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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

John Stephen Silvestri, individually and on
behalf of others similarly situated, and on
behalf of other aggrieved employees
pursuant to the Private Attorneys General
Act

Plaintiff,

vs.

Upward Projects Holdings, LLC, a limited
liability company; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: 30-2024-01380452-CU-OE-CXC

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

- (1) Violation of Cal. Labor Code §§ 510 and 1198 (Unpaid Overtime)
- (2) Violation of Cal. Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums)
- (3) Violation of Cal. Labor Code § 226.7 (Unpaid Rest Period Premiums)
- (4) Violation of Cal. Labor Code §§ 1194, 1197 and 1197.1 (Unpaid Minimum Wages)
- (5) Violation of Cal. Labor Code §§ 201, 202 and 203 (Final Wages Not Timely Paid)
- (6) Violation of Labor Code §§ 204 and 210 (Wages Not Timely Paid During Employment)
- (7) Violation of Cal. Labor Code § 226(a) (Failure to Provide Accurate Wage Statements)
- (8) Violation of Cal. Business & Professions Code § 17200, et seq.
- (9) Violation of Cal. Labor Code § 2698 (Private Attorneys General Act)

DEMAND FOR TRIAL BY JURY

1 Plaintiff John Stephen Silvestri (“Plaintiff”), individually and on behalf of other members
2 of the general public similarly situated, and on behalf of other aggrieved employees pursuant to
3 the Private Attorneys General Act, based upon facts that either have evidentiary support or are
4 likely to have evidentiary support after a reasonable opportunity for further investigation and
5 discovery, alleges as follows:

6 **JURISDICTION AND VENUE**

7 1. Plaintiff brings this action against Defendant Upward Projects Holdings, LLC and
8 DOES 1 THROUGH 50 (hereinafter also collectively referred to as “Defendant” or “Defendants”)
9 for California Labor Code violations, unfair business practices, and civil penalties stemming from
10 Defendants’ failure to pay overtime compensation, failure to provide meal periods, failure to
11 authorize and permit rest periods, failure to pay minimum wage, failure to timely pay wages,
12 failure to provide accurate wage statements, failure to maintain accurate time and payroll records,
13 and failure to pay reporting wages.

14 2. Plaintiff’s First through Eighth Causes of Action are brought as a class action on
15 behalf of himself and similarly situated current and former employees of Defendants (hereinafter
16 collectively referred to as the “Class” or “Class Members,” as defined more fully in paragraph
17 12, below) pursuant to California Code of Civil Procedure section 382. The monetary damages
18 and restitution sought by Plaintiff exceeds the minimal jurisdiction limits of the Superior Court
19 and will be established according to proof at trial.

20 3. Plaintiff’s Ninth Cause of Action is brought as a representative action on behalf of
21 himself and certain other current and former individuals who performed work for Defendant in
22 California during the statutory period against whom one or more of the alleged violations was
23 committed (hereinafter collective referred to as the “Aggrieved Employees”) pursuant to
24 California Labor Code sections 2698, et seq. Plaintiff is an aggrieved employee against whom
25 one or more of the alleged violations occurred. The civil penalties sought by Plaintiff exceed the
26 minimal jurisdictional limits of the Superior Court and will be established according to proof at
27 trial.

28 4. The Court has jurisdiction over this action pursuant to the California Constitution,

Article VI, Section 10, which grants the superior court “original jurisdiction in all other causes” except those given by statute to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

5. This Court has jurisdiction over Defendants because, upon information and belief, Defendants have sufficient minimum contacts in California, or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

6. Venue is proper in this Court because, upon information and belief, Defendants maintain offices, have agents, and/or transact business in the State of California, County of Orange.

PARTIES

7. Plaintiff John Stephen Silvestri is an individual, residing in the County of Orange, State of California, at all relevant times.

8. Defendant Upward Projects Holdings, LLC, is and at all times herein mentioned was, a limited liability company organized and existing under the laws of the State of Delaware and registered to do business in the state of California.

9. Plaintiff is ignorant of the identities of defendants Does 1 through 50, inclusive, and therefore sues these defendants by such fictitious names. The Doe defendants may be individuals, partnerships, or corporations. Plaintiff is informed and believes, and thereon alleges, that, at all times mentioned herein, each of the Doe defendants was the parent, subsidiary, agent, servant, employee, co-venturer, and/or co-conspirator of each of the other defendants and was at all times mentioned acting within the scope, purpose, consent, knowledge, ratification and authorization of such agency, employment, joint venture and conspiracy. Plaintiff will amend this Complaint to allege their true names and capacities when ascertained. Plaintiff is informed and believes and thereon alleges that each of the fictitiously named Doe defendants is responsible in some manner for the occurrences herein alleged, and that Plaintiff’s damages as herein alleged were proximately caused by its conduct. Upward Projects Holdings, LLC and Doe Defendants 1 through 50 are collectively referred to herein as “Defendant.”

10. Defendant was and at all times herein mentioned were, (a) conducting business in the County of Orange, State of California, and (b) the employer of Plaintiff consistent with the California Labor Code and Industrial Welfare Commission Wage Orders (“Wage Orders”).

11. Plaintiff further alleges that Defendant, directly or indirectly controlled or affected the working conditions, wages, working hours, and conditions of employment of Plaintiff, the Class, and the Aggrieved Employees so as to make each of said Defendant employers and employers jointly liable under the statutory provisions set forth herein.

CLASS ACTION ALLEGATIONS

12. Plaintiff brings the First through Eighth Causes of Action as a class action on his own behalf and on behalf of all other members of the general public similarly situated, and, thus, seeks class certification under Code of Civil Procedure section 382.

13. The proposed class is defined as follows: All current and former non-exempt employees of any of Defendant within the State of California at any time commencing four (4) years preceding the filing of Plaintiff's complaint up until the time that notice of the certified class action is provided to the class (hereinafter referred to as the "Class" or "Class Members.").

14. Plaintiff reserves the right to establish other subclasses as appropriate.

15. The Class is ascertainable and there is a well-defined community of interest in the litigation:

a. Numerosity: The Class Members are so numerous that joinder of all Class Members is impracticable. The membership of the entire Class is unknown to Plaintiff at this time; however, the Class is estimated to be over fifty (50) individuals and the identity of such membership is readily ascertainable by inspection of Defendant's employment records.

b. Typicality: Plaintiff's claims are typical of all other Class Members demonstrated herein. Plaintiff will fairly and adequately protect the interests of the other Class Members with whom he has a well-defined community of interest.

c. Adequacy: Plaintiff will fairly and adequately protect the interests of each Class Member, with whom he has a well-defined community of interest and typicality

1 of claims, as demonstrated herein. Plaintiff has no interest that is antagonistic to
2 the other Class Members. Plaintiff's attorneys, the proposed class counsel, are
3 versed in the rules governing class action discovery, certification, and settlement.
4 Plaintiff has incurred, and during the pendency of this action will continue to
5 incur, costs and attorneys' fees, that have been, are, and will be necessarily
6 expended for the prosecution of this action for the substantial benefit of each Class
7 Member.

8 d. Superiority: A class action is superior to other available methods for the fair and
9 efficient adjudication of this litigation because individual joinder of all Class
10 Members is impractical.

11 e. Public Policy Considerations: Certification of this lawsuit as a class action will
12 advance public policy objectives. Employers of this great state violate
13 employment and labor laws every day. Current employees are often afraid to
14 assert their rights out of fear of direct or indirect retaliation. However, class
15 actions provide the Class Members who are not named in the complaint
16 anonymity that allows for the vindication of their rights.

17 16. There are common questions of law and fact as to the Class that predominate over
18 questions affecting only individual members. The following common questions of law or fact,
19 among others, exist as to the members of the Class:

- 20 a. Whether Defendant's failure to pay wages, without abatement, or reduction, in
21 accordance with the California Labor Code was willful;
- 22 b. Whether Defendant had a corporate policy and practice of failing to pay Plaintiff
23 and the other Class Members for all hours worked, and missed, short, late or
24 interrupted meal periods and rest breaks in violation of California law;
- 25 c. Whether Defendant required Plaintiff and the other Class Members to work more
26 than eight (8) hours per day and/or more than forty (40) hours per week and failed
27 to pay the legally required overtime compensation to Plaintiff and the other Class
28 Members;

- 1 d. Whether Defendant deprived Plaintiff and the other Class Members of meal
2 and/or rest periods or required Plaintiff and the other Class Members to work
3 during meal and/or rest periods without compensation;
- 4 e. Whether Defendant failed to pay meal period premium wages to Class Members
5 when they were not provided with a legally compliant meal period;
- 6 f. Whether Defendant failed to pay rest period premium wages to Class Members
7 when they were not authorized and permitted to take legally compliant rest
8 periods;
- 9 g. Whether Defendant failed to pay minimum wages to Plaintiff and the other Class
10 Members for all hours worked;
- 11 h. Whether Defendant failed to pay Plaintiff and the other Class Members the
12 required minimum wage pursuant to California law;
- 13 i. Whether Defendant failed to pay Plaintiff and the other Class Members proper
14 overtime compensation pursuant to California law;
- 15 j. Whether Defendant failed to pay all wages due to Plaintiff and the other Class
16 Members within the time required upon their discharge or resignation from
17 employment;
- 18 k. Whether Defendant failed to pay reporting time wages in violation of the
19 applicable IWC Wage Order;
- 20 l. Whether Defendant failed to timely pay all wages due to Plaintiff and the other
21 Class Members during their employment;
- 22 m. Whether Defendant complied with wage reporting as required by the California
23 Labor Code, including section 226;
- 24 n. Whether Defendant's conduct was with malice, fraud or oppression;
- 25 o. Whether Defendant's conduct was willful or reckless;
- 26 p. Whether Defendant engaged in unfair business practices in violation of California
27 Business & Professions Code section 17200, *et seq.* based on their improper
28 withholding of compensation and deduction of wages;

q. The appropriate amount of damages, restitution, and/or monetary penalties resulting from Defendant's violation of California law; and

r. Whether Plaintiff and the other Class Members are entitled to compensatory damages pursuant to the California Labor Code.

PAGA ALLEGATIONS

17. At all times herein set forth, PAGA was applicable to Plaintiff's employment by Defendants.

18. At all times herein set forth, PAGA provides that any provision of law under the California Labor Code that provides for a civil penalty to be assessed and collected by the LWDA for violations of the California Labor Code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of themselves and other current or former employees pursuant to procedures outlined in California Labor Code section 2699.3.

19. Pursuant to PAGA, a civil action under PAGA may be brought by an "aggrieved employee," who is any person that was employed by the alleged violator and against whom one or more of the alleged violations was committed.

20. Plaintiff was employed by Defendant and the alleged violation were committed against him during his time of employment and he is, therefore, an aggrieved employee. Plaintiff and the other employees are "Aggrieved Employees" as defined by California Labor Code section 2699(c) in that they are all current or former employees of Defendants, and one or more of the alleged violations were committed against them.

21. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved employee, including Plaintiff, may pursue a civil action arising under PAGA after the following requirements have been met:

- a. The aggrieved employee shall give written notice by online submission (hereinafter "Employee's Notice") to the Labor & Workforce Development Agency (hereinafter "LWDA") and by U.S. Certified Mail to the employer of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support

1 the alleged violations.

2 b. The LWDA shall provide notice (hereinafter “LWDA Notice”) to the
3 employer and the aggrieved employee by certified mail that it does not
4 intend to investigate the alleged violation within sixty (60) calendar days
5 of the postmark date of the Employee’s Notice. Upon receipt of the
6 LWDA Notice, or if the LWDA Notice is not provided within sixty-five
7 (65) calendar days of the postmark date of the Employee’s Notice, the
8 aggrieved employee may commence a civil action pursuant to California
9 Labor Code section 2699 to recover civil penalties in addition to any
10 other penalties to which the employee may be entitled.

11 22. On February 21, 2024, Plaintiff provided written notice by online submission to
12 the LWDA and by U.S. Certified Mail to Defendant UPWARD PROJECTS HOLDINGS, LLC
13 of the specific provisions of the California Labor Code alleged to have been violated, including
14 the facts and theories to support the alleged violations. Plaintiff has not received an LWDA
15 Notice within sixty-five (65) calendar days of the date of Plaintiff’s notice.

16 23. Therefore, Plaintiff has satisfied the administrative prerequisites under California
17 Labor Code section 2699.3(a) to recover civil penalties against Defendants, in addition to other
18 remedies, for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510,
19 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802.

20 **GENERAL ALLEGATIONS**

21 24. Defendant operates a restaurant group that includes restaurants such as Postino,
22 Windsor, Churn, Federal Pizza, and Joyride Tacos.

23 25. Defendant employed Plaintiff to work as a server from October 2022 through
24 February 23, 2023.

25 26. At all relevant times set forth herein, Defendant employed Plaintiff, the Class and
26 the Aggrieved Employees as hourly-paid or non-exempt employees. During this time, Defendant
27 failed to provide Plaintiff, the Class and the Aggrieved Employees with rest and meal breaks as
28 required by California law and failed to pay corresponding premiums as required, failed to pay

1 Plaintiff, the Class and the Aggrieved Employees for all hours worked (including, but not limited
2 to, when he was asked to engage in work off the clock), failed to provide accurate wage
3 statements, and other Labor Code violations articulated below.

4 27. Throughout the time period involved in this case, Defendant had the authority to
5 hire and terminate Plaintiff, the Class, and the Aggrieved Employees; to directly or indirectly
6 control work rules, working conditions, wages, working hours, and conditions of employment of
7 Plaintiff, the Class, and the Aggrieved Employees; and to hire and terminate the employment of
8 Plaintiff, the Class, and the Aggrieved Employees.

9 28. At all times herein mentioned, Defendant was subject to the Labor Code of the
10 State of California and the applicable Industrial Welfare Commission Orders.

11 29. Plaintiff is informed and believes, and thereon alleges that Defendant engaged in
12 an ongoing and systematic scheme of wage abuse against their hourly-paid or non-exempt
13 employees. As set forth in more detail below, this scheme involved, *inter alia*, regularly requiring
14 Plaintiff, the Class, and the Aggrieved Employees to work off the clock without compensation,
15 thereby failing to pay them for all hours worked, including minimum and overtime wages. In
16 addition, Defendant routinely failed to permit Plaintiff, the Class, and the Aggrieved Employees
17 to take timely and duty-free meal periods and rest periods in violation of California law.
18 Defendant also failed to pay reporting wages.

19 30. Throughout the time period involved in this case, Defendant implemented policies
20 and/or practices which failed to provide Plaintiff, the Class, and the Aggrieved Employees with
21 timely and duty-free meal periods. Defendant routinely failed to relieve Plaintiff, the Class, and
22 the Aggrieved Employees of all duties during their meal periods, regularly failed to relinquish
23 control over Plaintiff, the Class, and the Aggrieved Employees during their meal periods,
24 regularly failed to permit Plaintiff, the Class, and the Aggrieved Employees a reasonable
25 opportunity to take their meal periods, and regularly impeded or discouraged Plaintiff, the Class,
26 and the Aggrieved Employees from taking thirty (30) minute uninterrupted meal breaks no later
27 than the end of their fifth hour of work and/or from taking a second thirty (30) minute
28 uninterrupted meal break no later than their tenth hour of work for shifts lasting more than ten

1 (10) hours. Defendant also failed to maintain accurate records of meal periods taken by Plaintiff,
2 the Class, and the Aggrieved Employees.

3 31. Throughout the time period involved in this case, Defendant did not adequately
4 inform Plaintiff, the Class, and the Aggrieved Employees of their right to take meal periods under
5 California law. Moreover, Defendant systematically disregarded their own written policies
6 regarding the provision and timing of meal periods for Plaintiff, the Class, and the Aggrieved
7 Employees.

8 32. Throughout the time period involved in this case, Defendant failed to pay Plaintiff,
9 the Class, and the Aggrieved Employees premium wages for meal periods that were missed, late,
10 interrupted, or shortened in violation of California law. Defendant knew or should have known
11 that Plaintiff, the Class, and the Aggrieved Employees were entitled to receive all meal periods
12 or payment of one additional hour of pay at their regular rate of pay when a meal period was
13 missed, short, late, and/or interrupted. Notwithstanding this knowledge, Defendant routinely
14 failed to provide legally compliant meal periods to Plaintiff, the Class, and the Aggrieved
15 Employees, and routinely failed to pay one additional hour of pay to Plaintiff, the Class, and the
16 Aggrieved Employees at their regular rate of pay when a meal period was missed, short, late,
17 and/or interrupted.

18 33. Throughout the time period involved in this case, Defendant has implemented
19 policies and practices which prohibited Plaintiff, the Class, and the Aggrieved Employees from
20 taking timely and duty-free rest periods. Defendant regularly failed to provide, authorize, and
21 permit Plaintiff, the Class, and the Aggrieved Employees to take full, uninterrupted, off-duty rest
22 periods for every shift lasting three and one-half (3.5) to six (6) hours and/or two full,
23 uninterrupted, off-duty rest periods for every shift lasting six (6) to ten (10) hours, and failed to
24 make a good faith effort to authorize, permit, and provide such rest breaks in the middle of each
25 work period.

26 34. Throughout the time period involved in this case, Defendant did not adequately
27 inform Plaintiff, the Class, and the Aggrieved Employees of their right to take rest periods under
28 California law. Moreover, Defendant systematically disregarded their own written policies

1 regarding the provision and timing of rest periods for Plaintiff, the Class, and the Aggrieved
2 Employees. Instead, Defendant's actual policy and practice was to schedule Plaintiff, the Class,
3 and the Aggrieved Employees in a way that regularly prohibited them from taking timely and
4 duty-free rest periods, and to regularly require Plaintiff, the Class, and the Aggrieved Employees
5 to work through their rest periods.

6 35. Throughout the time period involved in this case, Defendant failed to pay Plaintiff,
7 the Class, and the Aggrieved Employees premium wages for rest periods that were missed, late,
8 interrupted, or shortened in violation of California law. Defendant knew or should have known
9 that Plaintiff, the Class, and the Aggrieved Employees were entitled to receive all rest periods or
10 payment of one additional hour of pay at their regular rate of pay when a rest period was missed,
11 short, late, and/or interrupted. Notwithstanding this knowledge, Defendant routinely failed to
12 authorize and permit Plaintiff, the Class, and the Aggrieved Employees to take duty-free rest
13 periods, and failed to pay one additional hour of pay to Plaintiff, the Class, and the Aggrieved
14 Employees at their regular rate of pay when a rest period was missed, short, late and/or
15 interrupted.

16 36. Throughout the time period involved in this case, Defendant regularly required
17 Plaintiff, the Class, and the Aggrieved Employees to perform work off the clock.

18 37. Throughout the time period involved in this case, Defendant implemented policies
19 that prohibited Plaintiff, the Class, and the Aggrieved Employees from accurately recording the
20 actual time worked, resulting in a failure to pay Plaintiff, the Class, and the Aggrieved Employees
21 all wages owed.

22 38. Throughout the time period involved in this case, Plaintiff, the Class, and the
23 Aggrieved Employees worked more than eight (8) hours in a day, and/or forty (40) hours in a
24 week. Throughout the time period involved in this case, Defendant regularly failed to pay all
25 overtime compensation owed to Plaintiff, the Class, and the Aggrieved Employees when they
26 worked in excess of eight (8) hours in a single work day and/or forty (40) hours in a single work
27 week, or in excess of twelve (12) hours in a single work day and/or eighty (80) hours in a single
28 work week. Defendant knew or should have known that Plaintiff, the Class, and the Aggrieved

1 Employees were entitled to receive certain wages for overtime compensation and that they were
2 not receiving wages for overtime compensation.

3 39. Throughout the time period involved in this case, Defendant failed to pay overtime
4 to Plaintiff, the Class, and the Aggrieved Employees for all overtime hours worked based on
5 regular rates of pay correctly calculated to include all applicable remuneration.

6 40. Throughout the time period involved in this case, Defendant regularly failed to
7 pay Plaintiff, the Class, and the Aggrieved Employees at least minimum wages for all hours
8 worked. Defendant knew or should have known that Plaintiff, the Class, and the Aggrieved
9 Employees were entitled to receive at least minimum wages for all hours worked and that they
10 were not receiving at least minimum wages for all hours worked. Defendant's failure to pay
11 minimum wages included, *inter alia*, failing to pay Plaintiff, the Class, and the Aggrieved
12 Employees at the required minimum wage pursuant to California law, requiring Plaintiff, the
13 Class, and the Aggrieved Employees to perform work off the clock.

14 41. Throughout the time period involved in this case, Defendant regularly failed to
15 pay Plaintiff, the Class, and the Aggrieved Employees all wages owed to them upon discharge or
16 resignation. Defendant knew or should have known that Plaintiff, the Class, and the Aggrieved
17 Employees were entitled to receive all wages owed to them upon termination within the time
18 permissible under California Labor Code section 202. Plaintiff, the Class, and the Aggrieved
19 Employees did not receive payment of all final wages owed to them upon discharge or resignation,
20 including overtime compensation and minimum wages within any time permissible under
21 California Labor Code section 202.

22 42. Throughout the time period involved in this case, Defendant regularly failed to
23 pay Plaintiff, the Class, and the Aggrieved Employees all wages within any time permissible
24 under California law, including, *inter alia*, California Labor Code section 204. Defendant knew
25 or should have known that Plaintiff, the Class, and the Aggrieved Employees were entitled to
26 receive all wages owed to them during their employment. Plaintiff, the Class, and the Aggrieved
27 Employees did not receive payment of all wages, including overtime compensation, minimum
28 wages, and meal and rest period premiums.

1 43. Throughout the time period involved in this case, Defendant regularly failed to
2 provide complete or accurate wage statements to Plaintiff, the Class, and the Aggrieved
3 Employees. Defendant knew or should have known that Plaintiff, the Class, and the Aggrieved
4 Employees were entitled to receive complete and accurate wage statements in accordance with
5 California law, but, in fact, they did not receive complete and accurate wage statements from
6 Defendant. The deficiencies included, *inter alia*, the failure to include the total number of hours
7 worked, the actual gross wages earned, the correct rates of pay, and the address of the legal entity
8 of the employer.

9 44. Throughout the time period involved in this case, Defendant regularly failed to
10 keep complete or accurate payroll records for Plaintiff, the Class, and the Aggrieved Employees.
11 Defendant knew or should have known that Defendant was required to keep complete and
12 accurate payroll records for Plaintiff, the Class, and the Aggrieved Employees in accordance with
13 California law, but, in fact, did not keep complete and accurate payroll records.

14 45. Throughout the time period involved in this case, Defendant regularly failed to
15 maintain accurate records relating to Plaintiff's, the Class', and the Aggrieved Employees' work
16 periods, meal periods, total daily hours, hours per pay period, and applicable pay rates.

17 46. Throughout the time period involved in this case, Defendant knew or should have
18 known that they had a duty to compensate Plaintiff, the Class, and the Aggrieved Employees
19 pursuant to California law. Defendant had the financial ability to pay such compensation, but
20 willfully, knowingly, and intentionally failed to do so, and falsely represented to Plaintiff, the
21 Class, and the Aggrieved Employees that they paid all wages owed to them, all in order to increase
22 Defendant's profits.

23 47. California Labor Code section 218 states that nothing in Article 1 of the Labor
24 Code shall limit the right of any wage claimant to "sue directly ... for any wages or penalty due
25 to him [or her] under this article."

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1 **FIRST CAUSE OF ACTION**

2 **(Violation of California Labor Code §§ 510 and 1198)**

3 **(Against All Defendants)**

4 48. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and
5 every allegation set forth above.

6 49. California Labor Code section 1198 and the applicable Industrial Welfare
7 Commission (“IWC”) Wage Order provide that it is unlawful to employ persons without
8 compensating them at a rate of pay either time-and-one-half or two-times that person’s regular
9 rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

10 50. Specifically, the applicable IWC Wage Order provides that Defendant is and was
11 required to pay Plaintiff and the other Class Members employed by Defendant, and working more
12 than eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time-and-
13 one-half for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours
14 in a workweek.

15 51. The applicable IWC Wage Order further provides that Defendant is and was
16 required to pay Plaintiff and the Class overtime compensation at a rate of two times their regular
17 rate of pay for all hours worked in excess of twelve (12) hours in a day and for all hours worked
18 in excess of eight (8) hours on the seventh day of work in a workweek.

19 52. California Labor Code section 510 codifies the right to overtime compensation at
20 one-and-one-half times the regular hourly rate for hours worked in excess of eight (8) hours in a
21 day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh day of
22 work, and no overtime compensation at twice the regular hourly rate for hours worked in excess
23 of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day of work.

24 53. During the relevant time period, Plaintiff and the other Class Members regularly
25 worked in excess of eight (8) hours in a day, and/or in excess of forty (40) hours in a week.

26 54. During the relevant time period, Defendant intentionally and willfully failed to pay
27 overtime wages owed to Plaintiff and the other Class Members.

28 55. Defendant’s failure to pay Plaintiff and the other Class Members the unpaid

1 balance of overtime compensation, as required by California laws, violates the provisions of
2 California Labor Code sections 510 and 1198, and is therefore unlawful.

3 56. Pursuant to California Labor Code section 1194, Plaintiff and the other Class
4 Members are entitled to recover unpaid overtime compensation, as well as interest, costs, and
5 attorneys' fees.

6 **SECOND CAUSE OF ACTION**

7 **(Violation of California Labor Code §§ 226.7 and 512(a))**

8 **(Against All Defendants)**

9 57. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and
10 every allegation set forth above.

11 58. At all relevant times, the relevant IWC Order and California Labor Code sections
12 226.7 and 512(a) were applicable to Plaintiff and the other Class Members' employment by
13 Defendant.

14 59. At all relevant times, California Labor Code section 226.7 provides that no
15 employer shall require an employee to work during any meal or rest period mandated by an
16 applicable order of the California IWC.

17 60. At all relevant times, the applicable IWC Wage Order and California Labor Code
18 section 512(a) provide that an employer may not require, cause or permit an employee to work
19 for a work period of more than five (5) hours per day without providing the employee with a meal
20 period of not less than thirty (30) minutes, except that if the total work period per day of the
21 employee is no more than six (6) hours, the meal period may be waived by mutual consent of
22 both the employer and employee.

23 61. At all relevant times, California Labor Code section 512(a) further provides that
24 an employer may not require, cause or permit an employee to work for a work period of more
25 than ten (10) hours per day without providing the employee with a second uninterrupted meal
26 period of not less than thirty (30) minutes, except that if the total hours worked is no more than
27 twelve (12) hours, the second meal period may be waived by mutual consent of the employer and
28 the employee only if the first meal period was not waived.

1 Defendant.

2 70. At all relevant times, California Labor Code section 226.7 provides that no
3 employer shall require an employee to work during any rest period mandated by an applicable
4 order of the California IWC.

5 71. At all relevant times, the applicable IWC Wage Order provides that “[e]very
6 employer shall authorize and permit all employees to take rest periods, which insofar as
7 practicable shall be in the middle of each work period” and that the “rest period time shall be
8 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
9 hours or major fraction thereof unless the total daily work time is less than three and one-half
10 (3.5) hours.”

11 72. During the relevant time period, Defendant required Plaintiff and other Class
12 Members to work four (4) or more hours without authorizing or permitting a ten (10) minute rest
13 period per each four (4) hour period worked.

14 73. During the relevant time period, Defendant willfully required Plaintiff and the
15 other Class Members to work during rest periods, failed to allow Plaintiff and the other Class
16 Member to take any rest period and/or failed to authorize and permit Plaintiff and the other Class
17 Members to take uninterrupted, duty-free rest breaks.

18 74. During the relevant time period, Defendant failed to pay Plaintiff and the other
19 Class Members the full rest period premium due pursuant to California Labor Code section 226.7
20 for work performed during rest periods, and/or for failure to authorize and permit Plaintiff and
21 other Class Members from taking uninterrupted rest periods.

22 75. Defendant’s conduct violates applicable IWC Wage Orders and California Labor
23 Code section 226.7.

24 76. Pursuant to the applicable IWC Wage Orders and California Labor Code section
25 226.7(b), Plaintiff and the other Class Members are entitled to recover from Defendant one
26 additional hour of pay at the employees’ regular hourly rate of compensation for each work day
27 that the rest period was not provided.

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1 **FOURTH CAUSE OF ACTION**

2 **(Violation of California Labor Code §§ 1194, 1197, and 1197.1)**

3 **(Against All Defendants)**

4 77. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and
5 every allegation set forth above.

6 78. At all relevant times, California Labor Code sections 1194, 1197, and 1197.1
7 provide that the minimum wage to be paid to employees and the payment of a lesser wage than
8 the minimum so fixed is unlawful.

9 79. During the relevant time period, Defendant regularly failed to pay minimum wage
10 to Plaintiff and the other Class Members as required pursuant to California Labor Code sections
11 1194, 1197, and 1197.1.

12 80. Defendant's failure to pay Plaintiff and the other Class Members the minimum
13 wage as required violates California Labor Code sections 1194, 1197, and 1197.1. Pursuant to
14 those sections, Plaintiff and the other Class Members are entitled to recover the unpaid balance
15 of their minimum wage compensation as well as interest, costs, and attorneys' fees, and liquidated
16 damages in an amount equal to the wages unlawfully unpaid and interest thereon.

17 81. Pursuant to California Labor Code section 1194.2, Plaintiff and the other Class
18 Members are entitled to recover liquidated damages in an amount equal to the wages unlawfully
19 unpaid and interest thereon.

20 **FIFTH CAUSE OF ACTION**

21 **(Violation of California Labor Code §§ 201, 202, 203)**

22 **(Against All Defendants)**

23 82. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and
24 every allegation set forth above.

25 83. At all relevant times herein set forth, California Labor Code sections 201 and 202
26 provide that if an employer discharges an employee, the wages earned and unpaid at the time of
27 discharge are due and payable immediately, and if an employee quits his or his employment, his
28 or his wages shall become due and payable not later seventy-two (72) hours thereafter, unless the

1 employee has given seventy-two (72) hours' notice of his or his intention to quit, in which case
2 the employee is entitled to his or his wages at the time of quitting.

3 84. During the relevant time period, the employment of Plaintiff and many other Class
4 Members with Defendant ended, *i.e.* was terminated by quitting or discharge. Defendant
5 intentionally and willfully failed to pay Plaintiff and other Class Members who are no longer
6 employed by Defendant all of their wages, earned and unpaid, including but not limited to
7 minimum wages, straight time wages, and overtime wages, within seventy-two (72) hours of their
8 leaving Defendant's employ.

9 85. Defendant's failure to pay Plaintiff and other Class Members who are no longer
10 employed by Defendant their wages, earned and unpaid, within seventy-two (72) hours of their
11 leaving Defendant's employ, is in violation of California Labor Code sections 201 and 202.

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

16 87. Plaintiff and other Class Members who are no longer employed by Defendant are
17 entitled to recover from Defendant the statutory penalty wages for each day they were not paid,
18 up to a thirty (30) day maximum pursuant to California Labor Code section 203.

19 **SIXTH CAUSE OF ACTION**

20 **(Violation of California Labor Code §§ 204 and 210)**

21 **(Against All Defendants)**

22 88. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and
23 every allegation set forth above

24 89. At all times herein set forth, California Labor Code section 204 provides that all
25 wages earned by any person in any employment between the 1st and 15th days, inclusive, of any
26 calendar month, other than those wages due upon termination of an employee, are due and payable
27 between the 16th and 26th day of the month during which the labor was performed.

28 90. At all times herein set forth, California Labor Code section 204 provides that all

1 wages earned by any person in any employment between the 16th and the last day, inclusive, of
2 any calendar month, other than those wages due upon termination of an employee, are due and
3 payable between the 1st and the 10th day of the following month.

4 91. At all times herein set forth, California Labor Code section 204 provides that all
5 wages earned for labor in excess of the normal work period shall be paid no later than the payday
6 for the next regular payroll period.

7 92. During the relevant time period, Defendant intentionally and willfully failed to pay
8 Plaintiff and other Class Members all wages due to them, within any time period permissible
9 under California Labor Code section 204.

10 93. Plaintiff and other Class Members are entitled to recover all available remedies for
11 Defendant's violations of California Labor Code section 204, including statutory penalties
12 pursuant to Labor Code section 210(b).

13 **SEVENTH CAUSE OF ACTION**

14 **(Violation of California Labor Code § 226(a))**

15 **(Against All Defendants)**

16 94. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and
17 every allegation set forth above.

18 95. At all material times set forth herein, California Labor Code section 226(a)
19 provides that every employer shall furnish each of his or his employees an accurate itemized
20 statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, (3)
21 the number of piece-rate units earned and any applicable piece rate if the employee is paid on a
22 piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the
23 employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates
24 of the period for which the employee is paid, (7) the name of the employee and his or his social
25 security number, (8) the name and address of the legal entity that is the employer, and (9) all
26 applicable hourly rates in effect during the pay period and the corresponding number of hours
27 worked at each hourly rate by the employee. The deductions made from payments of wages shall
28 be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and

a copy of the statement or a record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

96. Defendant has intentionally and willfully failed to provide Plaintiff and the Class with complete and accurate wage statements. The deficiencies include but are not limited to the failure to list the total number of hours worked, the actual gross wages earned, and the correct rates of pay, and listing any premiums that should have been paid.

97. Because of Defendant's violation of California Labor Code section 226(a), Plaintiff and the Class have suffered injury and damage to their statutorily protected rights.

98. More specifically, Plaintiff and the Class have been injured by Defendant's intentional and willful violation of California Labor Code section 226(a) because they were denied both their legal right to receive, and their protected interest in receiving, accurate and itemized wage statements pursuant to California Labor Code section 226(a).

99. Plaintiff and the Class are entitled to recover from Defendant the greater of their actual damages caused by Defendant's failure to comply with California Labor Code section 226(a), or an aggregate penalty not exceeding four thousand dollars per employee.

100. Plaintiff and the Class are also entitled to injunctive relief to ensure compliance with this section, pursuant to California Labor Code section 226(g).

EIGHTH CAUSE OF ACTION

(Violation of Cal. Business & Professions Code §§ 17200, et seq.)

(Against All Defendants)

101. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

102. Defendant's conduct, as alleged herein, has been, and continues to be, unfair, unlawful and harmful to Plaintiff and the Class, to the general public, and Defendant's competitors. Accordingly, Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

103. Defendant's activities as alleged herein are violations of California law, and constitute unlawful business acts and practices in violation of California Business & Professions

1 Code section 17200, *et seq.*

2 104. A violation of California Business & Professions Code section 17200, *et seq.* may
3 be predicated on the violation of any state or federal law. In this instant case, Defendant's policies
4 and practices of requiring employees, including Plaintiff and the Class, to work overtime without
5 paying them proper compensation violate California Labor Code sections 510 and 1198.
6 Additionally, Defendant's policies and practices of requiring employees, including Plaintiff and
7 the Class, to work through their meal and rest periods without paying them proper compensation
8 violate California Labor Code sections 226.7 and 512(a). Moreover, Defendant's policies and
9 practices of failing to timely pay wages to Plaintiff and the Class violate California Labor Code
10 sections 201, 202, 203 and 204.

11 105. Defendant also violated California Labor Code sections 221, 226(a), 1194, 1197,
12 1197.1, 510, 1174(d), 2800, and 2802.

13 106. As a result of the herein described violations of California law, Defendant
14 unlawfully gained an unfair advantage over other businesses.

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

18 108. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
19 Plaintiff and the Class are entitled to restitution of the wages withheld and retained by Defendant
20 during a period that commences four years prior to the filing of this Complaint; an award of
21 attorneys' fees pursuant to California Code of Civil Procedure section 1021.5 and other applicable
22 laws; and an award of costs.

23 **NINTH CAUSE OF ACTION**

24 **Violation of California Labor Code § 2698, et seq. ("Private Attorneys General Act")**

25 **(Against All Defendants)**

26 109. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and
27 every allegation set forth above.

28 110. PAGA expressly establishes that any provision of the California Labor Code

1 which provides for a civil penalty to be assessed and collected by the LWDA, or any of its
2 departments, divisions, commissions, boards, agencies or employees for a violation of the
3 California Labor Code, may be recovered through a civil action brought by an aggrieved
4 employee on behalf of himself or herself, and other current or former employees.

5 111. Whenever the LWDA, or any of its departments, divisions, commissions, boards,
6 agencies, or employees has discretion to assess a civil penalty, a court in a civil action is
7 authorized to exercise the same discretion, subject to the same limitations and conditions, to assess
8 a civil penalty.

9 112. Plaintiff and the other hourly-paid or non-exempt employees or individuals who
10 performed work for Defendant during the statutory period are “aggrieved employees” as defined
11 by California Labor Code section 2699(c) in that they are all current or former employees of
12 Defendant, and one or more of the alleged violations was committed against them. As set forth in
13 detail above, during all times relevant to this Action, Defendant has routinely subjected Plaintiff
14 and the Aggrieved Employees to violations of California Labor Codes by:

15 **Failure to Pay Overtime**

16 113. Defendant’s failure to pay legally required overtime wages to Plaintiff and the
17 other aggrieved employees is in violation of the Wage Orders and constitutes unlawful or unfair
18 activity prohibited by California Labor Code sections 510 and 1198.

19 **Failure to Provide Meal Periods**

20 114. Defendant’s failure to provide legally required meal periods to Plaintiff and the
21 other aggrieved employees is in violation of the Wage Orders and constitutes unlawful or unfair
22 activity prohibited by California Labor Code sections 226.7 and 512(a).

23 **Failure to Provide Rest Periods**

24 115. Defendant’s failure to provide legally required rest periods to Plaintiff and the
25 other aggrieved employees is in violation of the Wage Orders and constitutes unlawful or unfair
26 activity prohibited by California Labor Code section 226.7.

27 **Failure to Pay Minimum Wages**

28 116. Defendant’s failure to pay legally required minimum wages to Plaintiff and the

1 other aggrieved employees is in violation of the Wage Orders and constitutes unlawful or unfair
2 activity prohibited by California Labor Code sections 1194, 1197 and 1197.1.

3 **Failure to Timely Pay Wages Upon Termination**

4 117. Defendant's failure to timely pay wages to Plaintiff and the other aggrieved
5 employees upon termination in accordance with Labor Code sections 201 and 202 constitutes
6 unlawful and/or unfair activity prohibited by California Labor Code sections 201 and 202.

7 **Failure to Timely Pay Wages During Employment**

8 118. Defendant's failure to timely pay wages to Plaintiff and the other aggrieved
9 employees during employment in accordance with Labor Code section 204 constitutes unlawful
10 and/or unfair activity prohibited by California Labor Code section 204.

11 **Failure to Provide Complete and Accurate Wage Statements**

12 119. Defendant's failure to provide complete and accurate wage statements to Plaintiff
13 and the other aggrieved employees in accordance with Labor Code section 226(a) constitutes
14 unlawful and/or unfair activity prohibited by California Labor Code section 226(a).

15 **Failure to Keep Complete and Accurate Payroll Records**

16 120. Defendant's failure to keep complete and accurate payroll records relating to
17 Plaintiff and the other aggrieved employees in accordance with California Labor Code section
18 1174(d) constitutes unlawful and/or unfair activity prohibited by California Labor Code section
19 1174(d).

20 121. Pursuant to California Labor Code section 2699, Plaintiff, individually, and on
21 behalf of all aggrieved employees, requests and is entitled to recover from Defendant and each of
22 them, business expenses, unpaid wages, and/or untimely wages according to proof, interest,
23 attorneys' fees and costs pursuant to California Labor Code section 218.5, as well as all statutory
24 penalties against Defendant, and each of them, including but not limited to:

- 25 a. Penalties under California Labor Code section 2699 in the amount of a hundred
26 dollars (\$100) for each aggrieved employee per pay period for the initial violation,
27 and two hundred dollars (\$200) for each aggrieved employee per pay period for
28 each subsequent violation;

- b. Penalties under California Code of Regulations Title 8 section 11010, et seq. in the amount of fifty dollars (\$50) for each aggrieved employee per pay period for the initial violation, and one hundred dollars (\$100) for each subsequent violation; and
- c. Penalties under California Labor Code section 210 in addition to, and entirely independent and apart from, any other penalty provided in the California Labor Code in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation; and
- d. Any and all additional penalties and sums as provided by the California Labor Code and/or other statutes.

122. Pursuant to California Labor Code section 2699(i), civil penalties recovered by aggrieved employees shall be distributed as follows: seventy-five percent (75%) to the Labor and Workforce Development Agency for the enforcement of labor laws and education of employers and employees about their rights and responsibilities and twenty-five percent (25%) to the aggrieved employees.

123. Further, Plaintiff is entitled to seek and recover reasonable attorneys' fees and costs pursuant to California Labor Code sections 210, 218.5 and 2699 and any other applicable statute.

124. Plaintiff has exhausted his administrative remedies pursuant to Labor Code section 2699.3. On February 21, 2024, Plaintiff, through his counsel of record, by online filing with the Labor and Workforce Development Agency ("LWDA") and by certified mail to the Defendant, notified Defendant and the LWDA of the specific provisions of the Labor Code and IWC Wage Orders that Defendant have violated, including the facts and theories to support the violations, and of Plaintiff's intent to bring a claim for civil penalties under PAGA. Plaintiff also paid the filing fee required under Labor Code section 2699.3. As of the filing of this Complaint, more than sixty-five (65) days have elapsed since the mailing of Plaintiff's February 21, 2024, notice, and the Labor and Workforce Development Agency has not indicated that it intends to investigate the

violations discussed in the notice. Accordingly, Plaintiff may commence a civil action to recover penalties for himself and other Aggrieved Employees pursuant to Labor Code section 2699.3.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all other members of the general public similarly situated, and on behalf of other aggrieved employees pursuant to the Private Attorneys General Act, prays for relief and judgment against Defendant, jointly and severally, as follows:

Class Certification

1. That this action be certified as a class action;
2. That Plaintiff be appointed as the representative of the Class;
3. That counsel for Plaintiff be appointed as Class Counsel; and
4. That Defendant provide to Class Counsel immediately the names and most current/last known contact information (address, e-mail and telephone numbers) of all class members.

As to the First Cause of Action

5. That the Court declare, adjudge and decree that Defendant violated California Labor Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all overtime wages due to Plaintiff and other Class Members;
6. For general unpaid wages at overtime wage rates and such general and special damages as may be appropriate;
7. For pre-judgment interest on any unpaid overtime compensation commencing from the date such amounts were due;
8. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Labor Code section 1194; and
9. For such other and further relief as the Court may deem just and proper.

As to the Second Cause of Action

10. That the Court declare, adjudge and decree that Defendant violated California Labor Code sections 226.7 and 512 and applicable IWC Wage Orders by willfully failing to

1 provide all meal periods (including second meal periods) to Plaintiff and the Class;

2 11. That the Court make an award to Plaintiff and the Class of one (1) hour of pay at
3 each employee's regular rate of compensation for each workday that a meal period was not
4 provided;

5 12. For all actual, consequential, and incidental losses and damages, according to
6 proof;

7 13. For premium wages pursuant to California Labor Code section 226.7;

8 14. For pre-judgment interest on any unpaid wages from the date such amounts were
9 due;

10 15. For reasonable attorneys' fees and costs of suit incurred herein; and

11 16. For such other and further relief as the Court may deem just and proper.

12 **As to the Third Cause of Action**

13 17. That the Court declare, adjudge and decree that Defendant violated California
14 Labor Code section 226.7 and applicable IWC Wage Orders by willfully failing to provide all rest
15 periods to Plaintiff and the Class;

16 18. That the Court make an award to Plaintiff and the Class of one (1) hour of pay at
17 each employee's regular rate of compensation for each workday that a rest period was not
18 provided;

19 19. For all actual, consequential, and incidental losses and damages, according to
20 proof;

21 20. For premium wages pursuant to California Labor Code section 226.7;

22 21. For pre-judgment interest on any unpaid wages from the date such amounts were
23 due; and

24 22. For such other and further relief as the Court may deem just and proper.

25 **As to the Fourth Cause of Action**

26 23. That the Court declare, adjudge and decree that Defendant violated California
27 Labor Code sections 1194, 1197, and 1197.1 by willfully failing to pay minimum wages to
28 Plaintiff and the Class;

As to the Seventh Cause of Action

38. That the Court declare, adjudge and decree that Defendant violated the record keeping provisions of California Labor Code section 226(a) and applicable IWC Wage Orders as to Plaintiff and the Class, and willfully failed to provide accurate itemized wage statements thereto;

39. For actual, consequential and incidental losses and damages, according to proof;

40. For statutory penalties pursuant to California Labor Code section 226(e); and

41. For such other and further relief as the Court may deem just and proper.

As to the Eighth Cause of Action

42. That the Court declare, adjudge and decree that Defendant violated California Business and Professions Code sections 17200, *et seq.* by failing to provide Plaintiff and the Class all overtime compensation due to them, failing to provide all meal and rest periods to Plaintiff and the Class, failing to pay at least minimum wages to Plaintiff and the Class, failing to pay Plaintiff's and other Class Members' wages timely as required by California Labor Code section 201, 202 and 204 and by violating California Labor Code sections 226(a), 1174(d), 2800, and 2802;

43. For restitution of unpaid wages to Plaintiff and the Class and all pre-judgment interest from the day such amounts were due and payable;

44. For the appointment of a receiver to receive, manage and distribute any and all funds disgorged from Defendant and determined to have been wrongfully acquired by Defendant as a result of violation of California Business and Professions Code sections 17200, *et seq.*;

45. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Code of Civil Procedure section 1021.5;

46. For injunctive relief to ensure compliance with this section, pursuant to California Business and Professions Code sections 17200, *et seq.*; and

47. For such other and further relief as the Court may deem just and proper.

As to the Ninth Cause of Action

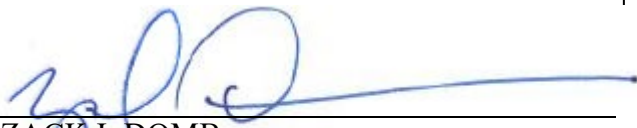
48. For civil penalties and wages as permitted by law pursuant to California Labor

1 Code sections 2699(a), (f) and (g) and 558 plus costs and attorneys' fees for violation of California
2 Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1,
3 1198, 1198.5, 2800 and 2802; and

4 49. For such other and further relief as the Court may deem equitable and appropriate.

5
6 Dated: May 20, 2024

DOMB & RAUCHWERGER, LLP

7
8 By: 

9 ZACK I. DOMB
10 DEVIN E. RAUCHWERGER
11 JEFFREY P. JACKSON
12 Attorneys for Plaintiff
13 John Stephen Silvestri
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DEMAND FOR TRIAL BY JURY

Plaintiff demands a trial by jury as to all causes of action triable by a jury.

Dated: May 20, 2024

DOMB & RAUCHWERGER, LLP

By: 

ZACK I. DOMB
DEVIN E. RAUCHWERGER
JEFFREY P. JACKSON
Attorneys for Plaintiff
John Stephen Silvestri

PROOF OF SERVICE
(CCP § 1013(a) and 2015.5)

I, the undersigned, am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; am employed with Domb & Rauchwerger LLP and my business address is 1055 East Colorado Blvd., Fifth Floor, Pasadena, California 91106. My e-mail address is jessica@dombrauchwerger.com.

On May 20, 2024, I served the foregoing document entitled **FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT** on all the appearing and/or interested parties in this action by placing ☐ *the original* ☒ *a true copy* thereof enclosed in sealed envelope(s) addressed as follows:

Jonas Trevethan, Esq.
Kenneth Zielinski, Esq.
Maria Z. Stearns, Esq.
RUTAN & TUCKER LLP
18575 Jamboree Rd, 9th Floor
Irvine, CA 92612
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Defendant Upward Projects Holdings, LLC

☐ **[by MAIL]** - I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postage cancellation date or postage meter date is more than one day after date of deposit for mailing this affidavit.

☒ **[by ELECTRONIC SERVICE]** - Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification address listed above.

☐ **[by PERSONAL SERVICE]** - I caused to be delivered by messenger such envelope(s) by hand to the office of the addressee(s). Such messenger is over the age of eighteen years and not a party to the within action and employed with Express Network, whose business address is 1605 W. Olympic Boulevard, Suite 800, Los Angeles, CA 90015.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed May 20, 2024, at Rio Linda, California.

Jessica Delgado

Print Name

By:


Signature