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7
8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**

10
11 VELVET MALONE individually, and on
behalf of all others similarly situated,

12 Plaintiff,

13 vs.

14 STONELEDGE FURNITURE, LLC, and
15 ASHLEY FURNITURE INDUSTRIES,
INC., inclusive,

16 Defendants.

Case No. 2-21-CV-00584-MCE-AC

CLASS ACTION

**FIRST AMENDED COMPLAINT FOR
DAMAGES, INJUNCTIVE RELIEF,
PENALTIES AND RESTITUTION**

[JURY TRIAL DEMANDED]

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19 Representative Plaintiff alleges as follows:

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21 **INTRODUCTION**

22 1. This is a class action seeking unpaid compensation for wages, meal and/or rest
23 period violations, interest thereon, liquidated damages and other penalties, injunctive and other
24 equitable relief, and reasonable attorneys' fees and costs under, *inter alia*, California Labor Code
25 §§ 200-204, 210, 218, *et seq.*, 223, 225.5, 226, *et seq.*, 256, 510, 512, 558, 1174, 1174.5, 1182.12,
26 1194, *et seq.*, 1197, 1197.1, 1198, 2800, 2802, 2698, *et seq.*, California Business and Professions
27 Code §§ 17200, *et seq.*, California Code of Civil Procedure § 1021.5. This action also seeks
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1 damages, penalties, fees, costs and other remedies (for Plaintiff only) pursuant to California Gov't
2 Code §§ 12940, *et seq.*

3 2. Plaintiff Velvet Malone (“Representative Plaintiff” or “Plaintiff”) brings this action
4 individually and on behalf of all other persons similarly situated (“Class Members” and/or the
5 “Plaintiff Class”) who are or have been employed by Defendants Stoneledge Furniture, LLC,
6 Ashley Furniture Industries, Inc. and/or Does 1 through 100, inclusive (collectively “Defendants”)
7 as non-exempt employees within the State of California within the applicable class period.

8 3. The relevant “class period” begins on February 2, 2017 and extends through trial,
9 based upon the allegation that the violations of California’s wage and hour laws, as described more
10 fully below, have been ongoing throughout that time.

11 4. The relevant period for recovery of penalties under California’s Private Attorneys
12 General Act begins on February 2, 2020 and extends through trial (i.e., the “PAGA period”), based
13 upon the allegation that the violations of California’s wage and hour laws, as described more fully
14 below, have been ongoing throughout that time.

15 5. Representative Plaintiffs and those persons working for Defendants in California
16 as non-exempt employees within these periods and trial, inclusive, are referred to herein as “Class
17 Members,” “Aggrieved Employees” or both.

18 6. Throughout the class and PAGA periods, Defendants have had a consistent policy
19 of (1) unlawfully denying Representative Plaintiff, Aggrieved Employees and Class Members
20 statutorily-mandated meal and rest periods, (2) failing to pay these workers’ wages in the event of
21 such failures, (3) willfully failing to pay these workers’ overtime wages at the correct rate, (4)
22 willfully failing to provide these workers with accurate semimonthly itemized wage statements
23 reflecting the total number of hours each worked, the applicable deductions, and the applicable
24 hourly rates in effect during the respective pay periods, and (7) willfully failing to pay
25 compensation in a prompt and timely manner to those workers whose employment with
26 Defendants have terminated.

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CLASS ACTION ALLEGATIONS

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2 18. The Representative Plaintiff brings this action individually and on behalf of all
3 persons similarly situated and proximately damaged by Defendants’ conduct including, but not
4 necessarily limited to, the following Plaintiff Class:

5 “All persons employed by Defendants as non-exempt employees in
6 California on or after February 2, 2017.”

7 19. Defendants’ officers and directors are excluded from the Plaintiff Class.

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

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

17 b. Commonality: The Representative Plaintiff and the Class Members
18 share a community of interests in that there are numerous common
19 questions and issues of fact and law which predominate over any
20 questions and issues solely affecting individual members, thereby
21 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/or 29 U.S.C. § 216(b). These common questions
include, but are not necessarily limited to:

- 22 1) Whether Defendants violated California Business and
23 Professions Code § 17200, *et seq.* by failing to provide meal
and/or rest breaks to Class Members working eligible shifts;
24 2) Whether Defendants violated California Labor Code § 1174 by
25 failing to keep accurate records of employees’ hours of work;
26 3) Whether Defendants violated California Labor Code §§ 201-
27 204 by failing to pay wages due and owing at the time that
28 certain Class Members’ employment with Defendants
terminated;

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4) Whether Defendants violated California Labor Code § 226 by failing to provide semimonthly itemized statements to Class Members of total hours worked by each, all wages earned and all applicable hourly rates in effect during the pay period; and

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

c. Typicality: The Representative Plaintiff’s claims are typical of the claims of Class Members. The Representative Plaintiff and Class Members sustained damages arising out of and caused by 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 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 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 and anticipates no management difficulties in this litigation.

e. Superiority of Class Action: Since the damages suffered by individual Class Members, while not inconsequential, may be relatively small, the expense and burden of individual litigation by each member makes or may make it impractical for Class Members to seek redress individually for the wrongful conduct alleged herein. Should separate actions be brought, or be required to be brought, by each individual Class Member, the resulting multiplicity of lawsuits would cause undue hardship and expense for the Court and the litigants. The prosecution of separate actions would also create a risk of inconsistent rulings which might be dispositive of the interests of other Class Members who are not parties to the adjudications and/or may substantially impede their ability to adequately protect their interests. Moreover, the Representative Plaintiffs are informed and believe, and based thereon allege, that Defendant, in refusing to pay overtime to the Class Members, has acted and refused to act on grounds generally applicable to all claims, thereby making appropriate injunctive and monetary relief for all members of the class. Consequently, class and/or collective action certification is proper under FRCP Rule 23(b)(2) and/or 29 U.S.C. § 216(b).

COMMON FACTUAL ALLEGATIONS

21. As described herein, for years, Defendants have knowingly failed to adequately compensate those employees within the class definition identified above for all wages earned (including premium wages such as compensation for missed meal and/or rest periods) under the

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1 California Labor Code and the applicable IWC Wage Order, thereby enjoying a significant
2 competitive edge over similar companies.

3 22. Defendants have declined to pay these wages, even upon an Aggrieved Employee
4 and/or Class Member's termination or resignation from employment, in blatant violation of
5 California Labor Code § 201 and/or § 202.

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

12 24. Furthermore, despite knowledge of the Aggrieved Employee and/or Class
13 Members' entitlement to compensation for all hours worked, Defendants violated California Labor
14 Code § 1174(d) by failing to provide or require the use, maintenance, or submission of time records
15 by Representative Plaintiff, Aggrieved Employees and Class Members. Defendants also failed to
16 provide these workers with accurate semimonthly itemized statements of the total number of hours
17 worked by each, and all applicable hourly rates in effect, during the pay period, in violation of
18 California Labor Code § 226. In failing to provide the required documents, Defendants have not
19 only failed to pay their workers the full amount of compensation due, but have also, until now,
20 effectively shielded themselves from employee scrutiny by concealing the magnitude and financial
21 impact of their wrongdoing that such documents might otherwise have led workers to discover.

22 25. Representative Plaintiff, Aggrieved Employees, and all persons similarly situated
23 are entitled to unpaid compensation, yet, to date, have not received such compensation despite
24 many of the same having been terminated by and/or resigned from Defendants' employ. More than
25 30 days have passed since certain Aggrieved Employees and Class Members have left Defendants'
26 employ.

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1 26. As a consequence of Defendants’ willful conduct in not paying former employees’
2 compensation for all hours worked in a prompt and timely manner, certain Class Members are
3 entitled to up to 30 days wages as a penalty under California Labor Code § 203, together with
4 attorneys’ fees and costs.

5 27. As a direct and proximate result of Defendants’ unlawful conduct, as set forth
6 herein, Representative Plaintiff, Aggrieved Employees, and Class Members have sustained
7 damages, as described above, including the loss of earnings for hours worked on behalf of
8 Defendants, in an amount to be established at trial. As a further direct and proximate result of
9 Defendants’ unlawful conduct, as set forth herein, certain Aggrieved Employees and Class
10 Members are entitled to recover “waiting time” penalties (pursuant to California Labor Code §
11 203) and penalties for failure to provide semimonthly statements of hours worked and all
12 applicable hourly rates (pursuant to California Labor Code § 226) in an amount to be established
13 at trial. As a further direct and proximate result of Defendants’ unlawful conduct, as set forth
14 herein, Representative Plaintiff, Aggrieved Employees and Class Members are also entitled to
15 recover costs and attorneys’ fees pursuant to statute(s).

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

23 29. Representative Plaintiffs seek injunctive relief prohibiting Defendants from
24 engaging in the complained-of illegal labor acts and practices in the future. Representative
25 Plaintiffs also seek restitution of costs incurred by Representative Plaintiffs and Class Members
26 under California’s Unfair Competition Law. Unless enjoined, Defendants’ unlawful conduct will
27 continue unchecked, while their non-exempt workers bear the financial brunt of Defendants’
28

1 unlawful conduct. As a further direct and proximate result of Defendants’ unlawful conduct, as set
2 forth herein, Class Members are also entitled to recover costs and attorneys’ fees, pursuant to
3 statute.

4 30. Representative Plaintiff has complied with the procedures necessary to maintain a
5 civil action against Defendants for violation of California’s Private Attorneys General Act, as
6 specified in California Labor Code § 2699.3.

7 31. On February 2, 2021, Representative Plaintiff served and filed a notice upon the
8 California Labor and Workforce Development Agency (“LWDA”) and Defendants in compliance
9 with Labor Code §§ 2699, *et seq.*

10
11 **INDIVIDUAL FACTUAL ALLEGATIONS**

12 32. Additionally, Defendants discriminated against and harassed Representative
13 Plaintiff based on race and/or disability. Throughout Representative Plaintiff’s employment,
14 Representative Plaintiff was subjected to unwanted harassing conduct including disparaging
15 remarks based on Representative Plaintiff’s race and/or disability. The unwanted harassing
16 conduct was so severe and pervasive that any reasonable person would have found the work
17 environment hostile and/or abusive. Representative Plaintiff found the work environment hostile
18 and abusive.

19 33. The unwanted harassing conduct was engaged in and/or endorsed by
20 Representative Plaintiff’s supervisors and/or managers.

21 34. Defendants were on notice of this unwanted harassing conduct and tolerated the
22 behavior against Representative Plaintiff, and other black and/or disabled employees. Rather than
23 attempt to stop the unwanted harassing conduct from occurring, Defendants endorsed and ratified
24 the behavior.

25 35. This harassment and the Defendants’ endorsement thereof created a hostile work
26 environment which caused Representative Plaintiff serious emotional hardship. Representative
27 Plaintiff was embarrassed and suffered emotional harm because of this treatment.
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1 36. Prior to filing this Complaint, Representative Plaintiff filed a Complaint against
2 Defendants with the California Department of Fair Employment and Housing (“DFEH”), pursuant
3 to California Government Code § 12960, *et seq.*, alleging the claims set forth in this Complaint.
4 On March 6, 2020 the DFEH issued a “right-to-sue” notice related to Defendants. All conditions
5 precedent to the initiation of this lawsuit have been fulfilled. This action is filed within one year
6 of the date the DFEH issued its right to sue letter.

7
8 **FIRST CLAIM FOR RELIEF**
9 **UNLAWFUL FAILURE TO PAY WAGES**
10 **(California Labor Code §§ 200-204, 510, 558, 1194, 1197 and 1198; IWC Wage Order)**

11 37. Each and every allegation of the preceding paragraphs is incorporated in this claim
12 for relief with the same force and effect as though fully set forth herein.

13 38. During the limitations period, Class Members performed work for Defendants,
14 oftentimes in excess of eight hours in a workday and/or forty hours in a workweek. The number
15 of hours will be proven at trial.

16 39. During the limitations period, Defendants refused to compensate Class Members
17 for all of the wages they earned, in violation of the applicable IWC Wage Order and provisions of
18 the California Labor Code.

19 40. At all relevant times, Defendants were aware of, and were under a duty to comply
20 with, the overtime provisions of the California Labor Code including, but not limited to, California
21 Labor Code §§ 510, 1194, and 1198.

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

23 Any work in excess of eight hours in one workday and any work in excess
24 of 40 hours in any one workweek and the first eight hours worked on the
25 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.

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

27 Notwithstanding any agreement to work for a lesser wage, any employee
28 receiving less than the legal minimum wage or the legal overtime

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1 compensation applicable to the employee is entitled to recover in a civil
2 action the unpaid balance of the full amount of this minimum wage or
3 overtime compensation, including interest thereon, reasonable attorneys’
fees, and costs of suit.

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

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

8 44. By refusing to compensate Class Members for minimum wages and/or overtime
9 wages earned, Defendants violated those California Labor Code provisions cited herein as well as
10 the applicable IWC Wage Order.

11 45. Defendants’ conduct, as heretofore detailed, represents underpayment of wages
12 pursuant to California Labor Code §§ 218, *et seq.*, 558, 1194, *et seq.*, and 1197, *et seq.*, for which
13 damages and/or penalties are now sought in an amount according to proof.

14 46. As a direct and proximate result of Defendants’ unlawful conduct, as set forth
15 herein, Class Members have sustained damages, including loss of earnings for hours of overtime
16 worked on behalf of Defendants, in an amount to be established at trial. As a further direct and
17 proximate result of Defendants’ unlawful conduct, as set forth herein, Class Members are entitled
18 to recover penalties in amounts to be established at trial, as well as attorneys’ fees and costs, and
19 restitution, pursuant to statute.

20
21 **SECOND CLAIM FOR RELIEF**
FAILURE TO PROVIDE MEAL AND REST PERIODS
22 **(California Labor Code §§ 226.7 and 512)**

23 47. Each and every allegation of the preceding paragraphs is incorporated in this claim
24 for relief with the same force and effect as though fully set forth herein.

25 48. At all relevant times, Defendants were aware of and were under a duty to comply
26 with California Labor Code § 226.7 and §512.

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- 1 49. California Labor Code § 226.7 provides, in pertinent part:
- 2 (a) No employer shall require any employee to work during any meal
- 3 or rest period mandated by an applicable order of the Industrial Welfare
- 4 Commission.
- 5 (b) If an employer fails to provide an employee a meal period or rest
- 6 period in accordance with an applicable order of the Industrial Welfare
- 7 Commission, the employer shall pay the employee one additional hour of
- 8 pay at the employee's regular rate of compensation for each work day that
- 9 the meal or rest period is not provided.
- 10 50. Moreover, California Labor Code § 512(a) provides, in pertinent part:
- 11 An employer may not employ an employee for a work period of more than
- 12 five hours per day without providing the employee with a meal period of
- 13 not less than 30 minutes, except that if the total work period per day of the
- 14 employee is no more than six hours, the meal period may be waived by
- 15 mutual consent of both the employer and employee. An employer may not
- 16 employ an employee for a work period of more than 10 hours per day
- 17 without providing the employee with a second meal period of not less than
- 18 30 minutes, except that if the total hours worked is no more than 12 hours,
- 19 the second meal period may be waived by mutual consent of the employer
- 20 and the employee only if the first meal period was not waived.
- 21 51. Sections 11 and 12, respectively, of the applicable IWC Wage Order mandate that
- 22 employers provide all applicable meal and/or rest periods to non-exempt (including exempt-
- 23 misclassified) employees.
- 24 52. Section 11 of the applicable IWC Wage Order provides:
- 25 (A) No employer shall employ any person for a work period of more than
- 26 five (5) hours without a meal period of not less than 30 minutes...
- 27 (B) An employer may not employ an employee for a work period of more
- 28 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.
53. 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

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1 worked daily at the rate of ten (10) minutes net rest time per four (4) hours
2 or major fraction thereof

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

7 54. By failing to consistently provide uninterrupted thirty-minute meal periods within
8 the first five hours of work each day, a second uninterrupted thirty-minute meal period within the
9 first ten hours of work each day and/or uninterrupted net ten-minute rest periods to Class Members,
10 Defendants violated the California Labor Code and applicable IWC Wage Order provisions.

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

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

17 57. As a further direct and proximate result of Defendants’ unlawful conduct, as set
18 forth herein, certain Class Members are entitled to recover “waiting time” penalties in amounts to
19 be established at trial, as well as recovery of attorneys’ fees and costs, pursuant to statute.

20 **THIRD CLAIM FOR RELIEF**
21 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**
22 **(California Labor Code §§ 226 and 1174)**

23 58. Each and every allegation of the preceding paragraphs is incorporated in this claim
24 for relief with the same force and effect as though fully set forth herein.

25 59. California Labor Code § 226(a) provides:

26 Each employer shall semimonthly, or at the time of each payment of wages,
27 furnish each of his or her employees either as a detachable part of the check,
28 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

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1 deductions, provided that all deductions made on written orders of the
2 employee may be aggregated and shown as one item; (4) net wages earned;
3 (5) the inclusive date of the period for which the employee is paid; (6) the
4 name of the employee and his or her social security number; and (7) the
5 name and address of the legal entity which is the employer.

60. 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.

61. 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.

62. Defendants have failed to provide timely, accurate itemized wage statements to the
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 for Class Members.

63. As a direct and proximate result of Defendants’ unlawful conduct, as set forth
herein, the Class Members are entitled to penalties in an amount to be established at trial and are
entitled to recover attorneys’ fees and costs of suit.

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

64. Each and every allegation of the preceding paragraphs is incorporated in this claim
for relief with the same force and effect as though fully set forth herein.

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1 65. 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
6 or until an action therefor is commenced; but the wages shall not continue
7 for more than 30 days.

8 66. Numerous Class Members were employed by Defendants during the class period
9 and were thereafter involuntarily terminated or resigned from their positions yet were not paid all
10 wages due upon said termination or within 72 hours of said resignation of employment therefrom.
11 This non-payment was the direct and proximate result of a willful refusal to do so by Defendants.

12 67. More than 30 days have elapsed since certain Class Members were involuntarily
13 terminated or voluntarily resigned from Defendants' employ.

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

18 **FIFTH CLAIM FOR RELIEF**
19 **UNFAIR BUSINESS PRACTICES UNDER THE UNFAIR COMPETITION ACT**
20 **(California Business & Professions Code §§ 17200-17208)**

21 69. Each and every allegation of the preceding paragraphs is incorporated in this claim
22 for relief with the same force and effect as though fully set forth herein.

23 70. Representative Plaintiff further brings this claim for relief seeking equitable and
24 statutory relief to stop Defendants' misconduct, as complained of herein, and to seek restitution of
25 the amounts Defendants acquired through the unfair, unlawful, and fraudulent business practices
26 described herein.

27 71. Defendants' knowing conduct, as alleged herein, constitutes an unlawful and/or
28 fraudulent business practice, as set forth in California Business & Professions Code §§ 17200-

1 17208. Specifically, Defendants conducted business activities while failing to comply with the
2 legal mandates cited herein.

3 72. Defendants have clearly established a policy of accepting a certain amount of
4 collateral damage, as represented by the damages and penalties to Class Members herein alleged,
5 as incidental to their business operations, rather than accept the alternative costs of full compliance
6 with fair, lawful, and honest business practices, ordinarily borne by its responsible competitors
7 and as set forth in legislation and the judicial record.

8
9 **SIXTH CLAIM FOR RELIEF**
10 **DISCRIMINATION IN VIOLATION OF THE CALIFORNIA**
11 **FAIR EMPLOYMENT AND HOUSING ACT**
(California Government Code §§ 12940, et seq.)

12 73. Each and every allegation of the preceding paragraphs is incorporated in this claim
13 for relief with the same force and effect as though fully set forth herein.

14 74. Representative Plaintiff brings this action on behalf of himself in his individual
15 capacity exclusively, and not on behalf of any other employees.

16 75. At all relevant times, Government Code § 12940, subdivision (a), was in full force
17 and effect, and was binding on Defendants. This section prohibited Defendants from
18 discriminating against an employee on the basis of race and disability as those terms are defined
19 in Government Code § 12926(r). Within the time provided by law, Representative Plaintiff filed a
20 Complaint with the California Department of Fair Employment and Housing and Equal
21 Employment Opportunity Commission and has received right-to-sue letters therefrom.

22 76. Defendants violated Government Code § 12940, subdivision (a), in numerous
23 respects, including but not necessarily limited to, discriminating against Representative Plaintiff
24 because of his race and disability. Such conduct resulted in damage and injury to Representative
25 Plaintiff, as alleged herein.

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1 83. As identified herein, during Representative Plaintiff's employment with
2 Defendants, Defendants engaged in actions that constituted unlawful harassment of Representative
3 Plaintiff based on race and/or disability. These actions created a hostile working environment for
4 Representative Plaintiff.

5 84. These acts of misconduct occurred throughout Representative Plaintiff's
6 employment with Defendants. Defendants took no action to prevent the harassment of
7 Representative Plaintiff.

8 85. As a proximate result of Defendants' willful, knowing, and intentional harassment
9 of Representative Plaintiff, Representative Plaintiff has sustained and continues to sustain
10 damages, including losses of earnings and benefits, according to proof.

11 86. As a proximate result of Defendants' willful, knowing, and intentional harassment
12 of Representative Plaintiff, Representative Plaintiff has suffered and continues to suffer
13 humiliation, emotional distress, and mental and physical pain and anguish, all to Representative
14 Plaintiff's damage in a sum according to proof.

15 87. Defendants' harassment was done intentionally, in a malicious, oppressive,
16 fraudulent manner, entitling Representative Plaintiff to punitive damages.

17 88. Representative Plaintiff has incurred and continues to incur legal expenses and
18 attorneys' fees. Representative Plaintiff is at present unaware of the precise amounts of these
19 expenses and fees and will seek leave of court to amend this Complaint when the amounts are
20 known.

21
22 **EIGHTH CLAIM FOR RELIEF**
23 **PRIVATE ATTORNEYS GENERAL ACT CLAIM**
(California Labor Code §§ 2699, et seq.)

24 89. Each and every allegation of the preceding paragraphs is incorporated in this claim
25 for relief with the same force and effect as though fully set forth herein.
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90. California Labor Code § 2699(a) provides, in pertinent part:

Notwithstanding any other provision of the law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an Aggrieved Employee on behalf of themselves or herself and other current or former employees. . .

91. Representative Plaintiff and each and every other non-exempt employee working in California for Defendants within one year of the exhaustion of the administrative prerequisites under the California Private Attorneys General Act, as described herein, are “Aggrieved Employees,” as defined by California Labor Code § 2699(c), because she/they was/were employed by Defendants and were among the employees against whom the violations of law articulated in this Complaint were committed.

92. These Aggrieved Employees share each and every one of the factual underpinnings and predicate violations articulated in the preceding paragraphs of this Complaint with Class Members and the Representative Plaintiff.

93. As set forth above, the 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 on behalf of the State of California under) California’s Private Attorneys General Act.

94. Representative Plaintiff brings this action on direct and/or indirect behalf of all Aggrieved Employees, alleging violations of the California Labor Code provisions cited in the preceding paragraphs.

95. As a direct and proximate result of Defendants’ unlawful conduct, as set forth herein, Representative Plaintiff, Aggrieved Employees and the State of California are entitled to recover 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(s).

RELIEF SOUGHT

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

On Behalf of Representative Plaintiff, Aggrieved Employees, and Class Members:

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 FRCP Rule 23 and/or 29 U.S.C. § 216;

2. That the Court declare, adjudge, and decree that Defendants willfully violated their legal duties to pay all wages due under the California Labor Code, the applicable California Industrial Welfare Commission Wage Order and the applicable California Code of Regulations provisions;

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

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

5. That the Court make an award to Representative Plaintiff and Class Members of penalties, pursuant to California Labor Code §§ 203, 226, 558, 1174.5 and/or liquidated damages pursuant to § 1194.2, in an amount to be proven at trial;

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

7. 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.*;

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

3 9. That the Court declare, adjudge and decree that this action is a proper representative
4 action and that Representative Plaintiff has standing to pursue it, pursuant to California Labor
5 Code § 2699, *et seq.*;

6 10. That the Court make an award of civil penalties to Aggrieved Employees and the
7 State of California, pursuant to California Labor Code § 2699, *et seq.*;

8 11. For reasonable attorneys' fees, pursuant to California Code of Civil Procedure §
9 1021.5 and Labor Code § 218.5;

10 12. For costs of suit and any and all such other relief as the Court deems just and proper;
11 and

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

14

15 On Behalf of Plaintiff Only:

16 14. For compensatory and other damages, including, without limitation, damages for
17 medical and related expenses, lost wages, emotional distress, and/or special damages according to
18 proof of claim for relief for which such damages are available;

19 15. For punitive damages in an amount to be determined at trial;

20 16. For reasonable attorneys' fees, pursuant to statute;

21 17. For costs of suit and any and all such other relief as the Court deems just and proper;
22 and

23 18. For all other Orders, findings and determinations identified and sought in this
24 Complaint.

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JURY DEMAND

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

Dated: April 20, 2021

SCOTT COLE & ASSOCIATES, APC

By: /s/ Laura Van Note
Laura Van Note, Esq.
Attorneys for Representative Plaintiff, *et al.*

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