maintain Records: For failure to provide the Aggrieved Employees with wage statements or with accurate, itemized wage statements and failure to maintain employment records for Aggrieved Employees under Labor Code §§ 226, 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties and wages available and applicable under Labor Code §§ 226(e), 226.3, 558, 1174.5, 1199, and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by providing inaccurate wage statements and failing to maintain records as required under Labor Code § 226(a), Defendants committed ongoing violations giving rise to civil penalties under Labor Code § 226.3, which in addition to other penalties provided by law, subjects Defendants to "a penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, ...";

(d) Failure to Timely Pay Wages: For failure to timely pay all wages owed, including at least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(e) Failure to Reimburse Business Expenses: For Defendants' failure to reimburse the necessary work related expenses incurred under Labor Code §§ 1197, 1197.1, 1198, and 2802, and Sections 2(K), 4, 9, and 20 of the applicable IWC Wage Order(s), seeking civil penalties available and applicable under Labor Code §§ 1197, 1197.1, 1198, 2802, 2699.5, and 2699(f)(2) and paragraph 9 and 20 of the IWC Wage Orders, and also attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(f) All Alleged Violations of the IWC Wage Orders: For any above addressed violation of the applicable provisions of the IWC Wage Orders constituting violations of Labor Code § 1198 and Labor Code § 2699.5 and seeking penalties available and applicable under Labor Code § 2699(f)(2) and paragraph 20 of the applicable IWC Wage Orders, and for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

We have been constrained to initially move forward with the filing of this Complaint, alleging the causes of action discussed herein, without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.



This letter and the attached Complaint therefore provide the requisite notice under the Act to the LWDA and Defendants by setting forth the specific provisions of the Labor Code and related provisions Plaintiff alleges have been violated, including the facts and relevant theories alleged against Defendants and joint employers. To prevent the violations described in the Complaint and herein from occurring, and to remedy past violations, Plaintiff respectfully requests that the LWDA conduct an investigation into Defendants' employment practices in accordance with the Act.

Wherefore we request that you advise us, by certified mail within sixty days of the postmark on this letter, whether you intend to proceed with these claims or whether the Aggrieved Employees should include them in an amended Labor Code § 2698 *et seq.* claim under the Act in an amended Complaint.

Regards,

D.LAW, INC.

A handwritten signature in blue ink, appearing to read 'David Yeremian', written over the printed name.

David Yeremian

Cc: Zepexco, Inc. dba Zephyr Express, by Certified Mail
Winebow, Inc. dba Winebow. by Certified Mail
Central Coast Wine Company, by Certified Mail

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Attorneys for Plaintiff MELISSA JOSEPHINE FLUTY,
on behalf of herself and others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SOLANO**

MELISSA JOSEPHINE FLUTY, on behalf of
herself and others similarly situated,

Plaintiff,

vs.

ZEPEXCO, INC. dba ZEPHYR EXPRESS, a
California Corporation; WINEBOW, INC., dba
WINEBOW, a Delaware Corporation;
CENTRAL COAST WINE COMPANY, a
California Corporation; and DOES 1 through
50, inclusive,

Defendants.

Case No.:

CLASS ACTION

Assigned for All Purposes To:

Hon.

Dept.:

CLASS ACTION COMPLAINT FOR:

1. Failure to Pay Minimum Wages;
2. Failure to Pay Wages and Overtime
Under Labor Code § 510;
3. Meal-Period Liability Under Labor Code §
226.7;
4. Rest-Break Liability Under Labor Code §
226.7;
5. Reimbursement of Necessary Expenditures
Under Labor Code § 2802;
6. Violation of Labor Code § 226(a);
7. Failure to Keep Required Payroll Records
Under Labor Code §§ 1174, and 1174.5;
8. Penalties Pursuant to Labor Code § 203; and
9. Violation of Business & Professions Code §
17200 et seq.

DEMAND FOR JURY TRIAL

1. Plaintiff MELISSA JOSEPHINE FLUTY, (hereinafter “Plaintiff”) on behalf of herself and all others similarly situated (collectively, “Employees”; individually, “Employee”) complains of ZEPEXCO, INC. dba ZEPHYR EXPRESS, INEBOW, INC., dba WINEBOW, and CENTRAL COAST WINE COMPANY, Defendants, and each of them, as follows:

INTRODUCTION

2. Plaintiff brings this action on behalf of herself and all current and former Employees within the State of California who, at any time four (4) years prior to the filing of this lawsuit, are or were employed as non-exempt, hourly employees by Defendants ZEPEXCO, INC. dba ZEPHYR EXPRESS , INEBOW, INC., dba WINEBOW, and CENTRAL COAST WINE COMPANY , and DOES 1 through 50 (all defendants being collectively referred to herein as “Defendants”). Plaintiff alleges that Defendants, and each of them, violated various provisions of the California Labor Code, relevant orders of the Industrial Welfare Commission (IWC) and California Business & Professions Code, and seeks redress therefore.

3. Plaintiff is a resident of California and during the time period relevant to this Complaint was employed by Defendants as a non-exempt hourly employee within the State of California at Defendants' facilities and offices in California. Plaintiff and the other Class members worked for Defendants in Solano County, and in other nonexempt positions, throughout California and, and consistently worked at Defendants' behest without being paid all wages due. More specifically, Plaintiff and the other similarly situated Class members were employed by Defendants and worked at Defendants' offices and other facilities where the conduct giving rise to the allegations in this Class Action Complaint occurred. Upon information and belief, Plaintiff was employed by Defendants and (1) shared similar job duties and responsibilities, (2) was subjected to the same policies and practices, and (3) endured similar violations at the hands of Defendants as the other Employee Class members who served in similar and related positions.

4. Defendants required Plaintiff and the Employees in the Class to perform work while remaining under Defendants' control during their meal breaks. Defendants thus failed to pay Plaintiff and the Class members for all hours worked, and provided them with inaccurate wage statements that prevented Plaintiff and the Class from learning of these unlawful pay practices.

1 Defendants also failed to provide Plaintiff and the Class with lawful meal and rest periods, as
2 employees were not provided with the opportunity to take timely, uninterrupted, and duty-free
3 meal and rest periods as required by the Labor Code.

4 **THE PARTIES**

5 **A. The Plaintiff**

6 5. Plaintiff MELISSA JOSEPHINE FLUTY has resided in California and during the
7 time period relevant to this Complaint was employed by Defendants as a non-exempt hourly
8 employee within the State of California.

9 **B. The Defendants**

10 6. Defendant ZEPEXCO, INC. dba ZEPHYR EXPRESS is a California Corporation
11 with its principle executive offices in Benicia, California, and has been listed as the employer on
12 wage statements issued to Plaintiff during the relevant time period. ZEPEXCO, INC. employed
13 Plaintiff and the Employees in Solano County, including at Defendants' offices and facilities in
14 Benicia, California, and throughout California. Defendants conduct business throughout
15 California.

16 7. Defendant WINEBOW, INC. is a Delaware Corporation with its principle
17 executive offices in Pine Brook, New Jersey, and has been listed as the employer on the personnel
18 file issued to Plaintiff during the relevant time period. WINEBOW, INC. employed Plaintiff and
19 the Employees in Solano County, including at Defendants' offices and facilities in Benicia,
20 California, and throughout California and Defendants conduct business throughout California.

21 8. Defendant CENTRAL COAST WINE COMPANY is a California Corporation
22 with its principle executive offices in Benicia, California, and has been listed as the on the
23 personnel file issued to Plaintiff during the relevant time period. CENTRAL COAST WINE
24 COMPANY employed Plaintiff and the Employees in Solano County, including at Defendants'
25 offices and facilities in Benicia, California, and throughout California and Defendants conduct
26 business throughout California.

27 9. The true names and capacities, whether individual, corporate, associate, or
28 whatever else, of the Defendants sued herein as Does 1 through 50, inclusive, are currently

1 unknown to Plaintiff, who therefore sues these Defendants by such fictitious names under Code of
2 Civil Procedure § 474. Plaintiff is informed and believes and thereon alleges that Defendants
3 designated herein as Does 1 through 50, inclusive, and each of them, are legally responsible in
4 some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend
5 this Complaint to reflect the true names and capacities of the Defendants designated herein as
6 Does 1 through 50 when their identities become known.

7 10. Plaintiff is informed and believes and thereon alleges that each Defendant acted in
8 all respects pertinent to this action as the agent of the other Defendants, that Defendants carried
9 out a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of
10 each Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted in
11 all respects as the employers or joint employers of Employees. Defendants, and each of them,
12 exercised control over the wages, hours or working conditions of Employees, or suffered or
13 permitted Employees to work, or engaged, thereby creating a common law employment
14 relationship, with Employees. Therefore, Defendants, and each of them, employed or jointly
15 employed Employees.

16 JURISDICTION AND VENUE

17 11. This Court has jurisdiction over this Action pursuant to California Code of Civil
18 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought
19 as a Class Action on behalf of similarly situated Employees of Defendants pursuant to California
20 Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district
21 pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the
22 obligations and liabilities giving rise to this lawsuit occurred at least in part in Solano County and
23 Defendants maintain and operate company offices and facilities in Solano County, and employ
24 Plaintiff and other Class members in Solano County and throughout California.

25 FACTUAL BACKGROUND

26 12. The Employees who comprise the Class and Collective, including Plaintiff, are
27 nonexempt employees pursuant to the applicable Wage Order of the IWC. Defendants hire
28 Employees who work in nonexempt positions at the direction of Defendants in the State of

1 California. Plaintiff and the Class members were either not paid by Defendants for all hours
2 worked or were not paid at the appropriate minimum, regular and overtime rates. Specifically,
3 Plaintiff and Employees were not paid for the time that they worked “pre-shift” and “post-shift”
4 without compensation by donning and doffing required gear, taking calls and other forms of
5 mobile communication from supervisors and coworkers, spending time to clock in due to
6 insufficient time clocks and Defendants’ policies, working while clocked out for meal breaks.
7 Plaintiff also contends that Defendants failed to pay Plaintiff and the Class members all wages
8 due and owing, failed to provide meal and rest breaks, and failed to furnish accurate wage
9 statements, all in violation of various provisions of the California Labor Code and applicable
10 Wage Orders.

11 13. During the course of Plaintiff and the Class members’ employment with
12 Defendants, they were not paid all wages they were owed, including for all work performed and
13 for all overtime hours worked and were forced to work during their meal and rest breaks to keep
14 labor budgets low.

15 14. As a matter of uniform Company policy, Plaintiff and the Class members were
16 required to work during their meal and rest breaks which were not compensated by Defendants in
17 violation of the California Labor Code. Plaintiff and the Class members were also not paid regular
18 wages and overtime for the time they were required to comply with other requirements imposed
19 upon them, which they had to complete while working through their meal and rest breaks and
20 without compensation. As a result, Plaintiff and the Class members worked shifts over eight (8)
21 hours in a day and over forty (40) hours in a work week, but they were not paid at the appropriate
22 overtime rate for all such hours, including by being required to perform work duties and tasks
23 without pay and while off-the-clock. As a result, Plaintiff and the Class members worked
24 substantial overtime hours during their employment with Defendants for which they were not
25 compensated, in violation of the California Labor Code, applicable IWC Wage Orders.

26 15. As a result of the above described the daily work demands and pressures to work
27 through breaks, and the other wage violations they endured at Defendants’ hands, Plaintiff and the
28 Class members were not properly paid for all wages earned and for all wages owed to them by

1 Defendants, including when working more than eight (8) hours in any given day and/or more than
2 forty (40) hours in any given week. As a result of Defendants' unlawful policies and practices,
3 Plaintiff and Class members incurred overtime hours worked for which they were not adequately
4 and completely compensated. To the extent applicable, Defendants also failed to pay Plaintiff and
5 the Class members at an overtime rate of 1.5 times the regular rate for the first eight hours of the
6 seventh consecutive work day in a week and overtime payments at the rate of 2 times the regular
7 rate for hours worked over eight (8) on the seventh consecutive work day, as required under the
8 Labor Code, applicable IWC Wage Orders.

9 16. Therefore, from at least four (4) years prior to the filing of this lawsuit and
10 continuing to the present, Defendants had a consistent policy or practice of failing to pay
11 Employees for all hours worked, and failing to pay minimum wage for all time worked as required
12 by California Law.

13 17. Additionally from at least four (4) years prior to the filing of this lawsuit and
14 continuing to the present, Defendants had a consistent policy or practice of failing to pay
15 Employees overtime compensation at premium overtime rates for all hours worked in excess of
16 eight (8) hours a day and/or forty (40) hours a week, and double-time rates for all hours worked in
17 excess of twelve (12) hours a day, in violation of Labor Code § 510 and the corresponding
18 sections of IWC Wage Orders.

19 18. Additionally from at least four (4) years prior to the filing of this lawsuit and
20 continuing to the present, Defendants have regularly required Employees to work shifts in excess
21 of five (5) hours without providing them with uninterrupted meal periods of not less than thirty
22 (30) minutes and shifts in excess of ten (10) hours without providing them with second meal
23 periods of not less than thirty minutes; nor did Defendants pay Employees "premium pay," i.e. one
24 hour of wages at each Employee's effective regular rate of pay, for each meal period that
25 Defendants failed to provide or deficiently provided.

26 19. From at least four (4) years prior to the filing of this lawsuit and continuing to the
27 present, Defendants have consistently failed to provide Employees with paid rest breaks of not less
28 than ten (10) minutes for every work period of four (4) or more consecutive hours; nor did

1 Defendant pay Employees premium pay for each day on which requisite rest breaks were not
2 provided or were deficiently provided at one hour of wages at each Employee's effective regular
3 rate of pay, for each rest period that Defendants failed to provide or deficiently provided.

4 20. Additionally, from at least four (4) years prior to the filing of this lawsuit, and
5 continuing to the present, Defendants have consistently failed to provide Employees with timely,
6 accurate, and itemized wage statements, in writing, as required by California wage-and-hour laws.

7 21. From at least four (4) years prior to the filing of this lawsuit and continuing to the
8 present, Defendants have failed to reimburse Employees for expenses necessarily incurred in the
9 performance of their job duties for Defendants including, but not limited to, cost of cell phone
10 usage, internet usage, cost of equipment including but not limited to protective equipment which
11 were necessary to perform their duties under Defendants' employ in violation of Labor Code §
12 2802.

13 22. Additionally, from at least three (3) years prior to the filing of this lawsuit, and
14 continuing to the present, Defendants have consistently failed to keep accurate time and wage
15 records as required by California wage-and-hour laws.

16 23. Additionally, from at least four (4) years prior to filing this lawsuit and continuing
17 to the present, Defendants have had a consistent policy of failing to pay all wages due and owed to
18 Employees at the time of their termination of within seventy-two (72) hours of their resignation, as
19 required by California wage-and-hour laws.

20 24. In light of the foregoing, Employees bring this action pursuant to, inter alia, Labor
21 Code §§ 201, 202, 203, 204, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12,
22 1185, 1194, 1194.2 1197, 1198.5, 1199, and 2802.

23 25. Furthermore, pursuant to Business and Professions Code §§ 17200-17208,
24 Employees seek injunctive relief, restitution, and disgorgement of all benefits Defendants have
25 enjoyed from their violations of Labor Code.

26 **CLASS ALLEGATIONS**

27 26. Plaintiff brings this class action on behalf of herself and all others similarly situated
28 pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a class defined as follows:

1 all individuals employed by Defendants, at any time within four (4) years of the filing of this
2 lawsuit, and have been employed by Defendants within the State of California.

3 27. Further, Plaintiff seeks to represent the following Subclasses composed of and
4 defined as follows:

5 a. Subclass 1. Minimum Wages Subclass. All Class members who were not
6 compensated for all hours worked for Defendants at the applicable minimum wage.

7 b. Subclass 2. Wages and Overtime Subclass. All Class members who were not
8 compensated for all hours worked for Defendants at the required rates of pay, including for all
9 hours worked in excess of eight in a day and/or forty in a week.

10 c. Subclass 3. Meal Period Subclass. All Class members who were subject to
11 Defendants' policy and/or practice of failing to provide unpaid 30-minute uninterrupted and duty-
12 free meal periods or one hour of pay at the Employee's regular rate of pay in lieu thereof.

13 d. Subclass 4. Rest Break Subclass. All Class members who were subject to
14 Defendants' policy and/or practice of failing to authorize and permit Employees to take
15 uninterrupted, duty-free, 10-minute rest periods for every four hours worked, or major fraction
16 thereof, and failing to pay one hour of pay at the Employee's regular rate of pay in lieu thereof.

17 e. Subclass 5. Payroll Records Subclass. All Class members who were subject to
18 Defendants' policy and/or practice of failing to keep accurate time and wage records as required
19 by California wage-and-hour laws.

20 f. Subclass 6. Wage Statement Subclass. All Class members who, within the
21 applicable limitations period, were not provided with accurate itemized wage statements.

22 g. Subclass 7. Failure to Reimburse for Necessary Business Expenditures Subclass.
23 All Class members who were subject to Defendants failing to reimburse for expenses necessarily
24 incurred in the performance of Employees job duties for Defendants which were necessary to
25 perform their duties under Defendants' employ.

26 h. Subclass 8. Termination Pay Subclass. All Class members who, within the
27 applicable limitations period, either voluntarily or involuntarily separated from their employment
28 and were subject to Defendants' policy and/or practice of failing to timely pay wages upon

1 termination.

2 i. Subclass 9. UCL Subclass. All Class members who are owed restitution as a
3 result of Defendants' business acts and practices, to the extent such acts and practices are found to
4 be unlawful, deceptive, and/or unfair.

5 28. Plaintiff reserves the right under California Rule of Court 3.765 to amend or
6 modify the class description with greater particularity or further division into subclasses or
7 limitation to particular issues.

8 29. This action has been brought and may properly be maintained as a class action
9 under the provisions of Code of Civil Procedure § 382 because there is a well-defined community
10 of interest in litigation and proposed class is easily ascertainable.

11 **A. Numerosity**

12 30. The potential members of the class as defined are so numerous that joinder of all
13 the member of the class is impracticable. While the precise number of class member has not been
14 determined at this time, Plaintiff is informed and believes that Defendants employ or, during the
15 time period relevant to this lawsuit, employed more than 100 individuals were employed by
16 Defendant's within the State of California.

17 31. Accounting for employee turnover during the relevant time period increases this
18 number substantially. Plaintiff alleges that Defendants' employment records will provide
19 information as to the number and location of all class members.

20 **B. Commonality**

21 32. There are questions of law and fact common to the class that predominate over any
22 questions affecting only individual class members. These common questions of law and fact
23 include:

- 24 a. Whether Defendants failed to pay Employees minimum wages;
- 25 b. Whether Defendants failed to pay Employees wages for all hours worked;
- 26 c. Whether Defendants failed to pay Employees overtime as required under Labor
27 Code § 510;
- 28 d. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable

IWC Wage Orders, by failing to provide Employees with requisite meal periods or premium pay in lieu thereof;

e. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage Orders, by failing to provide Employees with requisite rest breaks or premium pay in lieu thereof;

f. Whether Defendants violated Labor Code § 226(a);

g. Whether Defendants violated Labor Code §§ 1174 and 1174.5;

h. Whether Defendants failed to reimburse Employees for necessary business expenses;

i. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay wages and compensation due and owing at the time of termination of employment;

j. Whether Defendants violated Business and Professions Code § 17200 et seq.; and

k. Whether Employees are entitled to equitable relief pursuant to Business and Professions Code § 17200 et seq.;

C. Typicality

33. The claims of the named plaintiff are typical of those of the other Employees.

Employees all sustained injuries and damages arising out of and caused by Defendant's common course of conducts in violation of statutes, as well as regulations that have the force and effect of law, as alleged herein.

D. Adequacy of Representation

34. Plaintiff will fairly and adequately represent and protect the interest of Employees.

Counsel who represents Employees are experienced and competent in litigating employment class actions.

E. Superiority of Class Action

35. A class action is superior to other available means for the fair and efficient

adjudication of this controversy. Individual joinder of all Employees is not practicable, and questions of law and fact common to all Employees predominate over any questions affecting only individual Employees. Each Employee has been damaged and is entitled to recovery by reason of

1 Defendants' illegal policies or practices of failing to compensate Employees properly.

2 36. Class action treatment will allow those persons similarly situated to litigate their
3 claims in the manner that is most efficient and economical for the parties and the judicial system.
4 Plaintiff is unaware of any difficulties in managing this case that should preclude class action.

5 **FIRST CAUSE OF ACTION**

6 **FAILURE TO PAY MINIMUM WAGES**

7 **(Against All Defendants)**

8 37. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
9 full herein.

10 38. Defendants failed to pay Employees minimum wages for all hours worked.
11 Defendants had a consistent policy of misstating Employees time records and failing to pay
12 Employees for all hours worked. Employees would work hours and not receive wages, including
13 as alleged above in connection with working during meal breaks, worked "pre-shift" and "post-
14 shift" without compensation by donning and doffing required gear, taking calls and other forms
15 of mobile communication from supervisors and coworkers, spending time to clock in due to
16 insufficient time clocks and Defendants' policies. Additionally, Defendants had a consistent
17 policy of failing to pay Employees for hours worked during alleged meal periods for which
18 Employees were consistently denied, as also addressed herein. Moreover, Defendants did not pay
19 Plaintiff and Employees at the applicable minimum wage for all hours worked. Defendants'
20 uniform pattern of unlawful wage and hour practices manifested, without limitation, applicable to
21 the Class as a whole, as a result of implementing a uniform policy and practice that denied
22 accurate compensation to Plaintiff and the other members of the Class as to minimum wage pay.

23 39. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage"
24 states:

25 The minimum wage for employees fixed by the commission is the minimum
26 wage to be paid to employees, and the payment of a less wage than the
27 minimum so fixed is unlawful.
28

1 40. The applicable minimum wages fixed by the commission for work during the
2 relevant period is found in the Wage Orders. Pursuant to the Wage Orders, Employees are
3 therefore entitled to double the minimum wage during the relevant period.

4 41. The minimum wage provisions of California Labor Code are enforceable by private
5 civil action pursuant to California Labor Code § 1194(a) which states:

6 Notwithstanding any agreement to work for a lesser wage, any employee
7 receiving less than the legal minimum wage or the legal overtime
8 compensation applicable to the employee is entitled to recover in a civil
9 action the unpaid balance of the full amount of this minimum wage or
overtime compensation, including interest thereon, reasonable attorney's
fees and costs of suit.

10 42. As described in California Labor Code §§ 1185 and 1194.2, any action for wages
11 incorporates the applicable Wage Order of the California Industrial Welfare Commission.

12 43. California Labor Code § 1194.2 also provides for the following remedies:

13 In any action under Section 1194 . . . to recover wages because of the
14 payment of a wage less than the minimum wages fixed by an order of the
15 commission, an employee shall be entitled to recover liquidated damages in
16 an amount equal to the wages unlawfully unpaid and interest thereon.

17 44. Defendants have the ability to pay minimum wages for all time worked and have
18 willfully refused to pay such wages with the intent to secure for Defendants a discount upon this
19 indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Employees.

20 45. Wherefore, Employees are entitled to recover the unpaid minimum wages
21 (including double minimum wages), liquidated damages in an amount equal to the minimum
22 wages unlawfully unpaid, interest thereon and reasonable attorney's fees and costs of suit pursuant
23 to California Labor Code § 1194(a).

24 **SECOND CAUSE OF ACTION**

25 **FAILURE TO PAY WAGES AND OVERTIME UNDER LABOR CODE § 510**

26 **(Against All Defendants)**

27 46. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
28 full herein.

 47. By their conduct, as set forth herein, Defendants violated California Labor Code §

1 510 (and the relevant orders of the Industrial Welfare Commission) by failing to pay Employees:
2 (a) time and one-half their regular hourly rates for hours worked in excess of eight (8) hours in a
3 workday or in excess of forty (40) hours in any workweek or for the first eight (8) hours worked
4 on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours
5 worked in excess of twelve (12) hours in any one (1) day or for hours worked in excess of eight
6 (8) hours on any seventh day of work in a workweek. Defendants had a consistent policy of not
7 paying Employees wages for all hours worked including time off the clock working “pre-shift”
8 and “post-shift” without compensation by donning and doffing required gear, taking calls and
9 other forms of mobile communication from supervisors and coworkers, spending time to clock in
10 due to insufficient time clocks and Defendants’ policies, and the uncompensated time included
11 the time Employees worked off-the-clock during meal periods. Employees regularly worked over
12 8 hours on a given day without receiving overtime compensation.

13 48. Defendants’ failure to pay compensation in a timely fashion also constituted a
14 violation of California Labor Code § 204, which requires that all wages shall be paid
15 semimonthly. From four (4) years prior to the filing of this lawsuit to the present, in direct
16 violation of that provision of the California Labor Code, Defendants have failed to pay all wages
17 and overtime compensation earned by Employees. Each such failure to make a timely payment of
18 compensation to Employees constitutes a separate violation of California Labor Code § 204.

19 49. Employees have been damaged by these violations of California Labor Code §§
20 204 and 510 (and the relevant orders of the Industrial Welfare Commission).

21 50. Consequently, pursuant to California Labor Code §§ 204, 510, and 1194 (and the
22 relevant orders of the Industrial Welfare Commission), Defendants are liable to Employees for
23 the full amount of all their unpaid wages and overtime compensation, with interest, plus their
24 reasonable attorneys’ fees and costs.

25 **THIRD CAUSE OF ACTION**

26 **MEAL-PERIOD LIABILITY UNDER LABOR CODE § 226.7**

27 **(Against All Defendants)**

28 51. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in

1 full herein.

2 52. Employees regularly worked shifts greater than five (5) hours and greater than ten
3 (10) hours. Pursuant to Labor Code § 512 an employer may not employ someone for a shift of
4 more than five (5) hours without providing him or her with a meal period of not less than thirty
5 (30) minutes or for a shift of more than ten (10) hours without providing him or her with a second
6 meal period of not less than thirty (30) minutes.

7 53. Defendants failed to provide Employees with meal periods as required under the
8 Labor Code. Employees were consistently required to work through their meal periods which they
9 were consistently denied. Employees were also required to take meal periods after working well
10 beyond the five (5) hour shifts. Furthermore, Employees were regularly required to work for more
11 than 10 hours in a given shift without receiving a second uninterrupted thirty (30) minute meal
12 period as required by law.

13 54. Moreover, Defendants failed to compensate Employees for each meal period not
14 provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11 and
15 20 of the applicable IWC Wage Orders, which provide that, if an employer fails to provide an
16 employee a meal period in accordance with this section, the employer shall pay the employee one
17 hour of pay at the employee's regular rate of compensation for each workday that the meal period
18 is not provided. Defendants failed to compensate the Employees in the Class for each meal period
19 not provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11
20 and 20 of the applicable IWC Wage Order.

21 55. Therefore, pursuant to Labor Code § 226.7, Employees are entitled to damages in
22 an amount equal to one (1) hour of wages at their effective hourly rates of pay for each meal
23 period not provided or deficiently provided, a sum to be proven at trial.

24 **FOURTH CAUSE OF ACTION**

25 **REST-BREAK LIABILITY UNDER LABOR CODE § 226.7**

26 **(Against All Defendants)**

27 56. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
28 full herein.

1 57. Employees consistently worked consecutive four (4) hour shifts. Pursuant to the
2 Labor Code and the applicable IWC Wage Order, Employees were entitled to paid rest breaks of
3 not less than ten (10) minutes for each consecutive four (4) hour shift.

4 58. Defendants failed to provide Employees with timely rest breaks of not less than ten
5 (10) minutes for each consecutive four (4) hour shift.

6 59. Additionally, under *Augustus v. ABM Security Services, Inc.*, 2 Cal.5th 257, 260
7 (2016) “[D]uring required rest periods, employers must relieve their employees of all duties and
8 relinquish any control over how employees spend their time.” Defendants did not allow
9 Employees to leave the Defendants’ location and this is directly at odds with *Augustus*, as it
10 “tethered [employees] by time and policy to a particular location” and therefore fails to relieve
11 employees of all work duties and employer control during rest periods. *Augustus*, 2 Cal.5th at 269.

12 60. Moreover, Defendants failed to compensate Employees for each rest period not
13 provided or inadequately provided, as required under Labor Code § 226.7 and the applicable IWC
14 Wage Orders, which provide that, if an employer fails to provide an employee a rest period in
15 accordance with this section, the employer shall pay the employee one hour of pay at the
16 employee’s regular rate of compensation for each workday that the rest period is not provided.
17 Defendants failed to compensate the Employees in the Class for each rest period not provided or
18 inadequately provided, as required under Labor Code § 226.7 and the applicable IWC Wage
19 Order.

20 61. Therefore, pursuant to Labor Code § 226.7, Employees are entitled to damages in
21 an amount equal to one (1) hour of wages at their effective hourly rates of pay for each day
22 worked without the required rest breaks, a sum to be proven at trial.

23 **FIFTH CAUSE OF ACTION**

24 **FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENDITURES**

25 **IN VIOLATION OF LABOR CODE § 2802**

26 **(Against All Defendants)**

27 62. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
28 full herein.

1 63. Under Labor Code § 2802(a) an employer must indemnify its employees for all
2 necessary expenditures or losses incurred by the employee in direct consequence of the discharge
3 of his or her duties, or of his or her obedience to the directions of the employer.

4 64. Employees incurred necessary expenditures in the performance of their job duties
5 for Defendants, namely the cost of cell phone usage, internet usage, cost of equipment including
6 but not limited to protective equipment, which were necessary to perform their duties under
7 Defendants' employ. From four (4) years prior to the original filing of this lawsuit and continuing
8 to the present, Defendants consistently failed to reimburse Employees for these necessarily
9 incurred business expenses.

10 65. As a result of the unlawful acts of Defendants, Employees have been deprived of
11 reimbursement in amounts to be determined at trial; they are entitled to recovery of such amounts,
12 plus interest and penalties thereon, attorneys' fees, and costs.

13 **SIXTH CAUSE OF ACTION**
14 **VIOLATION OF LABOR CODE § 226(a)**
15 **(Against All Defendants)**

16 66. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
17 full herein.

18 67. California Labor Code § 226(a) requires an employer to furnish each of his or her
19 employees with an accurate, itemized statement in writing showing the gross and net earnings,
20 total hours worked, and the corresponding number of hours worked at each hourly rate; these
21 statements must be appended to the detachable part of the check, draft, voucher, or whatever else
22 serves to pay the employee's wages; or, if wages are paid by cash or personal check, these
23 statements may be given to the employee separately from the payment of wages; in either case the
24 employer must give the employee these statements twice a month or each time wages are paid.

25 68. Defendants failed to provide Employees with accurate itemized wage statements in
26 writing, as required by the Labor Code. Specifically, the wage statements given to Employees by
27 Defendants failed to accurately account for wages, overtime, and premium pay for deficient meal
28 periods and rest breaks, all of which Defendants knew or reasonably should have known were

1 owed to Employees, as alleged hereinabove. The wage statements provided to Employees were
2 confusing and required Employees to engage in discovery and refer to outside sources to verify
3 whether their pay was correct and potentially resulting in a miscalculation by the Employees.

4 69. As a direct and proximate cause of Defendants' violation of Labor Code § 226(a),
5 Employees suffered injuries, including among other things confusion over whether they received
6 all wages owed them, the difficulty and expense involved in reconstructing pay records, and
7 forcing them to make mathematical computations to analyze whether the wages paid in fact
8 compensated them correctly for all hours worked.

9 70. Pursuant to Labor Code §§ 226(a) and 226(e), Employees are entitled to recover
10 the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
11 occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not
12 exceeding an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an
13 award of costs and reasonable attorneys' fees.

14 71. With respect to violations of Labor Code § 226, Labor Code § 226.3 imposes a
15 civil penalty of two hundred and fifty dollars (\$250) for initial violations for each employee for
16 each pay period, and one thousand dollars (\$1000) for each subsequent violation for each
17 employee for each pay period.

18 72. Plaintiff is seeking penalties against Defendants under Labor Code § 226.3, and
19 any other applicable statute allowing recovery of penalties as alleged herein in an amount to be
20 shown according to proof.

21 **SEVENTH CAUSE OF ACTION**

22 **FAILURE TO KEEP REQUIRED PAYROLL RECORDS UNDER LABOR CODE §§ 1174**

23 **and 1174.5**

24 **(Against All Defendants)**

25 73. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
26 full herein.

27 74. California Labor Code § 1174 requires that all employers shall keep accurate time
28 and wage records for all employees. California Labor Code § 1174.5 further requires that any

1 employee suffering injury due to a willful violation of the aforementioned obligations may seek
2 damages, including civil penalties, from the employer.

3 75. During the course of Plaintiff's and Employees' employment, Defendants
4 consistently failed to maintain accurate time and wage records for Plaintiff and Employees as
5 required by California Labor Code § 1174 by failing to pay Plaintiff and Employees proper wages,
6 overtime, and premium pay as discussed above.

7 76. Defendants are also required by the California Labor Code § 1198 and the
8 applicable Wage Order to maintain a tracking system that accurately records the times at which
9 Employees works.

10 77. Defendants have maintained a common unlawful policy and practice of failing to
11 accurately record meal breaks. At all times relevant hereto, Defendants had maintained an
12 unlawful uniform policy and practice of editing the time records entered by its Employees to
13 change the actual meal break times recorded by the employee, in order to make it appear as though
14 Defendants' Employees took timely and compliant meal breaks.

15 78. Defendants' failure to pay wages, as alleged above, was willful in that Defendants
16 knew wages to be due but failed to pay them.

17 79. Accordingly, Defendants are liable for civil penalties pursuant to the California
18 Labor Code including §§ 1174.5. for the three (3) years prior to the filing of this Complaint.

19 **EIGHTH CAUSE OF ACTION**

20 **VIOLATION OF LABOR CODE § 203**

21 **(Against All Defendants)**

22 80. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
23 full herein.

24 81. Numerous Employees are no longer employed by Defendants; they either quit
25 Defendants' employ or were fired therefrom.

26 82. Defendants failed to pay these Employees all wages due and certain at the time of
27 termination or within seventy-two (72) hours of resignation.

28 83. The wages withheld from these Employees by Defendants remained due and owing

1 for more than thirty (30) days from the date of separation of employment.

2 84. Defendants' failure to pay wages, as alleged above, was willful in that Defendants
3 knew wages to be due but failed to pay them; this violation entitles these Employees to penalties
4 under Labor Code § 203, which provides that an employee's wages shall continue until paid for up
5 to thirty (30) days from the date they were due.

6 **NINTH CAUSE OF ACTION**

7 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 ET SEQ.**

8 **(Against All Defendants)**

9 85. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
10 full herein.

11 86. Plaintiff, on behalf of herself, Employees, and the general public, brings this claim
12 pursuant to Business & Professions Code § 17200 et seq. The conduct of Defendants as alleged in
13 this Complaint has been and continues to be unfair, unlawful, and harmful to Employees and the
14 general public. Plaintiff seeks to enforce important rights affecting the public interest within the
15 meaning of Code of Civil Procedure
16 § 1021.5.

17 87. Plaintiff is a "person" within the meaning of Business & Professions Code
18 § 17204, has suffered injury, and therefore has standing to bring this cause of action for injunctive
19 relief, restitution, and other appropriate equitable relief.

20 88. Business & Professions Code § 17200 et seq. prohibits unlawful and unfair
21 business practices.

22 89. Wage-and-hour laws express fundamental public policies. Paying employees their
23 wages and overtime, providing them with meal and rest periods, etc., are fundamental public
24 policies of California. Labor Code § 90.5(a) articulates the public policies of this State vigorously
25 to enforce minimum labor standards, to ensure that employees are not required or permitted to
26 work under substandard and unlawful conditions, and to protect law-abiding employers and their
27 employees from competitors who lower costs to themselves by failing to comply with minimum
28 labor standards.

90. Defendants have violated statutes and public policies. Through the conduct alleged in this Complaint Defendants have acted contrary to these public policies, have violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair business practices in violation of Business & Professions Code § 17200 et seq.; which conduct has deprived Plaintiff, and all persons similarly situated, and all interested persons, of the rights, benefits, and privileges guaranteed to all employees under the law.

91. Defendants' conduct, as alleged hereinabove, constitutes unfair competition in violation of the Business & Professions Code § 17200 et seq.

92. Defendants, by engaging in the conduct herein alleged, by failing to pay wages and overtime, failing to provide meal and rest periods, etc., either knew or in the exercise of reasonable care should have known that their conduct was unlawful; therefore their conduct violates the Business & Professions Code § 17200 et seq.

93. As a proximate result of the above-mentioned acts of Defendants, Employees have been damaged, in a sum to be proven at trial.

94. Unless restrained by this Court Defendants will continue to engage in such unlawful conduct as alleged above. Pursuant to the Business & Professions Code this Court should make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use by Defendants or their agents or employees of any unlawful or deceptive practice prohibited by the Business & Professions Code, including but not limited to the disgorgement of such profits as may be necessary to restore Employees to the money Defendants have unlawfully failed to pay.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For an order certifying this action as a class action;
2. For compensatory damages in the amount of the unpaid minimum wages for work performed by Employees and unpaid overtime compensation from at least four (4) years prior to the filing of this action, as may be proven;

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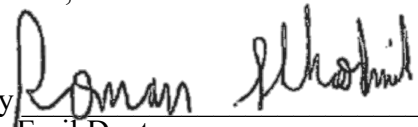
3. For liquidated damages in the amount equal to the unpaid minimum wage and interest thereon, from at least four (4) years prior to the filing of this action, according to proof;
4. For compensatory damages in the amount of the hourly wage made by Employees for each missed or deficient meal period where no premium pay was paid therefor from four (4) years prior to the filing of this action, as may be proven;
5. For compensatory damages in the amount of the hourly wage made by Employees for each day requisite rest breaks were not provided or were deficiently provided where no premium pay was paid therefor from at least four (4) years prior to the filing of this action, as may be proven;
6. For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven;
7. For penalties pursuant to Labor Code § 226.3, as may be proven;
8. For penalties pursuant to Labor Code § 203 for all Employees who quit or were fired in an amount equal to their daily wage times thirty (30) days, as may be proven;
9. For penalties pursuant to Labor Code § 1174.5, as may be proven;
10. For restitution for unfair competition pursuant to Business & Professions Code § 17200 et seq., including disgorgement or profits, as may be proven;
11. For compensatory damages in the amount of all previously unreimbursed business expenditures necessarily incurred by Employees in the discharge of their job duties for Defendants from four (4) years prior to the original filing of this action, as may be proven;
12. For an order enjoining Defendants and their agents, servants, and employees, and all persons acting under, in concert with, or for them, from acting in derogation of any rights or duties adumbrated in this Complaint;
13. For all general, special, and incidental damages as may be proven;
14. For an award of pre-judgment and post-judgment interest;
15. For an award providing for the payment of the costs of this suit;
16. For an award of attorneys' fees; and
17. For such other and further relief as this Court may deem proper and just.

///

1 DATED: November 16, 2023

D.Law, Inc.

2
3 By



4 Emil Davtyan
5 David Yeremian
6 Roman Shkodnik
7 Robert Payaslyan
8 Attorneys for Plaintiff
9 MELISSA JOSEPHINE FLUTY
10 and the putative class
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DATED: November 16, 2023

By 
David Yermian
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