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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF MARIN

CHRISTOPHER LYON, individually, and on behalf of all others similarly situated, Plaintiff, vs. BAYSIDE MARIN, INC., and DOES 1 through 100, inclusive, Defendants.	**Case No.** **CLASS ACTION** **COMPLAINT FOR DAMAGES, INJUNCTIVE RELIEF AND RESTITUTION** **[JURY TRIAL DEMANDED]**

Representative Plaintiff alleges as follows:

INTRODUCTION

1. This is a class action seeking unpaid compensation for wages, meal and/or rest period violations, interest thereon, liquidated damages and other penalties, injunctive and other equitable relief, and reasonable attorneys' fees and costs under, *inter alia*, California Labor Code §§ 200-204, 210, 218, *et seq.*, 223, 225.5, 226, *et seq.*, 256, 510, 512, 558, 1174, 1174.5, 1182.12,

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1194, *et seq.*, 1197, 1197.1, 1198, 2800, 2802, California Business and Professions Code §§ 17200, *et seq.* and California Code of Civil Procedure § 1021.5.

2. Plaintiff Christopher Lyon ("Representative Plaintiff" or "Plaintiff") brings this action individually and on behalf of all other persons similarly situated ("Class Members" and/or the "Plaintiff Class") who are or have been employed by defendant Bayside Marin, Inc. and/or Does 1 through 100, inclusive (collectively "Defendants") as non-exempt employees within the State of California within the applicable class period.

3. The class period begins on November 8, 2017 and extends through trial, based upon the allegation that the violations of California's wage and hour laws, as described more fully below, have been and are ongoing throughout that time.

4. During the class period, Defendants have had a consistent policy of (1) unlawfully denying Class Members statutorily-mandated meal and rest periods, (2) willfully failing to provide Class Members with accurate semimonthly itemized wage statements reflecting the total number of hours each worked, the applicable deductions, and the applicable hourly rates in effect during the pay period, and (3) willfully failing to pay compensation in a prompt and timely manner to those Class Members whose employment with Defendants has terminated.

5. Defendants operate an addiction treatment rehabilitation center within California for which Representative Plaintiff worked as a chef. Representative Plaintiff is informed and believes and, on that basis, alleges that, within the class period, Defendants employed scores, if not hundreds, of individuals in California to perform these and closely related services, employment positions which did not, and currently do not, meet any known test for exemption from the payment of minimum and/or overtime wages, and/or the entitlement to meal or rest periods.

6. Despite actual knowledge of these facts and legal mandates, Defendants have and continue to enjoy an advantage over their competition and a resultant disadvantage to their workers by electing not to pay all wages due (including missed meal and rest period compensation) and/or all penalties due (including "waiting time" penalties) to Class Members.

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

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

JURISDICTION AND VENUE

9. This Court has jurisdiction over Class Members' claims for unpaid wages and/or penalties under, *inter alia*, the applicable Industrial Welfare Commission Wage Order, Title 8 of the California Code of Regulations, Labor Code §§ 201-204, 226, 226.7, 512, 1174, and/or the California Code of Civil Procedure § 1021.5.

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

11. Venue as to Defendants is proper in this judicial district pursuant to California Code of Civil Procedure § 395(a). Defendants provided the aforementioned services within this County where Plaintiff and numerous Class Members worked, transacts business, has agents, and is otherwise within this Court's jurisdiction for purposes of service of process. The unlawful acts alleged herein have had a direct effect on Representative Plaintiff and those similarly situated within the State of California and within this County.

PLAINTIFF(S)

12. Representative Plaintiff is a natural person who was employed by Defendants as a chef during the class period.

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13. In this capacity, Representative Plaintiff is and was entitled to full, uninterrupted and statutorily-mandated meal and rest periods, as well as other benefits of employment, as set forth herein.

DEFENDANTS

14. Representative Plaintiff is informed and believes and, based thereon, alleges that, at all times herein relevant, Defendants (including the Doe defendants) did business within the State of California providing addiction treatment rehabilitation services.

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

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

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

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CLASS ACTION ALLEGATIONS

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

> "All persons employed by Defendants as non-exempt employees in California on or after November 8, 2017."

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

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

a. Numerosity: A class action is the only available method for the fair and efficient adjudication of this controversy. Insofar as Representative Plaintiff is informed and believes and, on that basis, alleges that there are sufficient Class Members to meet the 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.

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

1) Whether Defendants violated California Business and Professions Code § 17200, *et seq.* by failing to provide meal and/or rest breaks to Class Members working eligible shifts;

2) Whether Defendants violated California Labor Code § 1174 by failing to keep accurate records of employees' hours of work;

3) Whether Defendants violated California Labor Code §§ 201-204 by failing to pay wages due and owing at the time that certain Class Members' employment with Defendants terminated;

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. 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: 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 Class Members. Representative Plaintiff is committed to vigorous prosecution of this case and retained competent counsel who are experienced in conducting litigation of this nature. 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.

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

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

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

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

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

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

27. As a direct and proximate result of Defendants' unlawful conduct, as set forth herein, Class Members have sustained damages, as described above, including compensation for loss of earnings for hours worked on behalf of Defendants, in an amount to be established at trial. As a further direct and proximate result of Defendants' unlawful conduct, as set forth herein,

certain Class Members are entitled to recover "waiting time" penalties (pursuant to California Labor Code § 203) and penalties for failure to provide semimonthly statements of hours worked and all applicable hourly rates (pursuant to California Labor Code § 226) in an amount to be established at trial. As a further direct and proximate result of Defendants' unlawful conduct, as set forth herein, Class Members are also entitled to recover costs and attorneys' fees pursuant to statute.

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

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FIRST CAUSE OF ACTION
UNLAWFUL FAILURE TO PAY WAGES
(California Labor Code §§ 200-204, 510, 558, 1194, 1197 and 1198; IWC Wage Order)

29. Each and every allegation of the preceding paragraphs is incorporated in this cause of action with the same force and effect as though fully set forth herein.

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

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

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

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

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

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

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

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

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

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

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

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

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

39. Each and every allegation of the preceding paragraphs is incorporated in this cause of action with the same force and effect as though fully set forth herein.

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

41. California Labor Code § 226.7 provides, in pertinent part:

> (a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.
>
> (b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

42. Moreover, California Labor Code § 512(a) provides, in pertinent part:

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

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

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

> (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes...
>
> (B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes…
>
> (C) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall

pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

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

> (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof ....
>
> (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

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

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

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

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

THIRD CAUSE OF ACTION
FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS
(California Labor Code §§ 226 and 1174)

50. Each and every allegation of the preceding paragraphs is incorporated in this cause of action with the same force and effect as though fully set forth herein.

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

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

52. 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.

53. 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.

54. Defendants have failed to provide timely, accurate itemized wage statements to 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.

55. As a direct and proximate result of Defendants' unlawful conduct, as set forth herein, 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.

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FOURTH CAUSE OF ACTION
FAILURE TO PAY WAGES ON TERMINATION
(California Labor Code § 203)

56. Each and every allegation of the preceding paragraphs is incorporated in this cause of action with the same force and effect as though fully set forth herein.

57. California Labor Code § 203 provides that:

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

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

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

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

FIFTH CAUSE OF ACTION
UNFAIR BUSINESS PRACTICES UNDER THE UNFAIR COMPETITION ACT
(California Business & Professions Code §§ 17200-17208)

61. Each and every allegation of the preceding paragraphs is incorporated in this cause of action with the same force and effect as though fully set forth herein.

62. Representative Plaintiff further brings this cause of action seeking equitable and statutory relief to stop Defendants' misconduct, as complained of herein, and to seek restitution of

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

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

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

RELIEF SOUGHT

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

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

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

3. That the Court make an award to 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 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 order Defendants to pay restitution to Class Members due to Defendants' unlawful activities, pursuant to California Business and Professions Code §§ 17200-17208;

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6. 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.;*

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

8. That the Court make an award to 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;

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

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

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

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JURY DEMAND

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

Dated: November 8, 2021

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By: _____
Cody Bolce, Esq.
Attorneys for Representative Plaintiff