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Clerk of Court
Superior Court of CA,
County of Santa Clara
19CV346361
Reviewed By: S. Uy

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11 Attorneys for Representative Plaintiff
12 and the Plaintiff Class

13 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **IN AND FOR THE COUNTY OF SANTA CLARA**

15 MORGAN MCSHAN, on behalf of himself
16 and all other similarly situated,
17
18 Plaintiff,
19
20 vs.
21 HOTEL VALENCIA CORPORATION and
22 DOES 1-100, inclusive,
23
24 Defendants.

25 **Case No. 19CV346361**
26 **CLASS/COLLECTIVE ACTION**
27 **COMPLAINT FOR DAMAGES,**
28 **INJUNCTIVE RELIEF AND**
RESTITUTION
JURY TRIAL DEMANDED

Representative Plaintiff alleges as follows:

PRELIMINARY STATEMENT

1. This is a class action seeking unpaid compensation for meal and/or rest period violations, interest thereon, reimbursement of business expenses, liquidated damages and other penalties, injunctive and other equitable relief, and reasonable attorneys' fees and costs under, *inter alia*, California Labor Code §§ 200-204, inclusive, 226, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1198, California Business and Professions Code §§ 17200, *et seq.* and California Code of Civil Procedure § 1021.5. Plaintiff Morgan McShan ("Representative Plaintiff" or "Plaintiff") was employed by Hotel Valencia Corporation ("Defendant") in San Jose, California. At all times during the relevant period, Plaintiff was employed as a non-exempt employee—assisting Defendant's patrons and guests. Plaintiff brings this lawsuit on behalf of himself and on

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1 period compensation) and/or all penalties dues (including “waiting time” penalties) to its restaurant
2 workers.

3 6. Representative Plaintiff is informed and believes and, based thereon, alleges that
4 Defendant knew of these facts and legal mandates yet, nonetheless, repeatedly authorized and/or
5 ratified the violation of the laws cited herein.

6 7. Despite Defendant’s knowledge of Class Members’ entitlement to overtime pay
7 and meal and/or rest periods for all applicable work periods, Defendant failed to provide same to
8 the Class Members, in violation of California state statutes, the applicable California Industrial
9 Welfare Commission Wage Order, and Title 8 of the California Code of Regulations. This action
10 is brought to redress and end this prolonged pattern of unlawful conduct once and for all.

11
12 **JURISDICTION AND VENUE**

13 8. This Court has jurisdiction over the Representative Plaintiff’s and Class Members’
14 claims for unpaid wages, expenses and/or penalties under, *inter alia*, the applicable Industrial
15 Welfare Commission Wage Order, Title 8 of the California Code of Regulations, various sections
16 of the California Labor Code, and/or the California Code of Civil Procedure § 1021.5.

17 9. This Court also has jurisdiction over the Representative Plaintiff’s and Class
18 Members’ claims for injunctive relief and restitution of ill-gotten benefits arising from Defendant’s
19 unfair and/or fraudulent business practices under California Business & Professions Code § 17200,
20 *et seq.*

21 10. Venue as to Defendant is proper in this judicial district pursuant to California Code
22 of Civil Procedure § 395(a). Defendant provides hotel accommodations within the County of Santa
23 Clara (where Plaintiff and numerous Class Members worked), transacts business, has agents and
24 is otherwise within this Court’s jurisdiction for purposes of service of process. The unlawful acts
25 alleged herein have and have had a direct effect on Representative Plaintiff and those similarly
26 situated within the State of California and within the County of Santa Clara.

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PLAINTIFF

11. Representative Plaintiff Morgan McShan is a resident of the State of California, is a natural person, and was employed by Defendant Hotel Valencia Corporation and Does 1 through 100 (“Defendant”). Representative Plaintiff was categorized by Defendant as a non-exempt employee during the relevant time period.

DEFENDANT(S)

12. Defendant Hotel Valencia Corporation is engaged in the accommodations and hospitality industry in the State of California, County of Santa Clara.

13. Those Defendants identified as Does 1 through 100, inclusive, are and were, at all relevant times herein-mentioned, officers, directors, partners and/or managing agents of some or each of the remaining Defendants. Representative Plaintiff is informed and believes and, on that basis, alleges that at all relevant times herein mentioned, Defendant Hotel Valencia Corporation and those identified as Does 1 through 100, inclusive, employed, and/or exercised control over the wages, hours and/or working conditions of Plaintiff within the State of California.

14. Representative Plaintiff is unaware of the true names and capacities of those Defendants sued herein as Does 1 through 100, inclusive and, therefore, sues these Defendants by such fictitious names. Representative Plaintiff will seek leave of Court to amend this Complaint when such names are ascertained. Representative Plaintiff is informed and believes and, on that basis, alleges that each of the fictitiously-named Defendants was responsible in some manner for, gave consent to, ratified and/or authorized the conduct herein alleged and that Representative Plaintiff’s and Class Members’ damages, as herein alleged, were proximately caused thereby.

15. Representative Plaintiff is informed and believes and, on that basis, alleges that, at all relevant times herein mentioned, each of the Defendants was the agent and/or employee of each of the remaining Defendants and, in doing the acts herein alleged, was acting within the course and scope of such agency and/or employment.

1 CLASS ACTION ALLEGATIONS

2 16. The Representative Plaintiff brings this action on behalf of himself and as a class
3 action on behalf of all persons similarly situated and proximately damaged by Defendant's conduct
4 including, but not necessarily limited to, the following Plaintiff Class:

5 All persons employed as non-exempt employees by Hotel Valencia
6 Corporation in California at any time on or after April 10, 2015.

7 17. This action has been brought and may properly be maintained as a class action
8 under California Code of Civil Procedure § 382 because there is a well-defined community of
9 interest in the litigation and the proposed Class is easily ascertainable.

10 a. Numerosity: A class action is the only available method for the fair
11 and efficient adjudication of this controversy. The members of the
12 Plaintiff Class are so numerous that joinder of all members is
13 impractical, if not impossible, insofar as Representative Plaintiff is
14 informed and believes and, on that basis, alleges that there are
sufficient Class Members to meet the numerosity requirement. Membership in the Class will be determined upon analysis of employee and payroll, among other, records maintained by Defendants.

15 b. Commonality: The Representative Plaintiff and the Class Members
16 share a community of interests in that there are numerous common
17 questions and issues of fact and law which predominate over any
questions and issues solely affecting individual members, including,
but not necessarily limited to:

- 18 1) Whether Defendant violated California Labor Code §§ 226.7
19 and/or 512 by failing to consistently provide duty-free meal
20 periods and/or rest periods to its non-exempt employees;
- 21 2) Whether Defendant violated California Labor Code § 1194 by
22 failing to pay no less than the legal minimum wage for all hours
23 worked to its non-exempt employees;
- 24 3) Whether Defendant violated California Business and
25 Professions Code § 17200, *et seq.* by engaging in unfair,
26 unlawful, and/or fraudulent business practices;
- 27 4) Whether Defendant violated California Labor Code § 1174 by
28 failing to keep accurate records of employees' hours of work;
- 5) Whether Defendant violated California Labor Code §§ 201-204
by failing to pay wages due and owing at the time that
Plaintiff's and certain Class Members' employment with
Defendant terminated;

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6) Whether Defendant violated California Labor Code § 226 by failing to provide semi-monthly itemized statements to Class Members of total hours worked by each and all applicable hourly rates in effect during the pay period; and

7) Whether Class Members are entitled to “waiting time” penalties, pursuant to California Labor Code § 203.

c. Typicality: The Representative Plaintiff’s claims are typical of the claims of Class Members. The Representative Plaintiff and Class Members sustained damages arising out of and caused by Defendant’s common course of conduct in violation of law, as alleged herein.

d. Adequacy of Representation: The Representative Plaintiff in this class action is an adequate representative of the Plaintiff Class in that the Representative Plaintiff’s claims are typical of those of the Plaintiff Class and the Representative Plaintiff has the same interest in the litigation of this case as the Class Members. The Representative Plaintiff is committed to vigorous prosecution of this case and has retained competent counsel who are experienced in conducting litigation of this nature. The Representative Plaintiff is not subject to any individual defenses unique from those conceivably applicable to Class Members as a whole. The Representative Plaintiff anticipates no management difficulties in this litigation.

e. Superiority of Class Action: Since the damages suffered by individual Class Members, while not inconsequential, may be relatively small, the expense and burden of individual litigation by each member makes or may make it impractical for Class Members to seek redress individually for the wrongful conduct alleged herein. Should separate actions be brought, or be required to be brought, by each individual Class Member, the resulting multiplicity of lawsuits would cause undue hardship and expense for the Court and the litigants. The prosecution of separate actions would also create a risk of inconsistent rulings which might be dispositive of the interests of other Class Members who are not parties to the adjudications and/or may substantially impede their ability to adequately protect their interests.

COMMON FACTUAL ALLEGATIONS

18. As described herein, for years, Defendant has knowingly failed to adequately compensate those employees within the class definition identified above for all wages earned (including premium wages such as compensation for missed meal and/or rest periods) under the California Labor Code and the applicable IWC Wage Order, thereby enjoying a significant competitive edge over other service providers.

1 19. Defendant has declined to pay these wages, even upon a Class Member's
2 termination or resignation from employment, in blatant violation of California Labor Code § 201
3 and/or § 202.

4 20. California Labor Code §§ 201 and 202 require Defendant to pay severed employees
5 all wages due and owed to the employee immediately upon discharge or within 72 hours of
6 resignation of their positions, in most circumstances. California Labor Code § 203 provides that
7 an employer who willfully fails to timely pay such wages must, as a penalty, continue to pay the
8 subject employees' wages until the back wages are paid in full or an action is commenced, and the
9 payment of such penalty shall continue for a period of time up to 30 days.

10 21. Furthermore, despite its knowledge of the Representative Plaintiff's and the Class
11 Members' entitlement to compensation for all hours worked, Defendant violated California Labor
12 Code § 1174(d) by failing to provide or require the use, maintenance, or submission of time records
13 by members of the Plaintiff Class. Defendant also failed to provide the Representative Plaintiff
14 and Class Members with accurate semi-monthly itemized statements of the total number of hours
15 worked by each, and all applicable hourly rates in effect, during the pay period, in violation of
16 California Labor Code § 226. In failing to provide the required documents, Defendant has not only
17 failed to pay its workers the full amount of compensation due, but the company has also, until now,
18 effectively shielded itself from its employees' scrutiny by concealing the magnitude and financial
19 impact of its wrongdoing that such documents might otherwise have led workers to discover.

20 22. Representative Plaintiff and all persons similarly situated are entitled to unpaid
21 compensation, yet, to date, have not received such compensation despite many of the same having
22 been terminated by and/or resigned from Defendant's employ. More than 30 days have passed
23 since certain Class Members have left Defendant's employ.

24 23. As a consequence of Defendant's willful conduct in not paying former employees'
25 compensation for all hours worked in a prompt and timely manner, certain Class Members are
26 entitled to up to 30 days wages as a penalty under California Labor Code § 203, together with
27 attorneys' fees and costs.

28

1 24. As a direct and proximate result of Defendant's unlawful conduct, as set forth
2 herein, Representative Plaintiff and Class Members have sustained damages, as described above,
3 including compensation for loss of earnings for hours worked on behalf of Defendant, in an amount
4 to be established at trial. As a further direct and proximate result of Defendant's unlawful conduct,
5 as set forth herein, certain Class Members are entitled to recover "waiting time" penalties (pursuant
6 to California Labor Code § 203) and penalties for failure to provide semi-monthly statements of
7 hours worked and all applicable hourly rates (pursuant to California Labor Code § 226) in an
8 amount to be established at trial. As a further direct and proximate result of Defendant's unlawful
9 conduct, as set forth herein, Representative Plaintiff and Class Members are also entitled to recover
10 costs and attorneys' fees pursuant to California Code of Civil Procedure § 1021.5, among other
11 authorities.

12 25. Representative Plaintiff seeks injunctive relief prohibiting Defendant from
13 engaging in the complained-of illegal labor acts and practices in the future. Representative Plaintiff
14 also seeks restitution of costs incurred by Representative Plaintiff and Class Members under
15 California's Unfair Competition Law. Unless enjoined, Defendant's unlawful conduct will
16 continue unchecked, while Representative Plaintiff and Class Members bear the financial brunt of
17 Defendant's unlawful conduct. As a further direct and proximate result of Defendant's unlawful
18 conduct, as set forth herein, Representative Plaintiff and the Plaintiff Class are also entitled to
19 recover costs and attorneys' fees, pursuant to statute.

20
21 **FIRST CAUSE OF ACTION**
22 **UNLAWFUL FAILURE TO PAY WAGES**
23 **(California Labor Code §§ 200-204, 510, 558, 1194, and 1198; IWC Wage Order)**

24 26. Representative Plaintiff incorporates in this cause of action each and every
25 allegation of the preceding paragraphs, with the same force and effect as though fully set forth
26 herein.

26 27. During the limitations period, Plaintiff performed work for Defendant. The number
27 of hours will be proven at trial.

28

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1 28. During the limitations period, Defendant refused to compensate Plaintiff for all of
2 the wages earned, in violation of the applicable IWC Wage Order and provisions of the California
3 Labor Code.

4 29. Defendant's conduct, as heretofore detailed, represents underpayment of wages
5 pursuant to California Labor Code § 558 for which Plaintiff seeks damages and/or penalties
6 according to proof.

7 30. As a direct and proximate result of Defendant's unlawful conduct, as set forth
8 herein, Plaintiff has sustained damages, including loss of earnings for hours worked on behalf of
9 Defendant, in an amount to be established at trial. As a further direct and proximate result of
10 Defendant's unlawful conduct, as set forth herein, Plaintiff is entitled to recover penalties in
11 amounts to be established at trial, as well as attorneys' fees and costs, and restitution, pursuant to
12 statute.

13 **SECOND CAUSE OF ACTION**
14 **FAILURE TO PROVIDE MEAL AND REST PERIODS**
15 **(California Labor Code §§ 226.7 and 512)**

16 31. Representative Plaintiff incorporates in this cause of action each and every
17 allegation of the preceding paragraphs, with the same force and effect as though fully set forth
18 herein.

19 32. At all relevant times, Defendant was aware of and were under a duty to comply
20 with California Labor Code § 226.7 and §512.

21 33. California Labor Code § 226.7 provides:
22 (a) No employer shall require any employee to work during any
23 meal or rest period mandated by an applicable order of the Industrial
24 Welfare Commission.
25 (b) If an employer fails to provide an employee a meal period or
26 rest period in accordance with an applicable order of the Industrial
27 Welfare Commission, the employer shall pay the employee one
28 additional hour of pay at the employee's regular rate of
compensation for each work day that the meal or rest period is not
provided.

34. Moreover, California Labor Code § 512(a) provides:
An employer may not employ an employee for a work period of
more than five hours per day without providing the employee with
a meal period of not less than 30 minutes, except that if the total

1 work period per day of the employee is no more than six hours, the
2 meal period may be waived by mutual consent of both the employer
3 and employee. An employer may not employ an employee for a
4 work period of more than 10 hours per day without providing the
5 employee with a second meal period of not less than 30 minutes,
6 except that if the total hours worked is no more than 12 hours, the
7 second meal period may be waived by mutual consent of the
8 employer and the employee only if the first meal period was not
9 waived.

10 35. Sections 11 and 12, respectively, of the applicable IWC Wage Order mandate that
11 employers provide all applicable meal and/or rest periods to non-exempt (including exempt-
12 misclassified) employees.

13 36. Section 11 of the applicable IWC Wage Order provides:

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

17 (B) An employer may not employ an employee for a work period of
18 more than ten (10) hours per day without providing the
19 employee with a second meal period of not less than 30
20 minutes...

21 (C) If an employer fails to provide an employee a meal period in
22 accordance with the applicable provisions of this order, the
23 employer shall pay the employee one (1) hour of pay at the
24 employee's regular rate of compensation for each workday that
25 the meal period is not provided.

26 37. Moreover, Section 12 of the applicable IWC Wage Order provides:

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

(B) If an employer fails to provide an employee a rest period in
accordance with the applicable provisions of this order, the
employer shall pay the employee one (1) hour of pay at the
employee's regular rate of compensation for each workday that the
rest period is not provided.

38. By failing to consistently provide uninterrupted thirty-minute meal periods within
the first five hours of work each day and/or uninterrupted net ten-minute rest periods to
Representative Plaintiff and Class Members, Defendant violated the California Labor Code and
applicable IWC Wage Order provisions.

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1 39. Representative Plaintiff is informed and believes and, on that basis, alleges that
2 Defendant has never paid the one hour of compensation to any Class Member due to its violations
3 of the California Labor Code and applicable IWC Wage Order provisions.

4 40. As a direct and proximate result of Defendant's unlawful conduct, as set forth
5 herein, Representative Plaintiff and Class Members have sustained damages, including lost
6 compensation resulting from missed meal and/or rest periods, in an amount to be established at
7 trial.

8 41. As a further direct and proximate result of Defendant's unlawful conduct, as set
9 forth herein, certain Class Members are entitled to recover other penalties, in amounts to be
10 established at trial, as well as recovery of attorneys' fees and costs, pursuant to statute.

11
12 **THIRD CAUSE OF ACTION**
13 **UNLAWFUL FAILURE TO PAY OVERTIME WAGES**
14 **(Violation of IWC Wage Order and California Labor Code §§ 510, 1194, and 1198)**

15 42. Representative Plaintiff incorporates in this cause of action each and every
16 allegation of the preceding paragraphs, with the same force and effect as though fully set forth
17 herein.

18 43. During the relevant time period, Representative Plaintiff and Class Members
19 worked, on many occasions, in excess of eight hours in a workday and/or 40 hours in a workweek.
20 The precise number of overtime hours will be proven at trial.

21 44. During the relevant time period, Defendant refused to compensate Representative
22 Plaintiff and Class Members for all of the overtime wages earned, in violation of the applicable
23 IWC Wage Order and provisions of the California Labor Code.

24 45. Moreover, during the relevant time period, certain Class Members were employed
25 by and thereafter terminated from their position with Defendant yet affected Class Members were
26 not paid all wages due upon said termination of employment. Said non-payment of all wages due
27 was the direct and proximate result of a willful refusal to do so by Defendant.

28

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46. At all relevant times, Defendant was aware of, and were under a duty to comply with, the overtime provisions of the California Labor Code including, but not limited to, California Labor Code §§510, 1194, and 1198.

47. California Labor Code §510(a), in pertinent part, provides:

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee

48. California Labor Code §1194(a), in pertinent part, provides:

Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorneys' fees, and costs of suit.

49. California Labor Code §1198, in pertinent part, provides:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

50. By refusing to compensate Representative Plaintiff and certain Class Members for overtime wages earned, Defendant violated those California Labor Code provisions cited herein as well as the applicable IWC Wage Order(s).

51. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein, Representative Plaintiff and certain Class Members have sustained damages, including loss of earnings for hours of overtime worked on behalf of Defendant, in an amount to be established at trial, and is entitled to recover attorneys' fees and costs of suit.

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1 **FOURTH CAUSE OF ACTION**
2 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**
3 **(California Labor Code §§ 226 and 1174)**

4 52. Representative Plaintiff incorporates in this cause of action each and every
5 allegation of the preceding paragraphs, with the same force and effect as though fully set forth
6 herein.

7 53. California Labor Code § 226(a) provides:

8 Each employer shall semi-monthly, or at the time of each payment
9 of wages, furnish each of his or her employees either as a detachable
10 part of the check, draft or voucher paying the employee's wages, or
11 separately when wages are paid by personal check or cash, an
12 itemized wage statement in writing showing: (1) gross wages
13 earned; (2) total number of hours worked by each employee whose
14 compensation is based on an hourly wage; (3) all deductions,
15 provided that all deductions made on written orders of the employee
16 may be aggregated and shown as one item; (4) net wages earned; (5)
17 the inclusive date of the period for which the employee is paid; (6)
18 the name of the employee and his or her social security number; and
19 (7) the name and address of the legal entity which is the employer.

20 54. Moreover, California Labor Code § 226(e) provides:

21 An employee suffering injury as a result of a knowing and
22 intentional failure by an employer to comply with subdivision (a) is
23 entitled to recover the greater of all actual damages or fifty dollars
24 (\$50) for the initial pay period in which a violation occurs and one
25 hundred dollars (\$100) per employee for each violation in a
26 subsequent pay period, not exceeding an aggregate penalty of four
27 thousand dollars (\$4,000), and is entitled to an award of costs and
28 reasonable attorney's fees.

55. Finally, California Labor Code § 1174(d) provides:

Every person employing labor in this state shall . . . [k]eep, at a
central location in the state...payroll records showing the hours
worked daily by and the wages paid to...employees.... These records
shall be kept in accordance with rules established for this purpose
by the commission, but in any case shall be kept on file for not less
than two years.

56. Representative Plaintiff seeks to recover actual damages, costs, and attorneys' fees
under these provisions on behalf of himself and on behalf of all Class Members.

57. Defendant has failed to provide timely, accurate itemized wage statements to the
Representative Plaintiff and Class Members in accordance with California Labor Code § 226.

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1 Representative Plaintiff is informed and believes and, on that basis, alleges that none of the
2 statements provided by Defendant accurately reflected actual gross wages earned, net wages
3 earned, or the appropriate deductions of such Class Members.

4 58. As a direct and proximate result of Defendant's unlawful conduct, as set forth
5 herein, the Representative Plaintiff and Class Members have sustained damages in an amount to
6 be established at trial and are entitled to recover attorneys' fees and costs of suit.

7
8 **FIFTH CAUSE OF ACTION**
9 **FAILURE TO PAY WAGES ON TERMINATION**
10 **(California Labor Code § 203)**

11 59. Representative Plaintiff incorporates in this cause of action each and every
12 allegation of the preceding paragraphs, with the same force and effect as though fully set forth
13 herein.

14 60. California Labor Code § 203 provides that:

15 If an employer willfully fails to pay, without abatement or reduction, in
16 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an
17 employee who is discharged or who quits, the wages of the employee shall
18 continue as a penalty from the due date thereof at the same rate until paid or
19 until an action therefor is commenced; but the wages shall not continue for
20 more than 30 days.

21 61. Numerous Class Members were employed by Defendant during the Class Period
22 and were thereafter terminated or resigned from their positions, yet they were not paid all premium
23 (overtime) wages due upon said termination or within 72 hours of said resignation of employment
24 therefrom. Said non-payment was the direct and proximate result of a willful refusal to do so by
25 Defendant.

26 62. More than 30 days have elapsed since certain Class Members were involuntarily
27 terminated or voluntarily resigned from Defendant's employ.

28 63. As a direct and proximate result of Defendant's willful conduct in failing to pay
said Class Members for all hours worked, affected Class Members are entitled to recover "waiting

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1 time” penalties of up to thirty days’ wages pursuant to California Labor Code § 203 in an amount
2 to be established at trial, together with interest thereon, and attorneys’ fees and costs.

3 **SIXTH CAUSE OF ACTION**
4 **UNFAIR BUSINESS PRACTICES UNDER THE UNFAIR COMPETITION ACT**
5 **(California Business & Professions Code §§ 17200-17208)**

6 64. Representative Plaintiff incorporates in this cause of action each and every
7 allegation of the preceding paragraphs, with the same force and effect as though fully set forth
8 herein.

9 65. Representative Plaintiff further brings this cause of action seeking equitable and
10 statutory relief to stop Defendant’s misconduct, as complained of herein, and to seek restitution of
11 the amounts Defendant acquired through the unfair, unlawful, and fraudulent business practices
12 described herein.

13 66. Defendant’s knowing conduct, as alleged herein, constitutes an unlawful and/or
14 fraudulent business practice, as set forth in California Business & Professions Code §§ 17200-
15 17208. Specifically, Defendant conducted business activities while failing to comply with the legal
16 mandates cited herein.

17 67. Defendant has clearly established a policy of accepting a certain amount of
18 collateral damage, as represented by the damages to the Representative Plaintiff and to Class
19 Members herein alleged, as incidental to its business operations, rather than accept the alternative
20 costs of full compliance with fair, lawful, and honest business practices, ordinarily borne by its
21 responsible competitors and as set forth in legislation and the judicial record.

22 **RELIEF SOUGHT**

23 **WHEREFORE**, the Representative Plaintiff, on behalf of himself and the proposed
24 Plaintiff Class, prays for judgment and the following specific relief against Defendants, and each
25 of them, jointly and separately, as follows:

26 1. That the Court declare, adjudge, and decree that this action is a proper class action
27 and certify the proposed Class and/or any other appropriate subclasses under California Code of
28 Civil Procedure § 382;

1 2. That the Court declare, adjudge, and decree that Defendant willfully violated its
2 legal duties to pay all wages due under the California Labor Code and the applicable California
3 Industrial Welfare Commission Wage Orders;

4 3. That the Court declare, adjudge, and decree that Defendant violated the overtime
5 provisions of the California Labor Code and the applicable California Industrial Welfare
6 Commission Wage Order as to Plaintiff and the Putative Class Members;

7 4. That the Court declare, adjudge, and decree that Defendant willfully violated their
8 legal duties to pay overtime under the California Labor Code and the applicable California
9 Industrial Welfare Commission Wage Orders;

10 5. That the Court declare, adjudge, and decree that Plaintiff and the Putative Class
11 Members were, at all times relevant hereto, and are still, entitled to be paid overtime for work
12 beyond 8 hours in a day and 40 hours in a week;

13 6. That the Court make an award to Plaintiff and the Putative Class Members of
14 damages and/or restitution for the amount of unpaid overtime compensation, including interest
15 thereon, and penalties in an amount to be proven at trial;

16 7. That the Court make an award to the Representative Plaintiff and the Putative Class
17 Members of one hour of pay at each employee's regular rate of compensation for each workday
18 that a meal period was not provided;

19 8. That the Court make an award to the Representative Plaintiff and the Putative Class
20 Members of one hour of pay at each employee's regular rate of compensation for each workday
21 that a rest period was not provided;

22 9. That the Court Order Defendant to pay restitution to the Representative Plaintiff
23 and the Putative Class Members due to Defendants' unlawful activities, pursuant to California
24 Business and Professions Code §§ 17200-17208;

25 10. That the Court further enjoin Defendant, ordering it to cease and desist from
26 unlawful activities in violation of California Business and Professions Code § 17200, *et seq.*;

27 11. For all other Orders, findings and determinations identified and sought in this
28 Complaint;

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- 12. For interest on the amount of any and all economic losses, at the prevailing legal rate;
- 13. For reasonable attorneys' fees, pursuant to California Code of Civil Procedure § 1021.5; and
- 14. For costs of suit and any and all such other relief as the Court deems just and proper.

JURY DEMAND

Representative Plaintiff, on behalf of himself, and the Plaintiff Class hereby demands a trial by jury.

Dated: April 10, 2019

SCOTT COLE & ASSOCIATES, APC

By:



Andrew Daniel Weaver, Esq.
Attorneys for Representative Plaintiff
and the Plaintiff Class