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David W. Slayton,
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Attorneys for Plaintiff,
IAN SCHWANER and the Proposed Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

IAN SCHWANER, an individual on
behalf of himself and all other similarly
situated,

Plaintiff,

v.

DIPTYQUE DISTRIBUTION LLC, a
limited liability company; DIPTYQUE
LARCHMONT, LLC, a limited liability
company; DIPTYQUE FILLMORE
LLC, a limited liability company;
DIPTYQUE GEARY STREET SAN
FRANCISCO LLC, a limited liability
company; DIPTYQUE GROVE LLC, a
limited liability company; DIPTYQUE
MARIN LLC, a limited liability
company; DIPTYQUE PALISADES
LLC, a limited liability company;
DIPTYQUE SCP, LLC, a limited
liability company; DIPTYQUE TOWN
& COUNTRY LLC, a limited liability
company; DIPTYQUE VALLEY FAIR
LLC a limited liability company; and
DOES 1 through 10,

Defendants.

CASE NO. ~~24STCV08123~~

CLASS ACTION

PLAINTIFF'S CLASS ACTION

COMPLAINT FOR:

1. **VIOLATIONS OF LABOR CODE § 204, 226.2, 1194, 1197, AND WAGE ORDER (WAGES)**
2. **VIOLATIONS OF LABOR CODE §§ 226.2, 510, 1194, 1198, AND WAGE ORDER (OVERTIME WAGES)**
3. **VIOLATIONS OF LABOR CODE §§ 226.7 AND 512 AND WAGE ORDER (MEAL PERIODS)**
4. **VIOLATION OF LABOR CODE §§ 226.2, 226.7, 516, 558 AND WAGE ORDER (REST PERIODS)**
5. **VIOLATIONS OF LABOR CODE § 226(A) (NON-COMPLIANT WAGE STATEMENTS)**
6. **VIOLATIONS OF LABOR CODE §§ 201-203 (FAILURE TO PAY ALL WAGES OWED UPON TERMINATION)**
7. **VIOLATIONS OF LABOR CODE § 227.3 (FAILURE TO PAY VACATION/PTO WAGES)**
8. **VIOLATIONS OF BUSINESS AND PROFESSIONS CODE § 17200**
9. **VIOLATIONS OF CALIFORNIA LABOR CODE SECTION 2698 ET SEQ. - THE PRIVATE ATTORNEYS GENERAL ACT OF 2004**
10. **VIOLATION OF LABOR CODE § 1198.5 - FAILURE TO PROVIDE PERSONNEL FILE**

JURY TRIAL DEMANDED

1 Plaintiff Ian Schwaner (“Plaintiff”) alleges as follows on knowledge as to his own
2 acts/interactions and on information and belief as to all other matters.

3 **JURISDICTION AND VENUE**

4 1. This Court has personal jurisdiction over Defendants because they conduct
5 business in the State of California.

6 2. Under California Code of Civil Procedure section 395(a), venue is proper in
7 this county because Defendants do business in this county and the harm to Plaintiff
8 occurred in this county.

9 **EXHAUSTION OF ADMINISTRATIVE REQUIREMENTS**

10 3. On January 24, 2024, counsel for Plaintiff prepared and electronically
11 submitted a letter to the California Labor & Workforce Development Agency (“LWDA”)
12 via the California Department of Industrial Relations’ “PAGA Filing” website. A copy
13 of the letter was mailed to Defendants, also via USPS Certified Mail. The letter
14 contained the specific provisions of the California Labor Code violated by Defendants, as
15 well as the facts and theories in support of Plaintiff’s claims.

16 4. Now that sixty-five (65) days have passed since Plaintiff notified
17 Defendants of these violations, the statutory time period for the LWDA to investigate
18 and/or respond, and for the employer to respond, has concluded. Plaintiff has exhausted
19 the administrative requirements for bringing a claim under the PAGA for these
20 violations.

21 **PARTIES**

22 5. Plaintiff, at all times relevant hereto, was and is a resident of the State of
23 California.

24 6. Plaintiff is informed and believes that Defendant DIPTYQUE
25 DISTRIBUTION LLC, is a limited liability company, formed in and existing under the
26 laws of Delaware with its principal place of business located at 240 West 35th St., 14th
27 Floor, New York, New York 10001.

1 7. Plaintiff is informed and believes that Defendant DIPTYQUE
2 LARCHMONT, LLC, is a limited liability company, formed in and existing under the
3 laws of California with its principal place of business located at 240 West 35th St., 14th
4 Floor, New York, New York 10001.

5 8. Plaintiff is informed and believes that Defendant DIPTYQUE FILLMORE
6 LLC, is a limited liability company, formed in and existing under the laws of Delaware
7 with its principal place of business located at 240 West 35th St., 14th Floor, New York,
8 New York 10001.

9 9. Plaintiff is informed and believes that Defendant DIPTYQUE GEARY
10 STREET SAN FRANCISCO LLC, is a limited liability company, formed in and existing
11 under the laws of Delaware with its principal place of business located at 240 West 35th
12 St., 14th Floor, New York, New York 10001.

13 10. Plaintiff is informed and believes that Defendant DIPTYQUE GROVE
14 LLC, is a limited liability company, formed in and existing under the laws of Delaware
15 with its principal place of business located at 240 West 35th St., 14th Floor, New York,
16 New York 10001.

17 11. Plaintiff is informed and believes that Defendant DIPTYQUE MARIN
18 LLC, is a limited liability company, formed in and existing under the laws of Delaware
19 with its principal place of business located at 240 West 35th St., 14th Floor, New York,
20 New York 10001.

21 12. Plaintiff is informed and believes that Defendant DIPTYQUE PALISADES
22 LLC, is a limited liability company, formed in and existing under the laws of Delaware
23 with its principal place of business located at 240 West 35th St., 14th Floor, New York,
24 New York 10001.

25 13. Plaintiff is informed and believes that Defendant DIPTYQUE SCP, LLC, is
26 a limited liability company, formed in and existing under the laws of California with its
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1 principal place of business located at 240 West 35th St., 14th Floor, New York, New York
2 10001.

3 14. Plaintiff is informed and believes that Defendant DIPTYQUE TOWN &
4 COUNTRY LLC, is a limited liability company, formed in and existing under the laws of
5 California with its principal place of business located at 240 West 35th St., 14th Floor,
6 New York, New York 10001.

7 15. Plaintiff is informed and believes that Defendant DIPTYQUE VALLEY
8 FAIR LLC, is a limited liability company, formed in and existing under the laws of
9 Delaware with its principal place of business located at 240 West 35th St., 14th Floor,
10 New York, New York 10001.

11 16. The above-named Defendants are collectively referred to herein as
12 “Defendants”.

13 17. Plaintiff alleges that Defendants are each an “employer or other person
14 acting on behalf of an employer” giving rise to liability pursuant to California Labor
15 Code section 558.1.

16 18. Plaintiff alleges that Defendants were Plaintiff’s joint employer and are
17 liable under the joint employer and single enterprise theories. See Laird v. Capital Cities,
18 68 Cal. App. 4th 727, 737-38 (1998) (four factors to prove single enterprise are
19 “interrelation of operations, common management, centralized control of labor relations,
20 and common ownership or financial control. ... Although courts consider the four factors
21 together, they often deem centralized control of labor relations the most important.”); see
22 also Vernon v. State of California, 116 Cal. App. 4th 114, 128 (2004) (separate entities
23 can also be deemed a “joint employer” by having the right to control the employment
24 relationship, as evaluated by focusing on “an examination of Defendants’ role with
25 respect to the right to hire, fire, transfer, promote, discipline, set the terms, conditions and
26 privileges of employment, train and pay the plaintiff.”). Defendants were also joint
27 employers for purposes of wage-and-hour laws under Cal. Code Regs., tit. 8, § 11070,
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1 subd. 2(F) by exercising enough control over the intermediary entity to indirectly dictate
2 the wages, hours, or working conditions of the employee, that is a sufficient showing of
3 joint employment. Medina v. Equilon Enters., LLC, 68 Cal. App. 5th 868, 879 (2021).

4 19. Plaintiff is informed and believes that Defendants have an interrelation of
5 operations, including the fact that Defendants' operations are to manufacture and sell
6 upscale candles, fragrances, bath and body products, and home decor.

7 20. Plaintiff is informed and believes that Defendants have common
8 management.

9 21. Plaintiff is informed and believes that Defendants have centralized control
10 of labor relations, this includes but is not limited to Defendants creating various
11 employment policies applicable to all Defendants such as policies related to the hiring of
12 employees, discipline of employees, payment of wages, payroll policies, and other
13 employment policies. Defendants also utilize a centralized human resources,
14 management, and in-house legal counsel.

15 22. Plaintiff is informed and believes that Defendants have common ownership
16 and/or financial control, including but not limited to setting of budgets, sales goals,
17 managing expenses, and determining strategic goals.

18 23. The true names and capacities of the Defendant named herein as Does 1
19 through 10, inclusive, whether individual, corporate, associate or otherwise, are unknown
20 to Plaintiff who therefore sues such Defendant by fictitious names pursuant to California
21 Code of Civil Procedure section 474. Plaintiff is informed and believes that all of the
22 Doe Defendant are California residents. Plaintiff will amend this Complaint to show
23 such true names and capacities when they have been determined.

24 24. Plaintiff is informed and believes that at all times relevant herein, each
25 defendant designated, including Does 1 through 10, was the agent, managing agent,
26 principal, owner, partner, joint venturer, representative, manager, servant, employee
27 and/or co-conspirator of each of the other Defendant, and was at all times mentioned
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1 herein acting within the course and scope of said agency and employment, and that all
2 acts or omissions alleged herein were duly committed with the ratification, knowledge,
3 permission, encouragement, authorization and consent of each defendant designated
4 herein.

5 **PLAINTIFF'S FACTUAL ALLEGATIONS**

6 25. Starting in approximately January of 2023, Plaintiff worked for Defendants
7 as a Sales Representative, making sales of Defendants' products, and performing related
8 tasks in Defendants' locations in Larchmont Village and Beverly Hills.

9 26. Plaintiff and other non-exempt employees working for Defendants were
10 compensated based on an hourly rate.

11 27. Plaintiff and certain other non-exempt employees working for Defendants
12 were also compensated through bonuses, awards, reaching sales goals, and other forms of
13 non-discretionary compensation.

14 28. Plaintiff and other employees working for Defendants were not
15 compensated for all time worked, had their time entries altered/decreased by Defendant,
16 were required to work "off the clock," were not paid for mandatory trainings, and not
17 paid for reporting time pay.

18 29. Plaintiff and other employees are entitled to liquidated damages equal to
19 unlawfully unpaid minimum wages with interest pursuant to Labor Code § 1194.2.

20 30. Due to these and other issues, Plaintiff and other employees were also not
21 compensated appropriately for overtime wages and double overtime wages. Plaintiff and
22 other employees worked overtime during their employment with Defendants by working
23 over eight (8) hours in a workday and/or forty (40) hours in a workweek. Plaintiff and
24 other employees were not compensated for all hours worked and were not compensated
25 at the appropriate overtime rate, which resulted in underpayments of overtime wages and
26 double overtime wages.

1 31. Under California law, the determination of the regular rate of pay for
2 purposes of determining the amount of overtime pay must include all remuneration
3 earned by the employee including the employee's commissions, bonuses, shift-
4 differential pay or other non-hourly compensation. See DLSE Manual § 49.2.1.2
5 ("Compute the regular rate by dividing the total earnings for the week, including earnings
6 during overtime hours, by the total hours worked during the week, including the overtime
7 hours."); see also 29 C.F.R. § 778.118-120 ("When the commission is paid on a weekly
8 basis, it is added to the employee's other earnings for that workweek . . . and the total is
9 divided by the total number of hours worked in the workweek to obtain the employee's
10 regular hourly rate for the particular workweek.").

11 32. The "regular rate of pay" must include "all remuneration for employment
12 paid to, or on behalf of, the employee." Alonzo v. Maximus, Inc., 832 F. Supp. 2d 1122,
13 1130 (C.D. Cal. 2011). "Thus, when an employer calculates 1.5 times an employee's
14 regular rate of pay to pay overtime, *the employer must include bonuses, commissions, or*
15 *any other income not subject to an exception in that calculation.*" Brum v.
16 Marketsource, Inc., No. 2:17-cv-241-JAM-EFB, 2017 U.S. Dist. LEXIS 94079, at *10
17 (E.D. Cal. June 16, 2017) (emphasis added).

18 33. Defendants did not include non-discretionary compensation in calculating
19 the hourly rate of pay for overtime purposes. Instead, the regular rate of pay used for
20 calculating the overtime rate of pay was strictly based on the employees' hourly wage
21 (not including the non-discretionary compensation). As such, Defendants owe Plaintiff
22 and other members of the proposed classes additional overtime pay based on a
23 calculation using the correct, higher rate of pay (taking into account the non-discretionary
24 compensation).

25 34. Further, Defendants failed to pay Plaintiff and other employees all wages
26 due to them within any time period specified by Labor Code § 204, including earned and
27 unpaid minimum, overtime, and premium wages.

1 35. During Plaintiff's employment by Defendants, Plaintiff and other
2 employees working for Defendants were forced to miss taking compliant meal periods
3 (30-minute meal periods after the first five hours worked) due to the demands placed on
4 them by Defendants and lack of coverage. Moreover, Plaintiff and other non-exempt
5 hourly employees were deprived of taking a second meal period after ten hours worked.

6 36. During Plaintiff's employment by Defendant, Plaintiff and other employees
7 working for Defendants were forced to miss taking compliant rest periods (ten minutes
8 rest time per four hours worked) due to the demands placed on them by Defendants and
9 lack of coverage.

10 37. Defendants failed to pay penalties for noncompliant rest and meal periods
11 (premium pay as required by Labor Code § 226.7(b) and Sections 11 and 12 of the
12 applicable Wage Order in lieu of meal and/or rest periods).

13 38. To the extent Defendants paid some penalties (one hour of pay) for certain
14 missed or non-compliant meal or rest periods, Defendants paid such penalties at an
15 incorrect rate that is lower than the rate required by law. More specifically, because the
16 Legislature intended "regular rate of compensation" under Lab. Code, § 226.7, subd. (c),
17 to have the same meaning as "regular rate of pay" under Lab. Code, § 510, subd. (a), the
18 calculation of premium pay for a noncompliant meal, rest, or recovery period, like the
19 calculation of overtime pay, had to account for not only hourly wages but also other
20 nondiscretionary payments. Thus, an employer calculating premium pay for
21 noncompliant meal or rest breaks according to the employee's base hourly rate while
22 omitting nondiscretionary incentive payments failed to pay in accordance with the
23 employee's regular rate of compensation. Ferra v. Loews Hollywood Hotel, LLC, 11
24 Cal. 5th 858 (2021). By doing so, Defendants underpaid each meal and rest period
25 penalty payment. Also, by doing so, Defendants underpaid overtime wages to Plaintiff
26 and other employees at the incorrect rate.

1 39. Based on these underpayments of regular wages, overtime wages, double
2 overtime wages, and unpaid or underpaid meal/rest period penalties, Plaintiff and other
3 employees who were terminated or resigned did not receive all wages owed to them upon
4 termination or within seventy-two (72) hours after resignation.

5 40. In addition, Defendants did not provide Plaintiff and other employees with
6 accurate wage statements as required under California law. More specifically, the wage
7 statements provided to Plaintiff and other employees did not reflect or did not accurately
8 reflect the: (1) gross wages earned, (2) total hours worked by the employee, (3) the
9 number of piece-rate units earned and any applicable piece rate if the employee is paid on
10 a piece-rate basis, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the
11 period for which the employee is paid, (7) the name and address of the legal entity that is
12 the employer, and (8) all applicable hourly rates in effect during the pay period and the
13 corresponding number of hours worked at each hourly rate by the employee.

14 Accordingly, Plaintiff and other employees were not able to promptly and easily
15 determine the missing information without reference to other documents or information.

16 41. The wage statements also did not provide accurate information by omitting
17 the lack of meal/rest break premium pay that should have been paid to Plaintiff and the
18 other employees. See Naranjo v. Spectrum Sec. Servs., Inc., 13 Cal. 5th 93 (2022)
19 (Because premium pay for missed meal and rest breaks under Lab. Code, § 226.7,
20 compensated employees for the work performed during a break period and therefore
21 constituted wages within the meaning of Lab. Code, §§ 200, subd. (a), 203, 226, penalties
22 could be available for an employer's alleged failure to timely pay or report such
23 payments.).

24 42. The wage statements also did not include the commission rate and amount
25 of sales. The DLSE Enforcement Manual specifically provides that the information on
26 the wage statements required under Labor Code section 226(a)(3) must include "3. The
27 number of piece rate units earned and any applicable piece rate whenever an employee is
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1 being paid on a piecework basis (and commissioned employees, i.e., commission rate and
2 amount of sales.)” (emphasis added). See DLSE Enforcement Policies and
3 Interpretations Manual § 14.1.1; see also Balboa Acquisition v. Ratkovich, No. SACV
4 07-00091-JVS (RNBx), 2008 U.S. Dist. LEXIS 126625, at *6-7 (C.D. Cal. Feb. 27,
5 2008).

6 43. Defendants maintained unlawful business practices in their exercise of
7 improperly calculating and improperly paying out the accrued vacation hours of Plaintiff
8 and other non-exempt employees.

9 44. Defendants violated California Labor Code §§ 1174, 1174.5 by failing to
10 keep at a central location in the state or at the plants or establishments at which
11 employees are employed, payroll records showing the hours worked daily by and the
12 wages paid to employees employed at the respective plants or establishments.

13 45. Defendants violated California Labor Code § 2751 by failing to provide a
14 signed copy of the contract related to commissions and the method by which the
15 commissions shall be computed and paid.

16 **CLASS ACTION ALLEGATIONS**

17 46. This class action is filed under the provisions of Code of Civil Procedure
18 section 382, which provides that a class action may be brought when the question is one
19 of common interest to many persons, or when the number of persons is numerous and it
20 is impractical to bring them all before the court. This action is properly maintained as a
21 class action as set forth below.

22 47. Plaintiff brings this action on behalf of himself and all others similarly
23 situated in the “Class”, as follows: All persons within California who worked for any of
24 the Defendants as an hourly (non-exempt) employee at any time on or after the date that
25 is four (4) years prior to the filing of this lawsuit through class certification.

26 48. Plaintiff also brings this action on behalf of himself and all others similarly
27 situated in the “Incentive Compensation Class”, as follows: All persons within California
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1 who worked for any of the Defendants as an hourly (non-exempt) employee at any time
2 on or after the date that is four (4) years prior to the filing of this lawsuit through class
3 certification who earned any form of non-discretionary compensation.

4 49. Plaintiff also brings this action on behalf of himself and all others similarly
5 situated in the “Former Employee Class”, as follows: All persons within California who
6 worked for any of the Defendants as an hourly (non-exempt) employee at any time on or
7 after the date that is four (4) years prior to the filing of this lawsuit but who no longer
8 work for Defendants as of the date of class certification.

9 50. The classes identified above are collectively referred to herein as the
10 “Classes.”

11 51. Numerosity: Plaintiff does not know the number of members in the defined
12 Classes but believes the number is in the hundreds, if not substantially higher. Thus,
13 joinder of all the defined class members is impractical due to the size and relatively small
14 value of each member’s claim.

15 52. Typicality: Plaintiff’s claims are typical of the claims of each member of
16 the Classes because Plaintiff did not receive all wages owed, correct overtime
17 compensation, did not receive meal/rest periods in compliance with the requirements of
18 California law, did not receive all reimbursements for business expenses, and did not
19 receive accurate wage statements as required under California law.

20 53. Commonality: The members of the Classes share a well-defined
21 community of interest regarding questions of law and fact, which predominate over
22 questions that may affect individual members of the Class. These common questions of
23 law and fact include (but are not limited to):

24 (a) Whether Defendants failed to pay the Classes wages and overtime
25 compensation in accordance with the requirements of California law;

26 (b) Whether Defendants included non-discretionary commissions in
27 calculating employee’s hourly rate of pay for overtime purposes;

1 (c) Whether Defendants failed to maintain accurate records of the actual
2 hours worked by each member of the Classes as required by subsection 7 of the
3 applicable Industrial Welfare Commission Orders (see Franco v. Athens Disposal
4 Co., Inc., 171 Cal. App. 4th 1277, 1299 (2009) (“By law, an employer must
5 maintain time records showing an employee’s (1) ‘total daily hours worked’ and
6 (2) meal periods, unless ‘operations cease’ during meals.”) (quoting Wage Order,
7 § 7(A)(3));

8 (d) Whether Defendants did not permit Plaintiff and members of the
9 Classes to take a meal period after five (5) hours of work or ten (10) hours of work
10 due to lack of coverage, the need for the employees to continue working, or some
11 other unwritten practice/policy;

12 (e) Whether Defendants failed to pay premium pay for missed meal
13 periods displayed on Plaintiff’s and members of the Classes’ time records;

14 (f) Whether Defendants failed to pay premium pay for missed rest
15 periods;

16 (g) Whether Defendants correctly calculated the regular rate of pay for
17 purposes of meal or rest period penalties;

18 (h) Whether Defendants and its management regularly witnessed
19 Plaintiff and members of the Classes not taking a meal period within five (5) hours
20 of commencing work and a second meal period after working ten (10) hours;

21 (i) Whether Defendants and its management regularly witnessed
22 Plaintiff and members of the Classes not taking uninterrupted, full 30-minute meal
23 periods within five (5) hours of commencing work and a second meal period after
24 working ten (10) hours;

25 (j) Whether Defendants engaged in unfair business practices in
26 violation of California Business & Professions Code sections 17200, et seq.;

1 (k) Whether Plaintiff and the Classes are entitled to compensatory
2 damages pursuant to the California Labor Code; and

3 (l) The appropriate amount of damages, restitution, and/or monetary
4 penalties resulting from Defendants' violations of California law,

5 54. Predominance: The questions that are common to all class members
6 predominate over any questions that are unique to individual class members because the
7 answers to these questions will determine Defendants' liability to all class members and
8 because any remaining individual questions with respect to amounts of relief may be
9 resolved by reference to Defendant's records.

10 55. Superiority: A class action is vastly superior to other available means for
11 the fair and efficient adjudication of class members' claims. Because this case involves
12 large numbers of employees, most, if not all, of whom have relatively small individual
13 claims, it would be beneficial to the parties and this Court to allow them to
14 simultaneously and efficiently prosecute their common claims in a single forum without
15 the unnecessary duplication of effort and expense that numerous individual actions would
16 entail. Additionally, because the monetary amounts due to many individual class
17 members are likely to be relatively small, it would make it difficult, if not impossible, for
18 individual class members to both seek and obtain relief. Moreover, a class action will
19 serve an important public interest by permitting class members to effectively pursue the
20 recovery of moneys owed to them. Further, a class action will prevent the potential for
21 inconsistent or contradictory judgments inherent in individual litigation.

22 56. Ascertainable Class: The members of the Classes can be easily ascertained
23 from Defendant's records.

24 57. Adequacy of Class Representatives: Plaintiff will fairly and adequately
25 represent and protect the interests of the Classes in that Plaintiff have no interests
26 antagonistic to any member of the Class. There are no material conflicts between the
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1 claims of Plaintiff and the members of the Classes that would make class certification
2 inappropriate.

3 58. Adequacy of Class Counsel: Plaintiff has retained counsel experienced in
4 litigation class action claims and wage and hour claims.

5 59. Pursuant to Rule of Court 3.765(b), Plaintiff reserves the right to amend or
6 modify the class definition with greater specificity, by further division into subclasses
7 and/or by limitation to particular issues.

8 **FIRST CAUSE OF ACTION**

9 **VIOLATION OF CALIFORNIA LABOR CODE §§ 204, 226.2, 1194, 1197, AND** 10 **IWC WAGE ORDER (UNDERPAYMENT OF HOURLY WAGES)** 11 **(BY PLAINTIFF AND THE CLASSES AGAINST DEFENDANTS)**

12 60. Plaintiff incorporates by this reference all preceding and subsequent
13 paragraphs.

14 61. California Labor Code section 204(a) states (in relevant part) that wages
15 “earned by any person in any employment are due and payable twice during each
16 calendar month, on days designated in advance by the employer as the regular paydays.”

17 62. California Labor Code section 1194(a) states (in relevant part):
18 “Notwithstanding any agreement to work for a lesser wage, any employee receiving less
19 than the legal minimum wage or the legal overtime compensation applicable to the
20 employee is entitled to recover in a civil action the unpaid balance of the full amount of
21 this minimum wage or overtime compensation, including interest thereon, reasonable
22 attorney’s fees, and costs of suit.”

23 63. California Labor Code section 1197 states (in relevant part): “The
24 minimum wage for employees fixed by the commission or by any applicable state or
25 local law, is the minimum wage to be paid to employees, and the payment of a lower
26 wage than the minimum so fixed is unlawful.”

64. The applicable IWC Wage states: “Every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.”

65. As alleged above, Defendants violated the foregoing statutes and regulations through its practice and/or policy of not compensating the members of the Classes for all time that they worked.

66. Pursuant to California Labor Code sections 218.5, 1194, 1194.2, 1197.2, Plaintiff and the other members Classes are entitled to recover the full amount of their unpaid wages, liquidated damages equal to unlawfully unpaid minimum wages with interest waiting time penalties, reasonable attorneys’ fees, and costs of suit. Plaintiff and the other members of the Classes are entitled to recover interest on all due and unpaid wages and waiting time penalties under Labor Code section 218.6 and/or Civil Code section 3287(a).

SECOND CAUSE OF ACTION

VIOLATION OF CALIFORNIA LABOR CODE §§ 226.2, 510, 1194, 1198, AND IWC WAGE ORDER (UNDERPAYMENT OF OVERTIME WAGES) (BY PLAINTIFF AND THE CLASSES AGAINST DEFENDANTS)

67. Plaintiff incorporates by this reference all preceding and subsequent paragraphs.

68. The applicable IWC Wage Order states:

(A) Daily Overtime – General Provisions

(1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40

1 hours in any workweek unless the employee receives one and one-half
2 (1 ½) times such employee's regular rate of pay for all hours worked
3 over 40 hours in the workweek. Eight (8) hours of labor constitutes a
4 day's work. Employment beyond eight (8) hours in any workday or
5 more than six (6) days in any workweek is permissible provided the
6 employee is compensated for such overtime at not less than:

7 (a) One and one-half (1 ½) times the employee's regular rate of pay
8 for all hours worked In excess of eight (8) hours up to and
9 including twelve (12) hours in any workday, and for the first
10 eight (8) hours worked on the seventh (7th) consecutive day of
11 work in a workweek.; and

12 (b) Double the employee's regular rate of pay for all hours worked in
13 excess of 12 hours in any workday and for all hours worked in
14 excess of eight (8) hours on the seventh (7th) consecutive day of
15 work in a workweek.

16 (c) The overtime rate of compensation required to be paid to a
17 nonexempt full-time salaried employee shall be computed by
18 using the employee's regular hourly salary as one fortieth (1/40)
19 of the employee's weekly salary.

20 69. California Labor Code section 510(a) states: "Eight hours of labor
21 constitutes a day's work. Any work in excess of eight hours in one workday and any
22 work in excess of 40 hours in any one workweek and the first eight hours worked on the
23 seventh day of work in any one workweek shall be compensated at the rate of no less
24 than one and one-half times the regular rate of pay for an employee. Any work in excess
25 of 12 hours in one day shall be compensated at the rate of no less than twice the regular
26 rate of pay for an employee. In addition, any work in excess of eight hours on any
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seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.”

70. California Labor Code section 1194(a) 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.”

71. As alleged above, Defendants violated the foregoing statutes and regulations through its practice and/or policy of not paying Plaintiff and other members of the Classes all overtime compensation owed.

72. Pursuant to Labor Code sections 218.5 and 1194, Plaintiff and the other members of Classes are entitled to recover the full amount of their unpaid overtime wages, waiting time penalties, reasonable attorneys’ fees, and costs of suit. Plaintiff and the other members of the Classes are entitled to recover interest on all due and unpaid wages and waiting time penalties under Labor Code section 218.6 and/or Civil Code section 3287(a).

THIRD CAUSE OF ACTION

VIOLATION OF CALIFORNIA LABOR CODE SECTIONS 226.7, 512 AND IWC WAGE ORDER (MEAL PERIODS)

(BY PLAINTIFF AND CLASSES AGAINST DEFENDANTS)

73. Plaintiff incorporates by this reference all preceding and subsequent paragraphs.

74. California Labor Code section 512(a) states: “An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived

1 by mutual consent of both the employer and employee. An employer may not employ an
2 employee for a work period of more than 10 hours per day without providing the
3 employee with a second meal period of not less than 30 minutes, except that if the total
4 hours worked is no more than 12 hours, the second meal period may be waived by mutual
5 consent of the employer and the employee only if the first meal period was not waived.”

6 75. Section 11(A) of the applicable IWC Wage Orders provides (in relevant
7 part): “No employer shall employ any person for a work period of more than five (5)
8 hours without a meal period of not less than 30 minutes, except that when a work period
9 of not more than six (6) hours will complete the day’s work the meal period may be
10 waived by mutual consent of the employer and the employee.”

11 76. California Labor Code section 226.7(b) provides: “If an employer fails to
12 provide an employee a meal period or rest period in accordance with an applicable order
13 of the Industrial Welfare Commission, the employer shall pay the employee one
14 additional hour of pay at the employee’s regular rate of compensation for each work day
15 that the meal or rest period is not provided.”

16 77. As alleged above, during Plaintiff’s employment by Defendant, Plaintiff
17 and other members of the Classes working for Defendants were forced to miss taking
18 compliant meal periods (30-minute meal periods after the first five hours worked).
19 Moreover, Plaintiff and other members of the Classes were deprived of taking a second
20 meal period after ten hours worked. Plaintiff and these other members of the Classes did
21 not waive their right to their meal periods.

22 78. In addition, it was and continues to be Defendant’s policy and practice not
23 to compensate Plaintiff and other members of the Classes with the pay due and owing as
24 required by California Labor Code section 226.7, and subsection 11 of the applicable
25 Industrial Welfare Commission order (i.e., one hour of pay per day per meal period at the
26 employee’s regular rate of compensation).

1 79. Plaintiff and members of the Classes demand all applicable
2 reimbursements, interest, and penalties.

3 **FOURTH CAUSE OF ACTION**

4 **VIOLATION OF CALIFORNIA LABOR CODE §§ 226.2, 226.7 AND IWC WAGE**
5 **ORDER (REST PERIODS)**

6 **(BY PLAINTIFF AND THE CLASSES AGAINST DEFENDANTS)**

7 80. Plaintiff incorporates by this reference all preceding and subsequent
8 paragraphs.

9 81. At all relevant times, California Labor Code section 226.7 provides that no
10 employer shall require an employee to work during any rest period mandated by an
11 applicable order of the California Industrial Welfare Commission.

12 82. At all relevant times, the applicable Wage Order provides that “[e]very
13 employer shall authorize and permit all employees to take rest periods, which insofar as
14 practicable shall be in the middle of each work period” and that the “rest period time shall
15 be based on the total hours worked daily at the rate of ten (10) minutes net rest time per
16 four (4) hours or major fraction thereof unless the total daily work time is less than three
17 and one-half (3 ½) hours.”

18 83. During the relevant time period, Defendants required Plaintiff Classes to
19 work four (4) or more hours without authorizing or permitting a ten (10) minute rest
20 period per each four (4) hour period worked.

21 84. During the relevant time period, Defendants willfully required Plaintiff and
22 members of the Classes to work during rest periods and failed to pay the full rest period
23 premium for work performed during rest periods.

24 85. During the relevant time period, Defendants failed to pay Plaintiff and
25 members of the Classes the full rest period premium due pursuant to California Labor
26 Code section 226.7. Defendant’s conduct violates applicable Wage Orders and
27 California Labor Code section 226.7.

1 86. Pursuant to the applicable IWC Wage Order and California Labor Code
2 section 226.7(b), Plaintiff and the other members of the Classes is entitled to recover
3 from Defendants one additional hour of pay at the employee's regularly hourly rate of
4 compensation for each work day that the rest period was not provided.

5 87. Plaintiff and members of the Classes demand all applicable
6 reimbursements, interest, and penalties.

7 **FIFTH CAUSE OF ACTION**

8 **VIOLATION OF CALIFORNIA LABOR CODE § 226(a)**

9 **(NON-COMPLIANT WAGE STATEMENTS)**

10 **(BY PLAINTIFF AND THE CLASS AGAINST DEFENDANTS)**

11 88. Plaintiff incorporates by this reference all preceding and subsequent
12 paragraphs.

13 89. Labor Code section 226(a) provides that every employer shall furnish each
14 of its employees an accurate itemized statement in writing showing (1) gross wages
15 earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned
16 and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all
17 deductions, provided that all deductions made on written orders of the employee may be
18 aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the
19 period for which the employee is paid, (7) the name of the employee and his or her social
20 security number, (8) the name and address of the legal entity that is the employer, and (9)
21 all applicable hourly rates in effect during the pay period and the corresponding number
22 of hours worked at each hourly rate by the employee.

23 90. Defendants intentionally and willfully failed to provide Plaintiff and the
24 other members of the Classes with complete and accurate wage statements.

25 91. As a result of Defendant's violation of California Labor Code section
26 226(a), Plaintiff and the other members of the Classes have suffered injury and damage to
27 their statutory-protected right to receive accurate and itemized wage statements.

1 92. Pursuant to California Labor Code section 226(e), Plaintiff and the other
2 members of the Classes are entitled to recover from Defendants the greater of their actual
3 damages caused by Defendant' failure to comply with California Labor Code section
4 226(a), or an aggregate penalty not exceeding four thousand dollars per employee, and
5 are entitled to an award of costs and reasonable attorney's fees.

6 **SIXTH CAUSE OF ACTION**

7 **FAILURE TO PAY ALL WAGES OWED UPON TERMINATION IN**
8 **VIOLATION OF CALIFORNIA LABOR CODE §§ 201-203**
9 **(BY PLAINTIFF AND THE CLASS AGAINST DEFENDANTS)**

10 93. Plaintiff incorporates by this reference all preceding and subsequent
11 paragraphs.

12 94. At all relevant times, California Labor Code sections 201-203 provide that
13 if an employer discharges an employee, the wages earned and unpaid at the time of
14 discharge are due and payable immediately, and if an employee quits his or her
15 employment, his or her wages shall become due and payable not later than seventy-two
16 (72) hours thereafter, unless the employee has given seventy-two (72) hours' notice of his
17 or her intention to quit, in which case the employee is entitled to his or her wages at the
18 time of quitting.

19 95. As Plaintiff and other members of Classes were denied wages owed to
20 them, they were not paid all wages owed to them at the time of their termination or
21 resignation.

22 96. During the relevant time period, and as alleged above, Defendants
23 intentionally and willfully failed to pay Plaintiff and other members of the Classes their
24 wages, earned and unpaid, and meal/rest period penalties within the required time period.

25 97. Plaintiff is informed and believes that other members of the Classes were
26 not paid their final wages immediately upon their termination or within seventy-two (72)
27 hours of their resignation, is in violation of California Labor Code sections 201 and 202.

1 98. On information and belief, Plaintiff contends that Defendant's failure to
2 pay all wages earned upon termination in accordance with Labor Code section 201 was
3 willful. At all times relevant, Defendants had the ability to pay all earned and unpaid
4 wages in accordance with Labor Code section 201 but intentionally chose not to comply.

5 99. California Labor Code section 203 provides that if an employer willfully
6 fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the
7 employee shall continue as a penalty from the due date thereof at the same rate until paid
8 or until an action is commenced; but the wages shall not continue for more than thirty
9 (30) days.

10 100. Pursuant to Labor Code § 218.5, Plaintiff and members of the Classes are
11 entitled to recover the full amount of their unpaid wages, waiting time penalties,
12 reasonable attorneys' fees, and costs of suit. Plaintiff and the other members of the
13 Classes are entitled to recover interest on all due and unpaid wages and waiting time
14 penalties under Labor Code § 218.6 and/or Civil Code § 3287(a).

15 **SEVENTH CAUSE OF ACTION**

16 **FAILURE TO PAY VACATION WAGES**

17 **VIOLATION OF CALIFORNIA LABOR CODE § 227.3**

18 **(BY PLAINTIFF AND THE CLASS AGAINST DEFENDANTS)**

19 101. Plaintiff incorporates by this reference all preceding and subsequent
20 paragraphs.

21 102. California Labor Code section 227.3 provides:

22 Unless otherwise provided by a collective-bargaining agreement, whenever
23 a contract of employment or employer policy provides for paid vacations,
24 and an employee is terminated without having taken off his vested vacation
25 time, all vested vacation shall be paid to he as wages at his final rate in
26 accordance with such contract of employment or employer policy respecting
27 eligibility or time served; provided, however, that an employment contract
28

1 or employer policy shall not provide for forfeiture of vested vacation time
2 upon termination. The Labor Commissioner or a designated representative,
3 in the resolution of any dispute with regard to vested vacation time, shall
4 apply the principles of equity and fairness.

5 103. At all relevant times during the applicable limitations period, Plaintiff and
6 members of the Classes accrued vacation/PTO time during their employment with
7 Defendant.

8 104. As a result of Defendant's policies and practices, Plaintiff is informed and
9 believe and thereon allege that Defendants failed to reimburse for all accrued vacation
10 wages and/or subjected employees to unlawful forfeiture policies.

11 105. By reason of the above, Plaintiff and the class members are entitled to
12 restitution for all unpaid amounts due and owing.

13 106. Plaintiff, on behalf of himself and the members of the class, seeks interest
14 thereon pursuant to California Labor Code section 218.6, costs pursuant to California
15 Labor Code section 218.6, and reasonable attorneys' fees pursuant to California Code of
16 Civil Procedure section 1021.5.

17 **EIGHTH CAUSE OF ACTION**

18 **VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE § 17200**
19 **(BY PLAINTIFF AND THE CLASS AGAINST DEFENDANTS)**

20 107. Plaintiff incorporates by this reference all preceding and subsequent
21 paragraphs.

22 108. Business and Professions Code section 17200, et seq. ("UCL"), defines
23 unfair competition to include any "unfair," "unlawful," or "fraudulent" business practice.

24 109. At all times relevant herein the UCL was in full force and effect and
25 binding on Defendant.

26 110. The actions alleged herein by Defendants were "unlawful" under the UCL
27 based on the violations of each of the statutes and regulations alleged herein.

Defendant's conduct, as alleged herein, has been, and continues to be, unfair, unlawful and harmful to Plaintiff, members of the Class, the general public, and to Defendant's competitors.

111. Plaintiff and members of the Classes have been personally injured by Defendant's unlawful business acts and practices as alleged herein, including, but not necessarily limited to, the loss of money and/or property.

112. Pursuant to California Business & Professions Code sections 17200, et seq., Plaintiff and members of the Classes are entitled to restitution of the wages and overtime wages withheld and retained by Defendant; and a permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and the other members of the Class.

NINTH CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT OF 2004, LABOR CODE SECTION 2698 ET SEQ.

(REPRESENTATIVE ACTION BY PLAINTIFF AND AGGRIEVED EMPLOYEES AGAINST DEFENDANTS)

113. Plaintiff incorporates by reference all of the preceding and subsequent paragraphs.

114. Plaintiff on behalf of himself and all other aggrieved employees seeks penalties pursuant to PAGA for based on Defendants' following violation of the California Labor Code:

- a. Underpayment of minimum wages and hourly wages in violation of California Labor Code §§ 204, 1194, 1194.2, 1197, IWC Wage Order, California Minimum Wage Order.
- b. Underpayment of overtime wages in violation of California Labor Code §§ 510, 1194, and IWC Wage Order.
- c. Failure to provide compliant meal periods in violation of California Labor Code §§ 226.7 and 512 and IWC Wage Order.
- d. Failure to provide compliant rest periods in violation of California Labor Code §§ 226.7 and 512 and IWC Wage Order.

- e. Non-compliant wage statements in violation of California Labor Code § 226(a).
- f. Failure to pay all wages upon resignation or termination due to the underpayment of wages and/or overtime in violation of California Labor Code §§ 201-203.
- g. Failure to pay, appropriately accrue, and forfeiture of paid time off in violation of California Labor Code § 227.3.
- h. Failure to keep payroll records showing total hours worked and wages paid in violation of California Labor Code §§1174-1174.5 and Wage Order 4-2001.
- i. Failure to provide a signed copy of the contract related to commissions and the method by which the commissions shall be computed and paid in violation of California Labor Code § 2751.

115. Plaintiff on behalf of himself and all other aggrieved employees seeks civil penalties due to Plaintiff, other aggrieved employees, and the State of California according to proof, pursuant to the California Labor Code, including California Labor Code §§ 2699(a) and 2699(f), which provides for \$100 for each initial violation and \$200 for each subsequent violation per employee pay period.

116. Plaintiff on behalf of himself and all other aggrieved employees was compelled to retain the services of counsel to file this action to protect Plaintiff's interests and the interests of other similarly aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff on behalf of himself and all other aggrieved employees has thereby incurred attorneys' fees and costs, which Plaintiff is entitled to recover under California Labor Code § 2699(g).

TENTH CAUSE OF ACTION
VIOLATION OF CALIFORNIA LABOR CODE § 1198.5 - FAILURE TO
PROVIDE PERSONNEL FILE
(BY PLAINTIFF AGAINST DEFENDANT)

117. Plaintiff incorporates by reference all of the preceding and subsequent paragraphs.

1 118. California Labor Code section 1198.5(c) requires that an employer shall
2 “maintain a copy of each employee’s personnel records for a period of not less than three
3 years after termination of employment.” Labor Code section 1198.5(c)(3)(A) requires
4 (“[t]he employer shall do all of the following . . . [w]ith regard to former employees, make
5 a former employee’s personnel records available for inspection, and, if requested by the
6 employee or his or her representative, provide a copy thereof . . .”). Pursuant to Labor
7 Code section 1198.5(b), the employer must provide the personnel record within 30 days
8 of the employee making a written request.

9 119. Defendant failed to provide this information under the time allotted under
10 California law.

11 120. California Labor Code section 1198.5(k) provides that: “If an employer
12 fails to permit a current or former employee, or his or her representative, to inspect or
13 copy personnel records within the times specified in this section, or times agreed to by
14 mutual agreement as provided in this section, the current or former employee or the
15 Labor Commissioner may recover a penalty of seven hundred fifty dollars (\$750) from
16 the employer.

17 121. California Labor Code section 1198.5(l) provides that “[a] current or former
18 employee may also bring an action for injunctive relief to obtain compliance with this
19 section, and may recover costs and reasonable attorney’s fees in such an action.”

20 122. Accordingly, Plaintiff seeks the penalty of \$750, costs of suit, and
21 reasonable attorneys’ fees.

22 **JURY TRIAL DEMANDED**

23 123. Plaintiff demands a jury as to all causes of action permitted for a jury trial
24 under applicable law.

25 **PRAYER FOR RELIEF**

26 124. WHEREFORE, Plaintiff respectfully requests the Court grant Plaintiff and
27 the Classes the following relief against Defendants:

- 1 a. For an order certifying the Classes under California Code of Civil
2 Procedure section 382;
3 b. For appointment of Plaintiff as the representatives of the Class;
4 c. For general economic and non-economic damages according to proof;
5 d. For statutory damages according to proof;
6 e. For special damages according to proof;
7 f. For penalties where allowed by law;
8 g. For prejudgment interest pursuant to California Labor Code section 218.6,
9 California Civil Code section 3287, California Civil Code section 3288,
10 and/or any other provision of law providing for prejudgment interest;
11 h. For attorneys' fees where allowed by law;
12 i. For costs of suit incurred herein; and
13 j. For such other and further relief as this Court deems just and proper.

14 Dated: March 29, 2024

Respectfully submitted,
AZADIAN LAW GROUP, PC

16 

17 By: _____
18 GEORGE S. AZADIAN
19 Attorneys for Plaintiff, IAN SCHWANER
and the Proposed Class