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11 MITCHELL BERBERA, individually and on
12 behalf of all other persons similarly situated

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF LOS ANGELES

15 MITCHELL BERBERA, individually and on
16 behalf of all other persons similarly situated
17 and on behalf of the general public,

18 Plaintiff,

19 v.

20 LEVY PREMIUM FOODSERVICE
21 LIMITED PARTNERSHIP, an Illinois limited
22 partnership; LEVY GP CORPORATION, an
23 Illinois corporation; COMPASS GROUP
24 USA, INC., a Delaware corporation; and Does
25 1 through 30, inclusive,

26 Defendants.

Case No. 20STCV11273

*Assigned to Hon. Elihu M. Berle
Dept. 6*

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES:**

1. Failure to Pay Overtime Wages;
2. Failure to Provide Rest Periods;
3. Failure to Provide Meal Periods;
4. Failure to Reimburse Business Expenses;
5. Failure to Pay Vested Vacation Wages;
6. Failure to Timely Pay Wages;
7. Failure to Maintain Payroll Records and Provide Accurate Itemized Wage Statements;
8. Violation of California Unfair Competition Law;
9. California Labor Code Private Attorneys General Act (PAGA).

DEMAND FOR JURY TRIAL
Complaint Filed: March 20, 2020

1 Plaintiff MITCHELL BERBERA (“PLAINTIFF”) brings this action against Defendants
2 LEVY PREMIUM FOODSERVICE LIMITED PARTNERSHIP (“LEVY”), an Illinois limited
3 partnership, LEVY GP CORPORATION (“LEVY GP”), an Illinois corporation, COMPASS
4 GROUP USA, INC. (“COMPASS”), a Delaware corporation, and DOES 1 through 30,
5 inclusive (collectively hereinafter, “DEFENDANTS”), on behalf of himself and all others
6 similarly situated and the general public, and alleges upon information and belief, which is
7 based upon the investigation of his counsel, except as to the allegations concerning
8 PLAINTIFF or his counsel, which are made upon PLAINTIFF’s personal knowledge, as
9 follows:

10 **NATURE OF ACTION**

11 1. This action is brought on behalf of PLAINTIFF and a class of current and
12 former similarly-situated employees employed by DEFENDANTS within the State of
13 California to recover unpaid overtime wages, wages for meal and rest period violations, vested
14 vacation wages, reimbursement of business expenses, statutory penalties, restitution, as well as
15 other damages owed pursuant to the California Labor Code, California Business and
16 Professions Code section 17200 *et seq.*, and California Industrial Welfare Commission
17 (“IWC”) Wage Order 5-2001.

18 2. This lawsuit arises out of the following wrongful acts that occurred, are
19 occurring, and will occur, at least in part, within four years preceding the filing of this action
20 and up to and through the time of trial of this matter. As a result of DEFENDANTS’ company-
21 wide policies and practices, DEFENDANTS engaged in the following unlawful conduct:

- 22 (a) DEFENDANTS failed to provide PLAINTIFF and similarly-situated employees
23 with one and one-half times their regular rate of pay for all hours worked in excess of
24 eight in one workday or forty in one workweek, and two times their regular rate of pay
25 for all hours worked in excess of twelve in one workday pursuant to California Labor
26 Code sections 510, 1194, and 1198;

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1 (b) DEFENDANTS failed to authorize and permit paid rest periods to PLAINTIFF
2 and similarly-situated employees in accordance with California Labor Code section
3 226.7 and IWC Wage Order 5-2001;

4 (c) DEFENDANTS failed to provide meal periods to PLAINTIFF and similarly-
5 situated employees in accordance with California Labor Code sections 226.7 and 512,
6 and IWC Wage Order 5-2001;

7 (d) DEFENDANTS failed to reimburse PLAINTIFF and similarly-situated
8 employees for all expenses necessarily incurred in the course of performing their job
9 duties pursuant to California Labor Code section 2802;

10 (e) DEFENDANTS failed to provide PLAINTIFF and similarly-situated employees
11 with their vested vacation wages upon termination of employment pursuant to
12 California Labor Code section 227.3;

13 (f) DEFENDANTS failed to provide PLAINTIFF and similarly-situated employees
14 with timely payment of wages pursuant to California Labor Code sections 201 and 202;
15 and,

16 (g) DEFENDANTS failed to furnish PLAINTIFF and similarly-situated employees
17 with accurate itemized wage statements pursuant to California Labor Code sections 226
18 and 1174.

19 **JURISDICTION AND VENUE**

20 3. The Court has jurisdiction over this matter because PLAINTIFF alleges state
21 law claims pursuant to the California Labor Code, California Business and Professions Code,
22 and IWC Wage Order 5-2001.

23 4. At all times mentioned herein, Defendant LEVY was a limited partnership duly
24 organized and existing under the laws of the State of Illinois, which conducts restaurant and
25 hospitality business in California, including food service operations at the Staples Center in Los
26 Angeles.

27 5. At all times mentioned herein, Defendant LEVY GP was a corporation duly
28 organized and existing under the laws of the State of Illinois, which conducts restaurant and

1 hospitality business in California, including food service operations at the Staples Center in Los
2 Angeles.

3 6. At all times mentioned herein, Defendant COMPASS was a corporation duly
4 organized and existing under the laws of the State of Delaware, which conducts restaurant and
5 hospitality business in California, including food service operations at the Staples Center in Los
6 Angeles.

7 7. Venue is proper in this district because a substantial part of the events or
8 omissions giving rise to the claims occurred in Los Angeles County. At all times mentioned
9 herein, DEFENDANTS conducted and continue to conduct business at the Staples Center in
10 Los Angeles County and employ a substantial number of class members therein. A class is
11 proper under California Business and Professions Code section 17200 because most, if not all,
12 of the improper conduct emanated out of California.

13 **PARTIES**

14 **The Representative Plaintiff**

15 8. PLAINTIFF and proposed class representative, MITCHELL BERBERA, is an
16 individual and, at all times relevant to this First Amended Class Action Complaint for Damages
17 (“Complaint”), was a resident of the State of California.

18 9. PLAINTIFF was employed by DEFENDANTS for over ten (10) years before
19 being terminated on or about October 8, 2019. During his employment, PLAINTIFF worked as
20 an Event Suites Server/Bartender at the Staples Center located at 1111 South Figueroa Street,
21 Los Angeles, California, 90015. PLAINTIFF was hired by DEFENDANTS pursuant to written
22 and implied contracts of employment, impliedly or explicitly, promising to pay in conformance
23 with California wage and hour requirements. The texts of any written terms of contract are
24 contained within DEFENDANTS’ records.

25 10. The obligations and responsibilities of PLAINTIFF as an Event Suites
26 Server/Bartender included, but were not limited to: understanding menus, offerings and pricing
27 of food and beverages offered by DEFENDANTS; setting up and preparing food and beverage
28 service in the private Staples Center suites prior to events; setting up cash bars within the

1 Staples Center prior to events; ensuring all food and beverages were replenished for customers
2 in private Staples Center suites during events; providing bartending services in private suites
3 and at cash bars within the Staples Center; making sure all alcohol and money from cash sales
4 was accounted for at cash bars within the Staples Center; and, cleaning up and removing all
5 food and beverage items in private Staples Center suites after events concluded.

6 11. On information and belief, PLAINTIFF, and each member of the class he seeks
7 to represent, were regularly subjected to, or had personal knowledge of, the violations
8 described in this Complaint and/or the allegations contained herein made on information and
9 belief based upon investigation of counsel. Each member of the purported class was working
10 for DEFENDANTS and is therefore a witness to the allegations of this Complaint.

11 12. DEFENDANTS employ numerous employees in the State of California that are
12 paid on an hourly basis. Any differences in job activities between the employees were and are
13 legally insignificant to the issues presented by this action.

14 **Defendants**

15 13. On information and belief, Defendants LEVY, LEVY GP, and COMPASS own,
16 control, and/or operate restaurant and hospitality companies which specialize in providing food
17 and beverages to major entertainment and sports venues across North America. Currently,
18 DEFENDANTS manage food and beverage service operations inside hundreds of convention
19 facilities, concert and performance venues, and arenas, including the Staples Center located at
20 1111 South Figueroa Street, Los Angeles, California 90015.

21 14. PLAINTIFF is ignorant of the true names or capacities of the defendants sued
22 herein under the fictitious name DOES 1 through 30, inclusive.

23 15. PLAINTIFF is informed and believes and thereon alleges that, at all times
24 herein mentioned, there existed a unity of interest and ownership between the DEFENDANTS
25 that the individuality and separateness of DEFENDANTS ceased to exist. The business affairs
26 of DEFENDANTS, at all relevant times, were and are so mixed and intermingled that the same
27 cannot reasonably be segregated. The recognition of the separate existence of DEFENDANTS
28 would not promote justice in that it would permit each defendant to insulate itself from liability

1 from PLAINTIFF. Accordingly, DEFENDANTS constitute the alter egos of one another and
2 the fiction of their separate existence must be disregarded.

3 16. Upon information and belief, DEFENDANTS exercised, and continue to
4 exercise, control over the wages, hours, and/or food service working conditions at the Staples
5 Center in various ways, including but not limited to: controlling the day-to-day food service
6 operations and significant business functions at the arena; hiring, firing, and modifying the
7 employment conditions of the employees at the arena; controlling matters concerning
8 compensation and promotion of employees; and, directing, supervising and arranging
9 employee's work activities, work schedules, and employment conditions.

10 17. PLAINTIFF is informed and believes and thereon alleges that at all relevant
11 times, each defendant, directly or indirectly, or through agents or other persons, employed
12 PLAINTIFF and other members of the class, and exercised control over their labor contracts,
13 policies and procedures regarding wages, hours, and working conditions, and caused or
14 permitted the violations against all of the aggrieved employees at issue in this Complaint.

15 18. PLAINTIFF is informed and believes and thereon alleges that DEFENDANTS
16 were joint employers of PLAINTIFF and other members of the class and are therefore
17 independently and jointly and severally liable for violations as alleged herein. At all times
18 relevant to this action, PLAINTIFF and the other members of the class have, directly or
19 indirectly, performed services for each of the DEFENDANTS, and to the mutual benefit of all
20 DEFENDANTS.

21 19. PLAINTIFF is informed and believes and thereon alleges that based on their co-
22 employer relationship, DEFENDANTS knew or should have known of the wrongful conduct of
23 each defendant, but failed to intervene and/or correct such conduct.

24 20. PLAINTIFF is informed and believes and thereon alleges that at all times herein
25 mentioned each defendant was the agent or employee of each of the remaining defendants, and
26 in doing the things alleged herein was acting within the course and scope of this agency or
27 employment.

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21. DEFENDANTS were “employers” of the class members, as defined in the IWC Wage Orders, and caused or permitted the violations at issue in this Complaint.

22. DEFENDANTS’ violations as described in this Complaint were knowing, intentional, deliberate, and willful.

23. Each defendant acted in all respects pertinent to this action as the agent of the other defendant, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the other defendant.

GENERAL BACKGROUND

24. This is a class action pursuant to California Code of Civil Procedure section 382 to vindicate rights afforded to by the California Labor Code, applicable IWC Wage Order, California Business and Professions Code section 17200 *et seq.*, California Code of Civil Procedure, and California decisional law. This action is brought on behalf of PLAINTIFF and of employees employed by, or formerly employed by, DEFENDANTS within the State of California during the applicable liability period.

25. The action seeks recovery for wages and compensation due and owing to PLAINTIFF and under California laws for the maximum period allowed to the present, as set forth below. For at least four years prior to the filing of this action and through to the present, DEFENDANTS systematically maintained and enforced against its employees, unlawful practices and policies, in violation of California wage and hour laws, including:

(a) failing to pay class members, including PLAINTIFF, one and one-half times their regular rate of pay for all hours worked in excess of eight in one workday or forty in one workweek, and two times their regular rate of pay for all hours worked in excess of twelve in one workday;

(b) failing to authorize and permit class members, including PLAINTIFF, to take paid rest periods of at least ten (10) minutes per four (4) hours worked or major fraction thereof and failing to pay such employees one (1) hour of pay at the employees’ regular rate of compensation for each rest period that is not provided, as required by California law;

- 1 (c) failing to provide class members, including PLAINTIFF, with meal periods of at
2 least thirty (30) minutes before the end of five (5) hours of work and failing to pay such
3 employees one (1) hour of pay at the employees' regular rate of compensation for each
4 meal period that is not provided, as required by California law;
- 5 (d) failing to reimburse class members, including PLAINTIFF, for necessarily
6 incurred business expenses, as required by California law;
- 7 (e) failing to provide class members, including PLAINTIFF, with their vested
8 vacation wages upon separation of employment, as required by California law;
- 9 (f) failing to timely pay class members, including PLAINTIFF, all wages due upon
10 the end of their employment, as required by California law;
- 11 (g) failing to provide class members, including PLAINTIFF, with accurate itemized
12 wage statements, as required by California law;
- 13 (h) failing to pay class members, including PLAINTIFF, statutory penalties
14 pursuant to the California Labor Code; and,
- 15 (i) the final cause of action is brought primarily as a non-class California Labor
16 Code Private Attorneys General Act ("PAGA") claim. PLAINTIFF has a substantive
17 right, pursuant to the California Labor Code, to stand in the shoes of the State of
18 California for purposes of this claim and no class certification is required for it, as the
19 claim is primarily that of the State of California and this claim is primarily an
20 enforcement action. As such, PLAINTIFF wishes to pursue the PAGA claim as a non-
21 class action claim to recover penalties and wages on behalf of the State of California.
22 In the alternative, PLAINTIFF can pursue the PAGA claim as a California Code of
23 Civil Procedure section 382 class action.

24 26. On information and belief, DEFENDANTS were well aware that PLAINTIFF
25 and the class were not provided with the foregoing. DEFENDANTS' violations alleged above,
26 during all relevant times herein, were willful and deliberate.

27 27. Unless this case proceeds as a class action, DEFENDANTS will likely continue
28 their illegal labor law violations with impunity. PLAINTIFF and the class are therefore entitled

1 to class-wide remedy, including monetary damages, and all statutory penalties, plus interest,
2 attorneys' fees and all other costs associated with DEFENDANTS' misconduct.

3 28. The procedural requirements of a PAGA claim, pursuant to California Labor
4 Code section 2699.3, subdivision (a), require first that the aggrieved employee or representative
5 shall give written notice by online filing with the California Labor and Workforce
6 Development Agency ("LWDA") and by certified mail to the employer(s). PLAINTIFF has
7 met this requirement.

8 29. Second, the procedural requirements, pursuant to California Labor Code section
9 2699.3, subdivision (a)(2)(A), provides that:

10 The agency shall notify the employer and the aggrieved
11 employee or representative by certified mail that it does not
12 intend to investigate the alleged violation within 60 calendar days
13 of the notice received pursuant to paragraph (1). Upon receipt of
14 that notice or if no notice is provided within 65 calendar days of
15 the postmark date of the notice given pursuant to paragraph (1),
16 the aggrieved employee may commence a civil action pursuant to
17 Section 2699.

18 30. On February 14, 2020, PLAINTIFF satisfied the procedural requirements of
19 California Labor Code section 2699.3 subdivision (a)(1)(A), by providing written notice of his
20 claims for wage and hour violations and penalties to the LWDA with an online filing and to
21 Defendants LEVY and COMPASS via certified mail. To date, the LWDA has not provided
22 notice as to whether it intends to investigate PLAINTIFF's allegations. As of April 20, 2020,
23 sixty-five (65) calendar days since the postmark date of the notice given have passed. As such,
24 PLAINTIFF has complied with the administrative requirements of PAGA.

25 **CLASS ACTION ALLEGATIONS**

26 31. This action is maintainable as a class action pursuant to California Code of Civil
27 Procedure section 382 as to claims for unpaid overtime wages, wages for meal and rest period
28 violations, vested vacation wages, unpaid business expenses, untimely paid wages, itemized

1 wage statement violations, penalties and attorneys' fees and costs under the California Labor
2 Code and Business and Professions Code. PLAINTIFF brings this action on behalf of himself
3 and all others similarly situated because there is a well-defined community of interest in the
4 litigation and the proposed class is easily ascertainable.

5 32. PLAINTIFF seeks to represent the following class:

6 (a) All current and former employees of DEFENDANT that
7 have been paid on an hourly basis in California within four (4)
8 years of the date of commencement of this action, through the
9 date of final disposition of this action (the "Hourly Class");

10 (b) All former employees who were not paid their vested
11 vacation wages at the time of termination of employment
12 ("Vacation Wages Class"); and,

13 (c) All former employees who were not provided with all
14 earned wages at the time of separation of employment ("Waiting
15 Time Class") (The Hourly Class, Vacation Wages Class, and
16 Waiting Time Class are collectively hereinafter referred to as
17 "the Classes").

18 33. PLAINTIFF also seeks to represent the following subclasses within the Classes:

19 (a) All current and former hourly-paid employees who were
20 not paid one and one-half and/or two times their regular rate of
21 pay for all overtime hours worked ("Overtime Subclass");

22 (b) All current and former hourly-paid employees who
23 worked three and a half (3½) hours or more without being
24 authorized or permitted to take a paid duty-free uninterrupted ten
25 (10) minute rest period for every four hours of work or major
26 fraction thereof and denied compensation for rest period
27 violations under California Labor Code sections 226.7 and
28 various IWC Wage Orders ("Rest Period Subclass");

1 (c) All current and former hourly-paid employees who
2 worked five (5) and/or ten (10) hours in a workday without being
3 provided with an uninterrupted thirty (30) minute meal period
4 and denied compensation for meal break violations under
5 California Labor Code sections 226.7, 512 and various IWC
6 Wage Orders (“Meal Period Subclass”);

7 (d) All current and former hourly-paid employees who were
8 required to incur business expenses and were not reimbursed for
9 the cost of the business expense (“Business Expense
10 Reimbursement Subclass”);

11 (e) All former hourly-paid employees who were not provided
12 with their vested vacation wages at the time of termination of
13 employment (“Vacation Wages Subclass”);

14 (f) All former hourly-paid employees who were not provided
15 with all earned wages at the time of separation of employment
16 (“Waiting Time Subclass”); and,

17 (g) All current and former hourly-paid employees who were
18 not provided with accurate itemized wage statements (“Itemized
19 Wage Statement Subclass”).

20 34. Excluded from the Classes are all defendants, their officers, subsidiaries,
21 affiliates, and any entity in which DEFENDANTS have a controlling interest.

22 35. PLAINTIFF reserves the right under California Rules of Court, rule 3.765(b), to
23 amend or modify the class descriptions with greater specificity or further division into
24 subclasses or limitation to particular issues.

25 **Numerosity of Class**

26 36. The employees in the Classes defined above are so numerous that joinder of all
27 members is impracticable. Although the precise number of such employees is unknown,
28 PLAINTIFF believes that hundreds of employees would fall within the putative class. The

1 exact number is easily ascertained from DEFENDANTS' own employment records, which are
2 presently within the control of DEFENDANTS. Furthermore, upon application by
3 PLAINTIFF's counsel for certification of the Classes, the Court may be requested to also
4 incorporate subclasses in the interest of justice and judicial economy.

5 **Existence and Predominance of Common Questions of Fact and Law**

6 37. Common questions of law and fact exist as to the class members that
7 predominate over any questions only affecting them individually and include, but are not
8 limited to, the following:

- 9 (a) Whether DEFENDANTS violated the California Labor Code and IWC Wage
10 Order as a result of the allegations described in this Complaint;
- 11 (b) Whether DEFENDANTS were required to include incentive compensation (e.g.
12 bonuses) when determining the regular rate of pay when calculating overtime
13 compensation due to PLAINTIFF and the Classes;
- 14 (c) Whether DEFENDANTS were required to: (1) average the hourly wage rates in
15 effect during the pay period to determine the correct regular rate of pay for overtime; or
16 (2) utilize the hourly rate of pay which was in effect at the time the overtime was
17 worked when PLAINTIFF and the Classes were subject to various wage rates during
18 the pay period;
- 19 (d) Whether DEFENDANTS were required to authorize and permit PLAINTIFF
20 and the Classes to take an uninterrupted ten minute off-duty rest period for every four
21 hours or major fraction thereof worked or compensate said employees one hour at their
22 regular rate of pay in lieu of rest periods;
- 23 (e) Whether DEFENDANTS were required to provide an uninterrupted thirty
24 minute off-duty meal period to PLAINTIFF and the Classes no later than the end of
25 their fifth hour of work and the end of their tenth hour of work or compensate said
26 employees one hour at their regular rate of pay in lieu of meal periods;
- 27 (f) Whether DEFENDANTS were required to reimburse PLAINTIFF and the
28 Classes for necessary business-related expenses and costs;

1 (g) Whether DEFENDANTS were required to pay PLAINTIFF and the Classes all
2 vested vacation wages upon termination of employment;

3 (h) Whether DEFENDANTS violated the California Labor Code by failing to pay
4 all earned wages due and owing at the time the employment of PLAINTIFF and any
5 member of the Classes ended;

6 (i) Whether DEFENDANTS violated the California Labor Code and IWC Wage
7 Order by failing to provide accurate and itemized wage statements to PLAINTIFF and
8 the Classes;

9 (j) Whether DEFENDANTS violated section 17200 *et seq.* of the California
10 Business and Professions Code by the violations of California law;

11 (k) Whether PLAINTIFF and the Classes are entitled to damages, restitution,
12 wages, statutory penalties, injunctive and declaratory relief, attorneys' fees, interest, and
13 costs, and other relief pursuant to the California Labor Code, IWC Wage Orders, and
14 California Business and Professions Code sections 17200 *et seq.*; and,

15 (l) The nature and extent of class-wide injuries and the measure of damages,
16 restitution and disgorgement for the injuries.

17 38. There are no individualized factual or legal issues for the Court to resolve that
18 would prevent this case from proceeding as a class action.

19 **Typicality**

20 39. The claims of PLAINTIFF are typical of the claims of the Classes he seeks to
21 represent. PLAINTIFF and the Classes sustained injuries and damages arising out of and
22 caused by DEFENDANTS' common course of conduct in violation of California laws.
23 PLAINTIFF and the Classes work, or have worked, for DEFENDANTS at entertainment and
24 sports venues in California. PLAINTIFF and the Classes have the same rights to be paid for all
25 hours worked based upon California wage and hour laws. PLAINTIFF and the Classes have
26 not been credited or compensated for all their work performed for the benefit of
27 DEFENDANTS. PLAINTIFF and the Classes have suffered damages, including unpaid
28 overtime wages, wages for meal and rest period violations, vested vacation wages, unpaid

1 business expenses, untimely paid wages, and itemized wage statement violations from
2 DEFENDANTS' wrongful conduct. In addition, PLAINTIFF and the Classes are entitled to
3 equitable relief, as permitted by law, because DEFENDANTS' violations of state statutes have
4 harmed the Classes and constitute an unfair business practice, especially when compared to
5 those competitors who comply with California wage and hour laws.

6 **Adequacy**

7 40. PLAINTIFF will fairly and adequately represent and protect the interests of the
8 Classes. PLAINTIFF has retained counsel competent and experienced in complex class
9 actions, and labor and employment litigation.

10 **Superiority**

11 41. A class action is superior to other available methods for the fair and efficient
12 adjudication of this litigation. The Classes have been damaged and are entitled to recovery as a
13 result of DEFENDANTS' common and uniform unlawful policies, practices and procedures.
14 Although the relative damages suffered by individual class members are not de minimis, such
15 damages are small compared to the expense and burden of individual prosecution of this
16 litigation. An individual plaintiff may lack the financial resources to vigorously prosecute a
17 lawsuit against a corporate defendant to recover such damages. Even if the individual class
18 members could afford to prosecute their claims separately, such individual prosecutions would
19 constitute a waste of the judicial resources. In addition, class litigation is superior because it
20 will obviate the need for unduly duplicative litigation that might result in inconsistent
21 judgments about DEFENDANTS' practices.

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1 **CAUSES OF ACTION**

2 42. All causes of action described herein are brought on behalf of PLAINTIFF, both
3 individually and on behalf of the Classes, against DEFENDANTS.

4 **FIRST CAUSE OF ACTION**

5 **FAILURE TO PAY OVERTIME WAGES**

6 **(PLAINTIFF, individually and on behalf of the Classes, against DEFENDANTS LEVY,**
7 **LEVY GP, COMPASS and DOES 1 through 30, inclusive.)**

8 43. PLAINTIFF re-alleges and incorporates by reference each and every allegation
9 set forth in all the foregoing paragraphs as if fully set forth herein.

10 44. California Labor Code section 510, subdivision (a), provides, in pertinent part:
11 Eight hours of labor constitutes a day's work. Any work in excess
12 of eight hours in one workday and any work in excess of 40
13 hours in any one workweek and the first eight hours worked on
14 the seventh day of work in any one workweek shall be
15 compensated at the rate of no less than one and one-half times the
16 regular rate of pay for an employee. Any work in excess of 12
17 hours in one day shall be compensated at the rate of no less than
18 twice the regular rate of pay for an employee.

19 45. Pursuant to section 2, subdivision (K), of the applicable IWC Wage Order,
20 "Hours worked" include the time during which an employee is subject to the control of an
21 employer, and includes all the time the employee is suffered or permitted to work, whether or
22 not required to do so.

23 46. Section 3, subdivision (A)(1)(a)-(b), of the applicable IWC Wage Order requires
24 that overtime hours be compensated as follows:

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

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

47. By DEFENDANTS' conduct described in this Complaint, DEFENDANTS violated the provisions of California Labor Code sections 510, 1194, 1198 and the IWC Wage Orders, by employing PLAINTIFF and the Classes in excess of the limits provided by the law without time and one half or double time pay of their regular rates.

48. At all times relevant herein, DEFENDANTS maintained and enforced policies and practices of refusing to properly pay PLAINTIFF and the Classes for all hours worked as DEFENDANTS failed to include all compensation earned, including, but not limited to, bonuses, when determining the regular rate of pay for calculating the overtime rate of pay.

49. DEFENDANTS additionally failed to properly calculate PLAINTIFF and the Classes' overtime wages when they were subject to various hourly wage rates during any one pay period as they did not: (1) average the hourly wage rates in effect during the pay period to determine the correct regular rate of pay for overtime or (2) utilize the hourly rate of pay which was in effect at the time the overtime was worked.

50. WHEREFORE, PLAINTIFF and the Classes are entitled to recover the unpaid overtime wages in an amount to be determined at trial, interest thereon, civil penalties, and reasonable attorneys' fees and costs of suit pursuant to California Labor Code sections 558, 1194 subdivision (a), 1194.2, and 2698 *et seq.*

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1 **SECOND CAUSE OF ACTION**

2 **FAILURE TO PROVIDE REST PERIODS**

3 **(PLAINTIFF, individually and on behalf of the Classes, against DEFENDANTS LEVY,**
4 **LEVY GP, COMPASS and DOES 1 through 30, inclusive.)**

5 51. PLAINTIFF re-alleges and incorporates by reference each and every allegation
6 set forth in all the foregoing paragraphs as if fully set forth herein.

7 52. At all times relevant herein, California Labor Code section 226.7 provided as
8 follows:

9 (a) An employer shall not require any employee to work
10 during a meal or rest period mandated pursuant to an applicable
11 order of the Industrial Welfare Commission.

12 (b) If an employer fails to provide an employee a meal or rest
13 period in accordance with an applicable order of the Industrial
14 Welfare Commission, the employer shall pay the employee one
15 additional hour of pay at the employee's regular rate of
16 compensation for each work day that the meal or rest period is
17 not provided.

18 53. Section 12 of the applicable IWC Wage Order provides as follows:

19 “(A) Every employer shall authorize and permit all employees to
20 take rest periods, which insofar as practicable shall be in the
21 middle of each work period. The authorized rest period time
22 shall be based on the total hours worked daily at the rate of ten
23 (10) minutes net rest time per four (4) hours or major fraction
24 thereof...

25 (B) If an employer fails to provide an employee a rest period in
26 accordance with the applicable provision of this Order, the
27 employer shall pay the employee (1) one hour of pay at the
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employee's regular rate of compensation for each work day that
the rest period is not provided."

54. PLAINTIFF, as well as other members of the Classes, were not provided time to take rest breaks during their work shifts of three and one-half hours (3½) or more due to the substantial amount of time required to setup private suites and bars at the Staples Center, understaffing, and the inability to leave alcohol and money unattended when working the cash bars.

55. DEFENDANTS additionally did not have any policy or procedure for relieving an hourly-paid employee if the employee was working with customers for a period of time that prohibited the employee from taking a rest break. As a result, PLAINTIFF and the Classes were frequently required to continue with their duties and work through their entire shift without any rest breaks.

56. PLAINTIFF and, on information and belief, the Classes he seeks to represent, did not voluntarily or willfully waive rest periods. Any express or implied waivers obtained from PLAINTIFF and/or the Classes were not willfully obtained, were not voluntarily agreed to, were a condition of employment, or were part of an unlawful contract of adhesion. DEFENDANTS did not provide, permit or authorize PLAINTIFF and, on information and belief, the Classes to take paid rest periods in accordance with the law.

57. As a result of DEFENDANTS' failure to comply with rest period regulations set forth in the IWC Wage Orders and California Labor Code, each class member is entitled to be compensated for one hour of additional pay at the regular rate of compensation for each rest period that was not provided pursuant to California Labor Code section 226.7 and the IWC Wage Orders. PLAINTIFF and the Classes are further entitled to restitution in the amount of ten minutes of pay time for each rest period that DEFENDANTS did not authorize or permit.

58. DEFENDANTS are further liable for civil penalties and reasonable attorneys' fees and costs of suit pursuant to California Labor Code sections 558 and 2698, *et seq.*

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1 **THIRD CAUSE OF ACTION**

2 **FAILURE TO PROVIDE MEAL PERIODS**

3 **(PLAINTIFF, individually and on behalf of the Classes, against DEFENDANTS LEVY,**
4 **LEVY GP, COMPASS and DOES 1 through 30, inclusive.)**

5 59. PLAINTIFF re-alleges and incorporates by reference each and every allegation
6 set forth in all the foregoing paragraphs as if fully set forth herein.

7 60. At all times relevant herein, California Labor Code section 512 provided that
8 “[a]n employer shall not employ an employee for a work period of more than five hours per
9 day without providing the employee with a meal period of not less than 30 minutes...”

10 61. Further, California Labor Code section 226.7 provides:

11 (a) An employer shall not require any employee to work
12 during a meal or rest period mandated pursuant to an applicable
13 order of the Industrial Welfare Commission.

14 (b) If an employer fails to provide an employee a meal or rest
15 period in accordance with an applicable order of the Industrial
16 Welfare Commission, the employer shall pay the employee one
17 additional hour of pay at the employee’s regular rate of
18 compensation for each work day that the meal or rest period is
19 not provided.

20 62. Section 11 of the applicable IWC Wage Order provides as follows:

21 (A) No employer shall employ any person for a work period of
22 more than five (5) hours without a meal period of not less than 30
23 minutes...

24 (B) If an employer fails to provide an employee a meal period in
25 accordance with the applicable provisions of this Order, the
26 employer shall pay the employee one (1) hour of pay at the
27 employee’s regular rate of compensation for each workday that
28 the meal period is not provided...

63. PLAINTIFF, as well as other members of the Classes, were not provided time to take an off-duty thirty (30) minute meal break during their work shifts that lasted at least five hours. All standard work shifts for Class members were greater than five (5) hours and class members were regularly not provided with an off-duty meal period due to the substantial amount of time required to setup private suites and bars at the Staples Center, understaffing, and the inability to leave alcohol and money unattended when working the cash bars.

64. PLAINTIFF and, on information and belief, the Classes he seeks to represent, did not voluntarily or willfully waive meal periods. Any express or implied waivers obtained from PLAINTIFF and/or the Classes were not willfully obtained, were not voluntarily agreed to, were a condition of employment, or were part of an unlawful contract of adhesion. DEFENDANTS did not provide PLAINTIFF and, on information and belief, the Classes time to take meal periods in accordance with the law.

65. As a result of DEFENDANTS' failure to comply with the meal period regulations set forth in the IWC Wage Orders and California Labor Code, each class member is entitled to one hour of additional pay at the regular rate of compensation for each uninterrupted off-duty meal period that was not provided pursuant to California Labor Code sections 226.7, 512 and the IWC Wage Orders. PLAINTIFF and the Classes are further entitled to restitution in the amount of thirty minutes of pay time for each meal period that DEFENDANTS did not provide.

66. DEFENDANTS are further liable for civil penalties and reasonable attorneys' fees and costs of suit pursuant to California Labor Code sections 558 and 2698, *et seq.*

FOURTH CAUSE OF ACTION

FAILURE TO REIMBURSE BUSINESS EXPENSES

(PLAINTIFF, individually and on behalf of the Classes, against DEFENDANTS LEVY, LEVY GP, COMPASS and DOES 1 through 30, inclusive.)

67. PLAINTIFF re-alleges and incorporates by reference each and every allegation set forth in all the foregoing paragraphs as if fully set forth herein.

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68. California Labor Code section 2802 requires DEFENDANTS to indemnify their employees for all expenses that the employees necessarily expend as a direct result of discharge of their employment duties or at the direction of the employer.

69. PLAINTIFF and the Classes used their personal cell phones for business purposes. This included, but was not limited to, using their personal cell phones to contact managers in order to: (1) place food and/or alcohol orders for customers; and (2) obtain assistance during their shifts when necessary. The cell phone expenses are, and were, necessarily incurred by PLAINTIFF and the Classes in the discharge of their duties. During the class period, DEFENDANTS had a policy and practice of not reimbursing PLAINTIFF and the Classes for their cell phone expenses.

70. As a proximate result of DEFENDANTS' conduct, PLAINTIFF and the Classes have suffered monetary loss and been deprived of their property in the form of unreimbursed expenses in an amount according to proof.

71. WHEREFORE, PLAINTIFF and the Classes are entitled to recover the costs of the business expenses as well as civil penalties, attorney fees, costs, and interest pursuant to California Labor Code sections 558, 2802, and 2698, *et seq.* for pursuit of this action.

FIFTH CAUSE OF ACTION

FAILURE TO PAY VESTED VACATION WAGES

(PLAINTIFF, individually and on behalf of the Classes, against DEFENDANTS LEVY, LEVY GP, COMPASS and DOES 1 through 30, inclusive.)

72. PLAINTIFF re-alleges and incorporates by reference each and every allegation set forth in all the foregoing paragraphs as if fully set forth herein.

73. Under California law, vacation pay is another form of wages which vests as it is earned. California Labor Code section 227.3 provides that upon termination of employment, all vested vacation must be paid to the employee at the final rate of pay.

74. At all relevant times herein, DEFENDANTS systematically failed to pay PLAINTIFF and certain members of the Classes vested vacation wages at their final rate of pay when their employment ended.

75. In violation of the applicable sections of the California Labor Code, DEFENDANTS, as a matter of corporate policy, practice and procedure, intentionally, knowingly and systematically failed to properly compensate PLAINTIFF and former employees of the Classes for all earned and accumulated vacation upon termination of their employment because DEFENDANTS failed to pay the vacation wages.

76. The above-mentioned uniform and systematic policies, practices and procedures of DEFENDANTS were intended to purposefully avoid the payment of wages required by California law which allows DEFENDANTS to illegally profit and gain an unfair advantage over competitors.

77. WHEREFORE, PLAINTIFF and all the former employees of the Classes are entitled to recover wages for all the vacation time that had vested prior to termination of their employment at their final rate of pay in accordance with California Labor Code section 227.3.

78. WHEREFORE, PLAINTIFF and all the current employees of the Classes are entitled to declaratory and all other equitable relief and to enjoin DEFENDANTS to cease and desist from engaging in the practices described herein.

79. DEFENDANTS are further liable for pre-judgment interest, civil penalties, civil attorneys' fees, and costs of suit pursuant to California Labor Code sections 218.5, 218.6, 558, and 2698 *et seq.*

SIXTH CASE OF ACTION

FAILURE TO TIMELY PAY WAGES

(PLAINTIFF, individually and on behalf of the Classes, against DEFENDANTS LEVY, LEVY GP, COMPASS and DOES 1 through 30, inclusive.)

80. PLAINTIFF re-alleges and incorporates by reference each and every allegation set forth in all the foregoing paragraphs as if fully set forth herein.

81. California Labor Code section 201, subdivision (a), provides, in pertinent part, “[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”

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1 82. California Labor Code section 202, subdivision (a), provides, in pertinent part:

2 If an employee not having a written contract for a definite period
3 quits his or her employment, his or her wages shall become due
4 and payable not later than 72 hours thereafter, unless the
5 employee has given 72 hours previous notice of his or her
6 intention to quit, in which case the employee is entitled to his or
7 her wages at the time of quitting. Notwithstanding any other law,
8 an employee who quits without providing a 72-hour notice shall
9 be entitled to receive payment by mail if he or she so requests
10 and designates a mailing address. The date of the mailing shall
11 constitute the date of payment for purposes of the requirement to
12 provide payment within 72 hours of the notice of quitting.

13 83. DEFENDANTS willfully failed to timely pay PLAINTIFF and the former
14 employees within the Classes all of their wages due for work performed at the time of
15 separation. This failure continued through the time in which PLAINTIFF and many members
16 of the Classes quit or were discharged from their employment with DEFENDANTS. As a
17 result, DEFENDANTS violated California Labor Code section 201 and/or 202.

18 84. California Labor Code section 203 states, in pertinent part:

19 If an employer willfully fails to pay, without abatement or
20 reduction, in accordance with Sections 201, 201.3, 201.5, 201.6,
21 201.9, 202, and 205.5, any wages of an employee who is
22 discharged or who quits, the wages of the employee shall
23 continue as a penalty from the due date thereof at the same rate
24 until paid or until an action therefor is commenced; but the wages
25 shall not continue for more than 30 days... Suit may be filed for
26 these penalties at any time before the expiration of the statute of
27 limitations on any action for the wages from which the penalties
28 arise.

85. As noted above, DEFENDANTS violated California Labor Code sections 201 and/or 202 by failing to pay class members who quit or were involuntarily terminated, all of the wages due pursuant to the timelines provided in those sections. DEFENDANTS willfully failed to pay all wages due as the failure to pay was not inadvertent or accidental.

86. Additionally, PLAINTIFF and the Classes he seeks to represent are entitled to compensation for all forms of wages earned, including, but not limited to, compensation for overtime hours worked; additional wages for meal and rest periods that were not provided; premium pay for the failure to provide meal and rest breaks; reimbursement of business expenses; vested vacation wages; and other claims described in this Complaint. But, to date, PLAINTIFF and former employees within the Classes have not received such compensation, therefore entitling them to penalties under California Labor Code section 203.

87. More than thirty (30) days have passed since PLAINTIFF and many affected members of the Classes have left DEFENDANTS' employ, and on information and belief, have not received payment pursuant to California Labor Code sections 201, 202 and/or 203. As a consequence of DEFENDANTS' willful conduct in not paying all earned wages, PLAINTIFF and the former employees within the Classes are entitled to thirty (30) days of wages as a premium wage or penalty under California Labor Code section 203.

88. WHEREFORE, PLAINTIFF and the Classes he seeks to represent are entitled to California Labor Code section 203 penalties in amounts to be determined at trial and civil penalties, attorneys' fees, costs and interest pursuant to California Labor Code sections 218.5 and 2698 *et seq.*

SEVENTH CAUSE OF ACTION

FAILURE TO MAINTAIN PAYROLL RECORDS AND PROVIDE ACCURATE

ITEMIZED WAGE STATEMENTS

(PLAINTIFF, individually and on behalf of the Classes, against DEFENDANTS LEVY, LEVY GP, COMPASS and DOES 1 through 30, inclusive.)

89. PLAINTIFF re-alleges and incorporates by reference each and every allegation set forth in all the foregoing paragraphs as if fully set forth herein.

1 90. California Labor Code section 226, subdivision (a), states:

2 An employer, semimonthly or at the time of each payment of
3 wages, shall furnish to his or her employee, either as a detachable
4 part of the check, draft, or voucher paying the employee's wages,
5 or separately if wages are paid by personal check or cash, an
6 accurate itemized statement in writing showing (1) gross wages
7 earned, (2) total hours worked by the employee, except as
8 provided in subdivision (j), (3) the number of piece-rate units
9 earned and any applicable piece rate if the employee is paid on a
10 piece-rate basis, (4) all deductions, provided that all deductions
11 made on written orders of the employee may be aggregated and
12 shown as one item, (5) net wages earned, (6) the inclusive dates of
13 the period for which the employee is paid, (7) the name of the
14 employee and only the last four digits of his or her social security
15 number or an employee identification number other than a social
16 security number, (8) the name and address of the legal entity that
17 is the employer...and (9) all applicable hourly rates in effect
18 during the pay period and the corresponding number of hours
19 worked at each hourly rate by the employee...The deductions
20 made from payment of wages shall be recorded in ink or other
21 indelible form, properly dated, showing the month, day, and year,
22 and a copy of the statement and the record of the deductions shall
23 be kept on file by the employer for at least three years at the place
24 of employment or at a central location within the State of
25 California.

26 91. In addition, section 1174 of the California Labor Code, and section 7 of the IWC
27 Wage Orders, require DEFENDANTS to maintain and preserve, in a centralized location,
28 among other items, records showing the names and addresses of all employees employed and

1 payroll records showing the hours worked daily by and the wages paid to its employees.
2 DEFENDANTS have created a uniform practice of knowingly and intentionally failing to
3 comply with California Labor Code section 1174. The failure of DEFENDANTS, and each of
4 them, to comply with California Labor Code section 1174 is unlawful pursuant to California
5 Labor Code section 1175.

6 92. DEFENDANTS knowingly and intentionally failed to furnish itemized
7 statements that accurately reflected: (1) gross wages earned; (2) net wages earned; (3) total
8 hours worked by the employee; (4) the name and address of Defendants LEVY GP and
9 COMPASS - PLAINTIFF and the class members' employers; and, (5) all applicable hourly
10 rates in effect during the pay period and the corresponding number of hours worked at each
11 hourly rate by the employee as required by California Labor Code section 226, subdivision (a).

12 93. By failing to furnish accurate itemized statements as required by California
13 Labor Code sections 226 and 1174 and the IWC Wage Orders, DEFENDANTS have injured
14 PLAINTIFF and the Classes. DEFENDANTS' failure to provide accurate and complete
15 information could not have promptly and easily been determined from the wage statement
16 alone and thus PLAINTIFF and the Classes have suffered injury pursuant to California Labor
17 Code 226, subdivision (e)(2)(B). DEFENDANTS' misrepresentations and inaccuracies have
18 deprived PLAINTIFF and the Classes of information they are entitled to and made it difficult
19 for the Classes to calculate the unpaid wages due.

20 94. As a result, DEFENDANTS are liable to PLAINTIFF and the Classes for actual
21 damages, civil penalties, attorneys' fees, costs, and interest pursuant to California Labor Code
22 sections 226, subdivision (e)(1), 1174.5, and 2698 *et seq.*

23 **EIGHTH CAUSE OF ACTION**

24 **VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW**

25 **(PLAINTIFF, individually and on behalf of the Classes, against DEFENDANTS LEVY,**
26 **LEVY GP, COMPASS and DOES 1 through 30, inclusive.)**

27 95. PLAINTIFF re-alleges and incorporates by reference each and every allegation
28 set forth in all the foregoing paragraphs as if fully set forth herein.

1 96. DEFENDANTS engaged in unlawful activity prohibited by California Business
2 and Professions Code section 17200 *et seq.* The actions of DEFENDANTS as alleged within
3 this Complaint constitute unlawful and unfair business practices with the meaning of California
4 Business and Professions Code sections 17200 *et seq.*

5 97. As described above, DEFENDANTS have conducted the following unlawful
6 activities:

7 (a) violation of California Labor Code sections 510, 1194, and 1198 by failing to
8 pay all overtime wages owed due to failing to properly calculate the regular rate when
9 paying overtime wages to PLAINTIFF and the Classes;

10 (b) violation of California Labor Code sections 226.7 and 512 by failing to provide
11 PLAINTIFF and the Classes with uninterrupted 30-minute meal periods mandated by
12 the IWC Wage Order 5-2001;

13 (c) violation of California Labor Code sections 226.7 by failing to authorize and
14 permit paid rest periods for PLAINTIFF and the Classes as mandated by the IWC Wage
15 Order 5-2001;

16 (d) violation of California Labor Code section 2802 by failing to reimburse
17 PLAINTIFF and the Classes for necessarily incurred business expenses;

18 (e) violation of California Labor Code section 227.3 by failing to pay PLAINTIFF's
19 and the Classes' vested vacation wages upon termination;

20 (f) violation of California Labor Code sections 201 and 202 by failing to pay all
21 wages earned and unpaid at the time PLAINTIFF and certain members of the Classes
22 were separated from their employment with DEFENDANTS;

23 (g) violation of California Labor Code section 226 by failing to provide
24 PLAINTIFF and the Classes with accurate itemized wage statements.

25 98. DEFENDANTS' activities also constitute unfair practices in violation of
26 California Business and Professions Code section 17200 *et seq.*, because DEFENDANTS'
27 practices violate the above-noted laws, and/or violate an established public policy and/or the
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1 practice is immoral, unethical, oppressive, unscrupulous, and substantially injurious to
2 PLAINTIFF and the Classes.

3 99. As a result of DEFENDANTS' violations of the California Labor Code,
4 PLAINTIFF suffered injury-in-fact and has lost money or property as a result of
5 DEFENDANTS' practices. This injury-in-fact and loss of money or property consists of the
6 lost wages and other restitutionary remedies provided by the California Labor Code as detailed
7 in this Complaint and other resulting harms. A tally of these damages cannot readily be
8 determined as the employment records are held exclusively or nearly exclusively in
9 DEFENDANTS' control. PLAINTIFF is entitled to restitution, declaratory and other equitable
10 relief against such unlawful practices to prevent future damage for which there is no adequate
11 remedy at law, and to avoid a multiplicity of lawsuits. PLAINTIFF is also seeking in the
12 alternative, by this class action, restitutionary disgorgement of such monies into a fluid
13 recovery fund.

14 100. As a result of its unlawful acts, DEFENDANTS have reaped and continue to
15 reap unfair benefits and unlawful profits at the expense of PLAINTIFF and the Classes.
16 DEFENDANTS should be enjoined from this activity and made to disgorge these ill-gotten
17 gains and restore to PLAINTIFF and the Classes the wrongfully withheld wages pursuant to
18 Business and Professions Code section 17203. PLAINTIFF is informed and believes, and
19 thereon alleges, that DEFENDANTS are unjustly enriched through their failure to pay legal
20 wages, and/or other remedies. PLAINTIFF is informed and believes, and thereon alleges, that
21 PLAINTIFF and the Classes are prejudiced by DEFENDANTS' unfair trade practices.

22 101. As a direct and proximate result of the unfair business practices of
23 DEFENDANTS, and each of them, PLAINTIFF, individually and on behalf of all employees
24 similarly situated, is entitled to equitable and injunctive relief, including full restitution and/or
25 disgorgement of all wages which have been unlawfully withheld from PLAINTIFF and the
26 Classes as a result of the business acts and practices described herein and enjoining
27 DEFENDANTS to cease and desist from engaging in the practices described herein for the
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1 maximum time permitted pursuant to Business and Professions Code section 17208, including
2 any tolling.

3 102. The unlawful and unfair conduct alleged herein is continuing, and there is no
4 indication that DEFENDANTS will refrain from such activity in the future. PLAINTIFF
5 believes and alleges that if DEFENDANTS are not enjoined from the conduct set forth in this
6 Complaint, they will continue to violate California labor laws.

7 103. WHEREFORE, PLAINTIFF and the Classes he seeks to represent request relief
8 as described herein and below.

9 **NINTH CAUSE OF ACTION**

10 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT OF 2004**

11 **(PLAINTIFF, individually and on behalf of the Classes, against DEFENDANTS LEVY,**
12 **COMPASS and DOES 1 through 30, inclusive.)**

13 104. PLAINTIFF re-alleges and incorporates by reference each and every allegation
14 set forth in all the foregoing paragraphs as if fully set forth herein.

15 105. PLAINTIFF submits this Complaint to include allegations pursuant to California
16 Labor Code section 2698 *et seq.*, the Private Attorneys General Act of 2004. As described
17 above, PLAINTIFF has complied with all of the administrative requirements.

18 106. PLAINTIFF is an aggrieved employee as defined in California Labor Code
19 section 2699, subdivision (c). PLAINTIFF brings this case on behalf of himself and other
20 current or former aggrieved employees affected by the labor law violations alleged in this
21 Complaint.

22 107. California Labor Code section 2699, subdivision (f), provides, in pertinent part:

23 For all provisions of this code except those for which a civil
24 penalty is specifically provided, there is established a civil
25 penalty for a violation of these provisions, as follows: . . . (2) If,
26 at the time of the alleged violation, the person employs one or
27 more employees, the civil penalty is one hundred dollars (\$100)
28 for each aggrieved employee per pay period for the initial

violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

108. PLAINTIFF also seeks civil penalties as provided under applicable California Labor Code sections for violations of the California Labor Code alleged herein pursuant to California Labor Code section 2699, subdivision (a). To the extent that any violation alleged herein does not carry a penalty, PLAINTIFF seeks civil penalties pursuant to California Labor Code section 2699, subdivision (f). PLAINTIFF is also entitled to an award of attorneys' fees and costs as set forth below.

109. PLAINTIFF's PAGA claim does not require class certification because these claims are made by PLAINTIFF on the behalf primarily of the State of California in this action. Indeed, seventy-five percent (75%) of the net penalties obtained through PAGA accrue to the State of California. Both the language of PAGA and the express intent of the Legislature indicate that an aggrieved employee may bring an action on behalf of other employees without complying with the requirements of a class action. California Labor Code section 2699 specifically states that an aggrieved employee may bring an action on behalf of other employees, "[n]otwithstanding any other provision of law..." The wording of the PAGA, which authorizes an aggrieved employee to bring an action "on behalf of himself or herself and other current or former employees... [,]" is similar to the former wording of Business and Professions Code section 17204, which authorized a person to bring an action "acting for the interests of itself, its members or the general public." The Legislature has made clear that an action under the PAGA is in the nature of an enforcement action, with the aggrieved employee acting as a Private Attorney General to collect penalties from employers who violate labor laws. Such an action is fundamentally a law enforcement action designed to protect the public and penalize defendants for past illegal conduct. Restitution is not the primary object of a PAGA action. An action under the PAGA is not for the purpose of recovering damages, but only for the recovery of a civil penalty. Further, PAGA recoveries do not preclude an employee from pursuing any other claim he/she may have available under the law, including those for any unpaid wages.

110. As such, PLAINTIFF individually holds a substantive right to bring PAGA claims by standing in the shoes of, and on behalf of, the State of California to enforce California labor laws.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF, on behalf of himself and the Classes he seeks to represent in this Complaint, requests the following relief:

1. That the Court determine this action be maintained as a class action under California Code of Civil Procedure section 382 with the named PLAINTIFF appointed as class representative;

2. For the attorneys appearing on the above-caption to be named class counsel;

3. For a declaratory judgment that DEFENDANTS have violated the overtime provisions of California Labor Code sections 510, 1194, and 1198 as to the PLAINTIFF and the Classes by failing to pay overtime wages using the correct regular rate of pay;

4. For a declaratory judgment that DEFENDANTS have violated California Labor Code sections 226.7, 512, and IWC Wage Orders by failing to provide, authorize and permit PLAINTIFF and the Classes to take full and uninterrupted off-duty meal and rest periods, and by maintaining a system-wide policy or practice of failing to pay meal and rest period premiums when required;

5. For a declaratory judgment that DEFENDANTS have violated California Labor Code section 2802 by failing to reimburse PLAINTIFF and the Classes for necessarily incurred business expenses;

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1 6. For a declaratory judgment that DEFENDANTS have
2 violated California Labor Code section 227.3 by failing to pay
3 PLAINTIFF and the Classes for all vested vacation wages at their
4 final rate of pay when their employment ended.

5 7. For a declaratory judgment that DEFENDANTS have
6 violated California Labor Code sections 201 through 202 for their
7 willful failure to pay all compensation owed at the time of
8 separation of employment of PLAINTIFF and the Classes;

9 8. For a declaratory judgment that DEFENDANTS have
10 violated the recordkeeping provisions of California Labor Code
11 sections 226, 1174 and section 7 of the IWC Wage Orders as to
12 PLAINTIFF and the Classes;

13 9. For a declaratory judgment that DEFENDANTS have
14 violated California Labor Code section 226 by failing to furnish
15 PLAINTIFF and the Classes with itemized statements accurately
16 showing the applicable hourly rates in effect, total hours worked,
17 gross wages, net wages, and the name and address of Defendants
18 LEVY GP and COMPASS;

19 10. For a declaratory judgment that DEFENDANTS'
20 violations have been willful and that the Court award to
21 PLAINTIFF and the Classes damages for the amount of unpaid
22 compensation and damages for failure to furnish accurate
23 itemized wage statements and penalties subject to proof at trial;

24 11. For a declaratory judgment that DEFENDANTS have
25 violated California Business and Professions Code section 17200
26 by failing to pay PLAINTIFF and the Classes all overtime and
27 vested vacation wages, by failing to afford full and uninterrupted
28 meal and rest periods, by maintaining a system-wide policy or

1 practice of failing to pay meal and rest period premiums when
2 required failing to pay all compensation due at the time of
3 separation of employment, by failing to reimburse business
4 expenses, by failing to timely pay wages, and by failing to
5 provide accurate itemized wage statements;

6 12. That DEFENDANTS be ordered to pay restitution to
7 PLAINTIFF and the Classes due to DEFENDANTS' unlawful,
8 unfair and/or fraudulent activities pursuant to California Business
9 and Professions Code sections 17200-17205;

10 13. That DEFENDANTS further be enjoined to cease and
11 desist from all unlawful, unfair or fraudulent activities in
12 violation of California Labor Code section 227.3 and California
13 Business and Professions Code section 17200, pursuant to section
14 17203;

15 14. That PLAINTIFF and the Classes be awarded reasonable
16 attorneys' fees and costs pursuant to California Labor Code
17 sections 218.5, 226, 1194, and 2802 and/or other applicable law;

18 15. For penalties pursuant to California Labor Code section
19 558;

20 16. For penalties pursuant to California Labor Code section
21 2698 *et seq.*;

22 17. For premium pay, wages, liquidated damages, and
23 penalties;

24 18. That the Court award both prejudgment and post-
25 judgment interest;

26 19. For costs of suit herein incurred;

27 20. For all other relief provided by the California Labor Code
28 and California Business and Professions Code; and,

1 21. That the Court award such other and further relief as the
2 Court may deem appropriate.

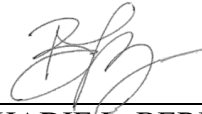
3 **DEMAND FOR JURY TRIAL**

4 PLAINTIFF hereby demands trial of his and the Classes' claims by jury to the extent
5 authorized by law.

6
7 DATE: April 21, 2020

BERENJI LAW FIRM, APC

8
9 By:



10 SHADIE L. BERENJI
11 BRITTANEE A. MARKSBURY
12 Attorneys for Plaintiff MITCHELL BERBERA,
13 individually and on behalf of all other persons
14 similarly situated.
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PROOF OF SERVICE

I, BRITTANEE A. MARKSBURY, am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 8383 Wilshire Blvd., Suite 708, Los Angeles, California, 90211.

On the date set forth below, I served the foregoing documents, entitled: **FIRST AMENDED CLASS ACTION COMPLAINT FOR DAMAGES** on the following interested parties:

Lonnie D. Giamela, Esq.
Justin P. Hall, Esq.
FISHER & PHILLIPS LLP
444 S. Flower Street, Ste. 1500
Los Angeles, CA 90071

Attorneys for Defendants
LEVY PREMIUM FOODSERVICE
LIMITED PARTNERSHIP, LEVY GP
CORPORATION, and COMPASS
GROUP USA, INC.

E-mail: LGiamela@fisherphillips.com
E-mail: JHall@fisherphillips.com

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

☐ **[by FAX]** I caused the aforementioned document(s) to be telefaxed to the aforementioned facsimile number(s). The facsimile machine I used complied with California Rules of Court, Rule 2003(3) and no error was reported by the machine. Pursuant to California Rules of Court, Rule 2005(i), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this declaration.

☒ **[by ELECTRONIC SERVICE]** Based on the "Administrative Order of the Presiding Judge Re COVID-19 Pandemic", dated April 14, 2020, I electronically served the above-listed document(s) by e-mailing the document(s) to the e-mail addresses listed above.

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

Executed on April 21, 2020, at Lakewood, California.

BRITTANEE A. MARKSBURY

Print Name

By:



Signature