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Clerk of the Superior Court
By Regina Chanez, Deputy Clerk

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

JON WOOD, as an individual and on behalf of
all others similarly situated,

Plaintiff,

vs.

2018HMO LLC dba HIKEI MODERN
CANNABIS; 2018HMPF LLC; AARON
MAGAGNA, an individual; MICHAEL
STRATMAN, an individual; and DOES 1
through 50, inclusive,

Defendants.

Case No. 37-2021-00053035-CU-OE-CTL

CLASS ACTION COMPLAINT

1. Failure to Pay All Minimum Wages
2. Failure to Pay All Overtime Wages
3. Meal Period Violations
4. Rest Period Violations
5. Untimely Payment of Wages
6. Wage Statement Violations
7. Waiting Time Penalties
8. Failure to Reimburse Business Expenses
9. Failure to Provide Records
10. Violations of the Unfair Competition Law

1 Plaintiff JON WOOD (“Plaintiff”), on behalf of a class of all other similarly situated current
2 and former California employees, brings this action against Defendants 2018HMO LLC dba HIKEI
3 MODERN CANNABIS; 2018 HMPF LLC; AARON MAGAGNA; MICHAEL STRATMAN; and
4 DOES 1 through 50 (collectively, “Defendants”), alleging as follows:

5 **INTRODUCTION**

6 1. This is a class action filed for wage and hour violations of the California Labor
7 Code. Plaintiff worked as an hourly, non-exempt employee for Defendants from March 2020
8 through October 2021. Defendants engaged in a pattern of editing employees’ time records that
9 resulted in an underpayment of regular and overtime wages to Plaintiff and the other employees.
10 Defendants also maintained an unlawful automatic meal period policy, whereby meal periods of at
11 least minimum duration were entered and/or automatically deducted regardless of whether they
12 were actually taken. This resulted in an underpayment of regular and overtime hours worked each
13 pay period for the Plaintiff and other employees. Defendants also required Plaintiff and other
14 employees to work through their meal and rest breaks as a matter of policy, failed to pay Plaintiff
15 and other employees for such time, and also failed to pay any meal or rest period premiums to
16 Plaintiff and other employees. Defendants thus failed to provide compliant meal and rest periods
17 (or premiums in lieu thereof) as required. Defendants also failed to reimburse Plaintiff and other
18 employees for necessary business expenses, including for the use of personal cell phones as a
19 requirement of employment. As a result of these violations, Defendants failed to timely pay
20 Plaintiff and Class Members each pay period on paydays and upon separation of employment, and
21 thus are liable for waiting time and other statutory penalties.

22 2. Defendants’ employment policies and practices and payroll administration systems
23 enabled and facilitated these violations on a company-wide basis with respect to the Class
24 Members.

25 **JURISDICTION & VENUE**

26 3. Jurisdiction of this action is proper in this Court under Article VI, Section 10 of the
27 California Constitution.
28

4. Venue as to each defendant is proper in this judicial district under Code of Civil Procedure sections 395 and 395.5 because Defendants conduct business in this county, employed Plaintiff in this county, and committed some of the alleged violations in this county.

5. Plaintiff is informed, believes, and alleges that more than two-thirds of the Class Members in this action are citizens of the State of California, which is where the principal injuries of Defendants' alleged conduct occurred.

PARTIES

A. Plaintiff Jon Wood

6. Plaintiff JON WOOD is a citizen of California over 18 years of age who worked for Defendants in San Diego County as an hourly, non-exempt employee of Defendants.

7. Plaintiff worked for Defendants in California from March 2020 to October 2021 as a Delivery Driver.

B. Defendants (Hikei Modern Cannabis)

8. Plaintiff is informed, believes, and alleges that Defendant 2018HMO LLC is a California limited liability company doing business and employing individuals in San Diego, California.

9. Plaintiff is informed, believes, and alleges that Defendant 2018HMPF LLC is a California limited liability company doing business and employing individuals in San Diego, California.

10. Plaintiff is informed, believes, and alleges that Defendant Aaron Magagna is a California resident and an officer, member, director, agent, and/or owner of the above corporate Defendants at all relevant times stated herein.

11. Plaintiff is informed, believes, and alleges that Defendant Michael Stratman is a California resident, and is the Chief Operating Officer of the above corporate Defendants during the class period.

12. Defendants does business as “Hikei Modern Cannabis.”

13. Plaintiff is informed and alleges that no class action asserting similar factual allegations has been filed against any of the named defendants within the preceding three years.

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

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

13 16. Plaintiff is informed, believes, and alleges that all defendants in this action are
14 employers and/or joint employers and part of an integrated employer enterprise, as each defendant
15 exercises control over the wages, hours, and working conditions of Plaintiff and other employees,
16 suffers and permits them to work, and engages the workforce creating a common law employment
17 relationship. Additionally, all Defendants have common ownership, common management,
18 interrelationship of operations, and centralized control over labor relations and are therefore part of
19 an integrated enterprise and thus jointly and severally responsible for the acts and omissions alleged
20 herein.

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

25 18. Plaintiff is informed, believes and alleges that the above-mentioned defendants
26 violated and/or caused to be violated Labor Code and IWC Wage Order provisions and/or
27 regulating minimum wages and days of work and other provisions of the Labor Code with respect
28 to the Class of aggrieved employees. As a result, they may be held personally liable under Labor

Code sections 558, 558.1, and 1197.1. (*See, e.g., Atempa v. Pedrazzani* (2018) 27 Cal. App. 5th 809.)

GENERAL ALLEGATIONS

19. Defendants failed to pay all minimum, regular, and overtime wages to employees as a result of their practice of editing employees' time records and automatically deducting employees' meal periods and forcing them to work through meal periods. Defendants maintained an unlawful automatic meal period policy, whereby meal periods of at least minimum duration were entered and/or auto-deducted regardless of whether they were actually taken. This resulted in an underpayment of hours worked each pay period for employees, as Class Members worked during those periods marked as unpaid meal periods. Class Members did not receive compensation for those hours worked. Defendants also engaged in a pattern of editing employees' time records that resulted in an underpayment of regular and overtime wages to Plaintiff and other non-exempt employees. The revisions were made without employees' knowledge or consent.

20. Furthermore, Defendants failed to consistently provide timely, off-duty 30-minute meal periods to Class Members within the first five hours of work, and timely second off-duty 30-minute meal periods to the extent they worked shifts of 10 hours or more, in violation of Labor Code sections 226.7, 512 and section 11 of the applicable IWC Wage Orders. (*See, e.g., Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 863 ["We hold that the terms are synonymous: "regular rate of compensation" under section 226.7(c), like "regular rate of pay" under section 510(a), encompasses all nondiscretionary payments, not just hourly wages."]) Defendants' policy and practice of not paying all meal period premiums is a matter of common corporate policy and payroll administration such that it applies and affected all other employees. As discussed above, Defendants automatically created/deducted meal periods entries on behalf of Plaintiff and Class Members, even when they did not take a compliant meal period (*i.e.*, taken by the 5th hour, uninterrupted, 30 minutes in length). Plaintiff and Class Members also experienced other meal period violations due to deliveries, poor staffing, company policy prohibiting breaks during deliveries, and customer demands. Plaintiff and other employees were not paid meal period premiums for shifts of 5 hours or more without a meal period when no meal period waiver was in

1 effect. Furthermore, Defendants' time records show that Defendants' or their agents edited
2 Plaintiff's time records (without his knowledge) to make it appear as though Plaintiff took
3 compliant meal periods during times when they did not. Plaintiff is informed, believes, and alleges
4 that Defendants engage in this same practice for other employees.

5 21. Moreover, drivers were not permitted to take breaks until they arrived back at the
6 store location per company policy. Drivers like Plaintiff were required to sign an agreement stating
7 that once they left the retail location, they were prohibited from making any stops in the vehicle
8 unless it was for product delivery, fuel, or vehicle repair and that they were required to drive
9 straight back to the retail location after the last delivery. This requirement prevented Plaintiff and
10 other Class Members from taking meal and rest periods because they were often scheduled with
11 back-to-back deliveries.

12 22. When Defendants did not provide fully compliant meal periods, Defendants failed to
13 pay Class Members a meal period premium at the regular rate of compensation in violation of
14 Labor Code section 226.7. (*See Ferra*, 11 Cal. 5th at 863.) "[T]ime records showing noncompliant
15 meal periods raise a rebuttable presumption of meal period violations, including at the summary
16 judgment stage." (*Donohue v. AMN Servs., LLC* (2021) 11 Cal. 5th 58, 61.) Defendants' policy
17 and practice of not paying all meal period premiums at the lawful rate is a matter of common
18 corporate policy and payroll administration such that it applies and affected all other Class
19 Members and are evident from the time records and time record edits maintained by Defendants,
20 which show late, short and missed meal periods without an associated meal period premium on the
21 corresponding employee wage statement.

22 23. Defendants failed to authorize or *permit* ten-minute rest periods for every four hours
23 of work or major fraction thereof as required by Labor Code section 226.7 and 516 and section 12 of
24 the applicable IWC Wage Order. Defendants did not authorize rest periods and did not afford
25 sufficient staffing for Plaintiff and other employees to take compliant 10-minute rest periods in
26 accordance with California law. Legally compliant breaks were usually precluded by Defendants'
27 scheduling practices and lack of compliant policies and practices with respect to 10-minute rest
28 periods, as well as company policy prohibiting breaks during deliveries. Defendants prohibited

1 drivers from taking breaks while delivering cannabis products and were expressly prohibited from
2 engaging in “any activities except for cannabis goods delivery[.]”

3 24. On information and belief, Plaintiff alleges that Defendants did not pay a single rest
4 period premium to any of its employees. Plaintiff is informed, believes, and alleges that Defendants
5 failed to maintain lawful meal and rest period policies in an employee handbook or other governing
6 document that apprised Plaintiff and other Class Members of their respective rights under
7 California law.

8 25. When Defendants did not provide a fully compliant rest period to Plaintiff or other
9 Class Members, Defendants failed to pay Plaintiff and other Class Members a rest period premium
10 at the lawful “regular rate of compensation” in violation of Labor Code section 226.7.

11 26. Defendants also failed to reimburse Plaintiff and other employees for necessary
12 business expenses. Defendants required Plaintiff and other employees to clock in and out using an
13 app called Deputy. At all relevant times, Defendants were required to comply with the
14 reimbursement mandate of Labor Code section 2802. Plaintiff and other employees were not
15 compensated for their use of their personal cell phones, and Defendants did not provide a
16 reasonable stipend. (*See, e.g., Cochran v. Schwan Home Service* (2014) 228 Cal. App. 4th 1137.)

17 27. With respect to the unpaid wages and premiums owed to Plaintiff and Class
18 Members, Defendants failed to pay those wages on time each pay period or upon separation of
19 employment. Because Defendants did not pay Plaintiff and the Class for all wages/premiums owed
20 each pay period their employment, Defendants failed to timely pay all wages owed each pay day or
21 upon separation of employment (or within 72 hours thereof), in violation of Labor Code sections
22 201 through 203 (waiting time) and 204 and 204b (paydays).

23 28. Defendants equally failed in their affirmative obligation to provide accurate itemized
24 wage statements each pay period to Plaintiff and Class Members. Defendants issued wage
25 statements to Plaintiff and, on information and belief, Class Members, which contain several types
26 of violations.

27 29. First, on each wage statement furnished, Defendants failed to accurately state the
28 “gross wages earned” and “net wages earned” in violation of Labor Code § 226(a)(1) and (5), as

1 Plaintiff and Class Members earned regular and overtime wages, but were underpaid (due to meal
2 period automatic deductions and time record alterations), and were deprived of wages and meal and
3 rest period premiums earned at the lawful rate, resulting in an inaccurate itemization of gross and
4 net wages earned on those wage statements.

5 30. Second, on each wage statement furnished to Plaintiff and, on information and
6 belief, the Class Members, Defendants failed to accurately state “all applicable hourly rates in effect
7 during the pay period and the corresponding number of hours worked at each hourly rate by the
8 employee” in violation of Labor Code § 226(a)(9), as the wage statements issued to Plaintiff and
9 Class Members do not accurately list the actual hours worked by employees (due to meal period
10 automatic deductions and time record alterations), but instead list deflated hours and wages.

11 31. Third, Defendants inaccurately listed total hours worked during the pay period, as
12 Plaintiff and Class Members worked off-the-clock during times that were Defendants edited time
13 records to (1) reduce hours worked, (2) automatically deduct 30 minutes from hours worked for a
14 meal period, or (3) insert false meal periods, resulting in an inaccurate reflection of total hours
15 worked on those corresponding wage statements.

16 32. Defendants’ wage statement issues described above rendered the wage statements
17 inaccurate and confusing to Plaintiff and Class Members, concealing the underpayments and
18 presenting a false portrayal of accuracy on the wage statements relied upon by Plaintiff and Class
19 Members as the sole documentary evidence of their respective earnings.

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

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

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

5 36. Because of the violations set forth in this Complaint, including Defendants' failure
6 to accurately maintain records of pay for all hours worked at the appropriate lawful rates of pay
7 (*i.e.*, unrecorded off-the-clock hours), Defendants violated Labor Code section 1174 and the IWC
8 Wage Orders by failing to maintain records showing accurate daily hours worked at the
9 corresponding wage rate, and the wages paid to each employee.

10 37. Plaintiff issued a records request to Defendants requesting all records due under the
11 IWC Wage Orders (including the Records sections), and Labor Code sections 226 and 432. In
12 response to Plaintiff's records request to Defendants, Defendants did not provide the employee
13 handbook or Plaintiff's time records, in violation of California law and as an effort to conceal the
14 violations addressed herein.

15 38. Plaintiff is informed, believes, and alleges that Defendants acts' and omissions have
16 knowingly and intentionally caused harm to Plaintiff and the Class. Plaintiff is informed, believes,
17 and alleges that Defendants have engaged in systemic violations of the Labor Code and IWC Wage
18 Orders by maintaining practices, policies, and customs that are inconsistent with their obligations
19 under California law.

20 **CLASS ACTION ALLEGATIONS**

21 39. ***Class Definition.*** The named individual Plaintiff seeks class certification under
22 California Code of Civil Procedure section 382. Plaintiff proposes the following class:

- 23 a. All individuals currently or formerly employed by Defendants in the State of
24 California as hourly non-exempt employees at any time from **December 20, 2017**
25 through the time of trial in this action (the "Class" or "Class Members" and the
26 "Class Period").

27 40. ***Subclasses.*** Further, Plaintiff proposes the following subclasses:
28

- 1 a. All Class Members who separated from employment with Defendants at any
2 time from **December 20, 2018** through the time of trial in this action (the
3 “Waiting Time Subclass”).
- 4 b. All Class Members who received a wage statement from Defendants at any time
5 from **December 20, 2020** through the time of trial in this action (“Wage
6 Statement Subclass”).
- 7 c. All Class Members who worked shifts of five hours or more without a duty-free
8 meal period of at least 30 minutes, who were not paid one hour of pay at the
9 regular rate of compensation for each of those days (“Meal Period Subclass”).
- 10 d. All Class Members who worked shifts of four hours or major fraction thereof
11 without being authorized or permitted an uninterrupted rest period of at least
12 10 minutes, who were not paid one hour at the regular rate of compensation for
13 each of those days (“Rest Period Subclass”).
- 14 e. All Class Members who were not paid all regular, overtime, or minimum wages
15 for all hours worked each pay period (“Unpaid Wage Subclass”).
- 16 f. All Class Members who used a personal cell phone or device for work-related
17 purposes and did not receive a reimbursement from Defendants
18 (“Reimbursement Subclass”).

19 41. Plaintiff reserves the right to move the Court to amend or modify the class
20 definitions and to establish additional classes and subclasses as appropriate.

21 42. ***Numerosity.*** The members of the Class are so numerous that joinder of all
22 individuals is impracticable. The identity of the Class Members is readily ascertainable by review
23 of Defendants’ employment and payroll records. Plaintiff is informed, believes and alleges there
24 are more than 50 Class Members.

25 43. ***Adequacy of Representation.*** Plaintiff is an adequate class representative. Plaintiff
26 will take all necessary steps to adequately and fairly represent and protect the interest of the Class.
27 Plaintiff is represented by attorneys who have substantial experience prosecuting and resolving
28

wage-and-hour class actions in the past and currently have numerous wage-and-hour class actions pending in California state and federal courts.

44. **Manageability.** This class action is manageable because the liability and damages to Class Members can be ascertained by forensic review of corporate and employer timekeeping and payroll records along with other evidence that Defendants maintained and is required by law to maintain. This class action is manageable because the contact information and identity of percipient witnesses—namely, Defendants employees (the putative class members)—is readily maintained by Defendants.

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

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

47. **Typicality.** Plaintiff's claims are typical of the claims of the other Class Members. Plaintiff and Class Members were subject to the same policies and practices of Defendants, which resulted in losses to Plaintiff and Class Members.

48. Proof of common unlawful business practices, which Plaintiff experienced and is representative of, will establish the right of the Class to recover on the causes of action alleged herein.

FIRST CAUSE OF ACTION

FAILURE TO PAY ALL REGULAR AND MINIMUM WAGES

Labor Code §§ 1194 and 1194.2

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

50. Defendants willfully failed in their affirmative obligation to pay Plaintiff and Class Members at least the lawful minimum wage for each hour worked in violation of Labor Code sections 1182.12, 1194, 1197, 1197.1 and 1198 and the IWC Wage Orders (the "Hours and Days of

1 Work” and “Minimum Wages” sections of the applicable orders), including payment at the lawful
2 local and county minimum wage ordinances in effect.

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

8 **SECOND CAUSE OF ACTION**

9 **FAILURE TO PAY ALL OVERTIME WAGES**

10 **Labor Code §§ 510 and 1194**

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

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

19 54. Defendants’ unlawful acts and omissions deprived Plaintiff and the Class of
20 overtime wages in amounts to be determined at trial. Plaintiff and the Class are entitled to recover
21 to the full amount of the unpaid overtime wages, in addition to interest, attorneys’ fees, and costs to
22 the extent permitted by law, including under Labor Code section 1194.

23 **THIRD CAUSE OF ACTION**

24 **MEAL PERIOD VIOLATIONS**

25 **Labor Code §§ 226.7 and 512**

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

27 56. Defendants willfully failed in their affirmative obligation to consistently provide
28 Plaintiff and Class Members compliant, duty-free meal periods of not less than 30 minutes

beginning before the fifth hour of hour for each work period of more than five hours per day and a second on-duty meal period of not less than 30 minutes beginning before the tenth hour of hour of work in violation of Labor Code sections 226.7 and 512 and the IWC Wage Orders (the “Meal Periods” sections of the applicable orders).

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

58. Defendants’ unlawful acts and omissions deprived Plaintiff and the Class of meal periods and meal period premiums in amounts to be determined at trial. Plaintiff and the Class are entitled to recover to the full amount of the unpaid premiums, in addition to interest, attorneys’ fees, and costs to the extent permitted by law, including under Code of Civil Procedure section 1021.5.

FOURTH CAUSE OF ACTION

REST PERIOD VIOLATIONS

Labor Code §§ 226.7 and 516

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

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

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

62. Defendants’ unlawful acts and omissions deprived Plaintiff and the Class of rest periods and rest period premiums in amounts to be determined at trial. Plaintiff and the Class are

entitled to recover to the full amount of the unpaid premiums, in addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Code of Civil Procedure section 1021.5.

FIFTH CAUSE OF ACTION

UNTIMELY PAYMENT OF WAGES

Labor Code §§ 204, 204b and 210

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

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

65. Defendants' unlawful acts and omissions deprived Plaintiff and the Class of timely wages in amounts to be determined at trial. Plaintiff and the Class are entitled to recover to the full amount of the unpaid wages, in addition to a statutory penalty in the amount of \$100 for the initial violation for each failure to pay each employee and \$200 for all subsequent violations and for all willful or intentional violations for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld under provided in Labor Code section 210, in addition to interest, attorneys' fees, and costs to the extent permitted by law.

SIXTH CAUSE OF ACTION

WAGE STATEMENT VIOLATIONS

Labor Code § 226

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

67. Defendants knowingly and intentionally failed in their affirmative obligation provide accurate itemized wage statements to Plaintiff and Class Members in violation of Labor Code section 226(a).

68. As an initial matter, on information and belief, Plaintiff alleges that Defendants maintained a policy and practice of non-compliance with Labor Code section 226(a)'s statutory

mandate by failing to issue or make available wage statements to Class Members each pay period that list any of the information required by Labor Code section 226.

69. Moreover, based on the wage statements issued by Defendants, Plaintiff alleges that these wage statements fail to correctly list (1) gross wages earned each pay period, (2) total hours actually worked each pay period, (5) net wages earned, (9) all hourly rates in effect and the total number of hours worked each pay period.

70. Defendants' unlawful acts and omissions deprived Plaintiff and the Class of accurate itemized wage statements, causing confusion and concealing wage and premium underpayments/ As a result, Plaintiff and the Class are entitled to recover the statutory penalty of \$50 per employee for the initial pay period in which a violation occurred and \$100 per employee for each violation in a subsequent pay period, up to an aggregate penalty of \$4,000 per employee, in addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor Code section 226(e).

SEVENTH CAUSE OF ACTION

WAITING TIME PENALTIES

Violation of Labor Code §§ 201 through 203

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

72. Defendants willfully failed in their affirmative obligation to pay all wages earned and unpaid to Plaintiff and members of the Waiting Time Subclass immediately upon termination of employment or within 72 hours thereafter for employees who did not provide at least 72 hours prior notice of his or her intention to quit, and further failed to pay those sums for 30 days thereafter in violation of Labor Code sections 201 through 203 and the IWC Wage Orders.

73. Defendants' unlawful acts and omissions deprived Plaintiff and the Class of timely wages upon separation of employment in amounts to be determined at trial. Plaintiff and the Class are entitled to recover to the wages of Plaintiff and members of the Waiting Time Subclass as a waiting time penalty for a period of up to 30 days, in addition to interest, attorneys' fees, and costs to the extent permitted by law.

1 **EIGHTH CAUSE OF ACTION**

2 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

3 **Violation of Labor Code § 2802**

4 74. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

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

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

13 **NINTH CAUSE OF ACTION**

14 **FAILURE TO PROVIDE RECORDS**

15 **Violation of Labor Code §§ 226, 432, 1198.5**

16 77. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

17 78. Plaintiff brings this cause of action on behalf of himself only.

18 79. Labor Code section 432 states that [i]f an employee. . . signs any instrument relating
19 to the obtaining or holding of employment, he shall be given a copy of the instrument upon
20 request.”

21 80. Labor Code section 226(b) grants employees the right to inspect or receive “a copy
22 of records pertaining to their employment.” Labor Code section 226(f) authorizes a penalty of \$750
23 for an employer's failure to comply with a request for records made under section 226.

24 81. Labor Code section 1198.5 requires employers to provide an employee's “personnel
25 records” within 30 days of receipt of the request. Section 1198.5(k) authorizes a penalty of \$750
26 for an employer's failure to provide a copy of or permit inspection of personnel records. Section
27 1198.5(l) allows an employee to seek injunctive relief to obtain an employer's compliance with this
28 section and authorizes the recovery of attorneys' fees and costs.

1 82. Section 7 of the IWC Wage Orders, which may be enforced through Labor Code
2 section 1198, requires that employers maintain records of when an employee begins and ends each
3 work period and when the employee takes meal periods. Section 7(C) states that “[a]n employee’s
4 records shall be made available for inspection by the employee upon reasonable request.”

5 83. Plaintiff issued a records request to Defendants requesting all records due under the
6 IWC Wage Orders (including the Records sections) and Labor Code sections 226, 432, and 1198.5.
7 Defendants willfully refused to provide Plaintiff’s time records and a copy of the employee
8 handbook signed by Plaintiff (among other records separately required by 1198.5), which are
9 records pertaining to their employment and records Defendants were required to obtain and produce
10 and/or make available upon request.

11 84. Defendants’ unlawful acts and omissions deprived Plaintiff of the ability to inspect
12 and reconcile their actual time worked with the ultimate pay he received. Plaintiff is entitled to
13 recover to penalties, in addition to interest, attorneys’ fees, and costs to the extent permitted by law,
14 including under Code of Civil Procedure section 1021.5, and Labor Code sections 226 and 1198.5.

15 **TENTH CAUSE OF ACTION**

16 **VIOLATIONS OF THE UNFAIR COMPETITION LAW**

17 **Business and Professions Code §§ 17200, *et seq.***

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

19 86. Defendants willfully failed in their affirmative obligation to timely pay each payday
20 or at other required intervals all minimum, regular, and overtime wages, meal and rest period
21 premium wages, and reimbursements to Plaintiff and Class Members. These failures constitute
22 unlawful, deceptive, and unfair business acts and practices in violation of Business and Professions
23 Code section 17200, *et seq.*

24 87. Because Plaintiff is a victim of Defendants’ unfair and unlawful conduct, as alleged
25 throughout this Complaint, Plaintiff, as an individual and on behalf of the Class seeks restitution of
26 all monies and property withheld, acquired, or converted by Defendants in violation of the Labor
27 Code and IWC Wage Orders under Business and Professions Code section 17202, 17203, 17204
28 and 17208.

1 88. Defendants' unlawful acts and omissions deprived Plaintiff and Class Members of
2 monies and property in amounts to be determined at trial. Plaintiff and the Class are entitled to
3 injunctive relief against Defendants, restitution, and other equitable relief to return all funds over
4 which Plaintiff and the Class have an ownership interest and to prevent future damage under
5 Business and Professions Code section 17200, *et seq.* in addition to interest, attorneys' fees, and
6 costs to the extent permitted by law, including under Code of Civil Procedure section 1021.5.

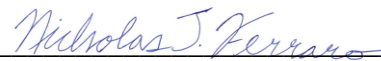
7 **PRAYER FOR RELIEF**

8 Plaintiff prays for judgment as follows:

- 9 a. For certification of this action as a class action;
10 b. For appointment of Plaintiff as the representative of the Class;
11 c. For appointment of counsel for Plaintiff as Class Counsel;
12 d. For injunctive relief;
13 e. For compensatory damages in amount according to proof;
14 f. For all recoverable pre- and post-judgment interest;
15 g. For recovery of all statutory penalties and liquidated damages;
16 h. For disgorgement of all amounts wrongfully obtained;
17 i. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent
18 permitted by law, including under California Labor Code sections 218.5, 226, 1194,
19 1198.5, 2802, and Code of Civil Procedure section 1021.5;
20 j. For such other relief the Court deems just and proper.

21 Dated: December 20, 2021

Ferraro Vega Employment Lawyers, Inc.

23 

24 Nicholas J. Ferraro
25 Attorney for Plaintiff Jon Wood