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By /s/ Gerardo B. Tolentino

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Attorneys for Plaintiff, RAJDEEP SANDHU, individually
and on behalf of other individuals similarly situated

**SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF SAN MATEO**

RAJDEEP SANDHU individually and on behalf
of other individuals similarly situated,

Plaintiff,

v.

SWISSPORT USA, INC., a Delaware corporation
and DOES 1-100 inclusive,

Defendant.

CASE NO. 20-CIV-02273

CLASS ACTION COMPLAINT FOR:

- 1. Failure to Pay all Wages in Violation of California *Labor Code* §§ 204, 1194, 1194.2, 1197, 1197.1;**
- 2. Meal Break Violations, California *Labor Code* §§ 200, 226.7, 512;**
- 3. Rest Breaks Violations, California *Labor Code* §§ 200, 226.7, 512;**
- 4. Failure to Furnish an Accurate, Itemized Wage Statement upon Payment of Wages in Violation of California *Labor Code* § 226;**
- 5. Violations of California *Business & Professions Code* §§ 17200, et seq.**

DEMAND FOR JURY TRIAL

1 Plaintiff RAJDEEP SANDHU, (hereinafter referred to as "Plaintiff"), hereby submits his
2 Class Action Complaint ("Complaint") against Defendant SWISSPORT USA, INC., a Delaware
3 corporation; and DOES 1-100 (hereinafter referred to as "Defendant") on behalf of himself and the
4 class of all other similarly situated current and former employees of Defendant. Plaintiff brings this
5 action upon information and belief, except as to his own actions, the investigation of his counsel,
6 and the facts that are a matter of public record, as follows:

7 **INTRODUCTORY FACTUAL ALLEGATIONS**

8 1. This is a class action challenging systemic illegal employment practices resulting in
9 violations of the California *Labor Code* and California *Business and Professions Code* against
10 employees of Defendant.

11 2. Plaintiff seeks relief on behalf of himself and the members of the Plaintiff Class as a
12 result of employment policies, practices and procedures more specifically described below, which
13 violate the California *Labor Code*, and the orders and standards promulgated by the California
14 Department of Industrial Relations, Industrial Welfare Commission, and Division of Labor
15 Standards. Said employment policies, practices and procedures are generally described as follows:

- 16 a. Failure to pay Plaintiff and the members of the Plaintiff Class wages for all hours
17 worked pursuant to California *Labor Code* §1194;
18 b. Failure to provide meal breaks pursuant to California *Labor Code*;
19 c. Failure to provide rest breaks pursuant to California *Labor Code*; and,
20 d. Failure to pay Plaintiff and members of Plaintiff Class with appropriate wage
21 statements.

22 3. Plaintiff is informed and believes, and based thereon alleges, that among other things
23 Defendant has engaged in a system of willful violations of the California *Labor Code* and California
24 *Business and Professions Code*, and applicable IWC wage orders by creating and maintaining
25 policies, practices and customs that knowingly deny employees the above stated rights and benefits.

26 4. The policies, practices and customs of Defendant described above and below have
27 resulted in unjust enrichment of Defendant and an unfair business advantage over businesses that
28

1 routinely adhere to the structures of the California *Labor Code*, and California *Business and*
2 *Professions Code*.

3 5. This matter is brought as a class action pursuant to California *Code of Civil*
4 *Procedure* §382, on behalf of Plaintiff and the Plaintiff Class, which is defined more specifically
5 below, but which is comprised, generally, of all former and current employees of SWISSPORT
6 USA, INC., a Delaware corporation, who hold or held the job positions which Defendant classified
7 as “non-exempt” at any of Defendant’s facilities in California and throughout the United States.

8 6. This Complaint alleges systematic violations of the California *Labor Code*
9 (hereinafter, “*Labor Code*,”) and the California *Business & Professions Code* and is brought by
10 Plaintiff on his own behalf and on behalf of the members of the Plaintiff Class.

11 7. The California Plaintiff “Class Period” is defined as the period from four years prior
12 to the filing of this action through and including the date judgment is rendered in this matter.
13 Plaintiff herein reserves the right to amend this Complaint to reflect a different Class Period as
14 discovery in this matter proceeds.

15 8. The actions of Defendant are in violation of the California *Labor Code* as well as the
16 wage orders of the Industrial Wage Commission of the State of California and, as a result, are
17 unlawful and unfair acts, thus constituting a violation of California *Business & Professions Code* §
18 17200, *et seq.* (Unfair Practices Act).

19 9. The policies, practices and customs of Defendant described above and herein have
20 resulted in unjust enrichment of Defendant and an unfair business advantage over businesses that
21 routinely adhere to the requirements of the California *Labor Code* and of the *Business & Professions*
22 *Code*.

23 **JURISDICTION AND VENUE**

24 10. On information and belief, Defendant are either a citizen of California, have
25 sufficient minimum contacts in California, or otherwise intentionally avail themselves of the
26 California market so as to render the exercise of jurisdiction over them by the California courts
27 consistent with traditional notions of fair play and substantial justice. There is no basis for federal
28 diversity jurisdiction in this action given that the State of California, as the real party in interest in

1 this action, is not a “citizen” for purposes of satisfying diversity jurisdiction. *Urbino v. Orkin Servs.*
2 *of Cal.*, 726 F.3d 1118, 1123 (9th Cir. Cal. 2013). *Urbino* also holds that civil penalties cannot be
3 aggregated to satisfy the amount in controversy requirement for federal diversity jurisdiction in this
4 action, and that diversity jurisdiction cannot be established when Plaintiff’s share of the civil
5 penalties attributable to violations personally suffered are less than \$75,000. *Id.* at 1122.

6 11. Venue is proper in San Mateo County because the acts which gave rise to this
7 litigation occurred in this county and Defendant does business in San Mateo County.

8 THE PARTIES

9 12. Plaintiff RAJDEEP SANDHU (“Plaintiff”) is a resident of San Mateo County, in the
10 State of California. Plaintiff was employed by Defendant from approximately September 2018
11 through the present. Plaintiff is employed as a “Passenger Service Agent”.

12 13. Defendant SWISSPORT USA, INC., is a Delaware corporation that conducts
13 business in California.

14 14. Plaintiff does not know the true names or capacities, whether individual, partner or
15 corporate, of the Defendants sued herein as DOES 1 through 100, inclusive, and for that reason, said
16 Defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this
17 Complaint when the true names and capacities are known. Plaintiff is informed and believes, and
18 based thereon alleges, that each of said fictitious Defendants were responsible in some way for the
19 matters alleged herein and proximately caused Plaintiff and members of the general public and class
20 to be subject to the illegal employment practices, wrongs and injuries complained of herein.

21 15. At all times herein mentioned, Defendants participated in the wrongdoing of the acts
22 hereinafter alleged to have been done by the named Defendants; and furthermore, the Defendants,
23 and each of them, were the agents, servants and employees of each of the other Defendants, as well
24 as the agents of all Defendants, and at all times herein mentioned, were acting within the course and
25 scope of said agency and employment.

26 16. Plaintiff is informed and believes, and based thereon alleges, that at all times material
27 hereto, each of the Defendants named herein were the agent, employee, alter ego and/or joint
28 venture of, or working in concert with each of the other co-Defendants and were acting within the

1 course and scope of such agency, employment, joint venture, or concerted activity. To the extent
2 said acts, conduct, and omissions were perpetrated by certain Defendants, each of the remaining
3 Defendants confirmed and ratified said acts, conduct, and omissions of the acting Defendants.

4 17. At all times herein mentioned, Defendants, and each of them, were members of, and
5 engaged in, a joint venture, partnership and common enterprise, and acting within the course and
6 scope of, and in pursuance of, said joint venture, partnership and common enterprise.

7 18. At all times herein mentioned, the acts and omissions of various Defendants, and
8 each of them, concurred and contributed to the various acts and omissions of each and all of the
9 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
10 herein mentioned, Defendants, and each of them, ratified each and every act or omission complained
11 of herein. At all times herein mentioned, the Defendants, and each of them, aided and abetted the
12 acts and omissions of each and all of the other Defendants in proximately causing the damages as
13 herein alleged.

14 19. The members of the Plaintiff Class, including the representative Plaintiff named
15 herein, have been employed during the Class Period in California. The practices and policies which
16 are complained of by way of this Complaint are enforced throughout the State of California and the
17 United States.

18 **FACTUAL ALLEGATIONS**

19 20. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

20 21. Plaintiff and all other members of the Plaintiff Class were and are classified by
21 Defendant as non-exempt employees, pursuant to the provisions of the California *Labor Code*, and
22 the orders and standards promulgated by the California Department of Industrial Relations,
23 Industrial Welfare Commission, and Division of Labor Standards. As non-exempt employees,
24 Plaintiff and all other members of the Plaintiff Class are entitled to certain benefits. In addition, said
25 statutory provisions, wage orders, regulations and standards obligate the employer to maintain
26 accurate records of the hours worked by employees.

27 22. Plaintiff and the members of the Plaintiff Class seek compensation from Defendant
28 for the relevant time period because Defendant:

- a. Failed to pay wages for all hours worked by Plaintiff and the members of the Plaintiff Class;
- b. Failed to provide mandated meal breaks pursuant to California law;
- c. Failed to provide mandated rest breaks pursuant to California law; and,
- d. Failed to provide accurate, itemized wage statements

23. Defendant has engaged in, and continues to engage in, unfair business practices in California by practicing, employing and utilizing the employment practices and policies outlined above.

24. Defendant's utilization of such unfair business practices deprives Plaintiff and Plaintiff Class members of the general minimum working standards and entitlements due to them under California law and the Industrial Welfare Commission wage orders as described herein.

25. As a direct result of the wage and hour violations herein alleged, Plaintiff and members of the Plaintiff Class have suffered, and continue to suffer substantial losses related to the use and enjoyment of wages, lost interest on such wages, and expenses and attorneys' fees in seeking to compel Defendant to fully perform its obligations under state law, all to Plaintiff's respective damage in amounts according to proof at the time of trial.

Defendant's Failure to Pay All Wages

26. Defendant did not compensate their hourly non-exempt employees for all the minutes that they worked as described above, including but not limited to the time that the employees were subject to the control and direction of Defendant; and/or the time that the employees were suffered or permitted to work.

Defendant's Failure to Pay for Time Spent "Off the Clock"

27. Defendant did not compensate their hourly non-exempt employees for all the minutes that they worked as described above, including but not limited to the time that the employees were subject to the control and direction of Defendant; and/or the time that the employees were suffered or permitted to work.

28. Plaintiff alleges that he would arrive up to one (1) to one hour prior to the start of his shift. Upon arriving in the parking lot, it took him approximately fifteen (15) minutes to reach the

1 bus stop. Afterwards, Plaintiff had to walk ten (10) to fifteen (15) minutes from the terminal to the
2 office. Plaintiff was not compensated for this waiting time.

3 29. Plaintiff alleges other non-exempt employees experienced the same waiting times.

4 30. Plaintiff also alleges that he would have two shifts scheduled for four hours each but
5 would sometimes work during the hour break between these shifts. He alleges that his manager was
6 aware of this and he would work in the office with managerial staff and other employees.

7 31. In addition, Plaintiff alleges that when scheduled shifts would go over the four hour
8 periods, they were not always compensated for the additional time worked.

9 32. Defendant routinely failed to compensate Plaintiff and other non-exempt employees
10 for this work performed "off-the clock."

11 ***Defendant's Failure to Provide Mandated Meal Breaks***

12 33. Plaintiff contends that when he and members of the Plaintiff Class worked shifts over
13 five (5) hours or more in duration, Defendant routinely failed to provide timely meal breaks in
14 compliance with State law. Such violations included a failure to provide meal periods before the
15 completion of the employee's fifth hour of work.

16 34. Additionally, Plaintiff alleges that he would sometimes work off the clock for the
17 benefit of Defendant throughout his meal periods.

18 35. Plaintiff alleges that throughout the Class Period, Defendant regularly failed to pay
19 Plaintiff and the members of the plaintiff class one hour of pay at their regular rate of compensation
20 for each workday that a meal period was not provided.

21 ***Defendant's Failure to Provide Mandated Rest Breaks***

22 36. At all times, relevant hereto, California *Labor Code* § 226.7 and the applicable IWC
23 Wage Order, section 12, required employers to authorize, permit, and provide a ten (10) minute paid
24 rest for each four (4) hours of work or major fraction thereof, during which employees are relieved
25 of all duty.

26 37. At all times, relevant hereto, California *Labor Code* § 226.7(b) and IWC Wage
27 Order section 12 required employers to pay one hour of additional pay at the regular rate of
28 compensation for each employee and each workday that a proper rest period was not provided.

1 38. Plaintiff is informed and believes, and based thereon alleges, that Defendant failed
2 and continues to fail to provide required rest breaks. Plaintiff alleges that he has never received rest
3 breaks.

4 39. Through his observations and discussions with his fellow employees, Plaintiff came
5 to understand that other employees similarly received no rest breaks.

6 40. Thus, Plaintiff and other employees receive less than the required ten (10) minutes of
7 rest. Throughout the Class Period, Plaintiff and the members of the Plaintiff Class were routinely
8 denied the rest breaks they were entitled to under California law.

9 41. Defendant failed to pay Plaintiff and the members of the Plaintiff Class one (1) hour
10 of pay at their regular rate of compensation for each workday that a rest period was not permitted.

11 ***Defendant's Failure to Provide Accurate Wage Statements***

12 42. Defendant failed to comply with California *Labor Code* §226(a) because the earnings
13 statements provided by Defendant to Plaintiff and members of the Plaintiff Class do not depict the
14 total number of hours worked, nor do the statements specify the correct gross wages earned by
15 Plaintiff and other members of the Plaintiff Class. Thus, Defendant violated California *Labor Code*
16 §226(a).

17 43. Defendant failed to accurately record the wages due to Plaintiff and members of the
18 Plaintiff Class, specifically including, but not limited to, by failing to record all hours worked and by
19 failing to record premiums earned for missed meal and rest breaks.

20 ***Facts Regarding Willfulness***

21 44. Plaintiff is informed and believes, and based thereon alleges, that Defendant is and
22 was advised by skilled lawyers, other professionals, employees with human resources background
23 and advisors with knowledge of the requirements of California wage and hour laws.

24 45. Plaintiff is informed and believes, and based thereon alleges, that at all relevant
25 times, Defendant had a consistent policy or practice of failing to compensate the Plaintiff Class
26 members, including Plaintiff.

27 46. Plaintiff is informed and believes and based thereon alleges that at all relevant times,
28 Defendant knew or should have known, that the Plaintiff Class members, including Plaintiff, were

1 and are entitled to accurate wages, and to be compensated for missed meal and rest breaks and for
2 time spent under the control of the Defendant.

3 ***Unfair Business Practices***

4 47. Defendant has engaged in, and continues to engage in, unfair business practices in
5 California by practicing, employing and utilizing the employment practices and policies outlined
6 above.

7 48. Defendant's utilization of such unfair business practices constitutes unfair
8 competition and provides an unfair advantage over Defendant's competitors.

9 49. Defendant's utilization of such unfair business practices deprives Plaintiff and
10 Plaintiff Class Members of the general minimum working standards and entitlements due them
11 under California law and the Industrial Welfare Commission wage orders as described herein.

12 50. As a direct result of the wage and hour violations herein alleged, Plaintiff and
13 members of the Plaintiff Class have suffered, and continue to suffer substantial losses related to the
14 use and enjoyment of wages, lost interest on such wages, and expenses and attorneys' fees in
15 seeking to compel Defendant to fully perform its obligations under state law, all to Plaintiff's
16 respective damage in amounts according to proof at the time of trial.

17 ***Plaintiff's Exhaustion of Administrative Remedies***

18 51. Plaintiff is currently complying with the procedures for bringing suit specified in
19 California *Labor Code* § 2699.3.

20 52. By letter dated May 29, 2020, required notice was sent to Labor and Workforce
21 Development Agency ("LWDA") and Defendant of the specific provisions of the California *Labor*
22 *Code* alleged to have been violated, including the facts and theories to support the alleged violations.
23 This Complaint will be amended when more than sixty-five (65) days have passed since the date the
24 notice was mailed to Defendant and the LWDA, if the LWDA chooses not to investigate the
25 allegations herein.

26 **CLASS ACTION ALLEGATIONS**

27 53. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.
28

1 54. Plaintiff brings this action on behalf of himself and all others similarly situated as a class
2 action, pursuant to California *Code of Civil Procedure* §382. The classes which Plaintiff seeks to represent
3 are composed of, and defined as follows:

4 **Plaintiff Class**

5 All persons who have been, or currently are, employed by Defendant and
6 who held, or hold, job positions which Defendant has classified as “non-
7 exempt” employees in the State of California. (The Class Period is defined
8 as the period from four years prior to the filing of this action through and
9 including the date judgment is rendered in this matter). The term “non-
10 exempt employee” refers to those who Defendant has classified as non-
11 exempt from the overtime wage provisions of the California *Labor Code*.
12 (collectively “Plaintiff Class” or “Class Members”)

13 55. The Plaintiff Class is so numerous that the individual joinder of all members is
14 impracticable. While the exact number and identification of the Plaintiff Class is unknown to
15 Plaintiff at this time and can only be ascertained through appropriate discovery directed to
16 Defendant, Plaintiff is informed and believes that the class includes potentially hundreds of
17 members.

18 56. Common questions of law and fact exist as to all Class Members, and predominate
19 over any questions affecting solely individual members of the class. Among the questions of law
20 and fact, that are relevant to the adjudication of class members claims are as follows:

- 21 a. Whether Plaintiff and members of the Plaintiff Class are subject to and entitled
22 to the benefits of California wage and hour statutes;
23 b. Whether Defendant’s policies resulted in a failure to pay all wages;
24 c. Whether Defendant maintained accurate records of the hours worked by
25 members of the Class in violation of California *Labor Code* §1174;
26 d. Whether Defendant unlawfully and/or willfully failed to provide Plaintiff and
27 members of the Plaintiff Class with true and proper wage statements upon
28 payment of wages, in violation of California *Labor Code* §226;

- e. Whether Defendant unlawfully and/or unwillingly failed to provide Plaintiff and members of the Plaintiff Class with meal breaks pursuant to California law;
- f. Whether Defendant unlawfully and/or unwillingly failed to provide Plaintiff and members of the Plaintiff Class with rest breaks pursuant to California law;
- g. Whether Plaintiff and members of the Plaintiff Class sustained damages, and if so, the proper measure of such damages, as well as interest, penalties, costs, attorneys' fees, and equitable relief; and,
- h. Whether Defendant's conduct as alleged herein violates the Unfair Business Practices Act of California, *Bus. & Prof. Code* § 17200, *et seq.*

57. The claims of the named Plaintiff are typical of the claims of the members of the Plaintiff Class. Plaintiff and Class Members sustained losses, injuries and damages arising from Defendant's common policies, practices, procedures, protocols, routines, and rules which were applied to other class members as well as Plaintiff. Plaintiff seeks recovery for the same type of losses, injuries, and damages as were suffered by other members of the proposed class.

58. Plaintiff is an adequate representative of the proposed classes because she is a member of the class, and his interests do not conflict with the interests of the members she seeks to represent. Plaintiff has retained competent counsel, experienced in the prosecution of complex class actions, and together Plaintiff and his counsel intend to prosecute this action vigorously for the benefit of the classes. The interests of the Class Members will fairly and adequately be protected by Plaintiff and his attorneys.

59. A class action is superior to other available methods for the fair and efficient adjudication of this litigation since individual litigation of the claims of all Class Members is impracticable. It would be unduly burdensome to the courts if these matters were to proceed on an individual basis, because this would potentially result in hundreds of individuals, repetitive lawsuits. Further, individual litigation presents the potential for inconsistent or contradictory judgments, and the prospect of a "race to the courthouse," and an inequitable allocation of recovery among those with equally meritorious claims. By contrast, the class action device presents far fewer management

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1 60. difficulties, and provides the benefit of a single adjudication, economics of scale, and
2 comprehensive supervision by a single court.

3 61. The various claims asserted in this action are additionally or alternatively certifiable
4 under the provisions of the California *Code of Civil Procedure* § 382 because:

- 5 a. The prosecution of separate actions by hundreds of individual class members
6 would create a risk of varying adjudications with respect to individual class
7 members, thus establishing incompatible standards of conduct for Defendant; and
8 b. The prosecution of separate actions by individual class members would also
9 create the risk of adjudications with respect to them that, as a practical matter,
10 would be dispositive of the interest of the other class members who are not a
11 party to such adjudications and would substantially impair or impede the ability
12 of such non-party class members to protect their interests.

13 62. Plaintiff hereby incorporates each and every allegation contained above and realleges
14 said allegations as if fully set forth herein.

15 **FIRST CAUSE OF ACTION**

16 **FAILURE TO PAY ALL WAGES**

17 **(By Plaintiff and the Members of the Plaintiff Class Against Defendant)**

18 63. Plaintiff incorporates herein by reference the allegations set forth above.

19 64. At all times relevant herein, which comprise the time period not less than four (4)
20 years preceding the filing of this action, Defendant was required to compensate their hourly
21 employees for all hours worked upon reporting for work at the appointed time stated by the
22 employer, pursuant to the Industrial Welfare Commission Orders and California *Labor Code* §§ 200,
23 226, 1197, and 1198.

24 65. For at least the four (4) years preceding the filing of this action, Defendant failed to
25 compensate employees for all hours worked. Defendant implemented policies that actively
26 prevented employees from being compensated for all time worked by failing to pay non-exempt
27 employees for all waiting time and time spent “off the clock.”

28 ///

1 66. Plaintiff alleges that he would arrive one (1) to one and a half (1 ½) hours prior to the
2 start of his shift. Upon arriving in the parking lot, it took him approximately fifteen (15) minutes to
3 reach the bus stop. Afterwards, Plaintiff had to walk ten (10) to fifteen (15) minutes from the
4 terminal to the office. Plaintiff was not compensated for this waiting time. Plaintiff alleges other
5 non-exempt employees experienced the same waiting times.

6 67. Defendant failed to compensate Plaintiff and other member of the Plaintiff Class for
7 this waiting time.

8 68. Defendant failed to compensate Plaintiff and other members of the Plaintiff Class for
9 this work performed “off-the clock.”

10 69. Defendant’s routine policy of failing to compensate Plaintiff and other Class
11 Members for all earned wages deprived Plaintiff and other Plaintiff Class Members of the
12 compensation they should have received.

13 70. Defendant owes each of their hourly employees for the unpaid time each day.

14 71. Under the above-mentioned wage order and state regulations, Plaintiff and the
15 Plaintiff Class are entitled to recover compensation for all hours worked, but not paid, for the four
16 (4) years preceding the filing of this action, in addition to reasonable attorneys’ fees and costs of suit
17 in accordance with California *Labor Code* § 218.5, and penalties pursuant to California *Labor Code*
18 §203 and 206.

19 72. Defendant’s rate policies are unlawful and in violation of the California *Labor Code*.
20 Further, as a result of Defendant’s unlawful rate policies, Plaintiff and members of the Plaintiff
21 Class have not received proper overtime compensation.

22 73. Defendant has knowingly and willfully refused to perform their obligations to
23 compensate Plaintiff and the Plaintiff Class for all wages earned and all hours worked, in violation
24 of state law. As a direct result, Plaintiff and the Plaintiff Class have suffered, and continue to suffer,
25 substantial losses related to the use and enjoyment of such wages, lost interest on such wages, and
26 expenses and attorneys’ fees in seeking to compel Defendant to fully perform its obligation under
27 state law, in accordance with Plaintiff’s and the Plaintiff Class’ respective damage amounts
28 according to proof at time of trial.

1 74. Defendant committed such actions knowingly and willfully, with the wrongful and
2 deliberate intention of injuring Plaintiff and the Plaintiff Class, from improper motives amounting to
3 malice, and in conscious disregard of Plaintiff's and the Plaintiff Class' rights.

4 75. Plaintiff and the Plaintiff Class are thus entitled to recover nominal, actual,
5 compensatory, punitive, and exemplary damages in amounts according to proof at the time of trial.

6 76. As a proximate result of the above-mentioned violations Plaintiff and the Plaintiff
7 Class have been damaged in an amount according to proof at time of trial.

8 **SECOND CAUSE OF ACTION**

9 **MEAL BREAKS VIOLATIONS OF**

10 **CAL. LABOR CODE SECTIONS 200, 226.7, 512**

11 **(By Plaintiff and the Members of the Plaintiff Class Against Defendant)**

12 77. Plaintiff hereby re-alleges, and incorporates by reference as though set fully forth
13 herein, the allegations contained above.

14 78. For at least the four (4) years preceding the filing of this action, Defendant failed to
15 provide meal breaks as required by law.

16 79. California *Labor Code* § 226.7(a) provides that: "No employer shall require any
17 employee to work during any meal or rest period mandated by an applicable order of the Industrial
18 Welfare Commission."

19 80. California *Labor Code* § 512 provides that: "An employer may not employ an
20 employee for a work period of more than five hours per day without providing the employee with a
21 meal period of not less than 30 minutes, except that if the total work period per day of the employee
22 is no more than six hours, the meal period may be waived by mutual consent of both the employer
23 and employee."

24 81. Additionally, when an employee works for a work period of more than five hours, a
25 meal period must be provided no later than the end of the employee's fifth hour of work (in other
26 words, no later than the start of the employee's sixth hour of work).

27 82. Due to Defendant's policies, Defendant routinely failed to provide meal periods in
28 compliance with California law and failed to pay Plaintiff and the Class members the full statutory

1 penalty for all missed meal periods.

2 83. The applicable Wage Order Section 11(D) states “If an employer fails to provide an
3 employee a meal period in the applicable provisions of this order, the employer shall pay the
4 employee one (1) hour of pay at the employee’s regular rate of compensation each day that the meal
5 period is not provided.”

6 84. Plaintiff alleges that meal breaks were sometimes late and interrupted. Specifically,
7 Plaintiff alleges that he would take meal breaks but continue to work off the clock with his manager
8 present. Thus, the documented meal breaks are incorrect.

9 85. Defendant’s conduct described herein violates the Industrial Welfare Commission
10 Order and California *Labor Code* §§ 226, 226.7, 512, and 1198.

11 86. As a proximate result of the aforementioned violations, Plaintiff and the Class
12 Members have been damaged in an amount according to proof at time of trial and have suffered, and
13 continue to suffer, substantial losses related to the use and enjoyment of such monies, lost interest on
14 such monies, and expenses and attorneys’ fees in seeking to compel Defendant to fully perform its
15 obligations under state law. Plaintiff and the Class Members are thus entitled to recover nominal,
16 actual, compensatory and exemplary damages in amount according to proof at time of trial.

17 **THIRD CAUSE OF ACTION**

18 **MISSED REST BREAKS IN VIOLATION OF**

19 **CAL. LABOR CODE SECTIONS 200, 226.7, 512**

20 **(By Plaintiff and the Members of the Plaintiff Class Against Defendant)**

21 87. Plaintiff hereby re-alleges, and incorporates by reference as though set fully forth
22 herein, the allegations contained above.

23 88. For at least the four (4) years preceding the filing of this action, Defendant failed to
24 provide rest breaks as required by law.

25 89. The applicable Wage Order Section 12(A) states “Every employer shall authorize and
26 permit all employees to take rest periods, which insofar as practicable shall be in the middle of each
27 work period. The authorized rest period time shall be based on the total hours worked daily at the
28 rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

90. Plaintiff and the Class Members are entitled to recover additional compensation for all rest periods that were missed, but not paid for, during the four (4) years preceding the filing of this Complaint, plus reasonable attorneys' fees and costs of suit pursuant to California *Labor Code* § 218.5 and penalties pursuant to California *Labor Code* § 226.7.

91. Due to, *inter alia*, systemic understaffing, Defendant failed to provide Plaintiff and Class Members the full ten (10) minutes of rest time prescribed by law. Specifically, Plaintiff alleges that he never received rest breaks.

92. As a proximate result of the aforementioned violations, Plaintiff and the Class Members have been damaged in an amount according to proof at time of trial and have suffered, and continue to suffer, substantial losses related to the use and enjoyment of such monies, lost interest on such monies, and expenses and attorneys' fees in seeking to compel Defendant to fully perform its obligations under state law. Plaintiff and the Class Members are thus entitled to recover nominal, actual, compensatory and exemplary damages in amount according to proof at time of trial.

FOURTH CAUSE OF ACTION

**FAILURE TO FURNISH AN ACCURATE ITEMIZED WAGE STATEMENT IN
VIOLATION OF CAL. LABOR CODE § 226**

(By Plaintiff and the Members of the Plaintiff Class Against Defendant)

93. Plaintiff hereby re-alleges, and incorporates by reference as though set fully forth herein, the allegations contained above.

94. California *Labor Code* §226(a) sets forth reporting requirements for employers when they pay wages, as follows: “[e]very employer shall ... at the time of each payment of wages, furnish his or her employees ... an accurate itemized statement in writing showing (1) gross wages earned; (2) total hours worked by the employee.... (5) net wages earned ... (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.” (Emphasis added.) Section (e) provides: “An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) shall be entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay

period, not exceeding an aggregate penalty of four thousand dollars (\$4000), and shall be entitled to an award of costs and reasonable attorney's fees."

95. Defendant failed to comply with California *Labor Code* §226(a) because Defendant failed to accurately represent the gross wages earned and failed to depict the total hours worked. This is because Defendant had a routine policy of failing to accurately calculate the hours worked by Plaintiff and Class Members, and failed to pay premiums for noncompliant meal and rest breaks.

96. Plaintiff and Class members were damaged by these failures because, among other things, the failures hindered Plaintiff and Class Members from determining the amounts of wages actually owed to them.

97. Plaintiff and Class Members request recovery of California *Labor Code* §226(e) penalties according to proof, as well as interest, attorneys' fees and costs pursuant to California *Labor Code* § 226(e), in a sum as provided by the *Labor Code* and/or other statutes

FIFTH CAUSE OF ACTION

VIOLATIONS OF CALIFORNIA

BUSINESS AND PROFESSIONS CODE § 17200, etc.

(By Plaintiff and the Members of the Plaintiff Class, Against Defendant)

98. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set forth herein.

99. Section 17200 of the California *Business and Professions Code* prohibits any unlawful, unfair or fraudulent business act or practice.

100. Plaintiff brings this cause of action in a representative capacity on behalf of the general public and the persons affected by the unlawful and unfair conduct described herein. Plaintiff and members of the Plaintiff Class have suffered, and continue to suffer, injury in fact and monetary damages because of Defendant's actions.

101. The actions by Defendant as herein alleged amount to conduct which is unlawful and a violation of law. As such, said conduct amounts to unfair business practices in violation of California *Business and Professions Code* § 17200, *et seq.*

1 102. Defendant's conduct as herein alleged has damaged Plaintiff and the members of the
2 Plaintiff Class by denying them wages due and payable, by failing to pay all wages, proper rest and
3 meal breaks. Defendant's actions are thus substantially injurious to Plaintiff and the members of the
4 Plaintiff Class, causing them injury in fact and loss of money.

5 103. Because of such conduct, Defendant has unlawfully and unfairly obtained monies due
6 to the Plaintiff and the members of the Plaintiff Class.

7 104. All members of the Plaintiff Class can be identified by reference to payroll and
8 related records in the possession of the Defendant. The amount of wages due to Plaintiff and
9 members of the Plaintiff Class can be readily determined from Defendant's records. The Class
10 Members are entitled to restitution of monies due and obtained by Defendant during the Class Period
11 as a result of Defendant's unlawful and unfair conduct.

12 105. During the Class Period, Defendant committed, and continue to commit, acts of
13 unfair competition as defined by § 17200, *et seq.*, of the *Business and Professions Code*, by and
14 among other things, engaging in the acts and practices described above.

15 106. Defendant's course of conduct, acts, and practices in violation of the California law
16 as mentioned in each paragraph above constitutes a separate and independent violation of § 17200,
17 *etc.*, of the *Business and Professions Code* in that it is fraudulent, improper and unfair.

18 107. The harm to Plaintiff and the members of the Plaintiff Class of being wrongfully
19 denied lawfully earned and unpaid wages outweighs the utility, if any, of Defendant's policies and
20 practices and therefore, Defendant's actions described herein constitute an unfair business practice
21 or act within the meaning of *Business and Professions Code* § 17200.

22 108. Defendant's conduct described herein threatens an incipient violation of California's
23 wage and hour laws, and/or violates the policy or spirit of such laws, or otherwise significantly
24 threatens or harms competition.

25 109. Defendant's course of conduct described herein further violates California *Business*
26 *and Professions Code* § 17200 in that it is fraudulent, improper, and unfair.

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110. The unlawful, unfair, and fraudulent business practices and acts of Defendant as described herein-above have injured Plaintiff and members of the Plaintiff Class in that they were wrongfully denied the timely and full payment of wages due to them.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and Class Members pray for judgment as follows:

1. For an order certifying the proposed Plaintiff and Plaintiff Class;
2. An order that counsel for Plaintiff be appointed class counsel;
3. Certification of this class action on behalf of the proposed Plaintiff and Plaintiff Class;
4. Designation of Plaintiff as the class representative of the Plaintiff and Plaintiff Class;
5. For restitution of all monies due to Plaintiff and the members of the Plaintiff Class and disgorgement of all profits from the unlawful business practices of Defendant;
6. A declaration that Defendant's practices violate the California *Labor Code* and California *Business & Professions Code*;
7. Prejudgment and post judgment interest on all sums awarded;
8. For compensatory damages;
9. For penalties pursuant to California *Labor Code* §§ 200, 226, 2699 (g) (1);
10. For interest accrued to date;
11. For costs of suit and expenses incurred herein pursuant to California *Labor Code* §§ 226, 1194, and 2699 (g) (1);
12. For reasonable attorneys' fees pursuant to California *Labor Code* §§ 226, and 1194; and,
13. A declaratory judgment that Defendant has knowingly and intentionally violated the following provisions of law:
 - a. California *Labor Code* § 1194 for failing pay all wages;
 - b. California *Labor Code* § 226.7 by failing to provide rest and meal breaks mandated by law;
 - c. California *Labor Code* § 226, by failing to provide the information required with

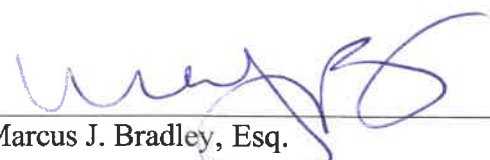
1 each payment of wages; and

2 d. California *Business & Professions Code* §§ 17200-08 by violating the provisions
3 set forth herein above;

4 14. For all such other and further relief that the Court may deem just and proper.

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6 DATED: May 29, 2020

BRADLEY/GROMBACHER, LLP

7
8 By: 

9 Marcus J. Bradley, Esq.
10 Kiley Lynn Grombacher, Esq.
11 Lirit Ariella King, Esq.

12 Attorneys for Plaintiff

13
14 **JURY DEMAND**

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16 Plaintiff demands a trial by jury on all issues so triable as a matter of right.

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18 DATED: May 29, 2020

BRADLEY/GROMBACHER, LLP

19
20 By: 

21 Marcus J. Bradley, Esq.
22 Kiley Lynn Grombacher, Esq.
23 Lirit Ariella King, Esq.

24 Attorneys for Plaintiff