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226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198 and/or 2698, *et seq.*, California Business and Professions Code §§ 17200, *et seq.* and California Code of Civil Procedure § 1021.5. Plaintiff Michael Ortiz (“Representative Plaintiff” or “Plaintiff”) was employed by Amazon.com LLC and Golden State FC LLC (collectively “Defendants”) at three facilities in California, including South San Francisco, San Leandro and Richmond. At all times during the relevant period, Plaintiff was misclassified as an overtime-exempt Level 4 Manager. Plaintiff brings this lawsuit on behalf of himself and on behalf of all other persons similarly situated who have been employed by Defendants as Level 4 Managers in the State of California within the applicable class period.

2. The “FLSA Class Period” is designated as the time from June 2, 2014 through the trial date, based upon the allegation that the violations of the FLSA, as described more fully below, have been willful and ongoing since, at least, this date. During this class period, Defendants have had a consistent policy of permitting, encouraging, and/or requiring its allegedly-overtime-exempt Level 4 Managers to work in excess of forty hours per week without paying them overtime compensation as required by the FLSA. The “California Class Period” is designated as the time from June 2, 2013, through trial, based upon the allegation that the violations of California’s wage and hour laws, as described more fully below, have been ongoing throughout that time.

3. During the class period, Defendants had a consistent policy of (1) permitting, encouraging and/or requiring Plaintiff and Class Members to work in excess of eight hours per day and/or in excess of forty hours per week without paying them overtime compensation as required by California’s wage and hour laws, (2) unlawfully denying Plaintiff and Class Members statutorily-mandated meal and rest periods, and (3) willfully failing to provide Plaintiff and Class Members with accurate semimonthly itemized wage statements reflecting the total number of hours each worked, the applicable deductions, and the applicable hourly rates in effect during the pay period. In addition, Plaintiff is informed and believes and, on that basis, alleges that Defendants had a consistent policy of willfully failing to pay compensation (including unpaid overtime) in a prompt and timely manner to Plaintiff and Class Members.

INTRODUCTION

4. The Fair Labor Standards Act of 1938, as amended (29 U.S.C. § 201, *et seq.*), provides for minimum standards for both wages and overtime entitlement, and details administrative procedures by which covered work time must be compensated. The enactment of the provisions of the FLSA provide the Federal Courts with substantial authority to stamp out abuses of child labor, equal pay, portal-to-portal activities as well as the overtime pay violations detailed in this Complaint.

5. According to Congressional findings, the existence of labor conditions detrimental to the maintenance of the minimum standard of living engenders unfair commercial competition, labor disputes, barriers to commerce and the free flow of goods in commerce, and interferes with the orderly and fair marketing of goods.

6. California's Labor Code and Industrial Welfare Commission Wage Orders provide even more expansive protection to hourly workers, including, but not necessarily limited to, entitlements to overtime pay and work performed beyond eight hours per day, and substantial remedies for the denial of rest and meal periods.

7. Both Federal and California studies have linked long work hours to increased rates of accident and injury and a loss of family cohesion when either or both parents are kept away from home for extended periods of time, on either a daily or weekly basis.

8. Defendants operate an Internet-based retail company with numerous sort, fulfillment, and delivery facilities throughout California, including those three in which Representative Plaintiff worked as a Level 4 Manager, and across the nation. The Representative Plaintiff is informed and believes and, on that basis, alleges that, Representative Plaintiff's employment position did not, and currently does not, meet any known test for exemption from the payment of overtime wages and/or the entitlement to meal or rest periods.

9. Despite actual knowledge of these facts and legal mandates, Defendants have and continue to enjoy an advantage over their competition and a resultant disadvantage to their workers by electing not to pay all wages due (including overtime and missed meal and rest period compensation) and/or all penalties dues (including "waiting time" penalties) to their salaried Level 4 Managers at Defendants' sort, fulfillment, and delivery facilities.

10. Representative Plaintiff is informed and believes and, based thereon, alleges that officers of Defendants knew of these facts and legal mandates yet, nonetheless, repeatedly authorized and/or ratified the violation of the laws cited herein.

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

JURISDICTION AND VENUE

12. This Court has jurisdiction over the Representative Plaintiff's and Class Members' claims for unpaid wages and/or penalties under, *inter alia*, the applicable Industrial Welfare Commission Wage Order, Title 8 of the California Code of Regulations, Labor Code §§ 201-204, 226, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, and/or 2698, *et seq.*, and the California Code of Civil Procedure § 1021.5.

13. This Court also has jurisdiction over the Plaintiff's claims for injunctive relief and restitution of ill-gotten benefits arising from Defendants' unfair and/or fraudulent business practices under California Business & Professions Code § 17200, *et seq.*

14. Venue as to Defendant is proper in this judicial district, pursuant to 28 U.S.C. § 1391. Defendant does business in the Northern District of California and transacts business, has agents, and is otherwise within this Court's jurisdiction for purposes of service of process. The unlawful acts alleged herein have a direct effect on the Representative Plaintiff and those similarly situated within this judicial district. Defendants operate facilities and have employed Class Members in this judicial district as well as throughout the State of California and the United States.

PLAINTIFF(S)

15. Representative Plaintiff Michael Ortiz is a resident of the State of California, and a natural person, and was jointly employed by Defendants Amazon.com LLC and Golden State FC LLC.

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1 16. Representative Plaintiff was categorized by Defendants as a salaried Level 4
2 Manager during the relevant time period. Specifically, his job title was "Shift Manager,
3 Logistics" and his internal business title was "Operations Manager, I."

4 17. Representative Plaintiff alleges that, throughout their employment, he and Class
5 Members were misclassified and that Level 4 Managers were essentially glorified box shufflers
6 required to perform virtually constant manual labor on the delivery line due to insufficient
7 staffing.

8 18. This demanding workload included highly physical and laborious tasks such as
9 offloading trucks, staging and moving pallets and gaylords, cutting open boxes, staging
10 conveyance systems and computers, replacing scan gun batteries, moving bread racks, and other
11 tasks at the start of shifts.

12 19. It included long spells in "the path" with co-workers unloading, receiving, sorting,
13 and scanning packages, competing on metrics, and cleaning up.

14 20. While certain hourly employees took breaks, Representative Plaintiff continued
15 sorting packages, assigning routes, repairing jams, moving bread racks, replacing batteries,
16 relabeling packages, and printing out lists.

17 21. Toward the end of shifts, he would continue picking routes, moving racks, staging
18 against walls, locating missing packages, loading vans, moving hazardous packages, relabeling
19 heavy or broken packages, scraping tape off floors, and performing various cleaning tasks.
20 Defendants' obsession with efficiency required Representative Plaintiff to constantly record
21 metrics and produce daily reports before ending shifts.

22 22. Representative Plaintiff's work-day typically began around 10 or 11 p.m. and
23 ended around 8 or 9 a.m. Aside from training or "on-boarding" days, he worked four ten-hour
24 days a week. Thus, he contends that virtually every shift he worked for Defendants was long
25 enough to trigger statutory meal and rest periods. However, not only did Defendants fail to
26 provide such breaks, there was almost no opportunity to do so given the pace of the job and the
27 understaffing of facilities.
28

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23. Representative Plaintiff contends that Defendants' strict guidelines limited the type of work lower-level hourly employees were authorized to do. Thus, if he had taken meal and/or rest periods and something had broken, it could have stopped the entire operation. This is yet another reason why he could not take breaks.

24. The job description for Representative Plaintiff's position notes four key areas—safety, quality, customer experience, and productivity—and charged him with “lead[ing] change at internet speed.” It also hints at the physical rigor of the job:

Regular bending, lifting, stretching and reaching both below the waist and above the head;

Walking in the FC and around area with great frequency; facilities are over a quarter mile in length;

Must be able to stand/walk for up to 10-12 hours [...];

Able to access all areas of building (ascending and descending ladders, stairs, gangways safely and without limitation).

25. Representative Plaintiff alleges that Defendants' push for “internet speed,” its requiring constant, physically demanding labor in massive, understaffed facilities, its focus on metrics recording/reporting, and its misclassification of employees created an environment where he and Class Members were commonly denied meal and/or rest periods and overtime wages.

DEFENDANT(S)

26. Defendant Amazon.com LLC is engaged in business in the Northern District of California and throughout California.

27. Defendant Golden State FC LLC is engaged in business in the Northern District of California and throughout California.

28. Representative Plaintiff is informed and believes and, based thereon, alleges that, at all times herein relevant, Defendants Amazon.com LLC and Golden State FC LLC did business within the state of California operating storage and delivery facilities.

29. 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.

CLASS ACTION ALLEGATIONS

30. The Representative Plaintiff brings this action on behalf of himself and as a class action on behalf of all persons similarly situated and proximately damaged by Defendants' conduct including, but not necessarily limited to, the following Plaintiff Classes:

FLSA Class:

All persons employed as Level 4 Managers by Amazon.com, LLC and/or Golden State FC, LLC, in California at any time on or after June 2, 2014.

California Class:

All persons employed as Level 4 Managers by Amazon.com, LLC and/or Golden State FC, LLC, in California at any time on or after June 2, 2013.

31. Amazon.com, LLC and Golden State FC, LLC, their officers and directors are excluded from the Plaintiff Classes.

32. This action has been brought and may properly be maintained as a class action under the Federal Rules of Civil Procedure ("FRCP") Rule 23 and as a collective action pursuant to 29 U.S.C. § 216 because there is a well-defined community of interest in the litigation and the proposed Classes are easily ascertainable:

- a. **Numerosity:** A class action is the only available method for the fair and efficient adjudication of this controversy. The members of the class are so numerous that joinder of all members is impractical, if not impossible, insofar as Representative Plaintiff is informed and believe and, on that basis, allege that the total number of Class Members exceeds hundreds of individuals. Membership in the Plaintiff Classes will be determined upon analysis of employee and payroll, among other, records maintained by Defendants.
- b. **Commonality:** The Representative Plaintiff and the Class Members share a community of interests in that there are numerous common questions and issues of fact and law which predominate over any questions and issues solely affecting individual members, thereby making a class action superior to other available methods for the fair and efficient adjudication of the controversy. Consequently, class and/or collective action certification is proper under FRCP Rule 23(b)(3) and 29 U.S.C. § 216(b). These common questions include, but are not necessarily limited to:

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- 1) Whether Defendants violated California Labor Code §§ 226.7 and/or 512 by failing to consistently provide duty-free meal periods and/or rest periods to its allegedly overtime-exempt Level 4 Managers;
 - 2) Whether Defendants violated California Business and Professions Code § 17200, *et seq.* by engaging in unfair, unlawful, and/or fraudulent business practices;
 - 3) Whether Defendants violated California Labor Code § 1174 by failing to keep accurate records of employees' hours of work;
 - 4) Whether Defendants 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 Defendants terminated;
 - 5) Whether Defendants violated California Labor Code § 226 by failing to provide semimonthly itemized statements to Class Members of total hours worked by each and all applicable hourly rates in effect during the pay period; and
 - 6) Whether Class Members are entitled to "waiting time" penalties, pursuant to California Labor Code § 203; and
 - 7) Whether Defendants violated the FLSA by failing to pay overtime compensation to Class Members who worked in excess of forty hours per week.
 - 8) Whether Defendants violated the FLSA by failing to pay minimum wage compensation to Class members who were paid below the federal minimum wage of \$7.25.
- 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 Defendants' 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

1 Court and the litigants. The prosecution of separate actions would also
 2 create a risk of inconsistent rulings which might be dispositive of the
 3 interests of other Class Members who are not parties to the adjudications
 4 and/or may substantially impede their ability to adequately protect their
 5 interests.

6 COMMON FACTUAL ALLEGATIONS

7 33. As described herein, during the relevant time period, Defendants knowingly failed
 8 to adequately compensate those employees within the class definition identified above for all
 9 wages earned (including premium wages such as overtime wages and/or compensation for
 10 missed meal and/or rest periods) under the California Labor Code and the applicable IWC Wage
 11 Order, thereby enjoying a significant competitive edge over other retailers.

12 34. Defendants declined to pay these wages, even upon a Class Member's termination
 13 from employment, in blatant violation of California Labor Code § 201 and/or § 202.

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

20 36. Furthermore, despite their knowledge of Representative Plaintiff's and the Class
 21 Members' entitlement to compensation for all hours worked, Defendants violated California
 22 Labor Code § 1174(d) by failing to provide or require the use, maintenance, or submission of
 23 time records by Plaintiff. Defendants also failed to provide Representative Plaintiff and Class
 24 Members with accurate semimonthly itemized statements of the total number of hours worked by
 25 each, and all applicable hourly rates in effect, during the pay period, in violation of California
 26 Labor Code § 226. In failing to provide the required documents, Defendants have not only failed
 27 to pay Plaintiff the full amount of compensation due but the Defendants have also, until now,
 28 effectively shielded themselves from its employees' scrutiny by concealing the magnitude and

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1 financial impact of Defendants' wrongdoing that such documents might otherwise have led
2 workers to discover.

3 37. Representative Plaintiff and all persons similarly situated are entitled to unpaid
4 compensation, yet, to date, have not received such compensation despite having been terminated
5 by Defendants. More than 30 days have passed since Plaintiff and certain Class Members have
6 left Defendants' employment.

7 38. As a consequence of Defendants' willful conduct in not paying former employees
8 compensation for all hours worked in a prompt and timely manner, Representative Plaintiff and
9 certain Class Members are entitled to up to 30 days wages as a penalty under California Labor
10 Code §203, together with attorneys' fees and costs.

11 39. As a direct and proximate result of Defendants' unlawful conduct, as set forth
12 herein, Representative Plaintiff and Class Members have sustained damages, as described above,
13 including compensation for loss of earnings for hours worked on behalf of Defendants, in an
14 amount to be established at trial. As a further direct and proximate result of Defendants'
15 unlawful conduct, as set forth herein, certain Class Members are entitled to recover "waiting
16 time" penalties (pursuant to California Labor Code § 203) and penalties for failure to provide
17 semimonthly statements of hours worked and all applicable hourly rates (pursuant to California
18 Labor Code §226) in an amount to be established at trial. As a further direct and proximate result
19 of Defendants' unlawful conduct, as set forth herein, Representative Plaintiff and Class Members
20 are also entitled to recover costs and attorneys' fees pursuant to California Labor Code §1194
21 and/or California Civil Code §1021.5, among other authorities.

22 40. Representative Plaintiff seeks injunctive relief prohibiting Defendants from
23 engaging in the complained-of illegal labor acts and practices in the future. Representative
24 Plaintiff also seeks restitution of costs incurred by Representative Plaintiff and Class Members
25 under California's Unfair Competition Law. Unless enjoined, Defendants' unlawful conduct will
26 continue unchecked, while Representative Plaintiff and Class Members bear the financial brunt
27 of Defendants' unlawful conduct. As a further direct and proximate result of Defendants'

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1 unlawful conduct, as set forth herein, Representative Plaintiff and the Plaintiff Class are also
2 entitled to recover costs and attorneys' fees, pursuant to statute.

3 41. Representative Plaintiff has complied with the procedures for bringing suit
4 specified in California Labor Code § 2699.3 necessary to maintain a civil action against
5 Defendant for violation (and/or recovery under) California Labor Code §§ 200-204, inclusive,
6 226, 226.7, 512, 1174, 1174.5, 1194, and 1197.

7 **FIRST CLAIM FOR RELIEF**
8 **VIOLATION OF THE FAIR LABOR STANDARDS ACT – OVERTIME CLAIM**
9 **(29 U.S.C. § 207)**
10 **(FLSA Class Only)**

11 30. Representative Plaintiff incorporates in this claim for relief each and every
12 allegation of the preceding paragraphs with the same force and effect as though fully set forth
13 herein.

14 31. The FLSA regulates, among other things, the payment of overtime wages by
15 employers whose employees are engaged in commerce, or engaged in the production of goods
16 for commerce, or employed in an enterprise engaged in commerce or in the production of goods
17 for commerce, as defined under 29 U.S.C. § 207(a)(1).

18 32. Representative Plaintiff is informed and believe, and thereon alleges, that
19 Defendants have required, or require, the FLSA Class Members as part of their employment to
20 work without additional compensation, such as overtime, in excess of the forty hours per week
21 maximum under 29 U.S.C. § 207(a)(1). That Section provides the following:

22 Except as otherwise provided in this section, no employer shall
23 employ any of his employees...for a workweek longer than forty
24 hours unless such employee receives compensation for his
25 employment in excess of the hours above specified at a rate which
26 is not less than one and one-half times the regular rate at which he
27 is employed.

28 33. Defendants are, and were, subject to the overtime pay requirements of the FLSA,
because they are enterprises engaged in commerce and their employees are engaged in
commerce.

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34. Defendants are, and were, subject to this requirement to pay its Level 4 Managers one and one-half times its employees' regular rate of pay for all hours worked in a workweek in excess of forty (40) hours.

35. Defendants violated the FLSA by paying Level 4 Managers a fixed salary without regard to the number of hours worked in excess of forty (40) hours in a workweek.

36. Section 13 of the FLSA, 29 U.S.C. § 213, exempts certain categories of employees from the overtime pay obligations set forth under Section 7(a)(1) of the FLSA. The exemptions include employees who are paid on a salary basis and are employed in a bona fide executive, administrative or professional exemption and employees employed in the capacity of "outside salesman." 29 U.S.C. § 213 (a)(1). In addition, the exemption provided under Section 7(i) of the FLSA, for employees in a retail or service establishment where the employees are paid more than half of their compensation in the form of commissions, also does not apply. None of the FLSA exemptions apply to Level 4 Managers. Accordingly, they must be paid overtime pay in accordance with Section 7 of the FLSA.

37. Representative Plaintiffs is informed and believes, and based thereon, alleges that Defendants have required and/or require the FLSA Class Members, as part of their employment, to work without compensation for all hours worked, to work beyond forty hours per week without the payment of overtime compensation therefor and/or to work at a wage less than the minimum wage, pursuant to, *inter alia*, 29 U.S.C. §§ 206 and 207(a)(1).

38. Indeed, in the performance of their duties for Defendants, the FLSA Class Members often did work over forty hours per week, yet did not receive overtime compensation for the work, labor and services they provided to Defendants, as required by the FLSA. The precise number of unpaid overtime hours will be proven at trial.

39. Representative Plaintiff proposes to undertake appropriate proceedings to have the FLSA Class Members aggrieved by Defendants' unlawful conduct notified of the pendency of this action and given the opportunity to join this action as plaintiffs, pursuant to 29 U.S.C. § 216(b), by filing written consents to joinder with the Court.

40. Defendants' violations of the FLSA were willful and are ongoing.

41. As a result of the foregoing, Representative Plaintiff seeks judgment against Defendants on his own behalf, and on behalf of those FLSA Class Members similarly situated who file written consents to joinder in this action, for all unpaid wages, including overtime wages owed by Defendants to the Representative Plaintiff and Class Members, pursuant to 29 U.S.C. §§ 206 and 207, together with an award of an additional equal amount as liquidated damages, and costs, interests, and reasonable attorneys' fees, pursuant to, *inter alia*, 29 U.S.C. § 216(b).

SECOND CLAIM FOR RELIEF
VIOLATION OF THE FAIR LABOR STANDARDS ACT – MINIMUM WAGE CLAIM
(29 U.S.C. § 206)
(FLSA Class Only)

42. Representative Plaintiff incorporates in this claim for relief each and every allegation of the preceding paragraphs with the same force and effect as though fully set forth herein.

43. The FLSA requires employers, such as Defendants, to pay employees the minimum wage for all hours worked.

44. At all relevant times, 29 U.S.C. § 206 has defined the minimum wage under FLSA. Since July 24, 2009, the federal minimum wage has been \$7.25 an hour.

45. During the applicable statute of limitations, Defendants have failed to pay Representative Plaintiff and FLSA Class Members the federally mandated minimum wage for all hours worked.

46. Representative Plaintiff and the FLSA Class Members do not or did not perform job duties or tasks that permit them to be exempt from minimum wage as required under the FLSA.

47. The foregoing conduct, as alleged herein, constitutes a willful violation of the FLSA within the meaning of 29 U.S.C. § 255(a).

48. Representative Plaintiff, on behalf of themselves and the FLSA Class Members, seek damages in the amount of all respective unpaid minimum wage compensation at minimum wage rate effective during the applicable work week, plus liquidated damages, as provided by the

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1 FLSA, 29 U.S.C. § 216(b), interest, and such other legal and equitable relief as the Court deems
2 just and proper.

3 49. Representative Plaintiff, on behalf of himself and the FLSA Class Members, seek
4 recovery of all attorneys' fees, costs, and expenses of this action, to be paid by Defendants, as
5 provided by the FLSA, 29 U.S.C. § 216(b).

6 **THIRD CLAIM FOR RELIEF**
7 **UNLAWFUL FAILURE TO PAY OVERTIME WAGES**
8 **(Violation of IWC Wage Order and California Labor Code §§ 510, 1194, and 1198)**

9 50. Representative Plaintiff incorporates in this claim for relief each and every
10 allegation of the preceding paragraphs, with the same force and effect as though fully set forth
11 herein.

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

15 52. During the relevant time period, Defendants refused to compensate
16 Representative Plaintiff and Class Members for all of the overtime wages earned, in violation of
17 the applicable IWC Wage Order and provisions of the California Labor Code.

18 53. Moreover, during the relevant time period, Representative Plaintiff and certain
19 Class Members were employed by and thereafter terminated from Plaintiff's position with
20 Defendants, yet Representative Plaintiff and affected Class Members were not paid all wages due
21 upon said termination of employment. Said non-payment of all wages due was the direct and
22 proximate result of a willful refusal to do so by Defendants.

23 54. At all relevant times, Defendants were aware of, and were under a duty to comply
24 with, the overtime provisions of the California Labor Code including, but not limited to,
25 California Labor Code §§ 510, 1194, and 1198.

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

27 Any work in excess of eight hours in one workday and any work in
28 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

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

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

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

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

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

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

17 **FOURTH CLAIM FOR RELIEF**
18 **FAILURE TO PROVIDE MEAL AND REST PERIODS**
19 **(California Labor Code §§ 226.7, 512, and 558)**

19 60. Representative Plaintiff incorporates in this claim for relief each and every
20 allegation of the preceding paragraphs, with the same force and effect as though fully set forth
21 herein.

22 61. At all relevant times, Defendants were aware of and were under a duty to comply
23 with California Labor Code § 226.7 and § 512.

24 62. California Labor Code § 226.7 provides:

25 (a) No employer shall require any employee to work during any meal or rest period
26 mandated by an applicable order of the Industrial Welfare Commission.

27 (b) If an employer fails to provide an employee a meal period or rest period in accordance
28 with an applicable order of the Industrial Welfare Commission, the employer shall pay
the employee one 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.

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

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

65. Section 11 of the applicable IWC Wage Order provides:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes...
- (B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes...
- (C) If an employer fails to provide an employee a meal 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 meal period is not provided.

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

- (A) Every employer shall authorize and permit all employees to 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.

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67. 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, Defendants violated the California Labor Code and applicable IWC Wage Order provisions.

68. Representative Plaintiff is informed and believes and, on that basis, alleges that Defendants have never paid the one hour of compensation to any Class Member due to Defendants' violations of the California Labor Code and applicable IWC Wage Order provisions.

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

70. As a further direct and proximate result of Defendants' unlawful conduct, as set forth herein, certain Class Members are entitled to recover "waiting time" and other penalties, in amounts to be established at trial, as well as recovery of attorneys' fees and costs, pursuant to statute.

FIFTH CLAIM FOR RELIEF
FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS
(California Labor Code §§ 226 and 1174)

71. Representative Plaintiff incorporates in this claim for relief each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

72. California Labor Code § 226(a) provides:

Each employer shall semimonthly, or at the time of each payment of wages, furnish each of his or her employees either as a detachable part of the check, draft or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an itemized wage statement in writing showing: (1) gross wages earned; (2) total number of hours worked by each employee whose compensation is based on an hourly wage; (3) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item; (4) net

wages earned; (5) the inclusive date of the period for which the employee is paid; (6) the name of the employee and his or her social security number; and (7) the name and address of the legal entity which is the employer.

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

An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is 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 (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

74. 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.

75. 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.

76. Defendants have failed to provide timely, accurate itemized wage statements to the Representative Plaintiff and Class Members in accordance with California Labor Code § 226. Representative Plaintiff is informed and believes and, on that basis, alleges that none of the statements provided by Defendants accurately reflected actual gross wages earned, net wages earned, or the appropriate deductions of Class Members.

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

SIXTH CLAIM FOR RELIEF
FAILURE TO PAY WAGES ON TERMINATION
(California Labor Code § 203)

78. Representative Plaintiff incorporates in this claim for relief each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

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1 79. California Labor Code § 203 provides that:

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

8 80. Numerous Class Members were employed by Defendants during the relevant time
9 period and were thereafter terminated from their positions, yet they were not paid all premium
10 (overtime) wages due upon said termination of employment therefrom. Said non-payment was
11 the direct and proximate result of a willful refusal to do so by Defendants.

12 81. More than 30 days have elapsed since Representative Plaintiff and certain Class
13 Members were involuntarily terminated from Defendants' employment. Roughly 100 days
14 following his termination, Representative Plaintiff received a payment from Defendants, but that
15 amount fell far short of the wages due, particularly in light of the unlawful conduct alleged
16 herein.

17 82. As a direct and proximate result of Defendants' willful conduct in failing to pay
18 said Class Members for all hours worked, affected Class Members are entitled to recover
19 "waiting time" penalties of up to thirty days' wages pursuant to California Labor Code §203 in
20 an amount to be established at trial, together with interest thereon, and attorneys' fees and costs.

21 **SEVENTH CLAIM FOR RELIEF**
22 **UNFAIR BUSINESS PRACTICES UNDER THE UNFAIR COMPETITION ACT**
23 **(California Business & Professions Code §§ 17200-17208)**

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

27 84. Representative Plaintiff further brings this claim for relief seeking equitable and
28 statutory relief to stop Defendants' misconduct, as complained of herein, and to seek restitution

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1 of the amounts Defendants acquired through the unfair, unlawful, and fraudulent business
2 practices described herein.

3 85. Defendants' knowing conduct, as alleged herein, constitutes an unlawful and/or
4 fraudulent business practice, as set forth in California Business & Professions Code §§ 17200-
5 17208. Specifically, Defendants conducted business activities while failing to comply with the
6 legal mandates cited herein.

7 67. Defendants have clearly established a policy of accepting a certain amount of
8 collateral damage, as represented by the damages to Representative Plaintiff and to Class
9 Members herein alleged, as incidental to their business operations, rather than accept the
10 alternative costs of full compliance with fair, lawful, and honest business practices, ordinarily
11 borne by their responsible competitors and as set forth in legislation and the judicial record.

12
13 **EIGHTH CLAIM FOR RELIEF**
14 **PRIVATE ATTORNEYS GENERAL ACT CLAIM**
15 **(California Labor Code §§ 2699)**

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

19 66. California Labor Code § 2699(a) states:

20 Notwithstanding any other provision of the law, any provision of this code
21 that provides for a civil penalty to be assessed and collected by the Labor
22 and Workforce Development Agency or any of its departments, divisions,
23 commissions, boards, agencies, or employees, for a violation of this code,
24 may, as an alternative, be recovered through a civil action brought by an
25 aggrieved employee on behalf of himself or herself and other current or
26 former employees. . .

27 67. Representative Plaintiff (and each and every other Class Member) are "aggrieved
28 employees," as defined by California Labor Code § 2699(c), because they were employed by
29 Defendants and were among the many employees against whom violations of law were
30 committed.

68. Representative Plaintiff has met all of the requirements set forth in California Labor Code § 2699.3 necessary to maintain a civil action against Defendants for violations of (and/or recovery under) California Labor Code §§ 200-203, inclusive, 226, 226.7, 512, 558, 1174, 1174.5, and/or 2699.

69. Representative Plaintiff brings this action on behalf of themselves and all Class Members alleging violations of the California Labor Code sections cited in the preceding paragraph.

70. As a direct and proximate result of Defendants' unlawful conduct, as set forth herein, Representative Plaintiff and Class Members are entitled to recover various penalties as provided by California Labor Code § 2699, in an amount to be established at trial, as well as costs and attorneys' fees, pursuant to statute.

RELIEF SOUGHT

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

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

2. That the Court declare, adjudge, and decree that Defendants violated the overtime provisions of the California Labor Code and the applicable California Industrial Welfare Commission Wage Order as to Plaintiff;

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

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

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

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

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

8. That the Court make an award to Representative Plaintiff and Class Members of penalties, pursuant to California Labor Code §§ 203, 226, 558, 1174.5, 1197.1, *et seq.*, in an amount to be proven at trial;

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

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

11. That the Court declare, adjudge, and decree that this action is a proper representative action pursuant to California Labor Code § 2699;

12. That the Court make an award of civil penalties for violations of the Labor Code, pursuant to California Labor Code § 2699;

13. For all other Orders, findings and determinations identified and sought in this Complaint;

14. For interest on the amount of any and all economic losses, at the prevailing legal rate;

15. For reasonable attorneys' fees, pursuant to California Labor Code §1194, 2699 and/or California Code of Civil Procedure §1021.5; and

JURY DEMAND

Dated: October 31, 2017

By: /s/ Corey B. Bennett
Corey B. Bennett, Esq.
Attorneys for Representative Plaintiff
and the Plaintiff Class