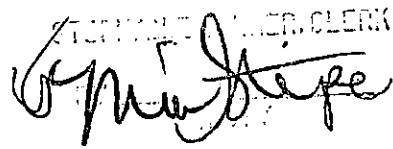


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13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 FOR THE COUNTY OF SAN JOAQUIN

15 IGNACIO ELIAS, as an individual, and on
16 behalf of all others similarly situated,

17 Plaintiff,

18 vs.

19 CES CLEANING CONTRACTORS, LLC, a
20 California limited liability company; and
21 DOES 1 through 100, inclusive,

Defendants.

Case No.: STK-CV-UOE-2024-2816

[Assigned for all purposes to the Hon.
Barbara Kronlund.; Dept. 10D]

STIPULATION TO FILE FIRST
AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT; ~~PROPOSED~~ ORDER

1 **TO THE COURT, THE PARTIES, AND THEIR ATTORNEYS OF RECORD:**

2 Plaintiff Ignacio Elias ("Plaintiff") and Defendant CES Cleaning Contractors, LLC
3 ("Defendant") (collectively Plaintiff and Defendant are referred to as the "Parties"), by and
4 through their respective attorneys of record, hereby submit the following stipulation for Plaintiff
5 to file a First Amended Class and Representative Action Complaint ("FAC"):

6 WHEREAS, on March 1, 2024 pursuant to Labor Code § 2699.3, Plaintiff notified
7 Defendant, via certified mail, and notified the California Labor & Workforce Development
8 Agency ("LWDA") via its website, of Plaintiff's intent to bring a claim for civil penalties under
9 California Labor Code § 2698 *et seq.* (the "PAGA") based on Defendant's alleged violations of
10 the California Labor Code;

11 WHEREAS, on May 6, 2024, sixty-five days had passed from Plaintiff's notifying
12 Defendant and the LWDA of the alleged violations, and the LWDA had not provided notice that
13 it intended to investigate the violations. Accordingly, Plaintiff had exhausted his administrative
14 requirements for bringing a claim under the PAGA with respect to the alleged violations, pursuant
15 to Labor Code § 2699.3;

16 WHEREAS, Labor Code § 2699.3(a)(2)(C) provides that Plaintiff may amend his
17 complaint as a matter of right in order to add a claim for civil penalties under the PAGA after
18 exhausting his administrative requirements;

19 WHEREAS, the Parties have met and conferred over Plaintiff's proposed FAC, and
20 Defendant consents to the filing of Plaintiff's FAC; and

21 WHEREAS, in the interest of judicial economy and efficiency for the Court and the
22 Parties, counsel for the Parties have agreed to stipulate to the filing of Plaintiff's FAC, with
23 Defendant reserving all rights with respect to its responses to the FAC, including its right to
24 contest the validity and/or sufficiency of the causes of action alleged therein.

25 WHEREFORE, IT IS HEREBY STIPULATED by and between Plaintiff and Defendant,
26 through their respective attorneys of record, that:

27 ///

1. Plaintiff be permitted to file the proposed FAC in the form attached hereto as Exhibit A;
2. Plaintiff will cause the FAC to be served as soon thereafter as practicable, but in no event greater than ten (10) court days after notice of the Court's entry of an Order deeming the FAC to be filed; and
3. Defendant's Answer on file will be deemed to be Answer to the FAC.

IT IS SO STIPULATED.

Dated: June 10, 2024

STANSBURY BROWN LAW, PC

By: 

Daniel J. Brown
Jessica Flores
Attorneys for Plaintiff

Dated: June 9, 2024

O'HAGAN MEYER

By: 

Derek S. Sachs
Adriana Rodriguez
Attorneys for Defendant

1
2
3
4 **[PROPOSED] ORDER**

5 FOR GOOD CAUSE SHOWN, IT IS HEREBY ORDERED THAT Plaintiff's First
6 Amended Class and Representative Action Complaint ("FAC"), in the form attached as Exhibit
7 A to the Parties' Stipulation to File FAC, shall be deemed filed as of the date of this Order.

8 IT IS FURTHER ORDERED THAT Plaintiff shall serve the FAC within 10 Court days
9 of the date of notice of this Order.

10 IT IS FURTHER ORDERED THAT Defendant's Answer on file will be deemed an
11 Answer to the FAC.

12
13 **IT IS SO ORDERED.**

14
15 Dated: 6/14/24

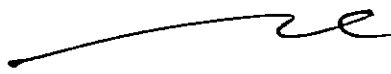
16 
17 _____
18 Hon. Barbara Kronlund
19 Judge of the Superior Court
20
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EXHIBIT A

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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN JOAQUIN

IGNACIO ELIAS, an individual, and on
behalf of all others similarly situated,

Plaintiff,

vs.

CES CLEANING CONTRACTORS, LLC, a
California limited liability company; and
DOES 1 through 100,

Defendants.

Case No.: STK-CV-UOE-2024-0002816

Amended as a Matter of Right Pursuant to
Labor Code Section 2699.3(a)(2)(C)

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT:**

- (1) **MINIMUM WAGE VIOLATIONS**
(LABOR CODE §§ 1182.12, 1194,
1194.2, 1197);
- (2) **FAILURE TO PAY ALL
OVERTIME WAGES (LABOR
CODE §§ 204, 510, 558, 1194, AND
1198);**
- (3) **MEAL PERIOD VIOLATIONS**
(LABOR CODE §§ 226.7, 512);
- (4) **REST PERIOD VIOLATIONS**
(LABOR CODE §§ 226.7, AND 516);
- (5) **FAILURE TO PROVIDE
ACCURATE, ITEMIZED WAGE
STATEMENTS (LABOR CODE
§ 226 *et seq.*);**
- (6) **WAITING TIME PENALTIES**
(LABOR CODE §§ 201-203); AND
- (7) **UNFAIR COMPETITION (BUS &
PROF CODE § 17200 *et seq.*); AND**
- (8) **CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 *et seq.*).**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Ignacio Elias ("Plaintiff"), on behalf of himself and all others similarly situated,
2 hereby brings this First Amended Class and Representative Action Complaint ("Complaint")
3 against CES Cleaning Contractors, LLC, a California Limited Liability Company; and DOES 1
4 to 100, (collectively "Defendants"), and on information and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this
7 First Amended Class and Representative Action Complaint for recovery of unpaid wages and
8 penalties under California Business & Professions Code § 17200 *et seq.*, Labor Code §§ 201-204,
9 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198; 2698 *et seq.*, and Industrial Welfare
10 Commission Wage Order 5 ("Wage Order 5), in addition to seeking declaratory relief and
11 restitution. This Court has jurisdiction over Defendants' violations of the California Labor Code
12 because the amount in controversy exceeds this Court's jurisdictional minimum.

13 **VENUE**

14 2. Venue is proper in this judicial district pursuant to Cal. Code of Civ. Proc. §§
15 395(a) and 395.5, as at least some of the acts and omissions complained of herein occurred in the
16 County of San Joaquin. One or more of the Defendants, transact business, have agent(s) within
17 the County of San Joaquin, and/or otherwise are found within the County of San Joaquin, and
18 Defendants are within the jurisdiction of this Court for purposes of service of process.

19 **PARTIES**

20 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
21 Plaintiff was and currently is, a California resident. During the four years immediately preceding
22 the filing of the Complaint in this action and within the statute of limitations periods applicable
23 to each cause of action pled herein, Plaintiff was employed by Defendants as a non-exempt
24 employee. Plaintiff was, and is, a victim of Defendants' policies and/or practices complained of
25 herein, lost money and/or property, and has been deprived of the rights guaranteed by Labor Code
26 §§ 201-204, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2698 *et seq.*,
27 California Business & Professions Code § 17200 *et seq.* ("Unfair Competition Law"); and Wage
28 Order 5, which sets employment standards for the public housekeeping industry.

1 4. Plaintiff is informed and believes, and based thereon alleges, that during the four
2 years preceding the filing of the Complaint and continuing to the present, Defendants did (and
3 continue to do) business by in the cleaning/sanitation industry, and employed Plaintiff and other,
4 similarly-situated non-exempt employees within San Joaquin County and the state of California
5 and, therefore, were (and are) doing business in San Joaquin County and the State of California.

6 5. Plaintiff does not know the true names or capacities, whether individual, partner,
7 or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said
8 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
9 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed,
10 and believes, and based thereon alleges, that each of said fictitious defendants, whether individual,
11 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,
12 and proximately caused Plaintiff and other similarly situated non-exempt employees to be subject
13 to the unlawful employment practices, wrongs, injuries and damages complained of herein.

14 6. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
15 herein, Defendants were and are the employers of Plaintiff.

16 7. At all times herein mentioned, each of said Defendants participated in the doing
17 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
18 Defendants, and each of them, were the agents, servants, and employees of each and every one of
19 the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned
20 were acting within the course and scope of said agency and employment. Defendants, and each
21 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or
22 omissions complained of herein.

23 8. At all times mentioned herein, Defendants, and each of them, were members of
24 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
25 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
26 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and other
27 similarly situated non-exempt employees.

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9. Defendants employ non-exempt employees in the sanitation and meat production industries. Plaintiff worked for Defendants as a non-exempt employee from approximately July 19, 2023 to approximately July 26, 2023 after he sustained a work-related injury. Plaintiff's job duties included cleaning and sanitizing the facilities he was assigned to work in. Plaintiff worked Monday through Friday and began and ended his work day at varying times of the day based on the instructions of his supervisors. Plaintiff could be scheduled to start his work day at 4:00 p.m., 5:00 p.m. or at another time. Plaintiff's daily hours worked would range from anywhere between 8 and 15.5 hours per shift depending on how long it took to clean the facility.

10. Throughout the duration of Plaintiff's employment with Defendants, Plaintiff and other non-exempt employees were not paid for all hours worked as Defendants would not accurately keep track of their actual hours worked. Upon information and belief, Plaintiff's supervisors wrote down in a notebook his hours worked and the hours worked of other non-exempt employees. Plaintiff and other non-exempt employees never signed off on or approved the hours their supervisors credited them with working. The hours recorded by Defendants did not reflect that Plaintiff and other non-exempt employees arrived approximately one hour before their scheduled start times and continued working at least approximately fifteen (15) or twenty (20) minutes beyond the recorded end time. Prior to his scheduled start time, Plaintiff spent approximately ten (10) to fifteen (15) minutes waiting in line to pass through security. Plaintiff also spent another ten (10) minutes walking from security to his work area. Upon arrival at his work area, Plaintiff often spent several minutes searching for protective gear to wear as he would not find his protective gear in the location that he left it in the day before. Plaintiff spent approximately ten (10) minutes putting on his protective gear which included a jacket, boots, a helmet and plastic gloves. At the end of the work day, the supervisor told Plaintiff and other non-exempt employees when they could leave and then wrote down their end times. After the time recording, Plaintiff spent about fifteen (15) to twenty (20) minutes removing his protective gear, walking to security and waiting in line in security before accessing the parking lot. Plaintiff and other non-exempt employees were also told that they would receive four (4) to six (6) hours of pay for training at a further location in Hanford on the date of their interviews. Plaintiff and other

10. Throughout the duration of Plaintiff's employment with Defendants, Plaintiff and other non-exempt employees were not paid for all hours worked as Defendants would not accurately keep track of their actual hours worked. Upon information and belief, Plaintiff's supervisors wrote down in a notebook his hours worked and the hours worked of other non-exempt employees. Plaintiff and other non-exempt employees never signed off on or approved the hours their supervisors credited them with working. The hours recorded by Defendants did not reflect that Plaintiff and other non-exempt employees arrived approximately one hour before their scheduled start times and continued working at least approximately fifteen (15) or twenty (20) minutes beyond the recorded end time. Prior to his scheduled start time, Plaintiff spent approximately ten (10) to fifteen (15) minutes waiting in line to pass through security. Plaintiff also spent another ten (10) minutes walking from security to his work area. Upon arrival at his work area, Plaintiff often spent several minutes searching for protective gear to wear as he would not find his protective gear in the location that he left it in the day before. Plaintiff spent approximately ten (10) minutes putting on his protective gear which included a jacket, boots, a helmet and plastic gloves. At the end of the work day, the supervisor told Plaintiff and other non-exempt employees when they could leave and then wrote down their end times. After the time recording, Plaintiff spent about fifteen (15) to twenty (20) minutes removing his protective gear, walking to security and waiting in line in security before accessing the parking lot. Plaintiff and other non-exempt employees were also told that they would receive four (4) to six (6) hours of pay for training at a further location in Hanford on the date of their interviews. Plaintiff and other

1 non-exempt employees were not compensated for this time and for other time worked.

2 11. Furthermore, Plaintiff and other non-exempt employees worked overtime hours,
3 but did not receive overtime compensation equal to one and one-half times their regular rates of
4 pay for all overtime hours worked. Upon information and belief, Defendants systematically failed
5 to pay overtime compensation due to Plaintiff and other non-exempt employees when they
6 worked the requisite number of hours to be entitled to such pay. Instead, Plaintiff and other non-
7 exempt employees would either be paid their normal hourly rate for overtime hours worked, or
8 simply not paid for these hours worked at all. As an example, Plaintiff received one paycheck in
9 the amount of \$871.37 on August 3, 2023. This amount divided by Plaintiff's hourly rate of
10 \$18.50 results in approximately 47 hours. As Plaintiff states that he worked between 8 hours and
11 15.5 hours each day over a period of approximately one week, the paycheck does not account for
12 Plaintiff's overtime worked. As a result, Defendants failed to ensure that Plaintiff and other non-
13 exempt employees were being paid at least the minimum wage for all hours actually worked, and
14 failed to ensure that Plaintiff and other non-exempt employees received proper overtime wages
for all overtime hours worked.

15 12. Plaintiff and other non-exempt employees were not authorized to take all legally
16 required rest periods free of employer control during the entirety of Plaintiff's employment with
17 Defendants. Plaintiff and other non-exempt employees were only authorized to take one 10-
18 minute rest period during their 8-15.5-hour shifts, if at all. Even though Plaintiff and other non-
19 exempt employees often worked more than ten (10) hours in a work day, they were not authorized
20 to take a second or third 10-minute rest period. Despite Defendants' failure to authorize and
21 permit Plaintiff and other non-exempt employees to take all lawful paid rest periods, due to their
22 uniform and unlawful practices, Defendants never provided Plaintiff and other non-exempt
23 employees with an hour of pay at their regular rate for each rest period violation as required by
24 Labor Code § 226.7. Upon information and belief, Defendants maintained no payroll code or
25 mechanism for the payment of rest period premiums in the event Plaintiff and other non-exempt
26 employees were not authorized to take lawful rest periods.

27 13. Defendants also did not always provide Plaintiff and other non-exempt employees
28 with a legally compliant first meal period when they worked shifts in excess of 6.0 hours.

Sometimes Plaintiff's supervisors told Plaintiff and other non-exempt employees that they would not get a meal period because they needed to clean the machines by a specific time. Other times, if Plaintiff and other non-exempt employees received a meal period, the meal period was less than thirty minutes because Plaintiff and other non-exempt employees removed their protective gear to take their meal periods and then spent several minutes of that time looking for protective gear to put back on prior to returning to work after the meal period. Furthermore, to the extent that Plaintiff and other non-exempt employees were authorized to exercise their first meal periods, they were not allowed to leave the premises for their meal periods, thus making them inherently non-compliant. Additionally, even though Plaintiff and other non-exempt employees worked shifts in excess of ten (10) hours, Plaintiff and other non-exempt employees were almost never permitted to exercise their right to a second meal period. Despite Defendants' failure to provide Plaintiff and other non-exempt employees with all lawful meal periods due to their uniform and unlawful practices, Defendants never provided Plaintiff and other non-exempt employees with an hour of pay at their regular rate for each meal period violation as required by Labor Code § 226.7.

14. Additionally, Defendants forced Plaintiff to wait several days for his final paycheck, in violation of Labor Code § 201.

15. As a result of Defendants' failure to pay all overtime wages, and failure to provide all required meal periods and authorize all rest periods or pay premium pay in lieu thereof, Defendants have maintained inaccurate payroll records, failed to timely pay all wages owed to separating employees at the time of their separation, and issued inaccurate wage statements.

16. Defendants further failed to issue to Plaintiff and other non-exempt employees accurate itemized statements in writing showing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is

1 the employer, and (9) all applicable hourly rates in effect during the pay period and the
2 corresponding number of hours worked at each hourly rate by the employee.

3 17. Additionally, Defendants failed to meet its obligation to provide paid sick leave to
4 Plaintiff and other aggrieved employees under Labor Code § 245.5(b) which requires that
5 employers authorize and permit its employees who worked 30 or more days within a year to
6 accrue paid sick leave, and to allow them to exercise paid sick leave on or after their 90th day of
7 employment. Despite meeting all of the statutory requirements for being able to accrue and utilize
8 paid sick leave, Plaintiff and other aggrieved employees were not provided paid sick leave on all
9 of those occasions when they needed to take a "sick day" in violation of Labor Code § 245.5(b),
10 and did not provide sick pay at the correct regular rate.

11 18. Finally, Defendants failed to conform to the requirements of Labor Code § 2810.5
12 by failing to provide Plaintiff and other aggrieved employees written notices, in the language
13 normally used to communicate employment related information to the employees, containing
14 information regarding their: i) rate(s) of pay and the basis thereof; ii) allowances claimed as part
15 of the minimum wage; iii) regular payday designated by the employer; iv) the legal name of the
16 employer; v) the address of the legal entity that is the employer; vi) the telephone number of the
17 employer; vii) identifying information for the employer's workers' compensation insurance
18 carrier; and viii) information informing the employee of their right to accrue and use paid sick
19 leave. Despite maintaining an obligation to provide these disclosures to Plaintiff and other
20 aggrieved employees, Defendants failed to do so, in violation of Labor Code § 2810.5.

21 CLASS ACTION ALLEGATIONS

22 19. **Class Definitions:** Plaintiff brings this action on behalf of himself and the
23 following Classes pursuant to § 382 of the Code of Civil Procedure:

- 24 a. The Minimum Wage Class consists of all current and former non-exempt
25 employees of Defendants who performed in California and were subject to
26 Defendants' timekeeping systems and/or practices during the four years
27 immediately preceding the filing of this lawsuit through the present.
28

- 1 b. The Overtime Wage Class consists of all current and former non-exempt
2 employees of Defendants who performed work in California and who worked
3 overtime hours during the four years immediately preceding the filing of this
4 lawsuit through the present.
- 5 c. The Rest Period Class consists of all current and former non-exempt employees of
6 Defendants who performed work in California and who worked at least one shift
7 in excess of 3.5 hours during the four years immediately preceding the filing of
8 this lawsuit through the present.
- 9 d. The Meal Period Class consists of all current and former non-exempt employees
10 of Defendants who performed work in California and: (i) worked at least one shift
11 in excess of 5.0 hours without a meal period of at least 30 minutes in duration
12 commencing prior to the conclusion of the fifth hour of work, and who could not
13 leave the premises during a meal period and who do not have a corresponding meal
14 period premium payment made for such shifts and/or (ii) worked at least one shift
15 in excess of 10.0 hours while performing work for Defendants in California
16 without a second meal period of at least 30 minutes in duration commencing prior
17 to the conclusion of the tenth hour of work, and who do not have a corresponding
18 meal period premium payment made for such shifts during the four years
19 preceding the filing of this lawsuit through the present.
- 20 e. The Wage Statement Class consists of all members of the Rest Period Class,
21 Minimum Wage Class, Overtime Class, and/or Meal Period Class who received a
22 wage statement from Defendants during the one year immediately preceding the
23 filing of this lawsuit through the present.
- 24 f. The Waiting Time Class consists of all of Defendants' formerly employed non-
25 exempt employees who performed work in California and were subject to
26 Defendants' timekeeping systems and/or practices, during the three years
27 immediately preceding the filing of this lawsuit through the present.
- 28

1 20. **Numerosity/Ascertainability:** The members of the Classes are so numerous that
2 joinder of all members would be unfeasible and not practicable. The membership of the Classes is
3 unknown to Plaintiff at this time; however, it is estimated that the members of the Classes number
4 greater than one hundred (100) individuals. The identity of such membership is readily
5 ascertainable via inspection of Defendants' employment records.

6 21. **Common Questions of Law and Fact Predominate/Well Defined Community**
7 **of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly
8 situated employees, which predominate over questions affecting only individual members. Those
9 common questions include, without limitation:

- 10 i. Whether Defendants paid all minimum wages owed for all hours worked to
11 members of the Minimum Wage Class pursuant to Labor Code §§ 1182.12, 1194,
12 1194.2, and 1197;
- 13 ii. Whether Defendants violated the applicable Labor Code provisions, including, but
14 not limited to, §§ 510 and 1194 and Wage Order 5 by requiring members of the
15 Overtime Wage Class to perform overtime work and not paying for said work in
16 accordance with the overtime laws of the State of California;
- 17 iii. Whether Defendants' timekeeping policies/practices resulted in the failure to
18 properly compensate members of the Minimum Wage Class;
- 19 iv. Whether Defendants provided all legally compliant meal periods to members of
20 the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;
- 21 v. Whether Defendants provided all legally compliant rest periods to members of the
22 Rest Period Class pursuant to Labor Code §§ 226.7 and 516;
- 23 vi. Whether Defendants provided accurate, itemized wage statements to members of
24 the Classes; and
- 25 vii. Whether Defendants' policies and/or practices for the timing and amount of
26 payment of final wages to members of the Waiting Time Class at the time of
27 separation from employment were lawful.

28 22. **Predominance of Common Questions:** Common questions of law and fact

1 predominate over questions that affect only individual members of the Classes. The common
2 questions of law set forth above are numerous and substantial and stem from Defendants' policies
3 and/or practices applicable to each individual class member, such as Defendants' uniform
4 timekeeping policies and practices, meal and rest period policies and practices, wage statement
5 policies and practices, and the policies and practices regarding the timely payment of final wages.
6 As such, the common questions predominate over individual questions concerning each
7 individual class member's showing as to his or her eligibility for recovery or as to the amount of
8 his or her damages.

9 **23. Typicality:** The claims of Plaintiff are typical of the claims of the Classes because
10 Plaintiff was employed by Defendants as a non-exempt employee in California during the
11 statute(s) of limitations period applicable to each cause of action pled in the Complaint. As alleged
12 herein, Plaintiff, like the members of the Classes, was subject to Defendants' meal/rest period and
13 timekeeping policies and practices, was provided inaccurate wage statements, and was not paid
14 all wages earned at the time of his separation of employment.

15 **24. Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps
16 to represent fairly and adequately the interests of the members of the Classes. Moreover,
17 Plaintiff's attorneys are ready, willing and able to fully and adequately represent the members of
18 the Classes and Plaintiff. Plaintiff's attorneys have prosecuted and defended numerous wage-
19 and-hour class actions in state and federal courts in the past and are committed to vigorously
20 prosecuting this action on behalf of the members of the Classes.

21 **25. Superiority:** The California Labor Code is broadly remedial in nature and serves
22 an important public interest in establishing minimum working conditions and standards in
23 California. These laws and labor standards protect the average working employee from
24 exploitation by employers who have the responsibility to follow the laws and who may seek to
25 take advantage of superior economic and bargaining power in setting onerous terms and
26 conditions of employment. The nature of this action and the format of laws available to Plaintiff
27 and members of the Classes make the class action format a particularly efficient and appropriate
28 procedure to redress the violations alleged herein. If each employee were required to file an

1 individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they
2 would be able to exploit and overwhelm the limited resources of each individual plaintiff with
3 their vastly superior financial and legal resources. Moreover, requiring each member of the
4 Classes to pursue an individual remedy would also discourage the assertion of lawful claims by
5 employees who would be disinclined to file an action against their former and/or current employer
6 for real and justifiable fear of retaliation and permanent damages to their careers at subsequent
7 employment. Further, the prosecution of separate actions by the individual class members, even
8 if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications
9 with respect to the individual class members against Defendants herein; and which would
10 establish potentially incompatible standards of conduct for Defendants; and/or legal
11 determinations with respect to individual class members which would, as a practical matter, be
12 dispositive of the interest of the other class members not parties to adjudications or which would
13 substantially impair or impede the ability of the class members to protect their interests. Further,
14 the claims of the individual members of the Classes are not sufficiently large to warrant vigorous
15 individual prosecution considering all of the concomitant costs and expenses attending thereto.
16 As such, the Classes (as defined herein) are maintainable as a Class under § 382 of the Code of
17 Civil Procedure.

18 **FIRST CAUSE OF ACTION**
19 **MINIMUM WAGE VIOLATIONS**
20 **(AGAINST ALL DEFENDANTS)**

21 26. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

22 27. Wage Order 5, § 4 and California Labor Code §§ 1197 and 1182.12 establish the
23 right of employees to be paid minimum wages for all hours worked in amounts set by state law.
24 Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal
25 minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with
26 attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid
27 wages and interest accrued thereon. At all relevant times herein, Defendants failed to conform
28 their pay practices to the requirements of the law by failing to pay Plaintiff and the Minimum

1 Wage Class for all hours actually worked including, but not limited to, all hours he was subject
2 to the control of Defendants and/or suffered or permitted to work under the California Labor Code
3 and Wage Order 5.

4 28. California Labor Code § 1198 makes unlawful the employment of an employee
5 under conditions that the IWC prohibits. California Labor Code §§ 1194(a) and 1194.2(a) provide
6 that an employer who has failed to pay its employees the legal minimum wage is liable to pay
7 those employees the balance of the unpaid wages as well as liquidated damages in an amount
8 equal to the wages due and interest thereon.

9 29. As a direct and proximate result of Defendants' unlawful conduct as alleged
10 herein, Plaintiff and the Minimum Wage Class have sustained economic damages, including but
11 not limited to, unpaid wages and lost interest in an amount to be established at trial, and are
12 entitled to recover economic and statutory damages and penalties and other appropriate relief as
13 a result of Defendants' violations of the California Labor Code and Wage Order 5.

14 30. Defendants' practice and uniform administration of corporate policy regarding
15 illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiff and
16 the Minimum Wage Class in a civil action for the unpaid amount of minimum wages, liquidated
17 damages, including interest thereon, statutory penalties, and attorneys' fees and costs of suit
18 according to California Labor Code §§ 204, 558, 1194, *et seq.*, 1197, 1198 and Code of Civil
19 Procedure § 1021.5.

20 **SECOND CAUSE OF ACTION**

21 **FAILURE TO PAY ALL OVERTIME WAGES**

22 **(AGAINST ALL DEFENDANTS)**

23 31. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

24 32. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194,
25 and 1198, which provide that non-exempt employees are entitled to overtime wages for all
26 overtime hours worked, and provide a private right of action for the failure to pay all overtime
27 compensation for overtime work performed.

28 33. At all times relevant herein, Defendants were required to properly compensate
Plaintiff and other non-exempt employees for all overtime hours worked pursuant to California

1 Labor Code § 1194 and Wage Order 5. Wage Order 5, § 3 requires an employer to pay overtime
2 wages when an employee's hours worked cross certain thresholds or meet certain criteria set forth
3 in the Wage Order.

4 34. At all times relevant herein, Defendants caused Plaintiff and other non-exempt
5 employees to work overtime hours but did not compensate Plaintiff or other non-exempt
6 employees at one and one-half times their regular rate of pay for such hours.

7 35. The foregoing policies and practices are unlawful and create entitlement to
8 recovery by Plaintiff and other non-exempt employees in a civil action for the unpaid amount of
9 overtime premiums owing, including interest thereon, statutory and civil penalties, and attorneys'
10 fees and costs of suit according to California Labor Code §§ 204, 510, 558, 1194, and 1198, Wage
11 Order 5, and Code of Civil Procedure § 1021.5.

12 **THIRD CAUSE OF ACTION**

13 **MEAL PERIOD VIOLATIONS**

14 **(AGAINST ALL DEFENDANTS)**

15 36. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

16 37. Plaintiff is informed and believes, and based thereon alleges, that Defendants
17 failed in their affirmative obligation to provide all of their non-exempt employees in California,
18 including Plaintiff and members of the Meal Period Class with all legally compliant meal periods
19 in accordance with the mandates of the California Labor Code and Wage Order 5, § 11. Despite
20 Defendants' violations, Defendants did not pay an additional hour of pay to Plaintiff and the Meal
21 Period Class at their respective regular rates of compensation, in accordance with California
22 Labor Code §§ 204, 210, 226.7, and 512.

23 38. As a result, Defendants are responsible for paying premium compensation for meal
24 period violations including interest thereon, as well as statutory penalties, civil penalties, and
25 costs of suit, pursuant to Labor Code §§ 226.7, 512, and 558, Wage Order 5, and Civil Code §§
26 3287(b) and 3289.

27 **FOURTH CAUSE OF ACTION**

28 **REST PERIOD VIOLATIONS**

1 **(AGAINST ALL DEFENDANTS)**

2 39. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

3 40. Wage Order 5, § 12 and California Labor Code §§226.7 and 516 establish the right
4 of employees to be authorized and permitted to take a paid rest period of at least ten (10) minutes
5 net rest time for each four (4) hour period worked, or major fraction thereof.

6 41. As alleged herein, Defendants failed to authorize and permit Plaintiff and members
7 of the Rest Period Class to take all legally compliant rest periods.

8 42. The foregoing violations create an entitlement to recovery by Plaintiff and other
9 members of the Rest Period Class in a civil action for the unpaid rest period wages and the amount
10 of rest period premiums owing, including interest thereon, as well as statutory penalties, civil
11 penalties, and costs of suit according to California Labor Code §§ 226.7, 516, 558, and Civil Code
12 §§ 3287(b) and 3289.

13 **FIFTH CAUSE OF ACTION**

14 **WAGE STATEMENT VIOLATIONS**

15 **(AGAINST ALL DEFENDANTS)**

16 43. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

17 44. Plaintiff is informed and believes, and based thereon alleges, that Defendants
18 knowingly and intentionally, as a matter of uniform practice and policy, failed to furnish Plaintiff
19 and other members of the Wage Statement Class with accurate, itemized wage statements that
20 included, among other requirements, accurate total gross wages earned, meal and rest period
21 premiums, and total net wages earned in violation of Labor Code §226 *et seq.*

22 45. Defendants' failure to furnish Plaintiff and other members of the Wage Statement
23 Class with complete and accurate, itemized wage statements resulted in actual injury, as said
24 failures led to, among other things, the non-payment of all of their meal and rest period
25 premiums, and deprived them of the information necessary to identify discrepancies in
26 Defendants' reported data.

27 46. Defendants' failures created an entitlement to Plaintiff and other members of the
28 Wage Statement Class in a civil action for damages and/or penalties pursuant to Labor Code §

226, including statutory penalties, civil penalties, reasonable attorneys' fees, and costs according to suit pursuant to Labor Code § 226 *et seq.*

SIXTH CAUSE OF ACTION

WAITING TIME PENALTIES

(AGAINST ALL DEFENDANTS)

47. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

48. This cause of action is brought pursuant to Labor Code §§ 201-203, which require an employer to pay all wages immediately at the time of termination of employment in the event the employer discharges the employee or the employee provides at least 72 hours of notice of his/her intent to quit. In the event the employee provides less than 72 hours of notice of his/her intent to quit, said employee's wages become due and payable not later than 72 hours upon said employee's last date of employment.

49. Defendants failed to timely pay Plaintiff and other members of the Waiting Time Class all final wages due to them at the time of their separation including, among other things, underpaid overtime wages owed, and meal and rest period premium wages. Further, Plaintiff is informed and believes, and based thereon alleges, that as a matter of uniform policy and practice, Defendants continue to fail to pay Plaintiff and other non-exempt employees all earned wages at the end of employment in a timely manner pursuant to the requirements of Labor Code §§ 201-203. Defendants' failure to pay all final wages was willful within the meaning of Labor Code § 203.

50. Defendants' willful failure to timely pay Plaintiff and other members of the Waiting Time Class their earned wages upon separation from employment results in a continued payment of wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and other non-exempt employees are entitled to compensation pursuant to Labor Code § 203, plus reasonable attorneys' fees and costs of suit.

SEVENTH CAUSE OF ACTION

UNFAIR COMPETITION

(AGAINST ALL DEFENDANTS)

1 51. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

2 52. Defendants have engaged and continue to engage in unfair and/or unlawful
3 business practices in California in violation of California Business and Professions Code § 17200
4 *et seq.*, by failing to pay Plaintiff and other non-exempt employees all overtime wages, failing
5 to provide all required meal periods, failing to authorize and permit all required rest periods,
6 failing to pay meal and rest period premium wage payments, failing to furnish accurate wage
7 statements, and willfully failing to timely pay Plaintiff other non-exempt employees all final
8 wages upon separation of employment.

9 53. Defendants' utilization of these unfair and/or unlawful business practices deprived
10 Plaintiff and continues to deprive other non-exempt employees of compensation to which they
11 are legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair
12 advantage over Defendants' competitors who have been and/or are currently employing workers
13 and attempting to do so in honest compliance with applicable wage and hour laws.

14 54. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged
15 herein, Plaintiff for himself and other non-exempt employees, seeks full restitution of monies,
16 as necessary and according to proof, to restore any and all monies withheld, acquired and/or
17 converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

18 55. The acts complained of herein occurred within the last four years immediately
19 preceding the filing of the Complaint in this action.

20 56. Plaintiff was compelled to retain the services of counsel to file this court action to
21 protect his interests and to obtain restitution and injunctive relief on behalf of Defendants'
22 current non-exempt employees, and to enforce important rights affecting the public interest.
23 Plaintiff has thereby incurred the financial burden of attorneys' fees and costs, which he is
24 entitled to recover under Code of Civil Procedure § 1021.5.

25 **EIGHTH CAUSE OF ACTION**

26 **PRIVATE ATTORNEYS GENERAL ACT**

27 **(AGAINST ALL DEFENDANTS)**

28 57. Plaintiff re-alleges and incorporates by reference all prior paragraphs as though

1 fully set forth herein.

2 58. Defendants have committed several Labor Code violations against Plaintiff,
3 members of the Classes, and other aggrieved employees. Plaintiff, an “aggrieved employee”
4 within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of himself and other aggrieved
5 employees, brings this representative action against Defendants to recover the civil penalties due
6 to Plaintiff, the members of the Classes, other aggrieved employees, and the State of California
7 according to proof pursuant to Labor Code § 558 and § 2699 (a) and (f) including, but not limited
8 to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 for each
9 subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each
10 failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each
11 initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per
12 employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent
13 violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each
14 initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per
15 employee per pay period; and/or (5) \$100.00 for each initial violation and \$200 for each
16 subsequent violation per employee per pay period for those violations of the Labor Code for which
17 no civil penalty is specifically provided, based on the following Labor Code violations:

- 18 a. Failing to pay minimum wages for all hours worked to Plaintiff, the Minimum
19 Wage Class, and other aggrieved employees in violation of Labor Code §§ 551-
20 552, 558, 1182.12, 1194, 1194.2, 1197, and 1198;
- 21 b. Failing to pay Plaintiff, the Overtime Class, and other aggrieved employees all
22 earned overtime compensation in violation of Labor Code §§ 204, 510, 558,
23 1194, and 1198;
- 24 c. Failing to authorize and permit all legally required rest periods, and failure to
25 pay rest period premium wages, to Plaintiff, the Rest Period Class, and other
26 aggrieved employees at the regular rate of compensation in violation of Labor
27 Code §§ 226.7, 516, 558, and 1198;
- 28 d. Failing to provide all legally required meal periods, and failure to pay meal

1 period premium wages, to Plaintiff, the Meal Period Class, and other aggrieved
2 employees at the regular rate of compensation in violation of Labor Code §§
3 226.7, 512, 558, and 1198;

4 e. Failing to furnish Plaintiff, the Wage Statement Class, and other aggrieved
5 employees with complete, accurate, itemized wage statements in violation of
6 Labor Code § 226;

7 f. Failing to timely pay all final wages and compensation earned by Plaintiff, the
8 Waiting Time Class, and other aggrieved employees at the time of separation
9 in violation of Labor Code §§ 201, 202, and 203;

10 g. Failing to pay Plaintiff and other aggrieved employees all earned wages at least
11 twice during each calendar month in violation of Labor Code § 204;

12 h. Failing to permit and authorize Plaintiff and other non-exempt to exercise the
13 use of their accrued paid sick leave days in violation of Labor Code § 245.5;

14 i. Failing to provide legally mandated disclosures and/or written notices
15 regarding the terms of employment of Plaintiff and other aggrieved employees
16 in violation of Labor Code § 2810.5; and

17 j. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved
18 employees in violation of Labor Code §§ 1174 and 1198.

19 59. On March 1, 2024, Plaintiff notified Defendants via certified mail, and notified the
20 California Labor and Workforce Development Agency ("LWDA") via its website, of Defendants'
21 violations of the California Labor Code and Plaintiff's intent to bring a claim for civil penalties
22 under California Labor Code § 2698 et seq. with respect to violations of the California Labor
23 Code identified in Paragraph 59 (a)-(k). Now that sixty-five days have passed from Plaintiff's
24 notifying Defendants and the LWDA of these violations, and the LWDA has not provided notice
25 that it intends to investigate the violations, Plaintiff has exhausted his administrative requirements
26 for bringing a claim under the Private Attorneys General Act with respect to these violations.

27 60. Plaintiff was compelled to retain the services of counsel to file this court action to
28 protect his interests and the interests of other similarly aggrieved employees, and to assess and
collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and

costs, which he is entitled to receive under California Labor Code § 2699(g).

PRAYER

WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf this suit is brought against Defendants, as follows:

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiffs as representatives of the Classes;
3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
4. Upon the First Cause of Action, for payment of minimum wages, liquidated damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2, 1198 and Wage Order 5, § 5(A);
5. Upon the Second Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, 1198 and Wage Order 5, § 5(A);
6. Upon the Third Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;
7. Upon the Fourth Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;
8. Upon the Fifth Cause of Action, for statutory penalties pursuant to Labor Code § 226, *et seq*;
9. Upon the Sixth Cause of Action, for statutory waiting time penalties pursuant to Labor Code § 201-203;
10. Upon the Seventh Cause of Action, for restitution to Plaintiff and other non-exempt employees of all money and/or property unlawfully acquired by Defendants by means of any acts or practices declared by this Court to be in violation of Business and Professions Code § 17200 *et seq*;
11. Upon the Eighth Cause of Action, for (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 for each subsequent violation or willful or intentional

1 violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the
2 amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent
3 violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial
4 violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per
5 employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent
6 violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for
7 each initial violation and \$200 for each subsequent violation per employee per pay period for the
8 violations of the Labor Code Sections cited in Labor Code § 2699.5.

9 12. Prejudgment interest on all due and unpaid wages pursuant to California Labor
10 Code § 218.6 and Civil Code §§ 3287 and 3289;

11 13. On all causes of action, for attorneys' fees and costs as provided by Code of Civil
12 Procedure § 1021.5 and all other applicable statutes; and

13 14. For such other and further relief the Court may deem just and proper.

14
15 Dated: May 30, 2024

Respectfully submitted,
STANSBURY BROWN LAW, PC

16
17 By:



Daniel J. Brown
Jessica Flores
Attorneys for Plaintiff

18
19
20 **DEMAND FOR JURY TRIAL**

21 Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

22
23 Dated: May 30, 2024

Respectfully submitted,
STANSBURY BROWN LAW, PC

24
25 By:



Daniel J. Brown
Jessica Flores
Attorneys for Plaintiff

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2
3 **PROOF OF SERVICE**

4 STATE OF CALIFORNIA)
5) ss.
6 COUNTY OF LOS ANGELES)

7 I am employed in the County of Los Angeles, State of California. I am over the age of
8 18 years and not a party to the within action; my business address is 2610 ½ Abbot Kinney
9 Blvd. Venice, CA 90212

10 On June 10, 2024 I served the document listed below on the parties in this action as follows:

11 - **STIPULATION TO FILE FIRST AMENDED CLASS AND REPRESENTATIVE
12 ACTION COMPLAINT; [PROPOSED] ORDER**

- 13 ☐ (BY MAIL) I placed such envelope on the above date, with postage fully prepaid, for
14 deposit in the U.S. Postal Service at my place of business at Venice, California,
15 following the ordinary business practices of my place of business. I am readily familiar
16 with the business practice at my place of business for collection and processing of
17 correspondence for mail with the U.S. Postal Service. Under that practice, such
18 correspondence is deposited with the U.S. Postal Service the same day it is collected
19 and processed in the ordinary course of business.
- 20 ☐ (BY HAND DELIVERY) I delivered to an authorized courier or driver authorized by
21 _____ to receive documents to be delivered on the same date.
- 22 ☐ (BY FEDERAL EXPRESS) I am readily familiar with the practice of collection and
23 processing of correspondence for overnight delivery and know that the document(s)
24 described herein will be deposited in a box or other facility regularly maintained by
25 Federal Express for overnight delivery.
- 26 X (BY EMAIL or ELECTRONIC TRANSMISSION) By electronically transmitting the
27 document(s) listed above to the email address(es) of the person(s) set forth on the
28 attached service list from the email address dbrown@stansburybrownlaw.com. I did not
receive, within a reasonable time after the transmission, any electronic message or other
indication that the transmission was unsuccessful. Service by e-mail was made pursuant
to agreement of the parties, confirmed in writing, or as an additional method of service
as a courtesy to the parties or pursuant to Court Order. See Cal. R. Ct. R. 2.260.
- X (STATE) I declare under penalty of perjury under the laws of the State of California
that the above is true and correct.

Executed on June 10, 2024 at Venice, California.

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27 Daniel J. Brown
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