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Monteleone, on behalf of themselves, the State of
7 California, and all others similarly situated

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County of Santa Barbara
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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF SANTA BARBARA**
12

13 LATHAN FORD, an individual, and
14 BRANDON MONTELEONE, an individual,
on behalf of themselves, the State of
15 California as private attorneys general, and all
others similarly situated,

16 Plaintiffs,

17 v.
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19 HWV HOSPITALITY SERVICES, INC., a
Delaware corporation; and DOES 1 through 50,
20 inclusive,

21 Defendants.
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Case No.: 24CV03052

**CLASS AND REPRESENTATIVE
ACTION COMPLAINT FOR:**

- (1) Failure to Pay Minimum Wages;
- (2) Failure to Pay Overtime Wages;
- (3) Meal Period Liability under Lab. Code, § 226.7;
- (4) Rest Break Liability under Lab. Code, § 226.7;
- (5) Violation of Lab. Code, § 246;
- (6) Failure to Provide Accurate Itemized Employee Wage Statements;
- (7) Failure to Pay All Wages Owed Timely and upon Separation of Employment;
- (8) Failure to Reimburse Business Expenses;
- (9) Violation of Lab. Code, § 1174(d);
- (10) Violation of Bus. & Prof. Code, § 17200 et seq.; and
- (11) Penalties Pursuant to PAGA, Lab. Code, § 2698 et seq.

DEMAND FOR JURY TRIAL

1 Plaintiffs Lathan Ford and Brandon Monteleone (“Plaintiffs”), on behalf of themselves, the
2 State of California, and all others similarly situated, allege and complain of Defendants HWV
3 Hospitality Services, Inc. (“HWV”) and DOES 1 through 50, inclusive (collectively, “Defendants”),
4 and each of them, as follows:

5 **I. INTRODUCTION**

6 1. This is a class action pursuant to Code of Civil Procedure section 382 on behalf of
7 Plaintiffs and the following class: *all current and former employees classified as exempt who worked*
8 *for Defendants in California during the longest applicable limitations period* (the “Class” or “Class
9 Members”).

10 2. The Judicial Council of California (JCC)’s amended Emergency Rule 9 (effective
11 May 29, 2020) provides: “[n]otwithstanding any other law, the statutes of limitations and repose for
12 civil causes of action that exceed 180 days are tolled from April 6, 2020, until October 1, 2020.”
13 The Advisory Committee Comment notes that: “Emergency rule 9 is intended to apply broadly to
14 toll any statute of limitations on the filing of a pleading in court asserting a civil cause of action.
15 The term ‘civil causes of action’ includes special proceedings. (See Code Civ. Proc., §§ 312, 363
16 [‘action,’ as used in title 2 of the code (Of the Time of Commencing Civil Actions), is construed ‘as
17 including a special proceeding of a civil nature’)]”) . . . The rule also applies to statutes of
18 limitations on filing of causes of action in court found in codes other than the Code of Civil
19 Procedure.” Accordingly, the relevant time period for claims under the PAGA discussed herein is
20 one year prior to the date Plaintiffs filed their PAGA Notice online with the California Labor and
21 Workforce Development Agency (“LWDA”) and sent a letter by certified mail to Defendants, plus
22 the additional time during which the statute of limitations was tolled (pursuant to Emergency Rule
23 9 of the California Rules of Court) and ongoing.

24 3. Throughout the time period involved in this case, Defendants willfully maintained a
25 policy and/or practice of failing to pay all wages, including minimum and overtime wages, for all
26 hours worked; failing to provide compliant duty-free meal periods; failing to authorize and permit
27 compliant duty-free rest breaks; failing to pay sick pay; failing to maintain and provide accurate
28 itemized wage statements; failing to reimburse business expenses; and failing to pay all wages owed

1 timely and upon separation of employment. Defendants' illegal conduct has also given rise to
2 derivative claims for unfair business practices and violation of the Private Attorneys General Act of
3 2004 ("PAGA").

4 4. Plaintiffs, on behalf of themselves and all other similarly situated employees, also
5 seek all monies owed but withheld and retained by Defendants to which Plaintiffs and Class
6 Members are entitled, pursuant to Business and Professions Code sections 17200 through 17208.
7 Plaintiffs seek an order by the Court awarding restitution, injunctive relief, and all other legal and
8 equitable relief allowed, plus interest, attorneys' fees and costs.

9 5. Plaintiffs, on behalf of themselves and all other similarly situated aggrieved
10 employees (the "Aggrieved Employees"), also bring this representative action against Defendants
11 to recover wages and penalties owed pursuant to Labor Code section 2699. Plaintiffs were
12 compelled to retain the services of counsel to file this action to protect their interests and those of
13 Aggrieved Employees, and have thereby incurred attorneys' fees and costs, which they are entitled
14 to recover under Labor Code section 2699.

15 6. For purposes of the allegations set forth herein, Class Members, along with
16 Aggrieved Employees comprising the PAGA representative action, are collectively referred to as
17 "Employees" except as otherwise specified.

18 **II. JURISDICTION AND VENUE**

19 7. This Court has jurisdiction over this action pursuant to article VI, section 10 of the
20 California Constitution, which grants the superior court "original jurisdiction in all other causes"
21 except those given by statute to other courts. The statutes under which this action is brought do not
22 specify any other basis for jurisdiction. Further, the aggregate amount in controversy for the
23 proposed class action, including monetary damages, restitution, penalties, injunctive relief, and
24 attorneys' fees, is less than five million dollars (\$5,000,000), exclusive of interest and costs.
25 Plaintiffs reserve the right to seek a larger amount based upon new and different information
26 resulting from investigation and discovery.

27 8. This Court has personal jurisdiction over Defendants because they do business in
28 California, have sufficient minimum contacts in California, or otherwise intentionally avail

1 themselves of the California market so as to render the exercise of jurisdiction over them by
2 California courts consistent with traditional notions of fair play and substantial justice.

3 9. Venue as to Defendants is proper in this judicial district pursuant to Code of Civil
4 Procedure section 395.5 because, upon information and belief, Defendants transact business in the
5 State of California, County of Santa Barbara.

6 10. This case should be classified as complex according to California Rules of Court,
7 Rule 3.400, and assigned to a complex litigation judge and department because it is a class action,
8 will involve substantial documentary evidence and a large number of witnesses, is likely to involve
9 extensive motion practice raising difficult or novel issues that will be time-consuming to resolve,
10 and will require substantial post-judgment judicial supervision.

11 **III. PARTIES**

12 11. Defendant HWV is a Delaware corporation. Plaintiffs are informed and believe, and
13 based thereon allege, that at all times relevant herein, HWV operated, transacted, and conducted
14 business in Santa Barbara County, California. Moreover, Plaintiffs are informed and believe, and
15 based thereon allege, that during the relevant period, HWV employed some Employees within Santa
16 Barbara County, California.

17 12. The true names and capacities, whether individual, corporate, associate, or otherwise,
18 of defendants sued herein as DOES 1 through 50, inclusive, are currently unknown to Plaintiffs,
19 who therefore sue defendants by such fictitious names under Code of Civil Procedure section 474.
20 Plaintiffs are informed and believe, and based thereon allege, that each of the defendants designated
21 herein as DOE is legally responsible in some manner for the unlawful acts referred to herein.
22 Plaintiffs will seek leave of court to amend this Complaint to reflect the true names and capacities
23 of the defendants designated hereinafter as DOES when such identities become known.

24 13. Defendants employed Plaintiffs as exempt employees in California, and subjected
25 them to the same employment policies and/or practices that affected Employees.

26 14. Plaintiffs are informed and believe, and based thereon allege, that Defendants do
27 business in the State of California and, at all times hereinafter mentioned, were and are employers
28 as defined in and subject to the Labor Code and Industrial Welfare Commission ("IWC")

Occupational Wage Orders. During the relevant period, Defendants employed Plaintiffs and Employees within the State of California.

15. Plaintiffs are informed and believe, and based thereon allege, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to other Defendants. Plaintiffs are further informed and believe, and based thereon allege, that Defendants are joint employers in that they employed Plaintiffs and Employees at the same time and were operating as a joint enterprise and single entity during the relevant time periods.

16. California courts have recognized that the definition of “employer” for purposes of enforcement of the California Labor Code goes beyond the concept of traditional employment to reach irregular working arrangements for the purpose of preventing evasion and subterfuge of California’s labor laws. (*Martinez v. Combs* (2010) 49 Cal.4th 35, 65.) As such, anyone who directly or indirectly, or through an agent or any other person, engages, suffers, or permits any person to work or exercises control over the wages, hours, or working conditions of any person may be liable for violations of the California Labor Code as to that person.

17. California law also permits and recognizes the piercing of a corporate veil between sister companies under the single enterprise rule. (*Hasso v. Hapke*, 227 Cal.App.4th 107, 155 (2014); *Greenspan v. LADT, LLC*, 191 Cal.App.4th 486, 512 (2010).) The single enterprise rule applies where “there are two or more personalities, there is but one enterprise; and that this enterprise has been so handled that it should respond, as a whole, for the debts of certain component elements of it.” (*Hasso, supra*, 227 Cal.App.4th at p. 155; *Greenspan, supra*, 191 Cal.App.4th at p. 512.)

18. At all times throughout their employment, Plaintiffs and Employees were regularly and consistently subject to the common policies and/or practices utilized by Defendants.

19. Accordingly, all Defendants engaged, suffered, and permitted Plaintiffs and Employees to perform services from which Defendants benefitted. Moreover, the aforementioned entities had the right to exercise control over the wages, hours, and/or working conditions over Plaintiffs and Employees at all relevant times herein, so as to be considered joint employers.

1 **IV. FACTUAL BACKGROUND**

2 **Defendants Systematically Violated State Wage and Hour Laws**

3 20. While the precise number of Class Members has not been determined at this time,
4 Plaintiffs are informed and believe that there are more than 100 Class Members employed by
5 Defendants within the State of California during the relevant period.

6 21. Upon information and belief, Plaintiffs and Employees are covered by IWC Wage
7 Order No. 5-2001 (Cal. Code Regs., tit. 8, § 11050).¹

8 22. Defendants misclassified Plaintiffs and Employees as exempt “managers” for
9 purposes of compensation and applications of the Labor Code. Defendants routinely
10 mischaracterized the work performed by Plaintiffs and Employees as managerial as opposed to non-
11 managerial. However, while Plaintiffs and Employees did perform some managerial duties, the vast
12 majority of their time was spent on run-of-the-mill duties that all employees perform, such as front
13 desk work, housekeeping, and maintenance. (*Compare Sav-On Drug Stores, Inc. v. Superior Court*
14 (2004) 34 Cal.4th 319, 331.) This misclassification resulted in repeated and widespread failure to
15 (a) pay minimum and overtime wages; (b) provide meal periods; (c) authorize and permit duty-free
16 rest breaks; (d) provide accurate itemized wage statements; and (e) make correct and timely
17 payments to Plaintiffs and Employees throughout the relevant time period.

18 25. Throughout the applicable time period, Defendants did not pay Plaintiffs and
19 Employees at least the California minimum wage for all hours worked.

20 26. Labor Code section 1197 states the California requirement that employees must be
21 paid at least the minimum wage fixed by the Commission, and any payment of less than the
22 minimum wage is unlawful. Similarly, Labor Code section 1194 entitles “any employee receiving
23 less than the legal minimum wage...to recover in a civil action the unpaid balance of the full amount
24 of this minimum wage.” IWC Wage Order No. 5-2001 also obligates employers to pay each
25 employee minimum wages for all hours worked, and defines “hours worked” to include all times an
26 employee is subject to the employer’s control and all time the employee is suffered or permitted to

27 _____
28 ¹ Upon information and belief, Plaintiffs allege that IWC Wage Order No. 5-2001 is applicable.
However, Plaintiffs reserve the right to amend and/or allege any other applicable Wage Order(s).

1 work, regardless of whether the employee is required to work or not. (See IWC Wage Order No. 5-
2 2001 (Cal. Code Regs., tit. 8, § 11050), subd. 2(K).)

3 27. These minimum wage standards apply to each hour employees work for which they
4 are not paid. Therefore, an employer's failure to pay for any particular hour of time worked by an
5 employee is unlawful, even if averaging an employee's total pay over all hours worked, paid or not,
6 results in an average hourly wage above minimum wage. (*Armenta v. Osmose, Inc.* (2005) 135
7 Cal.App.4th 314, 324.)

8 28. Labor Code section 1194.2 authorizes employees to recover liquidated damages for
9 violations of Labor Code section 1194. Where an employee, like Plaintiffs and Employees, is not
10 paid for all hours worked under Labor Code section 1194, the employee may recover minimum
11 wages and liquidated damages. (*Sillah v. Command Int'l Sec. Servs.* (N.D.Cal. 2015) 154 F.Supp.3d
12 891 [holding that employees suing for failure to pay overtime could recover liquidated damages
13 under section 1194.2 if they also showed they were paid less than minimum wage]; accord, *Andrade*
14 *v. Arby's Rest. Grp., Inc.* (N.D.Cal. Dec. 12, 2016; No. 15-cv-03175 NC) 2016 U.S.Dist.LEXIS
15 172319, at *20-21.)

16 29. Labor Code section 1197.1 authorizes employees who are paid less than the
17 minimum wage fixed by an applicable state or local law, or by an order of the commission a civil
18 penalty, restitution of wages, and liquidated damages as follows: "(1) [f]or any initial violation that
19 is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay
20 period for which the employee is underpaid....[and] (2) [f]or each subsequent violation for the same
21 specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period
22 for which the employee is underpaid regardless of whether the initial violation is intentionally
23 committed."

24 30. Labor Code section 510 requires an employer to compensate an employee who works
25 more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8)
26 hours worked on the seventh consecutive day no less than one and one-half times the employee's
27 regular rate of pay. Further, Labor Code section 510 obligates an employer to compensate an
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1 employee at no less than twice the regular rate of pay when the employee works more than twelve
2 (12) hours in a day or more than eight (8) hours on the seventh consecutive day of work.

3 31. Throughout the applicable period of time, Defendants had a policy and/or practice of
4 failing to pay overtime wages to Plaintiffs and Employees for all overtime hours they worked. The
5 work times of Plaintiffs and Employees have been, and continue to be, greater than eight (8) hours
6 per day and/or forty (40) hours per week, including work required to be performed off-the-clock
7 pre- and post-shift, and work performed during meal periods and rest breaks. Yet, because
8 Defendants misclassified Plaintiffs and Employees as exempt, Defendants did not pay Plaintiffs and
9 Employees for overtime hours they worked.

10 32. By their common policy and/or practice of requiring Plaintiffs and Employees to
11 work in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without
12 compensating them at the applicable overtime rate of pay, Defendants willfully violated the
13 provisions of Labor Code sections 510 and 1198, as well as the relevant IWC Wage Order(s).

14 33. Defendants failed to provide Plaintiffs and Employees with timely, duty-free meal
15 periods. Labor Code sections 226 and 512, and IWC Wage Order No. 5-2001, require employers to
16 provide employees with a thirty (30) minute uninterrupted and duty-free meal period within the first
17 five (5) hours of work. (*Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1042
18 [“Accordingly, first meal periods must start after no more than five hours.”].) Moreover, an
19 employee who works more than ten (10) hours per day is entitled to receive a second thirty (30)
20 minute uninterrupted and duty-free meal period. (See Lab. Code, § 512.)

21 34. Defendants denied Plaintiffs and Employees meal periods that comply with Labor
22 Code sections 226.7 and 512, and IWC Wage Order No. 5-2001. Plaintiffs and Employees suffered
23 late, short, interrupted, and/or missed first and second meal periods. (See *Donohue v. AMN Services,*
24 *LLC* (2021) 11 Cal.5th 58 [the California Supreme Court reversed the Fourth Appellate District and
25 set forth two clear rules: (1) employers are not permitted to round time records when determining if
26 employees are entitled to meal premium pay, and (2) it is the employer’s burden to show that
27 compliant meal periods were provided to employees if the time records show otherwise].) Plaintiffs
28 and Employees did not receive compliant meal periods within the first five (5) hours of their work,

1 and did not receive compliant second meal periods when working shifts of ten (10) hours or more.
2 Instead, Plaintiffs and Employees often worked during what should have been their meal periods.
3 Plaintiffs and Employees were pressured to work during their meal periods. Those few meal periods
4 where Plaintiffs and Employees were free from the pressures of work (*i.e.*, “duty-free”) were often
5 late, short, interrupted or otherwise not code-compliant due to Defendants’ policies or lack thereof.

6 35. Defendants were also obligated but failed to provide Plaintiffs and Employees with
7 ten (10) minute rest breaks for work shifts exceeding four (4) hours or a major fraction thereof
8 worked as required by Labor Code section 226.7 and IWC Wage Order No. 5-2001. The California
9 Supreme Court held in *Augustus v. ABM Security Services Inc.* (2016) 2 Cal.5th 257, that employees
10 must be relieved of all duties during rest breaks pursuant to Labor Code section 226.7 and
11 subdivision 12 of IWC Wage Order No. 5-2001. The Court found that the Wage Orders and the
12 Labor Code require employers to “relinquish control over how employees spend their time” and
13 “relieve employees of all duties” during employees’ ten-minute rest periods. Plaintiffs and
14 Employees did not receive compliant rest breaks.

15 36. Defendants failed to permit or authorize Plaintiffs and Employees to stop working in
16 order to take rest breaks, and lacked a legally compliant policy that would authorize and permit
17 Plaintiffs and Employees duty-free rest breaks, off premises, and otherwise outside of Defendants’
18 control.

19 37. In addition to failing to authorize and permit compliant meal and rest breaks,
20 Plaintiffs and Employees were not compensated with one (1) hour’s worth of pay at their regular
21 rates of pay when they were not provided with compliant meal and rest breaks in accordance with
22 Labor Code section 226.7, subdivision (b). Defendants failed to include non-discretionary forms of
23 pay in regular rate calculations for purposes of paying meal period and/or rest period premiums.
24 (See *Ferra v. Loews Hollywood Hotel* (2021) 11 Cal.5th 858.)

25 38. Defendants withheld from Plaintiffs and Employees their accrued paid sick time, in
26 violation of Labor Code section 246.

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1 39. Defendants violated Labor Code sections 2800 and 2802 by failing to pay and
2 indemnify Plaintiffs and Employees for their necessary business expenditures and losses incurred
3 in direct consequence of the discharge of their duties.

4 40. Labor Code section 204 expressly requires that “[a]ll wages...earned by any person
5 in any employment are due and payable twice during each calendar month, on days designated in
6 advance by the employer as the regular paydays.” Pursuant to Labor Code section 204, subdivision
7 (d), these requirements are “deemed satisfied by the payment of wages for weekly, biweekly or
8 semimonthly payroll if the wages are paid not more than seven calendar days following the close of
9 the payroll period.” Due to Defendants’ non-compliant policies and/or practices described herein,
10 Defendants failed to timely pay Plaintiffs and Employees within seven (7) days of the close of the
11 payroll period in accordance with Labor Code section 204 on a regular and consistent basis.

12 41. Through Labor Code section 210 and the PAGA, and to the extent permitted by law,
13 Plaintiffs and Employees are entitled to recover civil penalties for violations of Labor Code section
14 204.

15 42. Due to Defendants’ non-compliant policies and/or practices described herein,
16 Plaintiffs and Employees whose employment with Defendants concluded were not compensated for,
17 *inter alia*, minimum and overtime wages for all hours worked, and were not paid all meal and rest
18 break premiums owed at their regular rates of pay. Thus, Defendants have failed to pay Plaintiffs
19 and Employees all wages, whose sums were certain, at the time of termination or within seventy-
20 two (72) hours of their resignation, and have failed to pay those sums for thirty (30) days thereafter
21 in violation of Labor Code section 203.

22 43. Labor Code section 203 provides “if an employer willfully fails to pay...any wages
23 of an employee who is discharged or who quits, the wages of the employee shall continue as a
24 penalty...” for up to 30 days. (Lab. Code, § 203; *Mamika v. Barca* (1998) 68 Cal.App.4th 487, 492.)

25 44. Further, Plaintiffs and Employees were not furnished with accurate itemized wage
26 statements that accurately showed their gross wages earned, net wages earned, premium payments
27 at their regular rates of pay for non-compliant meal and rest breaks, the number of hours worked,
28 all applicable hourly rates and corresponding number of hours worked at each hourly rate in effect

1 during each pay period, and other information required by Labor Code section 226, subdivision (a).
2 As a result of Defendant's failure to pay Plaintiffs and Employees for all hours worked (*e.g.*, off-
3 the-clock work), including minimum and overtime wages, and failure to provide premium payments
4 at the regular rate, the wage statements that were provided were inevitably inaccurate.

5 45. During the relevant period, Defendants knowingly and intentionally failed to provide
6 Plaintiffs and Employees with the above-described writing through actions alleged herein in
7 violation of Labor Code section 226. Plaintiffs and Employees have been injured by Defendants'
8 intentional violation of Labor Code section 226, subdivision (a), because they were denied both their
9 legal right to receive, and their protected interest in receiving, accurate itemized wage statements.

10 46. In addition, because Defendants failed to provide the accurate and mandated
11 information on the itemized wage statements, Plaintiffs and Employees were prevented by
12 Defendants from determining if all hours worked were paid and the extent of the underpayment.
13 Plaintiffs had to file this lawsuit and perform computations in order to analyze whether, and to what
14 extent, Plaintiffs and Employees suffered underpayment, thereby causing Plaintiffs to incur
15 expenses and time lost. Thus, Plaintiffs and Employees are owed the greater of all actual damages
16 or fifty dollars (\$50.00) for the initial pay period in which a violation occurs, and one hundred dollars
17 (\$100.00) per employee for each violation in a subsequent pay period, not exceeding an aggregate
18 penalty of four thousand dollars (\$4,000.00), as provided for in Labor Code section 226, subdivision
19 (e).

20 47. Moreover, for the violations described above, Plaintiffs and Employees may also
21 recover civil penalties pursuant to Labor Code section 226.3 and the PAGA for Defendants'
22 violations of Labor Code section 226, subdivision (a).

23 48. Plaintiffs and Employees have also been denied their legal right and protected
24 interest in having available at a central location at the establishment where they are employed
25 accurate and complete payroll records showing the hours worked daily by, and the wages paid to,
26 Plaintiffs and Employees at those respective locations pursuant to Labor Code section 1174.
27 Pursuant to Labor Code section 1174.5 and the PAGA, Plaintiffs and Employees may also recover
28 civil penalties for violation of Labor Code section 1174, subdivision (d).

49. Based on the foregoing, Defendants have also engaged in unlawful and unfair business practices in violation of Business and Professions Code section 17200 et seq., thereby entitling Plaintiffs and Class Members to restitution, disgorgement of profits, or other equitable remedies.

V. CLASS ACTION ALLEGATIONS

50. Plaintiffs bring this action on behalf of themselves and all others similarly situated as a class action pursuant to Code of Civil Procedure section 382. Plaintiffs seek to represent a proposed class comprised of and defined as follows:

All current and former employees classified as exempt who worked for Defendants in California during the longest applicable limitations period (again, the “Class” or “Class Members”).

51. Plaintiffs reserve the right under California Rules of Court, rule 3.765(b), to amend or modify the class description identified herein with greater specificity or further division into subclasses or limitation to particular issues.

52. This action has been brought and may properly be maintained as a class action under the provisions of Code of Civil Procedure section 382 because there is a well-defined community of interest in the litigation and the Class is easily ascertainable.

A. Numerosity

53. The potential members of the Class as defined are so numerous that joinder of all the members of the Class is not practicable. Plaintiffs are informed and believe that there are more than 100 Class Members employed by Defendants within the State of California during the relevant period.

54. Plaintiffs allege Defendants' employment records would provide information as to the number and location of all Class Members.

B. Commonality

55. There are questions of law and fact common to the Class that predominate over any questions affecting only individual Class Members. These common questions of law and fact include, without limitation:

a. Whether Defendants misclassified managers as exempt employees;

- 1 b. Whether Defendants' failure to pay wages, without abatement or reduction,
2 in accordance with the Labor Code, was willful;
- 3 c. Whether Defendants had a corporate policy and/or practice of failing to pay
4 Class Members for all hours worked in violation of California law;
- 5 d. Whether Defendants failed to pay at least the minimum wage to Class
6 Members for all hours worked;
- 7 e. Whether Defendants required Class Members to work over eight (8) hours
8 per day and/or over forty (40) hours per week and failed to pay the legally required overtime
9 compensation to Class Members;
- 10 f. Whether Defendants deprived Class Members of legally compliant meal
11 periods and rest breaks;
- 12 g. Whether Defendants had a corporate policy and/or practice of failing to pay
13 Class Members required premium payments for non-compliant (*e.g.*, short, late, interrupted, and/or
14 missed altogether) meal periods and rest breaks in violation of California law;
- 15 h. Whether Defendants failed to pay Plaintiffs and Class Members sick pay;
- 16 i. Whether Defendants failed to reimburse Class Members for necessary
17 business-related expenses and costs;
- 18 j. Whether Defendants failed to timely pay all wages due to Class Members
19 during their employment;
- 20 k. Whether Defendants failed to pay all wages due to Class Members within the
21 required time upon their discharge or resignation;
- 22 l. Whether Defendants complied with wage reporting as required by the Labor
23 Code, including, *inter alia*, section 226;
- 24 m. Whether Defendants kept complete and accurate payroll records as required
25 by the Labor Code, including, *inter alia*, section 1174, subdivision (d);
- 26 n. Whether Defendants' conduct was willful or reckless;
- 27 o. Whether Defendants engaged in unfair business practices in violation of the
28 Unfair Competition Law, Business and Professions Code section 17200 et seq.;

p. Whether Class Members are entitled to compensatory damages pursuant to the Labor Code;

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

r. Whether Class Members are entitled to attorneys' fees and costs; and

s. Whether Class Members are entitled to interest.

C. Typicality

56. The claims of Plaintiffs are typical of the claims of the Class. Plaintiffs and Class Members sustained injuries and damages arising out of and caused by Defendants' common course of conduct in violation of laws and regulations that have the force and effect of law and statutes, as alleged herein.

D. Adequacy of Representation

57. Plaintiffs will fairly and adequately represent and protect the interests of the Class. Counsel who represent Plaintiffs and Class Members are competent and experienced in litigating wage and hour class and representative actions, and have the financial resources to litigate the claims at issue.

E. Superiority of Class Action

58. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Class Members is not practicable, and questions of law and fact common to the Class predominate over any questions affecting only individual members of the Class. Each member of the Class has been damaged and is entitled to recovery by reason of Defendants' policy and/or practice of failing to pay minimum and overtime wages, failing to provide compliant duty-free meal periods and/or pay premiums owed thereon, failing to authorize and permit compliant duty-free rest breaks and/or pay premiums owed thereon, failing to pay sick pay, failing to maintain and provide accurate itemized wage statements, failing to reimburse necessary business expenses incurred, failing to pay all wages owed in a timely manner during employment, failing to timely pay all wages due upon termination and/or resignation, and engaging in unfair business practices.

59. Class action treatment will allow those similarly situated persons to litigate their claims in a manner that is most efficient and economical for the parties and the judicial system. Plaintiffs are unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

FIRST CAUSE OF ACTION

FAILURE TO PAY MINIMUM WAGES

(Lab. Code, §§ 1182.12, 1194, 1194.2, 1197, 1197.1, and the Relevant IWC Wage Orders)

[On Behalf of Plaintiffs and the Class against All Defendants]

60. Plaintiffs, on behalf of themselves and the Class, reallege and incorporate by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth herein.

61. Throughout the period of time applicable to this cause of action, Defendants did not pay Plaintiffs and Class Members at least the California minimum wage for all hours worked, thereby violating Labor Code section 1194 and the relevant IWC Wage Order(s), as a result of, but not limited to, Defendants' misclassification of Plaintiffs and Class Members as exempt, and further due to Defendants' failure to pay for work performed off the clock, including, *inter alia*, pre- and post-shift work, and work performed during meal and rest periods.

62. Defendants' failure to pay Plaintiffs and Class Members the minimum wage as required is unlawful and violates Labor Code sections 1182.12, 1194, 1194.2, 1197, and 1197.1. As a result, Plaintiffs and Class Members are entitled to recover the unpaid balance of their minimum wage compensation, as well as interest, costs, and attorney's fees, and liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

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1 **SECOND CAUSE OF ACTION**

2 **FAILURE TO PAY OVERTIME WAGES**

3 **(Lab. Code, §§ 510 and 1198, and the Relevant IWC Wage Orders)**

4 **[On Behalf of Plaintiffs and the Class against All Defendants]**

5 63. Plaintiffs, on behalf of themselves and the Class, reallege and incorporate by
6 reference all of the allegations contained in the preceding paragraphs of this Complaint as though
7 fully set forth herein.

8 64. At all times relevant to this Complaint, Labor Code section 510, subdivision (a), was
9 in effect, and provided: “[e]ight hours of labor constitutes a day’s work. Any work in excess of eight
10 hours in one workday and any work in excess of forty hours in any one workweek ... shall be
11 compensated at the rate of no less than one and one-half times the regular rate of pay for an
12 employee.”

13 65. Pursuant to the relevant IWC Wage Order(s), an employee shall not be employed
14 more than eight (8) hours in any workday and/or more than forty (40) hours in any workweek unless
15 the employee receives one and one-half (1½) times such employee’s regular rate of pay for all hours
16 worked over eight (8) hours in any workday and/or more than forty (40) hours in any workweek.
17 Further, an employer must compensate an employee at no less than twice the employee’s regular
18 rate of pay when the employee works more than twelve (12) hours in a day or more than eight (8)
19 hours on the seventh consecutive day of work. Further, the regular rate of pay for the purpose of
20 calculating overtime includes all non-discretionary forms of pay.

21 66. At all times mentioned, Plaintiffs and the Class regularly worked shifts that consisted
22 of more than eight (8) hours in a workday and/or more than forty (40) hours in a workweek and
23 were not paid proper overtime wages for all overtime hours worked as a result of, but not limited
24 to, Defendants’ misclassification of Plaintiffs and Class Members as exempt, as well as Defendants’
25 failure to pay for work performed off the clock, including pre- and post-shift activity and during
26 meal or rest periods.

27 67. Accordingly, by requiring Plaintiffs and the Class to work in excess of eight (8) hours
28 per day and/or forty (40) hours per week without properly compensating them overtime wages, as

described above, and further due to the intentional misclassification of Plaintiffs and Class Members as exempt, Defendants willfully violated the provisions of Labor Code section 1194.

68. As a result of the unlawful acts of Defendants, Plaintiffs and the Class have been deprived of overtime wages in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, costs, and attorneys' fees.

THIRD CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

(Lab. Code, §§ 226.7 and 512, and the Relevant IWC Wage Orders)

[On Behalf of Plaintiffs and the Class against All Defendants]

69. Plaintiffs, on behalf of themselves and the Class, reallege and incorporate by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth herein.

70. Labor Code section 226.7 provides "an employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission ("IWC")." Similarly, Labor Code section 512 and the IWC Wage Orders require employers to provide employees with thirty (30) minute uninterrupted and duty-free meal periods within the first five (5) hours of work. (See *Brinker, supra*, 53 Cal.4th at p. 1042 ["Accordingly, first meal periods must start after no more than five hours."].) Moreover, an employee who works more than ten (10) hours per day is entitled to receive a second thirty (30) minute uninterrupted and duty-free meal period. (See Lab. Code, § 512.)

71. Despite these legal requirements, Defendants failed to provide meal periods that comply with Labor Code sections 226.7 and 512, and IWC Wage Order No. 5-2001. Plaintiffs and Class Members experienced short, untimely, and interrupted meal periods, and frequently the demands of employee job duties were such that they were prevented from taking a meal period altogether. Having been thus subjected to late, short, interrupted, and missed meal periods, Plaintiffs and Class Members did not receive their statutorily mandated meal periods.

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72. Under Labor Code section 226.7 and the relevant IWC Wage Order(s), Plaintiffs and Class Members are entitled to be paid one (1) hour of additional wages at their regular rates of pay for each day they were not provided with all required meal periods. (See *Ferra, supra*, 11 Cal.5th at p. 858.) Defendants failed to pay Plaintiffs and Class Members the additional wages to which they were entitled for non-compliant meal periods.

73. As a result, Defendants are liable to Plaintiffs and each Class Member for one (1) hour of additional wages at their regular rates of pay for each workday a compliant meal period was not provided, in a sum to be proven at trial.

FOURTH CAUSE OF ACTION

FAILURE TO AUTHORIZE AND PERMIT REST BREAKS

(Lab. Code, § 226.7 and the Relevant IWC Wage Orders)

[On Behalf of Plaintiffs and the Class against All Defendants]

74. Plaintiffs, on behalf of themselves and the Class, reallege and incorporate by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth herein.

75. Under the applicable IWC Wage Order(s), an employer must authorize and permit all employees to take ten (10) minute duty free rest breaks for every major fraction of four hours worked. Labor Code section 226.7 provides “an employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission.”

76. Defendants are required by California law to authorize and permit breaks of ten (10) uninterrupted minutes for each four hours of work or major fraction thereof (*i.e.*, more than two hours). That is, the required number of rest breaks is equal to the number of work hours divided by four, and if the work time is not evenly divisible by four, any remainder of two hours or less is rounded down and that which exceeds two hours is rounded up. For example, if a Class Member's work time is six hours and ten minutes, he or she is entitled to two rest breaks. If the work time is nine hours, the employee is still entitled to only two rest breaks. (There is an exception: if the shift

1 is under three and one-half hours, no rest break is required.) Each failure to authorize rest breaks as
2 so required is itself a violation of California’s rest break laws.

3 77. Despite these legal requirements, Defendants failed to authorize and permit Plaintiffs
4 and the Class to take timely, duty-free rest breaks. Plaintiffs and the Class were subject to policies
5 and/or practices that prevented them from taking legally compliant rest breaks. Defendants did not
6 relieve Plaintiffs and the Class of all duties during their rest breaks, and required them to be available
7 to continue working—or, in fact, interrupted them—during their rest breaks. Defendants also
8 pressured Plaintiffs and the Class to perform their duties in a way that made taking duty-free rest
9 breaks difficult. Here, as a companywide practice and in fact, Defendants did not offer Plaintiffs
10 and the Class the opportunity to receive compliant off-duty rest breaks and, thus, “the court may not
11 conclude employees voluntarily chose to skip...breaks.” (*Alberts v. Aurora Behavioral Health Care*
12 (2015) 241 Cal.App.4th 388, 410 [“[i]f an employer fails to provide legally compliant meal or rest
13 breaks, the court may not conclude employees voluntarily chose to skip those breaks.”]; accord,
14 *Brinker, supra*, 53 Cal.4th at p. 1033 [“No issue of waiver ever arises for a rest break that was
15 required by law but never authorized; if a break is not authorized, an employee has no opportunity
16 to decline to take it.”].)

17 78. In *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, the court expressly
18 rejected the employer’s assertion that it could provide an on-duty rest break to employees who
19 worked as security guards and further explained “that employers [must] relinquish any control over
20 how employees spend their break time, and relieve their employees of all duties.” (*Id.* at p. 273.)
21 However, Defendants did not relieve Plaintiffs and Class Members of all duties and relinquish
22 control over how Plaintiffs and Class Members spend their time.

23 79. Plaintiffs and Class Members were not compensated with one (1) hour’s worth of
24 pay at their regular rates of pay when they were not provided with compliant rest breaks in
25 accordance with Labor Code section 226.7, subdivision (b). (See *Ferra, supra*, 11 Cal.5th at p. 858.)

26 80. As a result, Defendants are liable to Plaintiffs and Class Members for one (1) hour
27 of additional pay at their regular rates of pay for each workday when a compliant rest break was not
28 provided, in a sum to be proven at trial.

1 **FIFTH CAUSE OF ACTION**

2 **FAILURE TO PAY SICK PAY**

3 **(Lab. Code, § 246)**

4 **[On Behalf of Plaintiffs and the Class against All Defendants]**

5 81. Plaintiffs, on behalf of themselves and the Class, reallege and incorporate by
6 reference all of the allegations contained in the preceding paragraphs of this Complaint as though
7 fully set forth herein.

8 82. Labor Code section 246, subdivision (a), states: “[a]n employee who, on or after July
9 1, 2015, works in California for the same employer for 30 or more days within a year from the
10 commencement of employment is entitled to paid sick days as specified in this section.”

11 83. Labor Code section 246, subdivision (b)(1), states: “[a]n employee shall accrue paid
12 sick days at the rate of not less than one hour per every 30 hours worked, beginning at the
13 commencement of employment or the operative date of this article, whichever is later, subject to the
14 use and accrual limitations set forth in this section.”

15 84. Labor Code section 246, subdivision (l), states:

16 For the purposes of this section, an employer shall calculate paid sick leave using any
17 of the following calculations: (1) Paid sick time for nonexempt employees shall be
18 calculated in the same manner as the regular rate of pay for the workweek in which
19 the employee uses paid sick time, whether or not the employee actually works
20 overtime in that workweek. (2) Paid sick time for nonexempt employees shall be
21 calculated by dividing the employee’s total wages, not including overtime pay, by
22 the employee’s total hours worked in the full pay periods of the prior 90 days of
23 employment. (3) Paid sick time for exempt employees shall be calculated in the same
24 manner as the employer calculates wages for other forms of paid leave time.

25 85. Plaintiffs and Class Members accrued paid sick time during their employment with
26 Defendants, but Defendants failed to pay Plaintiffs and the Class sick pay in a manner that fully
27 complies with Labor Code section 246. Thus, Plaintiffs and the Class are entitled to recover unpaid
28 wages for all sick pay that was not paid to them in accordance with Labor Code section 246.

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1 **SIXTH CAUSE OF ACTION**

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

3 **(Lab. Code, §§ 226 and 226.3)**

4 **[On Behalf of Plaintiffs and the Class against All Defendants]**

5 86. Plaintiffs, on behalf of themselves and the Class, reallege and incorporate by
6 reference all of the allegations contained in the preceding paragraphs of this Complaint as though
7 fully set forth herein.

8 87. Labor Code section 226, subdivision (a), requires employers, semi-monthly or at the
9 time of each payment of wages, to furnish employees an accurate itemized statement in writing
10 showing:

- 11 (1) gross wages earned;
- 12 (2) total hours worked by the employee;
- 13 (3) the number of piece-rate units earned and any applicable piece rate if the
14 employee is paid on a piece rate;
- 15 (4) all deductions, provided that all deductions made on written orders of the
16 employee may be aggregated and shown as one item;
- 17 (5) net wages earned;
- 18 (6) the inclusive dates of the period for which the employee is paid;
- 19 (7) the name of the employee and only the last four digits of his or her social
20 security number or an employee identification number other than a social security number;
- 21 (8) the name and address of the legal entity that is the employer; and
- 22 (9) all applicable hourly rates in effect during the pay period and the
23 corresponding number of hours worked at each hourly rate by the employee.

24 88. Due to Defendants' failure to pay meal and rest break premiums at regular rates of
25 pay, failure to pay wages for all hours worked, including minimum and overtime wages, and failure
26 to accurately track accrued sick pay wages, the wage statements issued by Defendants, at a
27 minimum, do not indicate the correct amount of gross wages earned, the correct total hours worked,
28 the correct net wages earned, and the applicable and/or correct hourly rates in effect and

1 corresponding number of hours worked at each hourly rate in violation of Labor Code section 226,
2 subdivisions (a)(1), (2), (3), (5), and (9).

3 89. An employee suffering injury as a result of a knowing and intentional failure by an
4 employer to comply with Labor Code section 226, subdivision (a), is entitled to recover the greater
5 of all actual damages or fifty dollars (\$50.00) for the initial pay period in which a violation occurs
6 and one hundred dollars (\$100.00) per employee for each violation in a subsequent pay period, not
7 exceeding an aggregate penalty of four thousand dollars (\$4,000.00), and is entitled to an award of
8 costs and reasonable attorneys' fees.

9 90. The absence of accurate information on their wage statements has delayed challenge
10 to Defendants' unlawful pay practices, requires discovery and mathematical computations to
11 determine the accurate amount of wages owed, caused and continues to cause difficulty and expense
12 in attempting to reconstruct time and pay records, and has led to submission of inaccurate
13 information about wages and amounts deducted from wages to state and federal governmental
14 agencies. Plaintiffs would not have had to engage in these efforts and incur these costs had
15 Defendants provided accurate wage statements. This has also delayed Plaintiffs' ability to demand
16 and recover the underpayment of wages from Defendants.

17 91. Thus, Plaintiffs and Class Members have been injured by Defendants' violation of
18 Labor Code section 226, subdivision (a), because they were denied both their legal right to receive,
19 and their protected interest in receiving, accurate itemized wage statements.

20 92. Plaintiffs and Class Members are thus entitled to recover from Defendants the greater
21 of their actual damages caused by Defendants' failure to comply with Labor Code section 226,
22 subdivision (a), or an aggregate penalty not exceeding four thousand dollars (\$4,000.00) per
23 employee pursuant to Labor Code section 226, subdivision (e), and any other allowable penalties
24 including those pursuant to Labor Code section 226.3.

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1 **SEVENTH CAUSE OF ACTION**

2 **FAILURE TO PAY ALL WAGES TIMELY AND UPON SEPARATION OF**
3 **EMPLOYMENT**

4 **(Lab. Code, §§ 201-204 and 210)**

5 **[On Behalf of Plaintiffs and the Class against All Defendants]**

6 93. Plaintiffs, on behalf of themselves and the Class, reallege and incorporate by
7 reference all of the allegations contained in the preceding paragraphs of this Complaint as though
8 fully set forth herein.

9 94. Labor Code sections 201 and 202 provide that if an employer discharges an
10 employee, the wages earned and unpaid at the time of discharge are due and payable immediately,
11 and that if an employee voluntarily leaves his or her employment, his or her wages shall become
12 due and payable not later than seventy-two (72) hours thereafter, unless the employee has given
13 seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is
14 entitled to his or her wages at the time of quitting.

15 95. Labor Code section 203 provides that if an employer willfully fails to pay
16 compensation promptly upon discharge or resignation, as required by sections 201 and 202, then the
17 employer is liable for penalties in the form of continued compensation up to thirty (30) days.

18 96. Here, Defendants' failure to pay wages was willful in that Defendants knowingly
19 misclassified Plaintiffs and Class Members as exempt. Defendants knew that wages were owed to
20 Plaintiffs and Class Members, but failed to pay said wages, at the time of termination, or within 72
21 hours of resignation, thus entitling Plaintiffs and Class Members to penalties under Labor Code
22 section 203, which provides that an employee's wages shall continue as a penalty until paid for a
23 period of up to thirty (30) days from the time they were due.

24 97. Labor Code section 204 requires that all wages earned by any person in any
25 employment between the 1st and 15th day, inclusive, of any calendar month, other than those wages
26 due upon termination of an employee, are due and payable between the 16th and the 26th day of the
27 month during which the labor was performed, and that all wages earned by any person in any
28 employment between the 16th and the last day, inclusive, of any calendar month, other than those

1 wages due upon termination of an employee, are due and payable between the 1st and 10th day of
2 the following month. Labor Code section 204 also requires that all wages earned for labor in excess
3 of the normal work period shall be paid no later than the payday for the next regular payroll period.

4 98. The requirements of Labor Code section 204 shall be deemed satisfied by the
5 payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than
6 seven calendar days following the close of the payroll period when the wages were earned.

7 99. During the relevant time period, Defendants failed to pay Plaintiffs and Class
8 Members all wages due to them within the time period specified by Labor Code section 204
9 including, but not limited to minimum and overtime wages, along with meal and rest break
10 premiums and accumulated but unused vacation and sick pay wages, in part due to Defendants'
11 willful misclassification of Plaintiffs and Class Members as exempt rather than non-exempt
12 employees.

13 100. Labor Code section 210 imposes upon Defendants a penalty of \$100.00 for each
14 violation of failing to pay the wages of each employee. Furthermore, Labor Code section 210
15 imposes upon Defendants for each subsequent violation, or any willful or intentional violation, of
16 failure to pay the wages of each employee a penalty of \$200.00, plus 25 percent of the amount
17 unlawfully withheld.

18 101. Pursuant to Labor Code sections 218.5 and 218.6, along with Civil Code sections
19 3287, subdivision (b), and 3289, Plaintiffs request that the Court award reasonable attorneys' fees
20 and the costs incurred by them in this action, along with pre-judgment interest on all amounts
21 recovered herein, as well as any statutory penalties Defendants may owe under the California Labor
22 Code and/or any other statute.

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1 **EIGHTH CAUSE OF ACTION**

2 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

3 **(Lab. Code, §§ 2800 and 2802)**

4 **[On Behalf of Plaintiffs and the Class against All Defendants]**

5 102. Plaintiffs, on behalf of themselves and the Class, reallege and incorporate by
6 reference all of the allegations contained in the preceding paragraphs of this Complaint as though
7 fully set forth herein.

8 103. Labor Code sections 2800 and 2802 provide that an employer shall indemnify his or
9 her employee for all necessary expenditures or losses incurred by the employee in direct
10 consequence of the discharge of his or her duties, or of his or her obedience to the directions of the
11 employer, even though unlawful, unless the employee, at the time of obeying the directions, believed
12 them to be unlawful.

13 104. Plaintiffs and Class Members incurred necessary business expenses as a direct
14 consequence of Plaintiffs' and Class Members' work duties and at the direction of Defendants.

15 105. Defendants did not reimburse Plaintiffs and Class Members for business-related
16 expenses.

17 **NINTH CAUSE OF ACTION**

18 **VIOLATION OF LAB. CODE, § 1174, SUBDIVISION (d)**

19 **[On Behalf of Plaintiffs and the Class against All Defendants]**

20 106. Plaintiffs, on behalf of themselves and the Class, reallege and incorporate by
21 reference all of the allegations contained in the preceding paragraphs of this Complaint as though
22 fully set forth herein.

23 107. Pursuant to Labor Code section 1174, subdivision (d), an employer shall keep at a
24 central location in the state or at the plants or establishments at which employees are employed,
25 payroll records showing the hours worked daily by and the wages paid to employees employed at
26 the respective plants or establishments. These records shall be kept in accordance with rules
27 established for this purpose by the Commission, but in any case, shall be kept on file for not less
28 than three years.

108. Defendants have intentionally and willfully failed to keep accurate and complete payroll records showing the hours worked daily by, and the wages paid to, Plaintiffs and Class Members.

109. As a result of Defendants' violation of Labor Code section 1174, subdivision (d), Plaintiffs and Class Members have suffered injury and damage to their statutorily protected rights.

110. More specifically, Plaintiffs and Class Members have been injured by Defendants' intentional and willful violation of Labor Code section 1174, subdivision (d), because they were denied both their legal right and protected interest in having available, accurate, and complete payroll records pursuant to Labor Code section 1174, subdivision (d).

TENTH CAUSE OF ACTION

UNFAIR COMPETITION LAW VIOLATIONS

(Bus. & Prof. Code, § 17200 et seq.)

[On Behalf of Plaintiffs and the Class against All Defendants]

111. Plaintiffs, on behalf of themselves and the Class, reallege and incorporate by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth herein.

112. California's Unfair Competition Law ("UCL"), Business and Professions Code section 17200 et seq., prohibits any unlawful, unfair, or fraudulent business practices. Business and Professions Code section 17204 allows "any person who has suffered injury in fact and has lost money or property" to prosecute a civil action for violation of the UCL. Such a person may bring such an action on behalf of himself or herself and others similarly situated who are affected by the unlawful, unfair, or fraudulent business practice.

113. Labor Code section 90.5, subdivision (a), states that it is the public policy of California to vigorously enforce minimum labor standards in order to ensure employees are not required to work under substandard and unlawful conditions, and to protect employers who comply with the law from those who attempt to gain competitive advantage at the expense of their workers by failing to comply with minimum labor standards.

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114. A violation of Business and Professions Code section 17200 et seq., may be predicated upon the violation of any state or federal law. Defendants' policies and/or practices have violated state law in at least the following respects:

(a) Requiring Plaintiffs and Class Members to work without paying them the minimum wage for all hours worked in violation of Labor Code sections 1182.12, 1194, 1194.2, 1197, and 1197.1, and applicable IWC Wage Order(s);

(b) Requiring Plaintiffs and Class Members to work overtime without paying them the proper compensation in violation of Labor Code sections 510 and 1198, and applicable IWC Wage Order(s);

(c) Failing to provide compliant duty-free meal periods to Plaintiffs and Class Members and failing to authorize and permit compliant duty-free rest breaks to Plaintiffs and Class Members in violation of Labor Code sections 226.7 and 512, and applicable IWC Wage Order(s);

(d) Failing to pay Plaintiffs and Class Members sick pay in violation of Labor Code section 246;

(e) Failing to reimburse Plaintiffs and Class Members for necessary business expenses and losses incurred in performing their job duties, in violation of Labor Code sections 2800 and 2802;

(f) Failing to timely pay all wages to Plaintiffs and Class Members during their employment and upon separation of employment, in violation of Labor Code sections 201, 202, 203, 204, and 210;

(g) Failing to maintain and provide Plaintiffs and Class Members with accurate itemized wage statements, in violation of Labor Code sections 226, subdivision (a), and 1174; and thus, Defendants engaged in unlawful competition in violation of Business and Professions Code section 17200 et seq., by violating, *inter alia*, Labor Code sections 201, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 246, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2800, and 2802, and applicable IWC Wage Order(s).

115. As a direct and proximate result of Defendants' unlawful business practices, Plaintiffs and Class Members have suffered economic injuries because Defendants' conduct has

1 damaged Plaintiffs and Class Members by, *inter alia*, misclassifying them as exempt employees,
2 wrongfully denying them all wages, including minimum and overtime wages, failing to pay all meal
3 and rest breaks premiums at the regular rate of pay, failing to pay sick pay, and failing to reimburse
4 necessary business expenses, along with the corresponding interest, in a timely manner and upon
5 separation, and while supplying them inaccurate and misleading wage statements. Such conduct is
6 substantially injurious to Plaintiffs and Class Members.

7 116. Additionally, Defendants intentionally avoided paying Plaintiffs and Class Members
8 wages and monies, thereby creating for Defendants an artificially lower cost of doing business in
9 order to undercut their competitors and establish a greater foothold in the marketplace. Through
10 their actions alleged herein, Defendants have engaged in unfair competition within the meaning of
11 section 17200 of the Business and Professions Code.

12 117. Defendants have profited from their unlawful, unfair, and/or fraudulent acts and
13 practices. Plaintiffs and Class Members are entitled to monetary relief pursuant to Business and
14 Professions Code sections 17203 and 17208. Defendants should be required to disgorge all the
15 profits and gains they have reaped, and restore such profits and gains to Plaintiffs and Class
16 Members, from whom they were unlawfully taken.

17 118. Defendants' course of conduct, acts, and practices in violation of the California laws
18 mentioned above constitute independent violations of Business and Professions Code section 17200
19 et seq.

20 119. Plaintiffs and Class Members are entitled to enforce all applicable penalty provisions
21 of the Labor Code pursuant to Business and Professions Code section 17202.

22 120. Plaintiffs have assumed the responsibility of enforcement of the laws and public
23 policies specified herein by suing on behalf of themselves and Class Members previously or
24 presently employed by Defendants in California. Plaintiffs' success in this action will enforce
25 important rights affecting the public interest. Plaintiffs will incur a financial burden in pursuing this
26 action in the public interest. Therefore, an award of reasonable attorneys' fees to Plaintiffs is
27 appropriate pursuant to Code of Civil Procedure section 1021.5.

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ELEVENTH CAUSE OF ACTION
PENALTIES PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF 2004
(Lab. Code, § 2698 et seq.)
[On Behalf of Plaintiffs and Aggrieved Employees against All Defendants]

121. Plaintiffs, on behalf of themselves and Aggrieved Employees, reallege and incorporate by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth herein.

122. Plaintiffs, on behalf of themselves and Aggrieved Employees, bring this representative action against Defendants to recover wages and penalties pursuant to the PAGA, Labor Code section 2698 et seq.

123. Based on the above allegations, incorporated herein by reference, Defendants have violated Labor Code sections 201, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 246, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2800, and 2802, as well as applicable IWC Wage Order(s).

124. Under Labor Code sections 2699, subdivision (f)(2), and 2699.5, Plaintiffs and Aggrieved Employees are entitled to penalties in an amount to be shown at the time of trial, subject to the following formula:

- \$100 for the initial violation per employee per pay period; and
- \$200 for each subsequent violation per employee per pay period.

These penalties shall be allocated seventy-five percent (75%) to the LWDA and twenty-five percent (25%) to the affected employees.

125. Defendants failed to provide Plaintiffs and Aggrieved Employees with accurate itemized wage statements in compliance with Labor Code section 226, subdivision (a). Plaintiffs seek separate PAGA penalties for Defendants’ violations of Labor Code section 226, subdivisions (a) and (e). (*Lopez v. Friant & Assocs., LLC* (2017) 15 Cal.App.5th 773, 788; *Bell v. Home Depot U.S.A.* (E.D.Cal. Dec. 11, 2017; No. 2:12-cv-02499 JAM-CKD) 2017 U.S.Dist.LEXIS 204493, at *5 [finding after *Friant* that “[t]o the extent the Court’s Order [granting summary judgment to *Home Depot*] was ambiguous, the Court now clarifies that it granted summary judgment on Plaintiffs’

1 derivative claim for [PAGA] penalties under section 226(e)...the Court's Order should not be read
2 to grant summary judgment on Plaintiffs' claim for PAGA penalties based on violation of section
3 226(a)."].) For violations of Labor Code section 226, subdivision (a), Plaintiffs seek the default
4 penalty provided by Labor Code section 226.3. Labor Code section 226.3 provides that "[a]ny
5 employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount
6 of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one
7 thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the
8 employer fails to provide the employee a wage deduction statement or fails to keep the required
9 records in subdivision (a) of Section 226." Accordingly, through the PAGA and to the extent
10 permitted by law, Plaintiffs and Aggrieved Employees are entitled to recover penalties for violations
11 of Labor Code section 226.3 and seek the default PAGA penalties for each of Defendants' numerous
12 violations of Labor Code section 226, subdivision (a).

13 126. Labor Code section 210 provides that "[i]n addition to, and entirely independent and
14 apart from, any other penalty provided in this article, every person who fails to pay the wages of
15 each employee as provided in Sections ... 204 ... shall be subject to a civil penalty as follows: (1)
16 [f]or any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2)
17 [f]or each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200)
18 for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld." As a
19 result of the faulty compensation policies and/or practices, Plaintiffs and Aggrieved Employees are
20 also entitled to recover penalties under Labor Code section 210 through the PAGA.

21 127. Labor Code section 1197.1 authorizes a civil penalty, restitution of wages, and
22 liquidated damages, in the amount of: "(1) [f]or any initial violation that is intentionally committed,
23 one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee
24 is underpaid...[and] (2) [f]or each subsequent violation for the same specific offense, two hundred
25 fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is
26 underpaid regardless of whether the initial violation is intentionally committed." Accordingly,
27 through the PAGA and to the extent permitted by law, Plaintiffs and Aggrieved Employees are
28 entitled to recover pursuant to Labor Code section 1197.1.

128. On March 13, 2024, Plaintiffs filed their PAGA Notice with the LWDA, paid the filing fee, and sent a letter by certified mail to Defendant HWV setting forth the facts and theories of the violations alleged against Defendants, as prescribed by Labor Code section 2698 et seq. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), no notice was received by Plaintiffs from the LWDA evidencing its intention to investigate within sixty-five (65) calendar days of the date of the PAGA Notice. Plaintiffs are therefore entitled to commence and proceed with a civil action pursuant to Labor Code section 2699.

129. Plaintiffs, as personal representatives of the general public, on behalf of Aggrieved Employees and the State of California, will and do seek to recover any and all penalties for each and every violation shown to exist or to have occurred during the PAGA period, in an amount according to proof, as to those penalties that are otherwise only available to public agency enforcement actions. Funds recovered will be distributed in accordance with the PAGA, with 75 percent of the penalties recovered being reimbursed to the State of California and the LWDA.

130. Plaintiffs were compelled to retain the services of counsel to file this action to protect their interests and those of Aggrieved Employees, and to assess and collect the wages and penalties owed by Defendants. Plaintiffs have thereby incurred attorneys' fees and costs, which they are entitled to recover under Labor Code section 2699, subdivision (g)(1).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for the following relief:

1. For an order certifying this action as a class action;
2. For compensatory damages in the amount of the unpaid minimum wage and overtime compensation for work performed by Plaintiffs and Class Members, as may be proven;
3. For liquidated damages in the amount equal to the unpaid minimum wage and interest thereon, as may be proven;
4. For compensatory damages in the amount of the regular rate of pay for Plaintiffs and Class Members for each day of non-compliant meal periods for which premium pay was deficient, as may be proven;

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1 5. For compensatory damages in the amount of the regular rate of pay for Plaintiffs and
2 Class Members for each day of non-compliant rest breaks for which premium pay was deficient, as
3 may be proven;

4 6. For compensatory damages in the amount of the unpaid sick pay that should have
5 been paid to Plaintiffs and Class Members, as may be proven;

6 7. For penalties pursuant to Labor Code section 203 for Plaintiffs and Class Members
7 who quit or were fired, in an amount equal to their daily wage multiplied by thirty (30) days, as may
8 be proven;

9 8. For actual damages and/or penalties pursuant to Labor Code section 226, subdivision
10 (e), for Plaintiffs and Class Members, as may be proven;

11 9. For reimbursement of business expenditures, as may be proven;

12 10. For restitution for unfair competition pursuant to the Business and Professions Code
13 section 17200 et seq., including disgorgement of profits, as may be proven;

14 11. For a civil penalty in the amount of \$100.00 for the initial violation and \$200.00 for
15 each subsequent violation as specified in Labor Code section 2699, subdivision (f)(2), in the
16 representative action brought on behalf of Plaintiffs and Aggrieved Employees pursuant to the
17 PAGA;

18 12. For all civil penalties available under Labor Code section 210 and the PAGA;

19 13. For all civil penalties available under Labor Code section 226.3 and the PAGA;

20 14. For all civil penalties available under Labor Code section 1174.5 and the PAGA;

21 15. For all civil penalties available under Labor Code section 1197.1 and the PAGA;

22 16. For an order enjoining Defendants and their agents, servants, and employees, and all
23 persons acting under, in concert with, or for them, from acting in derogation of any rights or duties
24 adumbrated in this complaint;

25 17. For an award of pre-judgment and post-judgment interest;

26 18. For costs of suit;

27 19. For attorneys' fees, to the extent provided by law; and

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

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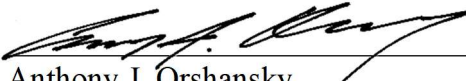
JURY DEMAND

Plaintiffs hereby demand a jury trial on all issues so triable.

Dated: May 29, 2024

Respectfully submitted,

COUNSELONE, PC

By: 
Anthony J. Orshansky
Demetrius X. Lambrinos
Attorneys for Plaintiffs, putative Class
Members and Aggrieved Employees