

Per local Rule, This case is assigned to
Judge Treat, Charles S, for all purposes.

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SUMMONS ISSUED

Attorneys for Plaintiff,
JOSE MARTINEZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA

JOSE MARTINEZ, an individual, and in a
representative capacity on behalf of the State of
California and other Aggrieved Employees,

Plaintiff,

vs.

ARGONAUT INDUSTRIES INC., a California
Corporation, and JASON SIMMS, an individual
and DOES 1-15

Defendants.

Case No. C24-02766
COMPLAINT FOR DAMAGES

DEMAND FOR JURY TRIAL

PLAINTIFF JOSE MARTINEZ (“PLAINTIFF”), an individual, on behalf of himself and in
a representative capacity on behalf of the State of California and other AGGRIEVED
EMPLOYEES, defined below, against DEFENDANT ARGONAUT INDUSTRIES INC., a
California Corporation, and JASON SIMMS, an individual, and DOES 1-15 (“Defendant DOES”)
(collectively “DEFENDANTS”), alleges on information and belief, except for his own acts and
knowledge which are based on personal knowledge, the following:

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I. INTRODUCTION

1. PLAINTIFF brings this action individually and as a representative action on behalf of himself, the State of California and pursuant to the Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA”) on behalf of other current and former AGGRIEVED EMPLOYEES of DEFENDANTS for engaging in a pattern and practice of wage and hour violations under the California Labor Code.

2. PLAINTIFF seeks recovery of all individual damages in addition to all civil penalties permitted pursuant to California Labor Code § 2699, *et seq.*

3. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS decreased their employment-related costs by systematically violating California wage and hour laws.

4. DEFENDANTS’ systematic pattern of wage and hour and IWC Wage Order violations toward PLAINTIFF and other AGGRIEVED EMPLOYEES in California include, *inter alia*:

- a. Failure to provide rest periods;
- b. Failure to provide meal periods
- c. Failure to correctly calculate the regular rate of pay;
- d. Failure to pay minimum wages for all hours worked;
- e. Failure to pay overtime wages;
- f. Failure to pay wages when due;
- g. Failure to provide accurate itemized wage statements;
- h. Failure to maintain true and accurate records;
- i. Failure to reimburse for required business expenses;
- j. Failure to timely pay wages during, and upon termination of employment.

5. PLAINTIFF brings the representative action against DEFENDANTS on behalf of himself and all other AGGRIEVED EMPLOYEES of DEFENDANTS in California, seeking all civil penalties and unpaid wages permitted pursuant to California Labor Code § 2699, *et seq.*

6. PLAINTIFF reserves the right to name additional representatives throughout the State of California.

II. PARTIES

7. PLAINTIFF JOSE MARTINEZ (“PLAINTIFF”), an individual, has resided, and at all times mentioned in this Complaint, continues to reside in Contra Costa County.

8. DEFENDANT ARGONAUT INDUSTRIES INC., a California Corporation, registered with the California Secretary of State as entity No. 3907945, that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

9. DEFENDANT JASON SIMMS is, on information and belief, a California resident and does business in California. He is Chief Executive Officer, Chief Financial Officer and Secretary of Defendant Argonaut Industries, Inc. On information and belief, at all relevant times, Jason Simms has been an owner, director, officer, or managing agent of Defendant Argonaut Industries, Inc.

10. Defendant DOES 1-15 (“Defendant DOES”) are persons and/or entities that at all relevant times mentioned herein conducted and continue to conduct substantial and regular business throughout California.

11. Each of the fictitiously named DEFENDANTS participated in the acts alleged in this Complaint. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate, or otherwise of DEFENDANT DOES 1 through 15, inclusive, are presently unknown to PLAINTIFF who therefore sues these DEFENDANTS by such fictitious names pursuant to Cal. Civ. Proc. Code. § 474. PLAINTIFF will seek leave to amend this Complaint to allege the true names and capacities of DOES 1 through 15, inclusive, when they are ascertained. PLAINTIFF is informed and believes, and based upon that information and belief alleges, that the DEFENDANTS named in this Complaint, including DOES 1 through 15, inclusive (hereinafter collectively “DEFENDANTS”), are responsible in some manner for one or more of the events and happenings that proximately caused the injuries and damages hereinafter alleged.

12. DEFENDANTS own, operate, and/or manage an auto repair company.

1 13. DEFENDANTS employed PLAINTIFF between approximately June 2023 and
2 February 2024 as a Service Technician paid on an hourly basis and entitled to bonuses. At all times,
3 DEFENDANTS paid PLAINTIFF as an hourly, non-exempt employee.

4 **III. PRIVATE ATTORNEYS GENERAL ACT AND DEFENDANTS' LIABILITY**

5 14. PLAINTIFF brings the representative action on behalf of the State of California and
6 on behalf of all individuals who are or previously were by Defendants and classified as non-exempt,
7 piece-rate-based and/or commission-based employees in California who suffered one or more Labor
8 Code violations enumerated in Labor Code §§ 2698 et seq. (hereinafter "AGGRIEVED
9 EMPLOYEES") and who worked for DEFENDANTS between August 7, 2023, and the present
10 ("PAGA PERIOD").

11 15. PLAINTIFF is an "AGGRIEVED EMPLOYEE" within the meaning of Labor Code
12 § 2699(c) because he was employed by DEFENDANTS and suffered each of alleged Labor Code
13 violations committed by DEFENDANTS.

14 16. PLAINTIFF and all other AGGRIEVED EMPLOYEES are, and at all relevant times
15 were, employees of DEFENDANTS, within the meanings set forth in the California Labor Code
16 and the applicable Industrial Welfare Commission Wage Order.

17 17. The Private Attorney General Act ("PAGA") permits an aggrieved employee to
18 enforce any provision of the California Labor Code that provides for a civil penalty. (*Lab. Code* §
19 2699(a).)

20 18. Section 558 of the California Labor Code provides that "any employer *or other*
21 *person* acting on behalf of an employer who violates, or causes to be violated, a section of this
22 chapter or any provision regulating hours and days of work in any order of the Industrial Welfare
23 Commissions shall be subject to a civil penalty..." (*Lab. Code* § 558(a).)

24 19. Section 1197.1 of the Labor Code provides that "[a]ny employer *or other person*
25 acting either individually or as an officer, agent, or employee of another person, who pays or causes
26 to be paid to any employee a wage less than the minimum fixed by an applicable state or local law,
27 or by an order of the commission shall be subject to a civil penalty..." (*Lab. Code* § 1197.1(a).)

1 20. Interpreting Sections 558 and 1197.1 of the Labor Code, California courts have held
2 that a corporate employer's owners, officers and directors, are subject to civil penalties for the
3 employer's failure to pay appropriate wages to its employees, and, since liability under either 558
4 or 1197.1 does not depend on a finding of an alter ego, no alter ego allegations or findings are
5 necessary. *Atempa v. Pedrazzani*, (2018) 27 Cal.App.5th 809; see generally *Ochoa-Hernandez v.*
6 *Cjaders Food, Inc.* (2009 WL 1404694); *Thurman v. Bayshore Management, Inc.* (2017) 203
7 Cal.App.4th 1112, 1145-1146.

8 21. Section 558.1 of the California Labor Code provides that "any employer *or other*
9 *person acting* on behalf of an employer, who violates, *or causes to be violated*, any provision
10 regulating minimum wages or hours and days of work in any order of the Industrial Welfare
11 Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802,
12 may be held liable as the employer for such violation." (*Lab. Code* § 558.1(a).) Section 558.1(b)
13 identifies the "other person acting on behalf of an employer" includes "owner, director, officer, or
14 managing agent" of the employer. (*Lab. Code* § 558.1(b).)

15 22. DEFENDANTS, including DOES 1 THROUGH 15 (hereinafter collectively
16 "DEFENDANTS"), were PLAINTIFF's employers or persons acting on behalf of PLAINTIFF's
17 employer, within the meaning of California Labor Code § 558, who violated or caused to be violated,
18 a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating hours and
19 days of work in any order of the Industrial Welfare Commission and, as such, are subject to civil
20 penalties for each underpaid employee, as set forth in Labor Code § 558, at all relevant times.

21 23. DEFENDANTS were PLAINTIFF's employer or persons acting on behalf of
22 PLAINTIFF's employer either individually or as an officer, agent, or employee of another person,
23 within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any
24 employee a wage less than the minimum fixed by California state law, and as such, are subject to
25 civil penalties for each underpaid employee.

26 24. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS and
27 each of them, are subject to civil penalties for their failure to pay PLAINTIFF and other
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1 AGGRIEVED EMPLOYEES the appropriate wages as complained of herein and proximately
2 caused the complaints, injuries, and damages alleged herein.

3 25. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS and
4 each of them, are subject to liability for their failure to pay PLAINTIFF and other AGGRIEVED
5 EMPLOYEES the appropriate wages as complained of herein and proximately caused the
6 complaints, injuries, and damages alleged herein.

7 26. DEFENDANTS have been personally involved in the purported violations and/or
8 had sufficient participation in the employer, such that DEFENDANTS may be deemed to have
9 contributed to, and “caused” the labor code violations alleged.

10 27. At all relevant times, each DEFENDANT, whether named or fictitious, was the
11 agent, employee or other person acting on behalf of each other DEFENDANT, and, in participating
12 in the acts alleged in this Complaint, acted within the scope of such agency or employment and
13 ratified the acts of the other.

14 28. Each DEFENDANT, whether named or fictitious, exercised control over
15 PLAINTIFF’S and other AGGRIEVED EMPLOYEES’ wages, working hours, and/or working
16 conditions.

17 29. Each DEFENDANT, whether named or fictitious, acted in all respects pertinent to
18 this action as the agent of the other DEFENDANT, carried out a joint scheme, business plan or
19 policy, and the acts of each DEFENDANT are legally attributable to the other DEFENDANTS.

20 **IV. JURISDICTION AND VENUE**

21 30. This Court has jurisdiction over this Action pursuant to the California Code of Civil
22 Procedure, Section 410.10.

23 31. Venue is proper in this Court pursuant to California Code of Civil Procedure,
24 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANTS and
25 DEFENDANTS (i) currently maintain and at all relevant times-maintained offices and facilities in
26 this County, and (ii) committed the wrongful conduct herein alleged in this County against
27 PLAINTIFF.

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V. FACTUAL ALLEGATIONS

A. Rest Period Violations

32. DEFENDANTS required PLAINTIFF and other AGGRIEVED EMPLOYEES to work in excess of four (4) hours without being provided ten (10) minute rest periods as a result of DEFENDANTS' policies and comments from DEFENDANTS supervisors and managers.

33. Further, for the same reasons PLAINTIFF and other AGGRIEVED EMPLOYEES were denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, these same employees were denied a first and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours.

34. Specifically, DEFENDANTS verbally reprimanded PLAINTIFF and other AGGRIEVED EMPLOYEES when they attempted to take rest periods. DEFENDANTS and DEFENDANTS' managers. DEFENDANTS encouraged PLAINTIFF and other AGGRIEVED EMPLOYEES to clean the shop or complete additional trainings if they were taking a break.

35. DEFENDANTS required PLAINTIFF and other AGGRIEVED EMPLOYEES to either postpone or forfeit their rest periods as result of DEFENDANTS' policies and practices.

36. PLAINTIFF and other AGGRIEVED EMPLOYEES were also not provided with one-hour wages *in lieu* thereof, and as a result, PLAINTIFF and other AGGRIEVED EMPLOYEES were denied their proper rest periods by DEFENDANTS and DEFENDANTS' managers.

37. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were required to provide rest periods to PLAINTIFF and other AGGRIEVED EMPLOYEES per every four (4) hours worked or major fraction thereof or provide the employee one (1) hour of pay at the employee's regular rate of compensation for each workday the rest period is not provided. During the entirety of PLAINTIFF'S employment and the PAGA Period, DEFENDANTS required PLAINTIFF and other AGGRIEVED EMPLOYEES to work through rest periods without paying them in accordance with Industrial Wage Orders. As a result, PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited their regular wages by working without compensation at the applicable wage and rates. DEFENDANTS had, and may continue to practice, a uniform policy to not pay PLAINTIFF and other AGGRIEVED EMPLOYEES all rest premiums owed.

1 B. Meal Period Violations

2 38. DEFENDANTS require PLAINTIFF and other AGGRIEVED EMPLOYEES to
3 work during the meal break during what is scheduled to be PLAINTIFF'S and other AGGRIEVED
4 EMPLOYEES' off-duty meal break due to DEFENDANTS' policies and practices and commentary
5 from DEFENDANTS' managers and supervisors.

6 39. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were
7 required to provide meal periods of not less than thirty (30) minutes to PLANITIFF and other
8 AGGRIEVED EMPLOYEES for each work period of more than five (5) hours, except when that
9 work period is not more than six (6) and validly waived or provide one (1) hour of pay at the
10 employee's regular rate of compensation.

11 40. DEFENDANTS required PLANITIFF and other AGGRIEVED EMPLOYEES to
12 work during what was scheduled to be off-duty meal break and/or required PLAINTIFF and other
13 AGGRIEVED EMPLOYEES to truncate their meal periods in order to complete more work.
14 Specifically, DEFENDANTS directed PLAINTIFF and other AGGRIEVED EMPLOYEES to clean
15 the shop during their 30-minute meal periods or complete trainings for work.

16 41. As a result, PLANITIFF and other AGGRIEVED EMPLOYEES forfeited their meal
17 periods without compensation at the applicable wage and rates. DEFENDANTS had, and may
18 continue to practice, a uniform policy to not pay PLANITIFF and other AGGRIEVED
19 EMPLOYEES meal premiums.

20 42. As a result of DEFENDANTS' policies and practices, PLAINTIFF and other
21 AGGRIEVED EMPLOYEES were unable to take thirty (30) minute off-duty meal breaks and were
22 not fully relieved of duty for their meal period.

23 43. PLAINTIFF and other AGGRIEVED EMPLOYEES were required to perform work
24 as ordered by DEFENDANTS for more than five (5) hours during some shifts without receiving a
25 meal break. The nature of the work performed by AGGRIEVED EMPLOYEES do not qualify for
26 limited and narrowly construed "on-duty" meal period exception. AGGRIEVED EMPLOYEES
27 therefore forfeited meal breaks without additional compensation and in accordance with
28 DEFENDANTS' policies and practices.

1 C. Off-the-Clock Work Resulting in Minimum and Overtime Wages

2 44. During PLAINTIFF'S employment and the PAGA Period, DEFENDANTS failed to
3 accurately pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all hours worked.

4 45. DEFENDANTS encouraged PLAINTIFF and other AGGRIEVED EMPLOYEES to
5 complete work-related trainings while off-the-clock. time which resulted in PLAINTIFF and other
6 AGGRIEVED EMPLOYEES performing off-the-clock work. DEFENDANTS failed to pay
7 PLAINTIFF and other AGGRIEVED EMPLOYEES all necessary wages for attending and
8 performing work at DEFENDANTS' direction, request, and benefit.

9 46. DEFENDANTS directed and directly benefited from the uncompensated off-the-
10 clock work performed by PLAINTIFF and other AGGRIEVED EMPLOYEES.

11 47. DEFENDANTS controlled the work schedules, duties, protocols, applications,
12 assignments, and employment conditions of PLAINTIFF and other AGGRIEVED EMPLOYEES.

13 48. DEFENDANTS were able to track the amount of time PLAINTIFF and other
14 AGGRIEVED EMPLOYEES spent working however, DEFENDANTS failed to document, track,
15 and pay PLAINTIFF and other AGGRIEVED EMPLOYEES all wages earned and owed for all the
16 work they performed, including during off-the-clock work. From time-to-time this may have
17 included overtime wages.

18 49. PLAINTIFF and other AGGRIEVED EMPLOYEES were non-exempt employees,
19 subject to the requirements of the California Labor Code.

20 50. DEFENDANTS' policies and practices deprived PLAINTIFF and other
21 AGGRIEVED EMPLOYEES of all regular wages and from time to time, overtime wages owed for
22 the off-the-clock work activities.

23 51. DEFENDANTS knew or should have known that PLAINTIFF and other
24 AGGRIEVED EMPLOYEES' off-the-clock work was compensable under the law.

25 52. As a result, PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited wages due
26 them for all hours worked at DEFENDANTS' direction, control and benefit for the time spent while
27 off-the-clock. DEFENDANTS have a uniform policy and practice to not pay PLAINTIFF and other
28 AGGRIEVED EMPLOYEES wages for all hours worked in accordance with applicable law.

1 53. Moreover, as a result, DEFENDANTS provided PLAINTIFF and other
2 AGGRIEVED EMPLOYEES with a paystub that failed to comply with Cal. Lab. Code § 226 and
3 did not maintain accurate payroll and timekeeping records.

4 D. Unlawful Deductions

5 54. During PLAINTIFF'S employment and the PAGA Period, DEFENDANTS
6 unlawfully deducted wages from PLAINTIFF'S and other AGGRIEVED EMPLOYEES'
7 paychecks without their knowledge and without their consent.

8 55. During PLAINTIFF'S employment and the PAGA PERIOD, DEFENDANTS
9 manipulated PLAINTIFF'S and other AGGRIEVED EMPLOYEES' timecards and commissions to
10 reduce the total number of hours worked in "charge backs." DEFENDANTS retroactively and
11 unilaterally modified timecards and work performed, to reduce payment of wages to PLAINTIFF
12 and other AGGRIEVED EMPLOYEES. This resulted in PLAINTIFF and other AGGRIEVED
13 EMPLOYEES performing work while off-the-clock and DEFENDANTS' unlawfully deducting
14 PLAINTIFF and other AGGRIEVED EMPLOYEES' wages.

15 56. DEFENDANTS resorted to self-help methods to deduct earned wages from
16 PLAINTIFF and other AGGRIEVED EMPLOYEES' paychecks. DEFENDANTS actions were
17 performed dishonestly and willfully.

18 57. As a result, DEFENDANTS provided PLAINTIFF and other AGGRIEVED
19 EMPLOYEES with a paystub that failed to comply with Cal. Lab. Code § 226 and did not maintain
20 accurate payroll and timekeeping records. Moreover, to the extent minimum and overtime wages
21 are deemed owed to PLAINTIFF whose employment has terminated, DEFENDANTS' conduct also
22 violates Cal. Lab. Code §203 which penalties are sought herein.

23 E. Regular Rate Violation – Overtime, Double Time, Meal and Rest Premiums, and Sick Pay

24 58. From time-to-time and during the PAGA PERIOD, DEFENDANTS failed and
25 continue to fail to accurately calculate and pay PLAINTIFF and the other AGGRIEVED
26 EMPLOYEES for their overtime and double time hours worked, meal and rest period premiums,
27 and sick pay. As a result, PLAINTIFF and the other AGGRIEVED EMPLOYEES forfeited wages
28 due them for working overtime without compensation at the correct overtime and double time rates,

1 meal and rest period premiums, and sick pay rates. DEFENDANTS' uniform policy and practice to
2 not pay the AGGRIEVED EMPLOYEES the correct rate for all overtime and double time worked,
3 meal and rest period premiums, and sick pay in accordance with applicable law is evidenced by
4 DEFENDANTS' business records.

5 59. State law provides that employees must be paid overtime at one-and-one-half times
6 their "regular rate of pay." PLAINTIFF and other AGGRIEVED EMPLOYEES were compensated
7 at an hourly rate plus incentive pay that was tied to specific elements of an employee's performance.

8 60. The second component of PLAINTIFF's and other AGGRIEVED EMPLOYEES'
9 compensation was DEFENDANTS' non-discretionary incentive program that paid PLAINTIFF and
10 other AGGRIEVED EMPLOYEES incentive wages based on their performance for
11 DEFENDANTS. The non-discretionary bonus program provided all employees paid on an hourly
12 basis with bonus compensation when the employees met the various performance goals set by
13 DEFENDANTS.

14 61. However, from time-to-time, when calculating the regular rate of pay, in those pay
15 periods where PLAINTIFF and other AGGRIEVED EMPLOYEES worked overtime, double time,
16 paid meal and rest period premium payments, and/or sick pay, and earned this non-discretionary
17 bonus or incentive, DEFENDANTS failed to accurately include the non-discretionary bonus
18 compensation and/or incentive and/or shift differential paid as part of the employees' "regular rate
19 of pay" and/or calculated all hours worked rather than just all non-overtime hours worked.
20 Management and supervisors described the incentive/bonus program to potential and new
21 employees as part of the compensation package. As a matter of law, the incentive compensation
22 received by PLAINTIFF and other AGGRIEVED EMPLOYEES must be included in the "regular
23 rate of pay." The failure to do so has resulting in a systematic underpayment of overtime and double
24 time compensation, meal and rest period premiums, and redeemed sick pay to PLAINTIFF and other
25 AGGRIEVED EMPLOYEES by DEFENDANTS.

26 62. Specifically, California Labor Code Section 246 mandates that paid sick time for
27 non-employees shall be calculated in the same manner as the regular rate of pay for the workweek
28 in which the non-exempt employee uses paid sick time, whether or not the employee actually works

1 overtime in that workweek. DEFENDANTS' conduct, as articulated herein, by failing to include
2 the incentive compensation as part of the "regular rate of pay" for purposes of sick pay compensation
3 was in violation of Cal. Lab. Code § 246 the underpayment of which is recoverable under Cal. Lab.
4 Code Sections 201, 202, 203, and/or 204.

5 63. In violation of the applicable sections of the California Labor Code and the
6 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
7 matter of company policy, practice, and procedure, intentionally and knowingly failed to
8 compensate PLAINTIFF and the other AGGRIEVED EMPLOYEES at the correct rate of pay for
9 all overtime and double time worked, meal and rest period premiums, and sick pay. This uniform
10 policy and practice of DEFENDANTS is intended to purposefully avoid the payment of the correct
11 overtime and double time compensation, meal and rest period premiums, and sick pay as required
12 by California law which allowed DEFENDANTS to illegally profit and gain an unfair advantage
13 over competitors who complied with the law.

14 F. Commission and Piece-Rate Violations

15 64. From time-to-time and during the PAGA PERIOD, PLAINTIFF and AGGRIEVED
16 EMPLOYEES were paid in part on a commission and/or piece-rate basis. In those instances where
17 PLAINTIFF and the AGGRIEVED EMPLOYEES were paid in part on a commission and/or piece-
18 rate basis, PLAINTIFF and the AGGRIEVED EMPLOYEES were entitled to be separately
19 compensated for all non-productive time at an hourly rate that is no less than the applicable
20 minimum wage. Notwithstanding, in those instances where PLAINTIFF and the AGGRIEVED
21 EMPLOYEES were paid in part on a commission and/or piece-rate basis, DEFENDANTS failed to
22 separately compensate PLAINTIFF and the AGGRIEVED EMPLOYEES for all non-productive
23 time, including but not limited to, paid rest periods, at an hourly rate that is no less than the
24 applicable minimum wage. As a result, PLAINTIFF and the AGGRIEVED EMPLOYEES forfeited
25 minimum wages and overtime wages by DEFENDANTS' failure to separately compensate their
26 non-productive time at an hourly rate that is no less than the applicable minimum wage.

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1 G. Violations for Untimely Payment of Wages

2 65. Pursuant to California Labor Code section 204, PLAINTIFF and other
3 AGGRIEVED EMPLOYEES are entitled to timely payment of wages during their employment.
4 PLAINTIFF and other AGGRIEVED EMPLOYEES, from time to time, did not receive payment of
5 all wages, including, but not limited to, overtime wages, minimum wages, meal period premium
6 wages, and rest period premium wages within permissible time period and on days designated in
7 advance by the employer as regular payday.

8 66. To date, DEFENDANTS have not fully paid PLAINTIFF the minimum, overtime
9 and double time compensation still owed to him, or any premium penalties owed to him.
10 Accordingly, DEFENDANTS CONDUCT violates Cal. Lab Code §§ 201 and/or 202 with regard
11 to PLAINTIFF and other AGGRIEVED EMPLOYEES, who no longer work for DEFENDANTS,
12 and are therefore these individuals are entitled to waiting time penalties under Cal. Lab. Code § 203.

13 H. Failure to Reimburse

14 67. DEFENDANTS failed to indemnify PLAINTIFF and other AGGRIEVED
15 EMPLOYEES for use of their personal cell phone as a direct consequence of discharging work
16 duties.

17 68. DEFENDANTS required PLAINTIFF and other AGGRIEVED EMPLOYEES to
18 use their personal cell phones for work-related communications, clock-in and clock-out, to access
19 the Auto Vital app for scheduling and communication but failed to reimburse PLAINTIFF and other
20 AGGRIEVED EMPLOYEES for necessary expenses incurred in using personal devices for work
21 purposes.

22 69. Additionally, DEFENDANTS directed PLAINTIFF and other AGGRIEVED
23 EMPLOYEES to use personal cell phones to complete their work duties whenever DEFENDANTS'
24 WIFI lost connection. DEFENDANTS directed PLAINTIFF and other AGGRIEVED
25 EMPLOYEES to use their personal data plans to discharge work duties.

26 70. DEFENDANTS failed to provide employees with a designated work phone and
27 failed to provide employees reimbursement for the cost of their phone.

28 71. DEFENDANTS shifted the costs associated with running a business onto

1 PLAINTIFF and other AGGRIEVED EMPLOYEES.

2 I. Inaccurate Itemized Wage Statements

3 72. California Labor Code Section 226 requires an employer to furnish its employees an
4 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked, (3)
5 the number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net wages
6 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the
7 employee and only the last four digits of the employee's social security number or an employee
8 identification number other than a social security number, (8) the name and address of the legal
9 entity that is the employer and, (9) all applicable hourly rates in effect during the pay period and the
10 corresponding number of hours worked at each hourly rate by the employee.

11 73. During PLAINTIFF'S employment and during the PAGA period, when PLAINTIFF
12 and other AGGRIEVED EMPLOYEES were not paid meal and rest period premiums, were not paid
13 for all hours worked, or hourly rates were incorrectly calculated, DEFENDANTS failed to provide
14 PLAINTIFF and other AGGRIEVED EMPLOYEES with complete and accurate wage statements.
15 DEFENDANTS' paystubs failed to show, among other things, the total hours worked and all
16 applicable hourly rates in effect during the pay period and the corresponding amount of time worked
17 at each hourly rate, correct rates of pay for penalty payments or missed meal and rest periods.

18 74. DEFENDANTS routinely failed to keep, maintain, and store accurate payroll records
19 and provide wage statements that comply with Cal. Lab. Code § 226.

20 75. PLAINTIFF and other AGGRIEVED EMPLOYEES suffered damages as a result of
21 DEFENDANTS' aforementioned violation because they could not promptly and easily determine
22 from the wage statement alone the applicable hourly rate and the corresponding number of hours
23 worked at the applicable hourly rate for this remuneration.

24 76. As a result, DEFENDANTS issued PLAINTIFF and other AGGRIEVED
25 EMPLOYEES wage statements that violate Cal. Lab. Code § 226. Further, DEFENDANTS'
26 violations are knowing and intentional, and were not isolated or due to an unintentional payroll error
27 due to clerical or inadvertent mistake.

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1 **VI. CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION**

3 For Failure to Provide Rest Periods
4 (Cal. Lab. Code §§ 226.7 & 512)
(Plaintiff Against All DEFENDANTS)

5 77. PLAINTIFF incorporates by reference and reallege as if fully stated herein each and
6 every allegation set forth above.

7 78. Labor Code Sections 226.7 and 512 and the Industrial Wage Orders require
8 DEFENDANTS to provide employees with all rest periods specified in the applicable Wage Order.
9 These laws and regulations further entitle employees to be paid one additional hour of pay at their
10 regular rate of compensation for each day of denied rest period.

11 79. PLAINTIFF was required to work in excess of four (4) hours without being provided
12 ten (10) minute rest periods. Further and for the same reasons PLAINTIFF was denied his first rest
13 periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours,
14 PLAINTIFF was denied a first and second rest period of at least ten (10) minutes for shifts worked
15 of between six (6) and eight (8) hours. PLAINTIFF was also not provided with one-hour wages in
16 lieu thereof.

17 80. As a result of DEFENDANTS policies and practices, and commentary from
18 DEFENDANTS' managers and supervisors, PLAINTIFF was denied his proper rest periods by
19 DEFENDANTS and DEFENDANTS' managers.

20 81. DEFENDANTS violated California Labor Code §§ 226.7 and the applicable IWC
21 Wage Order by failing to compensate PLAINTIFF who was not provided a rest period, in
22 accordance with the applicable Wage Order, one additional hour of compensation at each
23 employee's regular rate of pay for each workday that rest period was not provided.

24 82. As a proximate result of the aforementioned violations, PLAINTIFF has been
25 damaged in an amount according to proof at trial, and seek all wages earned and due, interest,
26 penalties, expenses and costs of suit.

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83. PLAINTIFF incorporates by reference and reallege as if fully stated herein each and every allegation set forth above.

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1 California Labor Code and the Industrial Welfare Commission requirements for DEFENDANTS'
2 failure to accurately calculate and pay minimum wages to PLAINTIFF.

3 90. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
4 including minimum wage compensation and interest thereon, together with the costs of suit. Cal.
5 Lab. § 1194.2 further establishes an employee's right to liquidated damages in an amount equal to
6 the unpaid minimum wages according to proof at trial.

7 91. DEFENDANTS maintained a uniform wage practice of paying PLAINTIFF without
8 regard to the correct amount of time worked and incorrectly calculating PLAINTIFF'S regular rate
9 of pay and unlawfully deducting wages from Plaintiff's paychecks. As set forth herein,
10 DEFENDANTS' uniform policy and practice was to unlawfully and intentionally deny payment of
11 wages due to PLAINTIFF for all hours worked and therefore did not receive minimum wage for all
12 hours worked as required by Cal. Lab. Code § 1197.

13 92. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
14 without limitation, as a result of implementing a uniform policy and practice that denied accurate
15 compensation to PLAINTIFF in regard to minimum wages.

16 93. In committing these violations of the California Labor Code, DEFENDANTS failed
17 to calculate the amount of time worked and consequently underpaid the actual time worked by
18 PLAINTIFF. DEFENDANTS acted in an illegal attempt to avoid the payment of all earned wages,
19 and other benefits in violation of the California Labor Code, the Industrial Welfare Commission
20 requirements and other applicable laws and regulations.

21 94. PLAINTIFF was paid less for time worked than he was entitled to, constituting a
22 failure to pay all earned wages and failure to pay all minimum wages.

23 95. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
24 PLAINTIFF has suffered and will continue to suffer an economic injury including the use and
25 enjoyment of wages and lost interest on such wages all to his damage in amounts in amounts which
26 are presently unknown to him, and which will be ascertained according to proof at trial.

27 96. DEFENDANTS knew or should have known that PLAINTIFF was under-
28 compensated for his time worked. DEFENDANTS systematically elected, either through intentional

malfeasance or gross nonfeasance, to not pay employees for their labor as a matter of uniform corporate policy, practice and procedure, and DEFENDANTS perpetrated this systematic scheme by refusing to pay PLAINTIFF the correct wages for their time worked.

97. DEFENDANTS maintained a uniform wage practice of not only paying PLAINTIFF without regard to the correct amount of time worked by PLAINTIFF and without accurately calculating employees' regular rates of pay. DEFENDANTS' uniform policy and practice was to unlawfully and intentionally deny accurate and full payment of wages due to PLAINTIFF.

98. In performing the acts and practices herein alleged in violation of California labor laws, and refusing to compensate PLAINTIFF for all time worked and provide him with the requisite compensation, DEFENDANTS acted and continue to act intentionally, oppressively, and maliciously toward PLAINTIFF with a conscious disregard for his legal rights, or the consequences to him, and with the intent of depriving him of his property and legal rights, and otherwise causing him injury in order to increase company profits at the expense of this employee.

99. PLAINTIFF, therefore, request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment of any statutory penalties against DEFENDANTS, in a sum as provided by the California Labor Code and/or other applicable statutes.

FOURTH CAUSE OF ACTION

For Failure to Pay Overtime Wages
(Cal. Lab. Code §§ 558, 510, 1194, 1198)
(Plaintiff Against All DEFENDANTS)

100. PLAINTIFF incorporates by reference and reallege as if fully stated herein each and every allegation set forth above.

101. Labor Code section 558 provides for a civil penalty to be assessed against any employer or other person acting on behalf of an employer who fails to compensate employees at the statutory overtime rate for any work in excess of eight hours in one day or any work in excess of 40 hours in any workweek or who fails to compensate employees at the statutory double time rates for any work in excess of twelve hours in one day or any work in excess of 8 hours on the seventh day of a workweek.

102. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,

1 including overtime compensation and interest thereon, together with the costs of suit. Cal. Lab. Code
2 § 1198 further states that the employment of an employee for longer hours than those fixed by the
3 Industrial Welfare Commission is unlawful.

4 103. Pursuant to Labor Code section 558, PLAINTIFF is entitled to recover a penalty of
5 \$50.00 for the initial failure to compensate employees at the statutory overtime rate for any work in
6 excess of eight hours in one day or any work in excess of 40 hours in any workweek and/or failure
7 to compensate employees at the statutory double time rates for any work in excess of twelve hours
8 in one day in addition to any underpaid wages; and \$100.00 for each subsequent failure to
9 compensate employees at the statutory overtime rate for any work in excess of eight hours in one
10 day or any work in excess of 40 hours in any workweek in addition to any underpaid wages.

11 104. DEFENDANTS routinely and systematically failed to properly record accurate time
12 records for each employee showing when each employee began and ended each work period. This
13 work included overtime. By failing to properly record hours, DEFENDANTS routinely and
14 systematically failed to compensate employees at the statutory overtime rate for any work in excess
15 of eight (8) hours in one day or any work in excess of forty (40) hours in any workweek as required
16 by Labor Code section 510 and Section 3 of the applicable Wage Order.

17 105. During PLAINTIFF'S employment, DEFENDANTS required PLAINTIFF to
18 perform work, including overtime, for DEFENDANTS and was not paid for all the time worked.

19 106. As a proximate result of DEFENDANTS' failure to pay overtime wages as alleged
20 above, PLAINTIFF is entitled to recover from DEFENDANTS penalties pursuant to section 558 as
21 may be established according to proof at trial.

22 107. DEFENDANTS acted in an illegal attempt to avoid the payment of all earned wages,
23 and other benefits in violation of the California Labor Code, the Industrial Welfare Commission
24 requirements and other applicable laws and regulations.

25 108. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
26 PLAINTIFF did not receive the correct overtime compensation for his time worked for
27 DEFENDANTS.

28 109. Cal. Lab. Code § 515 sets out various categories of employees who are exempt from

1 the overtime requirements of the law. For portions of PLAINTIFF'S employment, these exemptions
2 did not apply to PLAINTIFF. Further, PLAINTIFF is not subject to a valid collective bargaining
3 agreement that would preclude the causes of action contained herein this Complaint.

4 110. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned
5 compensation to PLAINTIFF for the true amount of overtime worked, PLAINTIFF has suffered
6 and will continue to suffer an economic injury in amounts which are presently unknown to him, and
7 which will be ascertained according to proof at trial.

8 111. DEFENDANTS knew or should have known that PLAINTIFF was under
9 compensated for his time worked. DEFENDANTS systematically elected, either through intentional
10 malfeasance or gross nonfeasance, to not pay him for labor as a matter of uniform company policy,
11 practice and procedure, and DEFENDANTS perpetrated this systematic scheme by refusing to pay
12 PLAINTIFF the correct overtime wages for their overtime worked.

13 112. In performing the acts and practices herein alleged in violation of California labor
14 laws, and refusing to compensate PLAINTIFF for all time worked and provide him with the requisite
15 compensation, DEFENDANTS acted and continues to act intentionally, oppressively, and
16 maliciously toward PLAINTIFF with a conscious of and utter disregard for his legal rights, or the
17 consequences to him, and with the despicable intent of depriving him of his property and legal rights,
18 and otherwise causing him injury in order to increase company profits at the expense of these
19 employees.

20 113. Therefore, PLAINTIFF request recovery of overtime wages, according to proof,
21 interest, statutory costs, as well as the assessment of any statutory penalties against DEFENDANTS,
22 in a sum as provided by the California Labor Code and/or other applicable statutes.

23 **FIFTH CAUSE OF ACTION**

24 For Failure to Reimburse Business Expenses

25 (Cal. Lab. Code §§ 2802)

26 (Plaintiff Against ALL DEFENDANTS)

27 114. PLAINTIFF incorporates by reference and realleges as if fully stated herein each and
every allegation set forth above.

28 115. Pursuant to California Labor Code section 2802, DEFENDANTS are required to

1 indemnify PLAINTIFF for the expenses and losses incurred during the performance of his job
2 duties. The purpose of this statute is to prevent employers from passing their operating expenses on
3 to their employees.

4 116. DEFENDANTS required PLAINTIFF to use personal cell phones to discharge work
5 duties but failed to reimburse PLAINTIFF for the use or cost of his cell phones.

6 117. DEFENDANTS sought to pay their own pockets at the expense of their employees,
7 and instead of compensating their employees for the necessary business costs, the employer passed
8 on its costs to its employees.

9 118. DEFENDANTS intentionally failed to reimburse its employees for the actual
10 expenses incurred and thereby increased its own profits to the detriment of its employees.

11 119. PLAINTIFF seeks to recover these business expenditures, plus interest thereon,
12 reasonable attorneys' fees, and costs, and statutory and civil penalties as provided by the Labor Code
13 in an amount to be proven.

14 120. Interest accrues from the date the employee incurred the necessary expenditure or
15 loss.

16 **SIXTH CAUSE OF ACTION**

17 For Failure To Pay All Wages

18 (Cal. Lab. Code § 204, 210)

(Plaintiff Against All DEFENDANTS)

19 121. PLAINTIFF incorporates by reference and reallege as if fully stated herein each and
20 every allegation set forth above.

21 122. Labor Code Section 204 provides in part provides in part that "all wages, ..., earned
22 by any person in any employment are due and payable twice during each calendar month, on days
23 designated in advance by the employer as the regular paydays."

24 123. Plaintiff is informed and believes, and thereon alleges that DEFENDANTS did not
25 pay PLAINTIFF all earned wages, including regular and/or overtime and meal and rest premiums,
26 on regularly established paydays.

27 124. In violation of Labor Code section 204, DEFENDANTS knowingly and willfully
28 refused to perform their obligations to compensate their employees for all wages earned.

125. Pursuant to Labor Code section 210, PLAINTIFF is entitled to recover a penalty of \$100.00 for the initial failure to timely pay each employee all of the wages earned, and \$200.00 for each subsequent failure to pay each employee all of the wages earned; in addition, pursuant to section 210, for each subsequent failure to pay in compliance with Labor Code section 204, PLAINTIFF is entitled to recover an additional amount equal to 25% of the unlawfully withheld wages.

126. As a direct and proximate result of DEFENDANTS' conduct in violation of Labor Code section 204 as alleged above, DEFENDANTS' employees have suffered, and continue to suffer, losses related to the use and enjoyment of wages and lost interest on such wages all to their damage in amounts according to proof at trial.

SEVENTH CAUSE OF ACTION

For Failure to Pay Wages Upon Termination

(Cal. Lab. Code § 201/202, 203)

(Plaintiff Against All DEFENDANTS)

127. PLAINTIFF incorporates by reference and reallege as if fully stated herein each and every allegation set forth above.

128. If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, . . . 202, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. (Cal. Lab. Code § 203).

129. To date, DEFENDANTS have yet to pay PLAINTIFF all of the wages and all premiums due for missed meal breaks and missed rest breaks and DEFENDANTS have failed to pay any penalty wages owed under California Labor Code section 203. Further, When DEFENDANTS terminated PLAINTIFF, DEFENDANTS failed to provide PLAINTIFF with his final paycheck and directed him to wait until the next pay period.

130. DEFENDANTS knowingly and willfully violated the laws, regulations and orders governing the wages of PLAINTIFF as described in the causes of action above.

131. Therefore, as provided by Cal Lab. Code § 203, on behalf of himself whose

1 employment has terminated, PLAINTIFF demands up to thirty (30) days of pay as penalty for not
2 paying all wages due at time of termination and demand an accounting and payment of all wages
3 due, plus interest and statutory costs as allowed by law.

4 **EIGHTH CAUSE OF ACTION**

5 For Failure to Provide Accurate, Itemized Wage Statements

6 (Cal. Lab. Code §§ 226; 226.3; 1174.5)

(Plaintiff Against All DEFENDANTS)

7 132. PLAINTIFF incorporates by reference and reallege as if fully stated herein each and
8 every allegation set forth above.

9 133. Labor Code section 226 requires defendants to provide employees an accurate
10 itemized statement showing (1) gross wages earned, (2) total hours worked by the employee, (3) the
11 number of piece units and rates if applicable, (4) all deductions, (5) net wages earned, (6) the
12 inclusive date of the period for which the employee is paid, (7) the name of the employee and his/her
13 or his social security number, (8) the name and address of the legal entity that is the employer, and
14 (9) all applicable hourly rates in effect and the corresponding number of hours worked

15 134. DEFENDANTS did not accurately record PLAINTIFF'S time worked, wage, and
16 missed meal and rest breaks. DEFENDANTS failed to provide an accurate wage statement in
17 writing that properly and accurately itemizes all wages, missed meal and rest periods, applicable
18 hourly wages in effect, and reporting time wages owed to PLAINTIFF and thereby also failed to set
19 forth the correct wages earned by the employees.

20 135. DEFENDANTS knowingly and intentionally failed to comply with Labor Code
21 section 226(a) on each and every wage statement that they provided to PLAINTIFF.

22 136. By failing to keep adequate records, as required by Labor Code sections 226 and
23 1174, DEFENDANTS injured PLAINTIFF making it difficult for this employee to calculate the
24 minimum wages owed. Those injuries include unpaid wages, interest, and penalties thereon.

25 137. PLAINTIFF seeks to recover the statutory penalties provided by Labor Code section
26 226(e), 226.3, and 1174.5 for the wage statement violations committed by DEFENDANTS.

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138. PLAINTIFF and other AGGRIEVED EMPLOYEES incorporate by reference and reallege as if fully stated herein each and every allegation set forth above.

- a. For failing to compensate employees who were not provided a rest period in violation of Labor Code Section 226.7 and 512;
- b. For failing to compensate employees who were not provided a meal period in violation of Labor Code Section 226.7 and 512;
- c. For failing to pay all minimum wages, in violation of Labor Code sections 1194, 1197.1, 218.5, and 218.6;
- d. For failing to provide employees who worked more than eight (8) hours per workday and more than forty (40) hours per workweek additional compensation beyond their regular wages in violation of Labor Code Section 510, 558, 1194, 1194.2, and 1198;
- e. For failing to reimburse employees for business-related expenses in violation of Labor Code section 2802;
- f. For failing to pay wages, in violation of Labor Code sections 204 and 210;
- g. For failing to pay wages upon termination, in violation of Labor Code sections 201, 202, and 203;
- h. For failing to maintain for and provide accurate, itemized wage statements required by Labor Code Section 226, 226.3;
- i. For failing to maintain accurate records in violation of Labor Code Section 1174.5.

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1 in the applicable sections of the Labor Code, and if not specifically provided, those under section
2 2699(f), and shall include those amounts sufficient to recover underpaid wages pursuant to C.C.R.
3 section 11040 and Labor Code sections §§ 201, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7,
4 510, 512, 515, 558, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802, and 2699, subdivisions
5 (a) and (f).

6 141. PLAINTIFF filed this complaint after the LWDA was afforded the opportunity to
7 consider PLAINTIFF's notice of DEFENDANTS' Labor Code violations and of PLAINTIFF's
8 intent to prosecute a private enforcement action for civil penalties under PAGA. After the LWDA
9 declined to investigate, PLAINTIFF brought this PAGA cause of action against DEFENDANTS,
10 pursuant to California Labor Code section 2699.3, subdivision (a)(2)(A).

11 **DEMAND FOR RELIEF**

12 WHEREFORE, PLAINTIFF prays for a judgment against each DEFENDANT, jointly and
13 severally, as follows:

14 1. On behalf of the PLAINTIFF:

15 A. Compensatory damages, according to proof at trial, including unpaid minimum and
16 overtime wages, due to PLAINTIFF, during the applicable employment period plus interest thereon
17 at the statutory rate;

18 B. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the
19 applicable IWC Wage Order;

20 C. The wages of Plaintiff as a penalty from the due date thereof at the same rate until
21 paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203;

22 D. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
23 which a violation occurs and one hundred dollars (\$100) per employee for each violation in a
24 subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
25 an award of costs for violation of Cal. Lab. Code § 226.

26 E. One hundred dollars (\$100) for the initial pay period in which Defendants
27 intentionally failed to pay minimum wages per employee per pay period and two hundred fifty
28 dollars (\$250) per employee per pay period for each violation in a subsequent pay period for

1 violation of Cal. Lab. Code § 1197 and 1197.1

2 F. The amount of the expenses PLAINTIFFS incurred in the course of his job duties,
3 plus interest, and costs of suit.

4 G. Punitive damages in an amount to punish DEFENDANTS to be proven at trial.

5 H. Liquidates damages pursuant to Cal. Lab. Code § 1194.2 in an amount equal to the
6 unpaid minimum wages according to proof at trial;

7 2. On Behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES

8 A. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
9 General Act of 2004;

10 3. On all claims:

11 A. An award of interest, including prejudgment interest at the legal rate;

12 B. Such other and further relief as the Court deems just and equitable; and

13 C. An award of penalties, attorneys' fees and cost of suit, as allowable under the law.

14 DATED: October 14, 2024

Respectfully submitted,

15 **EMRAN LAW**

16
17 By: Harris Emran
18 Harris Emran
19 Attorney for PLAINTIFF and OTHER
20 AGGRIEVED EMPLOYEES
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DEMAND FOR A JURY TRIAL

PLAINTIFF demands a jury trial on issues triable to a jury.

DATED: October 14, 2024

EMRAN LAW

By: Harris Emran
Harris Emran
Attorney for PLAINTIFF and OTHER
AGGRIEVED EMPLOYEES