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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF SAN DIEGO**

13 VLADIMIRO GUTIERREZ, as an individual
14 and on behalf of all others similarly situated,

15 Plaintiff,

16 vs.

17 REDI-CARPET SALES OF CALIFORNIA,
18 LLC; CAL-MULTI, LLC; G.B. SALES; and
19 DOES 1 through 50, inclusive,

20 Defendants.

Case No. 37-2022-00021779-CU-OE-CTL

CLASS ACTION

CLASS ACTION COMPLAINT

1. Failure to Pay All Minimum Wages
2. Failure to Pay All Overtime Wages
3. Failure to Pay for Authorized Rest Periods & Non-Productive Time
4. Meal Period Violations
5. Rest Period Violations
6. Failure to Reimburse Business Expenses
7. Untimely Payment of Wages
8. Wage Statement Violations
9. Waiting Time Penalties
10. Failure to Pay PSL & Supp. PSL Wages
11. Unfair Competition

1 Plaintiff VLADIMIRO GUTIERREZ (“Plaintiff”), as an individual and on behalf of all
2 others similarly situated, brings this CLASS ACTION COMPLAINT against Defendants REDI-
3 CARPET SALES OF CALIFORNIA, LLC; CAL-MULTI, LLC, G.B. SALES; and DOES 1 through
4 50 (collectively, “Defendants”), and on information and belief alleges as follows:

5 **INTRODUCTION**

6 1. This is a class action brought under California Code of Civil Procedure § 382 for
7 Defendants’ violations of the California Labor Code and Business and Professions Code.

8 **JURISDICTION & VENUE**

9 2. Jurisdiction of this action is proper in this Court under Article VI, Section 10 of the
10 California Constitution.

11 3. Venue as to each defendant is proper in this judicial district under Code of Civil
12 Procedure §§ 395(a) and 395.5 because Defendants conduct business in this county, employed
13 Plaintiff in this county, and committed some of the alleged violations in this county.

14 **PARTIES**

15 **A. Plaintiff Vladimiro Gutierrez**

16 4. Plaintiff VLADIMIRO GUTIERREZ is an individual over 18 years of age who
17 worked for Defendants in SAN DIEGO COUNTY as an hourly, non-exempt employee until
18 JUNE 2021.

19 **B. Class Members**

20 5. Plaintiff brings this action as an individual and on behalf of the following class under
21 Code of Civil Procedure § 382: All individuals currently or formerly employed by Defendants in the
22 State of California as hourly non-exempt employees at any time from four years preceding the filing
23 of this action through the time of trial (the “Class” or “Class Members” and the “Class Period”).

24 6. Further, Plaintiff proposes the following subclasses:

- 25 a. Unpaid Minimum or Regular Wage Subclass: All Class Members who were
26 not paid all regular or minimum wages for all hours worked each pay period
27 (including for off-the-clock work or non-productive time.)

- 1 b. Unpaid Overtime Subclass: All Class Members who [1] were not paid for all
2 overtime hours worked each pay period or [2] who were paid overtime wages
3 in the same pay period in which they were also paid non-excludable forms of
4 renumeration (including production bonuses, piece-rate pay, supply and
5 mileage payments, or other forms of compensation).
- 6 c. Meal Period Subclass: All Class Members who [1] worked shifts of five hours
7 or more without a duty-free meal period of at least 30 minutes, or worked
8 shifts of 10 hours or more without a second duty-free meal period of at least
9 30 minutes, and [2] who were not paid one hour of pay at the regular rate of
10 compensation for each of those days.
- 11 d. Rest Period Subclass: All Class Members who [1] worked shifts of four hours
12 or major faction thereof without being authorized or permitted an
13 uninterrupted rest period of at least 10 minutes and who were not paid one
14 hour at the regular rate of compensation for each of those days or [2] who
15 were paid for a rest period at a rate less than what is required under Labor
16 Code section 226.2.
- 17 e. Reimbursement Subclass: All Class Members who incurred work-related
18 expenses, such as for mileage, work supplies, and for usage of their personal
19 cell phones, and were not fully reimbursed by Defendant for the expenses
20 incurred.
- 21 f. Untimely Payment of Wages Subclass: All individuals who are members of
22 the following classes: (i) Unpaid Minimum or Regular Wage Subclass,
23 (ii) Unpaid Overtime Subclass, and (iii) Meal Period Subclass, (iv) Rest
24 Period Subclass, and (v) Paid Sick Leave Subclass.
- 25 g. Paid Sick Leave Subclass: All Class Members who were paid paid sick leave
26 wages in the same pay period in which they were also paid non-excludable
27 forms of remuneration (including production bonuses, piece-rate pay, supply
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1 and mileage payments, or other forms of remuneration) and were paid sick
2 leave at rate less than what is required by California law.

3 h. Wage Statement Subclass: All individuals who are members of the following
4 classes who received a wage statement from Defendants at any time during
5 the one-year period preceding the filing of this action through the present: All
6 individuals who are members of the following classes: (i) Unpaid Minimum
7 or Regular Wage Subclass, (ii) Unpaid Overtime Subclass, and (iii) Meal
8 Period Subclass, (iv) Rest Period Subclass, and (v) Paid Sick Leave Subclass.

9 i. Waiting Time Class: All individuals who are members of the following
10 classes at any time during the three-year period preceding the filing of this
11 action through the present, excluding current employees who have never
12 previously separated from employment with Defendants: (i) Unpaid Minimum
13 or Regular Wage Subclass, (ii) Unpaid Overtime Subclass, and (iii) Meal
14 Period Subclass, (iv) Rest Period Subclass, and (v) Paid Sick Leave Subclass.

15 **C. Defendants**

16 7. Defendant CAL-MULTI, LLC is a limited liability company registered to do business
17 in the State of California, doing business and employing labor throughout San Diego County.

18 8. Defendant REDI-CARPET SALES OF CALIFORNIA, LLC is a limited liability
19 company registered to do business in the State of California, doing business and employing labor
20 throughout San Diego County.

21 9. Defendant G.B. SALES is a company doing business in the State of California and
22 employing labor throughout San Diego County.

23 10. The true names and capacities, whether individual, corporate, or otherwise, of the
24 parties sued as DOES 1 through 50, are presently unknown to Plaintiff, who sues them by such
25 fictitious names under Code of Civil Procedure section 474. Plaintiff is informed, believes, and
26 alleges that each of the fictitious defendants is responsible in some manner for the acts and omissions
27 alleged herein. Plaintiff will seek leave to amend this Complaint to reflect their true names and
28 capacities when they become known.

1 11. Plaintiff is informed, believes, and alleges that all defendants in this action are
2 employers, co-employers, joint employers, and/or part of an integrated employer enterprise, as each
3 defendant exercises control over the wages, hours, and working conditions of Plaintiff and the other
4 aggrieved employees, suffers and permits them to work, and/or otherwise engages the workforce
5 creating a common law employment relationship.

6 12. Plaintiff is informed, believes, and alleges that at least some of the defendants have
7 common ownership, common management, interrelationship of operations, and centralized control
8 over labor relations and are therefore part of an integrated enterprise and thus jointly and severally
9 responsible for the acts and omissions alleged herein.

10 13. Plaintiff is informed, believes, and alleges that each defendant acted in all respects
11 pertinent to this action as an alter-ego, agent, servant, joint employer, joint venturer, co-conspirator,
12 partner, in an integrated enterprise, or in some other capacity on behalf of all other co-defendants,
13 such that the acts and omissions of each defendant may be legally attributable to all others.

14 14. Plaintiff is informed, believes and alleges that the above-mentioned defendants
15 violated and/or caused to be violated Labor Code and IWC Wage Order provisions and/or regulating
16 minimum wages and days of work and other provisions of the Labor Code with respect to the Class
17 of aggrieved employees. As a result, they may be held personally liable under Labor Code sections
18 558, 558.1, and 1197.1. See, e.g., *Atempa v. Pedrazzani* (2018) 27 Cal. App. 5th 809.

19 **GENERAL ALLEGATIONS**

20 15. Plaintiff and Class Members were compensated on a piece rate and/or hourly basis, in
21 addition to other forms of compensation including but not limited to, bonuses, production pay,
22 supply payments, and mileage payments.

23 16. Defendants failed to compensate Plaintiff and Class Members for all hours suffered or
24 permitted to work, including for non-productive time, off the clock work, and rest periods, resulting
25 in unpaid minimum, regular, and overtime wages. Defendants failed to pay all wages owed to
26 Plaintiff and Class Members in several ways.

27 17. First, Prior to the start of Plaintiff’s and Class Members’ first off-site assignment for
28 the day, Defendants required Plaintiff and Class Members to report to the workplace and perform

1 various non-installation related tasks (*i.e.*, non-productive time) for which they were not
2 compensated, in violation of Labor Code section 226.2(a)(1), which requires employers to
3 compensate employees for “rest and recovery periods and other non-productive time spent separate
4 from any piece rate compensation.”

5 18. Plaintiff and Class Members were only permitted to record the start of their shift as
6 beginning at the time they left Defendants’ “left the GB warehouse,” which did not account for the
7 significant amount of time that Plaintiff and Class Members spent working prior to leaving the
8 warehouse. The non-productive time tasks performed by Plaintiff and the Class Members include
9 but is not limited to: waiting at the worksite for Defendants to provide information and instructions
10 about the projects for the day, providing previous work orders to supervisors and await review of the
11 work orders, selecting and purchasing materials from G.B. Sales for projects for the day, disposing
12 of trash from jobs from the prior day, driving to the first job site, and driving between job sites.

13 19. Second, Plaintiff and Class Members were deprived of minimum and overtime wages
14 when Defendants deducted up to an hour of wages for a meal period that they were not provided the
15 opportunity to take. Although employees did not take a one-hour meal period, Defendants would
16 nonetheless deduct a full hour from employees’ hours worked each day.

17 20. Third, Plaintiff and Class Members frequently worked more than 8 hours in a day and
18 over 40 hours in a workweek. However, Defendants failed to pay for all minimum and overtime
19 hours worked each workday in violation of California Labor Code sections 1197 and 510 because
20 employees were forced to work off the clock without pay. Despite working over 40 hours each week
21 (e.g., 50-60 hours), Defendant nonetheless paid Plaintiff and Class Members for less hours than they
22 worked and even instructed employees that they were not permitted to record the hours that they
23 actually worked.

24 21. Furthermore, Defendants separately compensated Plaintiff and Class Members for
25 *some* rest periods each day under the pay category “BREAK.” Defendants’ records show that they
26 undercompensated Plaintiff and Class Members for rest period time in two ways.

27 22. First, Defendants failed to pay rest period time at the rate required by Labor Code
28 section 226.2, which required Defendants to pay for rest periods at the *higher of* the minimum wage

1 or an hourly rate derived by dividing employees' total weekly compensation (including all forms of
2 pay) by their total hours worked. Instead, Defendants paid rest periods at the minimum wage,
3 resulting in underpayments of wages to Plaintiff and Class Members.

4 23. Second, Defendants separately compensated Plaintiff and the Class Members under
5 the "BREAK" category for less rest periods than they were entitled to receive based on the hours
6 worked. This is due to Defendants' common policy and practice that is memorialized in Defendants'
7 documents. Defendants paid Plaintiff and the Class Members for only one rest period for shifts of
8 over 6 hours, 7 hours, 7.5 hours, etc., resulting in Plaintiff and the Class Members not being paid for
9 all rest periods at the rate required by section 226.2. Defendants also paid Plaintiff and Class
10 Members for less rest periods than they were entitled to receive when their shifts exceeded 10 hours.

11 24. Moreover, in addition to the overtime underpayments described above (*e.g.*, for off
12 the clock work and non-productive time), when Plaintiff and Class Members earned overtime,
13 Defendants failed to pay the overtime "at the rate of no less than one and one-half times the regular
14 rate of pay for an employee" - as required by the plain language of Labor Code section 510(a) and
15 the IWC Wage Orders - because they failed to include Plaintiff's and the Class Members' additional
16 compensation in their calculation for the "regular rate of pay."

17 25. Specifically, in addition to hourly wages, Defendants paid Plaintiff and the Class
18 Members several other categories of compensation that were included as part of employees' "gross
19 pay" on their wage statements, including but not limited to bonuses, production payments (based on
20 sq. ft installed), mileage payments, and supply payments.

21 26. When Plaintiff and Class Members worked overtime, Defendants paid the overtime at
22 1.5x Plaintiff and Class Members' base hourly rate rather than at the regular rate of pay, which
23 would have factored in employees' additional remuneration.

24 27. Additionally, Defendants failed to provide compliant first and second meal periods to
25 Plaintiff and the Class Members.

26 28. Defendants assigned Plaintiff and the Class Members to multiple installation jobs and
27 pressured employees to finish these jobs as quickly as possible and to keep labor costs down.
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1 29. As such, Plaintiff and the Class Members often experienced missed, short, and late
2 first and second meal periods in order to keep up with the demands of the job, in violation of Labor
3 Code sections 226.7, 512 and section 11 of the applicable IWC Wage Orders. Plaintiff and the Class
4 Members were rarely able to take compliant first meal periods and never received a second meal
5 period on days when they worked more than 10 hours.

6 30. Nonetheless, Defendants would still deduct a full hour of pay from employees' hours
7 worked for a one-hour meal period despite the fact that meal periods of any length were rarely taken.

8 31. Plaintiff and the Class Members were all subject to Defendants' common policy and
9 practice of not providing an opportunity to take a second meal period on days when employees
10 worked over 10 hours. Defendants' records expressly state that employees are only entitled to single
11 30-minute meal period whenever employees work "more than 5 hours."

12 32. "[T]ime records showing noncompliant meal periods raise a rebuttable presumption
13 of meal period violations, including at the summary judgment stage." *Donohue v. AMN Services,*
14 *LLC* (2021) 11 Cal. 5th 58, 61.

15 33. Defendants' records do not show the start and end times when Plaintiff and the Class
16 Members allegedly took meal periods and raise a presumption of meal period non-compliance.

17 34. When Defendants did not provide fully compliant meal periods, Defendants failed to
18 pay Plaintiff and Class Members a meal period premium at the regular rate of compensation in
19 violation of Labor Code section 226.7. *See Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.
20 5th 858, 863 ("We hold that the terms are synonymous: "regular rate of compensation" under section
21 226.7(c), like "regular rate of pay" under section 510(a), encompasses all nondiscretionary
22 payments, not just hourly wages").

23 35. Furthermore, due to the heavy workload and pressures from Defendants, Defendants
24 failed to authorize or permit ten-minute rest periods for every four hours of work or major fraction
25 thereof as required by Labor Code section 226.7 and 516 and section 12 of the applicable IWC Wage
26 Order.

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1 36. Furthermore, as described above, Defendants had a common policy and practice of
2 informing employees that they were only entitled to a single rest period for every “3 ½ hours of
3 work,” resulting in Plaintiff and Class Members not being authorized and permitted to take every
4 rest period to which they were entitled. As described above, because Defendants separately
5 compensated employees for rest periods, Defendants’ unlawful policy resulted in Plaintiff and Class
6 Members being deprived of rest periods that were paid at the rate required by Labor Code section
7 226.2.

8 37. Moreover, Defendants had a policy and practice of not paying rest period premiums
9 to employees who were unable to take rest periods.

10 38. To the extent Defendants ever paid a rest period premium, Defendants violated Labor
11 Code section 226.7 because such premiums were not paid at the regular rate of compensation to
12 Plaintiff and Class Members, which would have factored in employees’ additional compensation that
13 they received each pay period.

14 39. Defendants also required Plaintiff and Class Members to incur costs for work-related
15 purposes without full reimbursement, including but not limited to mileage, the purchase of supplies
16 necessary for the performance of their jobs, and the use of their personal cell phones for work
17 purposes. Defendants required Plaintiff and Class Members to purchase materials such as wax, sable,
18 pet treatment enzyme, and tub molding that were to be used during the installation process. Plaintiff
19 and Class Members were required to purchase these materials from Defendants (*e.g.*, from G.B.
20 Sales, which is a Redi-Carpet company).

21 40. Plaintiff and Class Members were not fully reimbursed for their mileage or the
22 purchase of the materials.

23 41. Furthermore, Plaintiff and Class Members were required by Defendants to use their
24 personal cell phones for work-related purposes without reimbursement. For example, Defendants
25 required employees to make phone calls and send text messages regarding the status of the jobs for
26 the day.

1 42. In direct consequence of their job duties, Plaintiff and Class Members unavoidably
2 and necessarily incurred losses, expenditures, costs and expenses that Defendants did not fully and
3 compliantly reimburse as a matter of policy and practice.

4 43. To the extent Defendants reimbursed Plaintiff and Class Members, those amounts
5 were underpaid. At all relevant times, Defendants were required to comply with the reimbursement
6 mandate of Labor Code sections 2800 and 2802.

7 44. With respect to the unpaid minimum and regular wages, overtime wages, sick leave,
8 and meal and rest period premiums owed to Plaintiff and Class Members, Defendants failed to pay
9 those wages on time each pay period or upon separation of employment. *See Naranjo v. Spectrum*
10 *Security Services, Inc.*, S258966 __ Cal. __ (May 23, 2022).

11 45. Because Defendants did not pay Plaintiff and the Class for all wages/premiums and
12 sick leave wages owed each pay period of their employment, Defendants failed to timely pay all
13 wages owed each pay day or upon separation of employment (or within 72 hours thereof), in
14 violation of Labor Code sections 201 through 203 (waiting time) and 204 and 204b (paydays).

15 46. Defendants equally failed in their affirmative obligation to provide accurate itemized
16 wage statements each pay period to Plaintiff and Class Members.

17 47. Defendants issued wage statements to Plaintiff and, on information and belief, other
18 Class Members, which contain at least four distinct types of violations.

19 48. First, on each wage statement furnished, Defendants failed to accurately state the
20 “gross wages earned” and “net wages earned” in violation of Labor Code § 226(a)(1) and (5), as
21 Plaintiff and Class Members were not paid for off the clock work and non-productive time, earned
22 overtime at one and one-half times their regular rate of pay, but were underpaid overtime on an
23 hourly basis (due to the regular rate of pay underpayment), and were deprived of all sick leave and
24 meal and rest period premiums earned at the lawful rate, resulting in an inaccurate itemization of
25 gross and net wages earned on those wage statements.

26 49. Second, Defendants violated Labor Code section 226(a)(2) by failing to list
27 employees’ “total hours worked,” as aggrieved employees worked off-the-clock, including during
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1 uncompensated meal and rest periods, rendering the total hours listed as an inaccurate reflection of
2 hours worked.

3 50. Third, the name and address of the legal entity that is the employer is incorrectly
4 listed on Claimant and aggrieved employees' wage statement as Cal-Multi in violation of Labor
5 Code section 226(a)(8).

6 51. Fourth, in violation of Labor Code section 226(a)(9), the hourly rates and
7 corresponding hours worked at those rates are incorrectly listed on Plaintiff's and Class Members'
8 wage statements. The hourly rates on the wage statement are inaccurate with respect to overtime
9 hours that were not paid at the "regular rate of pay" with respect to overtime, meal and rest period
10 premiums, and paid sick leave hours, if any, as those hours were paid at the improper base rate and
11 reflected as such on the wage statements of the aggrieved employees. The hourly rates are also
12 inaccurate with respect to Defendants' failure to pay rest and recovery pay at the correct rate.

13 52. Defendants' wage statement issues described above rendered the wage statements
14 inaccurate and confusing to Plaintiff and Class Members, concealing the underpayments and
15 presenting a false portrayal of accuracy on the wage statements relied upon by Plaintiff and Class
16 Members as the sole documentary evidence of their respective earnings.

17 53. Plaintiff and Class Members suffered injury in the form of confusion regarding
18 amounts paid for hours worked, and in the form of concealment of the common payroll practices
19 causing the violations and underpayment of wages and wage statement deficiencies as addressed in
20 this Complaint.

21 54. Indeed, Plaintiff and, on information and belief, Class Members were misinformed
22 and misled by the wage statements wages, hours, rates, and earnings. As a result of the inaccuracies
23 on the wage statements, Plaintiff and, on information and belief, Class Members were led to believe
24 that the hourly rates and net and gross wages reflected were a complete and accurate reflection of the
25 wages actually earned under California law.

26 55. Defendants' wage statement violations were knowing and intentional as a matter of
27 law with respect to Plaintiff and California Class Members given that the legal obligation was not
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1 disputed, the wage statement and wage laws are clear and unambiguous as written, and because
2 Defendants nevertheless failed to comply despite the means and ability to do so.

3 56. Plaintiff is informed, believes, and alleges that Defendants' acts and omissions have
4 knowingly and intentionally caused harm to Plaintiff and the Class. Plaintiff is informed, believes,
5 and alleges that Defendants have engaged in systemic violations of the Labor Code and IWC Wage
6 Orders by maintaining practices, policies, and customs that are inconsistent with their obligations
7 under California law.

8 57. In pay periods where Defendants provided Plaintiff and other Class Members with
9 remuneration in addition to their respective base hourly rate for hours worked—excluding any
10 forms of pay subject to any applicable statutory exclusions from the “regular rate”—Defendants
11 failed to properly calculate and pay paid sick leave at the appropriate regular rate of pay, in
12 violation of Labor Code § 246. Defendants paid sick leave at employees' straight time hourly rate
13 instead of one of the methods authorized by statute, which required Defendants to factor in
14 employees' additional remuneration, such as bonuses, production payments, mileage payments,
15 supply payments, etc.

16 58. Furthermore, Defendants also failed to pay Covid-19 Supplemental Sick Leave at a
17 rate authorized by statute because when paying such leave, Defendants failed to factor in
18 employees' bonuses, production payments, mileage payments, supply payments, and other
19 compensation. On information and belief, Defendants instead paid Supplemental Sick Leave at
20 employees' straight time hourly rate rather than by one of the methods authorized by Labor Code
21 sections 248.1, 248.2, and 248.6.

22 59. Defendants' underpayment of sick leave resulted in wage underpayments to
23 Plaintiff and Class Members.

24 **CLASS ALLEGATIONS**

25 60. *Numerosity.* The members of the Class are so numerous that joinder of all
26 individuals would be impracticable. The identity of the Class Members is readily ascertainable by
27 inspection of employment and payroll records Defendants maintain and are required to maintain by
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1 under the California Labor Code, IWC Wage Orders, and federal law. Plaintiff is informed, believes,
2 and alleges there are more than 40 Class Members.

3 61. *Adequacy of Representation.* Plaintiff is an adequate class representative. Plaintiff
4 will take all necessary steps to adequately and fairly represent and protect the interest of the Class.
5 Plaintiff is represented by attorneys who have substantial experience prosecuting, defending,
6 resolving and litigating wage and hour class actions in California state and federal courts.

7 62. *Superiority.* A class action is superior to other means for adjudication of the claims
8 of the Class and is beneficial and efficient for the parties and the Court. Class treatment will allow
9 for the common issues to be resolved in a single forum, simultaneously and without duplication of
10 effort and expense.

11 63. *Commonality.* Common questions of law and fact and a community of interest exists
12 amongst Plaintiff and the Class. These common issues arise from the employment relationship with
13 Defendants and predominate over any individual issues.

14 64. *Typicality.* Plaintiff's claims are typical of the claims of the other Class Members.
15 Plaintiff and Class Members were subject to the same policies and practices of Defendants, which
16 resulted in losses to Plaintiff and Class Members. Proof of common unlawful business practices,
17 which Plaintiff experienced and is representative of, will establish the right of the Class to recover
18 on the causes of action alleged herein.

19 **FIRST CAUSE OF ACTION**

20 **FAILURE TO PAY ALL MINIMUM WAGES**

21 **(ALL CLAIMS ALLEGED AGAINST ALL DEFENDANTS)**

22 65. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

23 66. This cause of action is brought by the Unpaid Minimum or Regular Wage Subclass.

24 67. Defendants willfully failed in their affirmative obligation to pay Plaintiff and Class
25 Members at least the lawful minimum wage for each hour worked in violation of Labor Code
26 sections 1182.12, 1194, 1197, 1197.1 and 1198 and the IWC Wage Orders (the "Hours and Days of
27 Work" and "Minimum Wages" sections of the applicable orders), including payment at the lawful
28 local and county minimum wage ordinances in effect.

1 68. Defendants' unlawful acts and omissions deprived Plaintiff and the Class of
2 minimum, regular and overtime wages in amounts to be determined at trial. Plaintiff and the Class
3 are entitled to recover to the full amount of the unpaid wages, plus liquidated damages in an amount
4 equal to the wages unlawfully unpaid (and interest thereon), in addition to interest, attorneys' fees,
5 and costs to the extent permitted by law, including under Labor Code sections 1194 and 1194.2.

6 **SECOND CAUSE OF ACTION**

7 **FAILURE TO PAY ALL OVERTIME WAGES**

8 69. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

9 70. This cause of action is brought by the Overtime Subclass pursuant to the IWC Wage
10 Orders and Labor Code §§ 204, 510, 558, 1194, and 1198, which require non-exempt employees be
11 timely paid overtime wages all overtime hours worked, and which further provide a private right of
12 action for an employer's failure to pay all overtime compensation for overtime hours worked.

13 71. Defendants failed in their affirmative obligation to pay Plaintiff and Class Members
14 no less than one and one-half times their respective "regular rate of pay" for all hours worked in
15 excess of eight hours in one day, 40 hours in one week, or the first eight hours worked on the
16 seventh day of work in any one workweek, and no less than twice their respective "regular rate of
17 pay" for all hours over 12 hours in one day and any work in excess of eight hours on any seventh
18 day of a workweek in violation of Labor Code sections 204, 510, 558, 1194, and 1198 and the IWC
19 Wage Orders (the "Hours and Days of Work" sections of the applicable orders).

20 72. Plaintiff and the Class are entitled to recover to the full amount of the unpaid
21 overtime, in addition to interest, statutory and civil penalties, and attorneys' fees, and costs to the
22 extent permitted by law.

23 **THIRD CAUSE OF ACTION**

24 **FAILURE TO PAY FOR AUTHORIZED REST PERIODS/NON-PRODUCTIVE TIME**

25 73. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

26 74. This cause of action is brought by the Unpaid Minimum or Regular Wage Subclass
27 and the Rest Period Subclass.

1 75. Because Plaintiff and the Class Members were not separately compensated for rest
2 periods (a rate required by statute) and non-productive time, Plaintiff and the Class Members are
3 owed wages for this time.¹

4 76. The IWC Wage Orders state that Plaintiff and the Class Members must be paid for all
5 “hours worked” for time they are “subject to the control of the employer, and includes all the time
6 the employee is suffered or permitted to work.” Cal. Code Regs., tit. 8, § 11040, subd. 2(k).

7 77. The IWC Wage Orders state that rest periods are “hours worked for which there will
8 be no deduction from wages.” Cal. Code Regs., tit. 8, § 11040, subd. 12(a).

9 78. Labor Code section 226.2 applies to employees who are compensated in whole, or in
10 part, on a piece-rate basis. Section 226.2(a)(1) requires employers to compensate employees for
11 “rest and recovery periods and other non-productive time spent separate from any piece rate
12 compensation.”

13 79. Non-productive time must be compensated at a rate no less than the applicable state
14 or local minimum wage. Cal. Lab. Code § 226.2(a)(4).

15 80. Rest and recovery periods must be compensated the *higher* of (1) an average hourly
16 rate taken by dividing an employee’s total compensation for the workweek (exclusive of overtime
17 and rest and recovery compensation) by the employee’s total hours worked or the applicable
18 minimum wage. Cal. Lab. Code § 226.2(a)(3)(A).

19 81. Section 226.2 expressly requires that any employees paid in whole or in part on a
20 piece rate basis must receive at least minimum wage for all hours worked as well as any required
21 overtime compensation.

22 82. Defendants willfully failed in their affirmative obligation to pay Plaintiff and Class
23 Members at least the lawful minimum wage for each hour worked (including all non-productive
24 time) in violation of Labor Code sections 226.2, 1182.12, 1194, 1197, 1197.1 and 1198 and the IWC
25 Wage Orders (the “Hours and Days of Work” and “Minimum Wages” sections of the applicable
26 orders), including payment at the lawful local and county minimum wage ordinances in effect.

27
28 ¹ See *Vaquero v. Stoneledge Furniture, LLC* (2017) 9 Cal. App. 5th 98; *Bluford v. Safeway
Stores, Inc.* (2013) 216 Cal. App. 4th 864, 872.

1 83. Defendants also failed in their affirmative obligation to pay Plaintiff and the Class for
2 rest periods at the rate required by section 226.2(a)(3)(A), resulting in unpaid wages to Plaintiff and
3 the Class.

4 84. Defendants' unlawful acts and omissions deprived Plaintiff and the Class of
5 minimum, regular and overtime wages in amounts to be determined at trial. Plaintiff and the Class
6 are entitled to recover to the full amount of the unpaid wages, plus liquidated damages in an amount
7 equal to the wages unlawfully unpaid (and interest thereon), in addition to interest, attorneys' fees,
8 and costs to the extent permitted by law, including under Labor Code sections 1194 and 1194.2.

9 **FOURTH CAUSE OF ACTION**

10 **MEAL PERIOD VIOLATIONS**

11 85. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

12 86. This cause of action is brought by the Meal Period Subclass pursuant to the IWC
13 Wage Orders and Labor Code §§ 226.7, 558 and 512, which require non-exempt employees be
14 provided complaint meal periods (or meal period premiums in lieu thereof), and which further
15 provide a private right of action for an employer's failure to lawfully provide all meal periods and/or
16 pay meal period premiums at the lawful regular rate of compensation.

17 87. Defendants willfully failed in their affirmative obligation to consistently provide
18 Plaintiff and Class Members compliant, duty-free meal periods of not less than 30 minutes beginning
19 before the fifth hour of hour for each work period of more than five hours per day and a second duty-
20 free meal period of not less than 30 minutes beginning before the tenth hour of hour of work in
21 violation of Labor Code sections 226.7, 512, 558, 1198 and the IWC Wage Orders (the "Meal
22 Periods" sections of the applicable orders).

23 88. Further, Defendants willfully failed in their affirmative obligation to consistently pay
24 Plaintiff and the Class one additional hour of pay at the respective regular rate of compensation for
25 each workday that a fully compliant meal period was not provided, in violation of Labor Code
26 sections 226.7, 512, 558, and 1198 and the IWC Wage Orders (the "Meal Periods" sections of the
27 applicable orders).

1 89. Plaintiff and the Class are entitled to recover to the full amount of the meal period
2 premiums owed, in addition to interest, statutory and civil penalties, and attorneys' fees, and costs to
3 the extent permitted by law.

4 **FIFTH CAUSE OF ACTION**

5 **REST PERIOD VIOLATIONS**

6 90. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

7 91. This cause of action is brought by the Rest Period Subclass pursuant to the IWC
8 Wage Orders and Labor Code §§ 226.7 and 516, which require non-exempt employees be authorized
9 to take complaint rest periods (or rest period premiums in lieu thereof), and which further provide a
10 private right of action for an employer's failure to lawfully provide all rest periods and/or pay rest
11 period premiums at the lawful regular rate of compensation.

12 92. Defendants willfully failed in their affirmative obligation to consistently authorize
13 and permit Plaintiff and Class Members to receive compliant, duty-free rest periods of not less than
14 ten (10) minutes for every four hours worked (or major fraction thereof) in violation of Labor Code
15 sections 226.7, 516, 558, and 1198 and the IWC Wage Orders (the "Rest Periods" sections of the
16 applicable orders).

17 93. Further, Defendants willfully failed in their affirmative obligation to consistently pay
18 Plaintiff and the Class one additional hour of pay at the respective regular rate of compensation for
19 each workday that a fully compliant rest period was not provided, in violation of Labor Code
20 sections 226.7, 516, 558, and 1198 and the IWC Wage Orders.

21 94. Plaintiff and the Class are entitled to recover to the full amount of the rest period
22 premiums owed, in addition to interest, statutory and civil penalties, and attorneys' fees, and costs to
23 the extent permitted by law.

24 **SIXTH CAUSE OF ACTION**

25 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

26 95. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

27 96. Plaintiff brings this cause of action on behalf of the Reimbursement Subclass.

1 97. Defendants willfully failed in its affirmative obligation to reimburse Plaintiff and
2 Class Members for all necessary expenditures, losses, expenses, and costs incurred by them in direct
3 discharge of the duties of their employment, in violation of Labor Code section 2802.

4 98. Defendants' unlawful acts and omissions deprived Plaintiff and Class Members of
5 lawful reimbursements for business expenses in amounts to be determined at trial. Plaintiff and the
6 Class are entitled to recover to amount of the unreimbursed expenses of Plaintiff and Class Members
7 in addition to interest, attorneys' fees, and costs to the extent permitted by law, including under
8 Labor Code section 2802.

9 **SEVENTH CAUSE OF ACTION**

10 **UNTIMELY PAYMENT OF WAGES**

11 99. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

12 100. This cause of action is brought by the Untimely Payment of Wages Subclass pursuant
13 to the IWC Wage Orders and Labor Code §§ 204, 204b, and 210 which require non-exempt
14 employees be timely paid all wages owed each pay period, and which further provide a private right
15 of action for an employer's failure to comply with this obligation.

16 101. Defendants willfully failed in their affirmative obligation to timely pay all wages,
17 including paid sick leave and meal and rest premiums, earned by Plaintiff and Class Members twice
18 during each calendar month on days designated in advance by the employer as regular paydays (for
19 employees paid on a non-weekly basis) and on the regularly-scheduled weekly payday weekly
20 employees, if any, in violation of Labor Code sections 204 and 204b and the IWC Wage Orders (the
21 "Minimum Wages" sections of the applicable orders).

22 102. Plaintiff and the Class are entitled to recover the full amount of the unpaid wages, in
23 addition to a statutory penalty in the amount of \$100 for the initial violation for each failure to pay
24 each employee and \$200 for all subsequent violations and for all willful or intentional violations for
25 each failure to pay each employee, plus 25 percent of the amount unlawfully withheld under
26 provided in Labor Code § 210, in addition to interest, attorneys' fees, and costs to the extent
27 permitted by law.

28 ///

1 **EIGHTH CAUSE OF ACTION**

2 **WAGE STATEMENT VIOLATIONS**

3 103. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

4 104. This cause of action is brought by the Wage Statement Subclass pursuant to Labor
5 Code § 226(a) which requires non-exempt employees be provided accurate itemized wage
6 statements each pay period, and which further provide a private right of action for an employer's
7 failure to comply with this obligation.

8 105. Defendants knowingly and intentionally failed in their affirmative obligation provide
9 accurate itemized wage statements to Plaintiff and Class Members resulting in injury to Plaintiff and
10 Class Members. Specifically, the wage statements issued to Plaintiff and Class Members did not
11 accurately state each pay period all of the information required by Labor Code § 226(a)(1)-(9).

12 106. Defendants' unlawful acts and omissions deprived Plaintiff and the Class of accurate
13 itemized wage statements, causing confusion and concealing wage and premium underpayments.

14 107. As a result, Plaintiff and the Class are entitled to recover the statutory penalty of \$50
15 per employee for the initial pay period in which a violation occurred and \$100 per employee for each
16 violation in a subsequent pay period, up to an aggregate penalty of \$4,000 per employee, in addition
17 to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor Code
18 section 226(e).

19 **NINTH CAUSE OF ACTION**

20 **WAITING TIME PENALTIES**

21 108. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

22 109. This cause of action is brought by the Waiting Time Penalty Subclass pursuant to
23 Labor Code §§ 201 through 203, which require an employer to timely pay all wages earned upon
24 termination of employment, and which further provide a private right of action to recover statutory
25 waiting time penalties each day an employer fails to comply with this obligation, up to a maximum
26 of 30 days wages.

27 110. Defendants willfully failed and continue to fail in their affirmative obligation to pay
28 all wages earned and unpaid to Plaintiff and members of the Waiting Time Class immediately upon

1 termination of employment or within 72 hours thereafter for employees who did not provide at least
2 72 hours prior notice of his or her intention to quit, and further failed to pay those sums for 30 days
3 thereafter in violation of Labor Code sections 201 through 203 and the IWC Wage Orders.

4 111. Plaintiff and the Waiting Time Class are entitled to recover to a waiting time penalty
5 for a period of up to 30 days, in addition to interest, attorneys' fees, and costs to the extent permitted
6 by law.

7 **TENTH CAUSE OF ACTION**

8 **FAILURE TO PAY PAID SICK LEAVE & SUPP. PAID SICK LEAVE WAGES**

9 112. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

10 113. Plaintiff brings this cause of action on behalf of the Paid Sick Leave Subclass.

11 114. Defendants knowingly and intentionally failed in their affirmative obligation to pay
12 sick leave wages to Plaintiff and the Paid Sick Leave Class in violation of Labor Code section 246 *et*
13 *seq.*

14 115. Labor Code section 246(l) governs how Defendants were required to calculate paid
15 sick leave:

16 [A]n employer shall calculate paid sick leave using any of the following
17 calculations:

18 (1) Paid sick time for nonexempt employees shall be calculated in the same
19 manner as the regular rate of pay for the workweek in which the employee
20 uses paid sick time, whether or not the employee actually works overtime
21 in that workweek.

22 (2) Paid sick time for nonexempt employees shall be calculated by dividing
23 the employee's total wages, not including overtime premium pay, by the
24 employee's total hours worked in the full pay periods of the prior 90 days
25 of employment.

26 (3) Paid sick time for exempt employees shall be calculated in the same
27 manner as the employer calculates wages for other forms of paid leave
28 time.

1 116. Defendants failed to pay Plaintiff and the Paid Sick Leave Class their paid sick leave
2 wages at one of the lawful rates set forth in the statute because Defendants failed to include in their
3 sick leave calculation the additional remuneration received by Plaintiff and the Paid Sick Leave
4 Class.

5 117. Furthermore, Defendants knowingly and intentionally failed in their affirmative
6 obligation to pay Covid-19 Supplemental Sick Leave wages to the Paid Sick Leave Class at the
7 correct rate in violation of Labor Code sections 246, 248.1, 248.2, and 248.6.

8 118. Pursuant to Labor Code section 248.1, Defendants were required to provide up to 80
9 hours of Covid-19 Supplemental Paid Sick Leave to employees for the period of April 20, 2020 to
10 December 31, 2020. Labor Code section 248.2 required Defendants to provide up to 80 hours of
11 Covid-19 Supplemental Paid Sick Leave for the period of January 1, 2021 through at least
12 September 30, 2021. Labor Code section 248.6 extended Covid sick leave protections and requires
13 employers to provide up to 80 hours of Covid-19 Supplemental Paid Sick Leave for the period of
14 January 1, 2022 to September 30, 2022, and may be extended thereafter.

15 119. Under Labor Code section 248.1, employees must be paid for Covid-19 Supplemental
16 Paid Sick Leave at the highest of the following: (1) the regular rate of pay for the last pay period,
17 (2) state minimum wage, (3) local minimum wage.

18 120. Under Labor Code section 248.2, non-exempt employees must be paid supplemental
19 paid sick leave according to the highest of the following four methods:

20 (I) Calculated in the same manner as the regular rate of pay for the workweek in
21 which the covered employee uses COVID-19 supplemental paid sick leave,
22 whether or not the employee actually works overtime in that workweek.

23 (II) Calculated by dividing the covered employee's total wages, not including
24 overtime premium pay, by the employee's total hours worked in the full pay
25 periods of the prior 90 days of employment.

26 (III) The state minimum wage.

27 (IV) The local minimum wage to which the covered employee is entitled.
28

1 121. Labor Code section 248.6 requires employers to pay supplemental sick leave using
2 either method (I) or (II), as identified above.

3 122. On information and belief, Defendants failed to pay Covid-19 Supplemental Sick
4 Leave in the manner described above because Defendants failed to include in their sick leave
5 calculation the additional remuneration received by the Paid Sick Leave Class.

6 123. As a result, Defendants violated the Labor Code and are liable to Plaintiff and the
7 Paid Sick Leave Class for underpaid sick leave wages, in addition to interest, attorneys' fees, and
8 costs.

9 **ELEVENTH CAUSE OF ACTION**

10 **UNFAIR COMPETITION**

11 124. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

12 125. Plaintiff brings this cause of action on behalf of all Classes.

13 126. Defendants have engaged and continue to engage in unfair and/or unlawful business
14 practices in the State of California in violation of California Business and Professions Code § 17200
15 by failing committing the foregoing wage and hour violations alleged throughout this Complaint.

16 127. Defendants' dependance on these unfair and/or unlawful business practices deprived
17 Plaintiff and continue to deprive other Class Members of compensation to which they are legally
18 entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage to
19 Defendants over competitors who have been and/or are currently employing workers in compliance
20 with California's wage and hour laws. These failures constitute unlawful, deceptive, and unfair
21 business acts and practices in violation of Business and Professions Code section 17200, et seq.

22 128. Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged in this
23 Complaint, and Plaintiff, as an individual and on behalf of others similarly situated, seeks full
24 restitution of the moneys as necessary and according to proof to restore all monies withheld,
25 acquired, and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and
26 17208.

27 129. Plaintiff and the Class are entitled to injunctive relief against Defendants, restitution,
28 and other equitable relief to return all funds over which Plaintiff and the Class have an ownership

1 interest and to prevent future damage and the public interest under Business and Professions Code
2 § 17200, et seq. Plaintiff and the Class are further entitled to recover interest, attorneys' fees, and
3 costs to the extent permitted by law, including under Code of Civil Procedure § 1021.5.

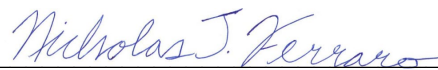
4 **PRAYER**

5 Plaintiff prays for judgment as follows:

- 6 a. For certification of this action as a class action;
- 7 b. For appointment of Plaintiff as the representative of the Class;
- 8 c. For appointment of above-captioned counsel for Plaintiff as Class Counsel;
- 9 d. For recovery of damages in amount according to proof;
- 10 e. For all recoverable pre- and post-judgment interest;
- 11 f. For recovery of all civil and statutory penalties and liquidated damages;
- 12 g. For disgorgement of all amounts wrongfully obtained;
- 13 h. For restitution and injunctive relief;
- 14 i. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent
15 permitted by law, including (without limitation) under Labor Code §§ 218.5, 226,
16 1194, 2802, and Code of Civil Procedure section 1021.5; and
- 17 j. For such other relief the Court deems just and proper.

18
19 Dated: June 7, 2022

Ferraro Vega Employment Lawyers, Inc.

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22 Nicholas J. Ferraro
23 *Attorneys for Plaintiff*
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