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August 26, 2020

Via Online Submission

California Labor & Workforce
Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

**Via Certified U.S. Mail – Return
Receipt Requested**

Talbert Architectural Panel & Door, Inc.
655 Tamarack Avenue
Brea, California 92821

**Via Certified U.S. Mail – Return
Receipt Requested**

Talbert Architectural Panel & Door, Inc.
725 Columbia Street
Brea, California 92821-2915

Re: Notice Pursuant to California Labor Code § 2699.3

Employee: Miguel Valles

Employer: Talbert Architecture Panel & Door, Inc.

To Whom It May Concern:

This office represents Miguel Valles (“Mr. Valles”), a former employee of Talbert Architecture Panel & Doors, Inc. (“Talbert”). Pursuant to the California Labor Code Private Attorneys General Act of 2004 (“PAGA”), Labor Code § 2698, *et seq.*, this letter sets forth the specific provisions of the Labor Code and Industrial Welfare Commission (“IWC”) Wage Order No. 1-2001, which Mr. Valles alleges Talbert has violated, including the facts and theories to support the alleged violations. Please be advised that this letter constitutes written notice required by Labor Code § 2699.3, subdivisions (a)(1)(A) and (c)(1)(A) and may lead to immediate action against Talbert in a court of law and/or administrative proceedings, as well as the imposition of substantial penalties and other remedies against Talbert. Enclosed please find a draft of Mr. Valles’ proposed complaint, which is incorporated by reference into this notice. Under separate cover, our office is sending a check in the amount of \$75.00 to the Accounting Unit of the Department of Industrial Relations for the requisite filing fee, pursuant to Labor Code § 2699.3, subdivisions (a)(1)(B) and (c)(1)(B).

This letter also serves as notice of Mr. Talbert’s demand for preservation and non-

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spoliation of evidence, requesting that all relevant documents and data be saved and that all electronic files and hard-copy documents that are related to Mr. Valles' employment and potential claims must be preserved, even without a court order.

Spoliation of evidence may result in legal claims for damages and monetary and evidentiary sanctions, including "adverse inference" jury instructions. Furthermore, intentional spoliation of evidence may carry criminal consequences pursuant to California Penal Code § 135.

A detailed preservation and non-spoliation of evidence letter will follow under separate cover.

We are investigating a potential class and representative action on behalf of Talbert's current and former non-exempt employees in the State of California regarding, among other things, the following violations: failure to provide meal and rest periods to employees in violation of Labor Code §§ 226.7 and 512 and Wage Order No. 1-2001, §§ 11-12; failure to pay one additional hour of compensation at the employee's regular rate of compensation for each workday that a meal or rest period is not provided in violation of Labor Code § 226.7 and Wage Order No. 1-2001, §§ 11(B) and 12(B); failure to pay employees minimum wages for all hours worked in violation of Labor Code §§ 1194, 1197 and 1197.1 and Wage Order No. 1-2001, § 4; failure to pay employees overtime wages in violation of Labor Code §§ 510 and 1194 and Wage Order No. 1-2001, § 3; failure to timely pay employees all wages earned in violation of Labor Code § 204; willful failure to pay all wages due to discharged and quitting employees in violation of Labor Code §§ 201-203; failure to furnish accurate itemized wage statements to employees in violation of Labor Code § 226; failure to maintain required records pursuant to Labor Code §§ 226, 1174 and 1174.5 and Wage Order No. 1-2001, § 7; and unlawful deductions and withholdings from employees' wages in violation of Labor Code §§ 221, 223 and 224.

The allegations made by Mr. Valles on behalf of himself and all other similarly-situated current and former non-exempt employees of Talbert in the State of California during the four years preceding the date of this notice are based on the following facts and theories: meal periods were less than thirty minutes, late (first meal periods starting after the fifth hour of work and/or second meal periods starting after the tenth hour), not given at all (including second meal periods after ten hours of work), or interrupted; rest periods were less than ten minutes, not provided, interrupted, and/or late; employees were not provided one hour of pay for each workday a meal period was not provided; employees were not provided one hour of pay for each workday a rest break was not authorized and permitted; and employees were not paid proper minimum and overtime wages for all hours worked as required by California law.¹ Given the overtime, meal period and rest period violations and Talbert's failure to compensate its employees fully, as set forth above, employees' wage statements were inaccurate and failed to comply with California law. In short, Talbert's unlawful employment practices and policies have deprived its employees of earned wages and other compensation.

¹ "[T]he statement that defendant has not provided its employees with proper rest periods states both the facts and the theory." *Gutierrez v. California Commerce Club, Inc.* (2010) 187 Cal.App.4th 969, 979 n.5.

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Failure to Provide Meal Periods

Pursuant to Labor Code §§ 226.7 and 512 and Wage Order No. 1-2001, § 11, an employer is required to provide meal periods to its employees. An employer must provide a meal period to any employee who works a shift of more than five (5) hours and a second meal period to any employee who works a shift of more than ten (10) hours. Furthermore, an employer must pay one extra hour of compensation for each workday a meal period is not provided.

If an employee is not relieved of all duty during a meal period, the meal period shall be considered an “on duty” meal period and counted as time worked. A paid “on duty” meal period is permitted only when 1) the nature of the work prevents an employee from being relieved of all duty and 2) the parties have agreed in writing to on duty meal periods.

Mr. Valles and other aggrieved employees are non-exempt employees and are entitled to the protections of California Labor Code §§ 226.7 and 512 and Wage Order No. 1-2001, § 11. Talbert failed to provide its employees timely and uninterrupted thirty-minute meal breaks. In fact, Mr. Valles’ and other aggrieved employees’ meal periods were short (less than thirty minutes), late (first meal periods after the fifth hour of work and second meal periods after the tenth hour), interrupted and/or missed. Talbert consistently failed to provide Mr. Valles and other aggrieved employees meal breaks because Mr. Valles and other aggrieved employees were given too much work to perform to take meal breaks.

Talbert further violated Labor Code § 226.7 and Wage Order No. 1-2001 by failing to compensate Mr. Valles and other aggrieved employees who were not provided with meal periods in accordance with California law one additional hour of pay at each employee’s regular rate of compensation for each workday a meal period was not provided.

Failure to Authorize and Permit Rest Periods

Pursuant to Labor Code § 226.7 and Wage Order No. 1-2001, § 12, an employer is required to provide rest periods to its employees. An employer must provide a ten (10) minute rest period for every four (4) hours worked or major action thereof which insofar as practicable shall be in the middle of each work period. Furthermore, an employer must pay one extra hour of compensation for each workday a rest period is not authorized and permitted.

Mr. Valles and other aggrieved employees were and are non-exempt employees and are entitled to the protections of Labor Code § 226.7 and Wage Order No. 1-2001. Talbert failed to authorize and permit its employees to take required rest periods. Specifically, Talbert maintained a policy or practice of not authorizing and permitting Mr. Valles and other aggrieved employees to take one 10-minute rest break for shifts 3.5-6.0 hours, a second rest break for shifts greater than 6 hours and less than or equal to 10 hours, and a third rest break for shifts in excess of 10 hours. Talbert consistently failed to authorize and permit Mr. Valles and other similarly-situated individuals to take rest breaks because Mr. Valles and other similarly-situated individuals were given too much work to perform to take rest breaks. When Mr. Valles and other aggrieved employees were able to take rest breaks, Talbert failed to authorize and permit Mr. Valles and

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other aggrieved employees to take their rest breaks in the middle of each work period insofar as practicable.

Talbert further violated Labor Code § 226.7 and Wage Order No. 1-2001, § 12 by failing to pay Mr. Valles and other aggrieved employees one additional hour of pay at each employee's regular rate of compensation for each workday a rest period was not authorized and permitted.

Failure to Pay Minimum Wages

Pursuant to Labor Code §§ 1194 and 1197 and Wage Order No. 1-2001, § 4, payment to an employee of less than the applicable minimum wage for all hours worked in a payroll period is unlawful.

Mr. Valles and other aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code §§ 1194 and 1197 and Wage Order No. 1-2001, § 4. Talbert failed to pay Mr. Valles and other aggrieved employees minimum wages for all hours worked by, among other things: requiring, suffering or permitting Mr. Valles and other similarly-situated individuals to work off-the-clock; requiring, suffering or permitting Mr. Valles and other aggrieved employees to work through their meal breaks but not compensating them for this time; illegally and inaccurately recording time worked by Mr. Valles and other aggrieved employees; failing to properly maintain Mr. Valles' and other aggrieved employees' records; failing to provide accurate itemized wage statements to Mr. Valles and other aggrieved employees for each pay period; and other methods to be discovered.

Talbert's conduct violates Labor Code §§ 1194 and 1197 and Wage Order No. 1-2001, § 4.

Failure to Pay Overtime Wages

Pursuant to California Labor Code §§ 510 and 1194 and Wage Order No. 1-2001, § 3, an employer must compensate its employees for all overtime, which is calculated at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on the seventh consecutive work day, with double time for all hours worked in excess of eight (8) hours on the seventh day of any workweek, or after twelve (12) hours in any workday.

Mr. Valles and other aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code §§ 510 and 1194 and Wage Order No. 1-2001. Talbert failed to compensate Mr. Valles and other aggrieved employees for all overtime hours worked as required under the foregoing provisions of the Labor Code and IWC Wage Order by, among other things: failing to pay overtime at one and one-half (1 ½) times or double the regular rate of pay as provided by Labor Code §§ 510 and 1194 and Wage Order No. 1-2001, § 3; requiring, suffering or permitting Mr. Valles and other aggrieved employees to work off-the-clock; requiring, suffering or permitting Mr. Valles and other aggrieved employees to work through meal periods but not compensating them for this time; illegally and inaccurately recording time worked by Mr. Valles and other aggrieved employees; failing to properly maintain Mr. Valles' and other

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aggrieved employees' records through falsifying hours worked; failing to provide accurate itemized statements to Mr. Valles and other aggrieved employees for each pay period; and other methods to be discovered.

In violation of California law, Talbert has refused to perform its obligations to compensate Mr. Valles and other aggrieved employees for all wages earned and all hours worked. Talbert's conduct violates Labor Code §§ 510 and 1194 and Wage Order No. 1-2001, § 3.

Failure to Timely Pay All Wages Earned

Pursuant to Labor Code § 204, an employer must pay its employees at least twice a month for all wages earned during the preceding pay period. Labor Code § 204 provides that labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. An employer using an alternate payday schedule must pay wages within seven calendar days of the end of the payroll period in which the wages were earned.

Talbert failed to pay Mr. Valles and other aggrieved employees on their regularly scheduled payday for all work performed during the preceding pay period. Specifically, Talbert required Mr. Valles and other aggrieved employees to work off-the-clock without compensation and required Mr. Valles and other aggrieved employees to work through required meal breaks without compensation. Additionally, Talbert failed to pay Mr. Valles and other aggrieved employees premium wages owed for each workday a meal period was not provided and each workday a rest period was not authorized and permitted.

Talbert also failed to pay Mr. Valles and other aggrieved employees for the overtime wages they earned in violation of Labor Code § 204. Labor Code § 204 requires an employer to pay overtime wages no later than the payday for the next regular payroll period following the payroll period in which the overtime wages were earned. Talbert knew it was required to pay overtime wages, yet on many occasions failed to pay Mr. Valles and other aggrieved employees overtime wages on any payday.

Failure to Pay All Wages Due Upon Separation

Pursuant to Labor Code § 201, 202 and 203, an employer is required to pay all earned and unpaid wages to an employee upon separation. Labor Code § 201 mandates that if an employer discharges an employee, the employee's wages accrued and unpaid at the time of discharge are due and payable immediately. Pursuant to Labor Code § 202, an employer is required to pay all accrued wages due to an employee no later than 72 hours after the employee quits his or her employment, unless the employee provided 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

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Labor Code § 203 provides that if an employer willfully fails to pay, in accordance with Labor Code §§ 201 and 202, any wages of an employee who is discharged or who quits, the employer is liable for waiting time penalties in the form of continued compensation to the employee at the same rate for up to thirty (30) days.

Talbert willfully failed to pay accrued wages and other compensation to Mr. Valles and other aggrieved employees in accordance with Labor Code §§ 201 and 202. Because Talbert required Mr. Valles and other aggrieved employees to work off-the-clock without compensation and through required meal breaks without compensation and failed to pay Mr. Valles and other aggrieved employees the premium wages for all meal periods which were not provided and all rest periods which were not authorized or permitted, Talbert failed and continues to fail to pay the full earned and unpaid wages due to Mr. Valles and other aggrieved employees upon separation.

Failure to Furnish Accurate Itemized Wage Statements

Labor Code § 226 requires every employer to furnish each of its employees an accurate itemized wage statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

Talbert failed to provide Mr. Valles and other aggrieved employees with timely and accurate itemized wage statements in writing showing each employee's gross wages earned, total hours worked, the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, all deductions made, net wages earned, the inclusive dates of the period for which the employee is paid, the name and address of the legal entity or entities employing Mr. Valles and other aggrieved employees, and all applicable hourly rates in effect during each pay period and the corresponding number of hours worked at each hourly rate, in violation of Labor Code § 226 and Wage Order No. 1-2001, § 7.

Specifically, Talbert had knowledge it was not providing its employees with proper meal and rest breaks; nevertheless, Talbert knowingly failed to include in the wage statements the extra hour of compensation owed for each workday a meal break was not provided and each workday a rest break was not authorized and permitted. As a result, Mr. Valles and other aggrieved employees lost wages. In addition, Talbert had knowledge it was requiring employees to work off-the-clock and was not properly compensating its employees for all hours worked, yet Talbert knowingly failed to include this time worked in the wage statements. As a result, Mr. Valles and other aggrieved employees lost wages. Talbert also did not properly calculate the regular rate of pay of Mr. Valles and other aggrieved employees. As a result, Mr. Valles' and other aggrieved employees' wage statements did not include all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate.

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Failure to Maintain Required Records

Talbert failed to maintain records as required under Labor Code §§ 226 and 1174 and Wage Order No. 1-2001, § 7, including but not limited to the following records: total daily hours worked by each employee; applicable rates of pay; all deductions; meal periods; time records showing when each employee begins and ends each work period; and accurate itemized statements.

Specifically, Talbert had knowledge it was not providing its employees with proper meal and rest breaks; nevertheless, Talbert knowingly failed to include in the wage statements the extra hour of compensation owed for each workday a meal break was not provided and each workday a rest break was not authorized and permitted. In addition, Talbert had knowledge it was requiring employees to work off-the-clock and was not properly compensating its employees for all hours worked, yet Talbert knowingly failed to include this time worked in the regular rate of pay of aggrieved employees.

Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties

Labor Code § 2802(a) requires an employer to indemnify an employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer. Talbert failed to indemnify Mr. Valles and other aggrieved employees for all business expenses and/or losses incurred in direct consequence of the discharge of their duties while working under the direction of Talbert, including but not limited to expenses for cell phones, uniforms, travel-related expenses, and other employment-related expenses, in violation of Labor Code § 2802.

This notice is hereby given to Talbert and any and all related and/or alter ego companies, corporations, partnerships, and/or business entities, as well as against any and all officers, owners, directors, managers, managing agents, or entities who are or may be liable under California law for any of the violations alleged herein as to any locations or employees who worked at any time in the State of California.

This notice is made on behalf of all persons who are, were, or will be non-exempt employees of Talbert, or any related or alter-ego company, corporation, partnership, and/or business entity at any time on or after a date four years prior to the date of this letter in the State of California.

This notice shall be construed as extending without limitation to any past, present, future, or continuing violation of the Labor Code, the applicable IWC Wage Order, or any applicable regulation which might be discovered as a result of a reasonable and diligent investigation made pursuant to this notice.

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This notice shall further represent Mr. Valles' reasonable attempt to settle his dispute with Talbert prior to litigation. Pursuant to *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553 (2004), this notice serves to apprise Talbert of Mr. Valles' aforementioned grievances and the proposed remedies as detailed below, while affording Talbert reasonable opportunity to meet Mr. Valles' demands.

Demand is hereby made that Talbert shall agree, in writing received at this office no later than 30 calendar days from the postmark date of this notice, as follows:

1. Talbert shall pay Mr. Valles and all other similarly-situated persons employed by Talbert at any time during the past 48 months back pay and compensation for the above-referenced violations.
2. Talbert shall comply with all California labor laws and ensure that its non-exempt employees are paid proper overtime compensation and given required meal and rest periods.
3. Talbert shall conduct a survey or interview all current and former non-exempt employees in California during the past 48 months to obtain information from them regarding the number of meal breaks which were not provided, the number of rest breaks which were not authorized and permitted, and the number of employees who were required to pay for cell phones, uniforms, travel-related expenses or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.
4. Talbert shall pay each employee one hour of pay for each workday he or she was not authorized and permitted one or more rest periods, as required by Labor Code § 226.7. Talbert also shall pay each employee one hour of pay for each workday he or she was not provided one or more and meal periods, as required by Labor Code § 226.7.
5. Talbert shall reimburse those employees who were forced to pay for any business expenses incurred for Talbert's benefit, including but not limited to cell phone, uniform, and travel-related expenses.
6. Talbert shall pay waiting time penalties, equal to thirty days of pay, to each former employee who was not paid all wages due as described herein.
7. Talbert shall pay accrued interest to all employees at the rate of ten percent per annum for said unpaid wages.
8. Talbert shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code § 2698 *et seq.*, including but not limited to penalties under Labor Code §§ 206.5, 210, 225.5, 226.3, 558, 1174.5, 1182.12, 1197.1, 1198, 1199 and 2699 and Wage Order No. 1-2001, § 20.

If the Labor and Workforce Development Agency intends to investigate the allegations set forth herein, please notify this office of that decision by certified mail addressed to Matern Law Group, PC, 1230 Rosecrans Avenue, Suite 200, Manhattan Beach, California 90266. Additionally,

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please advise us if the Agency or Talbert require additional information regarding Mr. Valles' complaints.

Thank you for your prompt attention to this matter.

Very truly yours,

MATERN LAW GROUP, PC

Max Sloves

Max Sloves

MATERN LAW GROUP, PC

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Attorneys for Plaintiff MIGUEL VALLES
individually, and on behalf of others
similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

MIGUEL VALLES, individually, and on
behalf of others similarly situated

Plaintiff,

vs.

TALBERT ARCHITECTURAL PANEL &
DOOR, INC., a California corporation; and
DOES 1 through 50, inclusive,

Defendants

CASE NO.:

[DRAFT] COMPLAINT

CLASS ACTION:

1. Failure to Provide Required Meal Periods
2. Failure to Provide Required Rest Periods
3. Failure to Pay Overtime Wages
4. Failure to Pay Minimum Wages
5. Failure to Pay All Wages Due to Discharged and Quitting Employees
6. Failure to Maintain Required Records
7. Failure to Furnish Accurate Itemized Wage Statements
8. Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties
9. Unfair and Unlawful Business Practices

REPRESENTATIVE ACTION:

10. Penalties under the Labor Code Private Attorneys General Act, as Representative Action

DEMAND FOR JURY TRIAL

1 **INTRODUCTION**

2 PLAINTIFF MIGUEL VALLES (“PLAINTIFF”) an individual, demanding a jury trial,
3 on behalf of himself and other persons similarly situated, hereby alleges as follows:

4 **JURISDICTION AND VENUE**

5 1. The Superior Court of the State of California has jurisdiction in this matter because
6 PLAINTIFF is a resident of the State of California, and Defendants TALBERT
7 ARCHITECTURAL PANEL & DOOR, INC., a California corporation; and DOES 1 through 50
8 inclusive (collectively “DEFENDANTS”), are qualified to do business in California and regularly
9 conduct business in California. Further, no federal question is at issue because the claims are based
10 solely on California law.

11 2. Venue is proper in this judicial district and the County of Los Angeles, California
12 because PLAINTIFF, and other persons similarly situated, performed work for DEFENDANTS
13 in the County of Los Angeles, DEFENDANTS maintain offices and facilities and transact
14 business in the County of Los Angeles, and because DEFENDANTS’ illegal payroll policies and
15 practices which are the subject of this action were applied, at least in part, to PLAINTIFF, and
16 other persons similarly situated, in the County of Los Angeles.

17 **PLAINTIFF**

18 3. PLAINTIFF is a male resident of the State of California and a former employee of
19 DEFENDANTS.

20 4. PLAINTIFF, on behalf of himself and other similarly situated current and former
21 non-exempt employees of DEFENDANTS in the State of California at any time during the four
22 years preceding the filing of this action, and continuing while this action is pending, brings this
23 class action to recover, among other things, wages and penalties from unpaid wages earned and
24 due, including but not limited to unpaid minimum wages, unpaid and illegally calculated overtime
25 compensation, illegal meal and rest period policies, failure to pay all wages due to discharged and
26 quitting employees, failure to indemnify employees for necessary expenditures and/or losses
27 incurred in discharging their duties, failure to provide accurate itemized wage statements, failure
28 to maintain required records, and interest, attorneys’ fees, costs, and expenses.

5. PLAINTIFF brings this action on behalf of himself and the following similarly situated class of individuals (“CLASS MEMBERS”): all current and former non-exempt employees of DEFENDANTS in the State of California at any time within the period beginning four (4) years prior to the filing of this action and ending at the time this action settles or proceeds to final judgment (the “CLASS PERIOD”). PLAINTIFF reserves the right to name additional class representatives.

DEFENDANTS

6. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANT TALBERT ARCHITECTURAL PANEL & DOOR, INC. is, and at all times relevant hereto was, a California corporation organized and existing under the laws of the State of California. PLAINTIFF is further informed and believes, and thereon alleges, that DEFENDANT TALBERT ARCHITECTURAL PANEL & DOOR, INC. is authorized to conduct business in the State of California, and does conduct business in the State of California. Specifically, DEFENDANT TALBERT ARCHITECTURAL PANEL & DOOR, INC. maintains offices and facilities and conducts business in, and engages in illegal payroll practices or policies in, the County of Los Angeles, State of California.

7. The true names and capacities of DOES 1 through 50, inclusive, are unknown to PLAINTIFF at this time, and PLAINTIFF therefore sues such DOE Defendants under fictitious names. PLAINTIFF is informed and believes, and thereon alleges, that each Defendant designated as a DOE is in some manner highly responsible for the occurrences alleged herein, and that PLAINTIFF and CLASS MEMBERS' injuries and damages, as alleged herein, were proximately caused by the conduct of such DOE Defendants. PLAINTIFF will seek leave of the court to amend this Complaint to allege their true names and capacities of such DOE Defendants when ascertained.

8. At all relevant times herein, DEFENDANTS were the joint employers of PLAINTIFF and CLASS MEMBERS. PLAINTIFF is informed and believes, and thereon allege, that at all times material to this complaint DEFENDANTS were the alter egos, divisions, affiliates, integrated enterprises, joint employers, subsidiaries, parents, principals, related entities,

1 co-conspirators, authorized agents, partners, joint venturers, and/or guarantors, actual or
2 ostensible, of each other. Each Defendant was completely dominated by his, her or its co-
3 Defendant, and each was the alter ego of the other.

4 9. At all relevant times herein, PLAINTIFF and CLASS MEMBERS were employed
5 by DEFENDANTS under employment agreements that were partly written, partly oral, and partly
6 implied. In perpetrating the acts and omissions alleged herein, DEFENDANTS, and each of them,
7 acted pursuant to, and in furtherance of, their policies and practices of not paying PLAINTIFF
8 and CLASS MEMBERS all wages earned and due, through methods and schemes which include,
9 but are not limited to, failing to pay overtime premiums; failing to provide rest and meal periods;
10 failing to properly maintain records; failing to provide accurate itemized statements for each pay
11 period; failing to properly compensate PLAINTIFF and CLASS MEMBERS for necessary
12 expenditures; and requiring, permitting or suffering the employees to work off the clock, in
13 violation of the California Labor Code and the applicable Welfare Commission ("IWC") Orders.

14 10. PLAINTIFF is informed and believes, and thereon allege, that each and every one
15 of the acts and omissions alleged herein were performed by, and/or attributable to, all
16 DEFENDANTS, each acting as agents and/or employees, and/or under the direction and control
17 of, each of the other DEFENDANTS, and that said acts and failures to act were within the course
18 and scope of said agency, employment and/or direction and control.

19 11. Pursuant to California Labor Code § 558.1, DEFENDANTS and any person acting
20 on behalf of any of the DEFENDANTS, are liable for violating, or causing to violate, any
21 provision regulating minimum wages or hours and days of work in any order of the Industrial
22 Welfare Commission, or Labor Code §§ 203, 226, 226.7, 1193.6, 1194, or 2802.

23 12. As a direct and proximate result of the unlawful actions of DEFENDANTS,
24 PLAINTIFF and CLASS MEMBERS have suffered, and continue to suffer, from loss of earnings
25 in amounts as yet unascertained, but subject to proof at trial, and within the jurisdiction of this
26 Court.

27 ///

28 **CLASS ACTION DESIGNATION**

1 not provided with a meal period, in accordance with the applicable wage order, one additional
2 hour of compensation at each employee's regular rate of pay for each workday that a meal period
3 was not provided.

4 17. DEFENDANTS further violated California Labor Code §§ 226.7, 510, 1194,
5 1197, and IWC Wage Order No. 1-2001 by failing to compensate PLAINTIFF and CLASS
6 MEMBERS for all hours worked during their meal periods.

7 18. As a proximate result of the aforementioned violations, PLAINTIFF and CLASS
8 MEMBERS have been damaged in an amount according to proof at trial, and seek all wages
9 earned and due, interest, penalties, expenses, and costs of suit.

10 **SECOND CAUSE OF ACTION**

11 **Failure to Provide Required Rest Periods**

12 **[Cal. Labor Code §§ 226.7, 512; IWC Wage Order No. 1-2001, § 12]**

13 **(Against all DEFENDANTS)**

14 19. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the
15 allegations in the foregoing paragraphs.

16 20. At all times relevant herein, as part of DEFENDANTS' illegal payroll policies and
17 practices to deprive their non-exempt employees all wages earned and due, DEFENDANTS
18 failed to provide rest periods to PLAINTIFF and CLASS MEMBERS as required under
19 California Labor Code §§ 226.7 and 512, and IWC Wage Order No. 1-2001, § 12.

20 21. DEFENDANTS further violated California Labor Code § 226.7 and IWC Wage
21 Order No. 1-2001, § 12 by failing to pay PLAINTIFF and CLASS MEMBERS who were not
22 provided with a rest period, in accordance with the applicable wage order, one additional hour of
23 compensation at each employee's regular rate of pay for each workday that a rest period was not
24 provided.

25 22. As a proximate result of the aforementioned violations, PLAINTIFF and CLASS
26 MEMBERS have been damaged in an amount according to proof at trial, and seek all wages
27 earned and due, interest, penalties, expenses, and costs of suit.

28 **THIRD CAUSE OF ACTION**

1 **Failure to Pay Overtime Wages**

2 **[Cal. Labor Code §§ 510, 1194, 1198; IWC Wage Order No. 1-2001, § 3]**

3 **(Against all DEFENDANTS)**

4 23. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the
5 allegations in the foregoing paragraphs.

6 24. Pursuant to California Labor Code §§ 510, 1194, and IWC Wage Order No. 1-
7 2001, § 3, DEFENDANTS are required to compensate PLAINTIFF and CLASS MEMBERS for
8 all overtime, which is calculated at one and one-half (1 ½) times the regular rate of pay for all
9 hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the
10 first eight (8) hours on the seventh consecutive workday, with double time for all hours worked in
11 excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours
12 on the seventh consecutive day of work in any workweek.

13 25. PLAINTIFF and CLASS MEMBERS are current and former non-exempt
14 employees entitled to the protections of California Labor Code §§ 510, 1194, and IWC Wage
15 Order No. 1-2001. During the CLASS PERIOD, DEFENDANTS failed to compensate
16 PLAINTIFF and CLASS MEMBERS for all overtime hours worked as required under the
17 foregoing provisions of the California Labor Code and IWC Wage Order by, among other things:
18 failing to pay overtime at one and one-half (1 ½) or double the regular rate of pay as provided by
19 California Labor Code §§ 510, 1194, and IWC Wage Order No. 1-2001, § 3; requiring, permitting
20 or suffering PLAINTIFF and CLASS MEMBERS to work off the clock; requiring, permitting or
21 suffering PLAINTIFF and CLASS MEMBERS to work through meal and rest breaks; illegally
22 and inaccurately recording time in which PLAINTIFF and CLASS MEMBERS worked; failing to
23 properly maintain PLAINTIFF's and CLASS MEMBERS' records; failing to provide accurate
24 itemized wage statements to PLAINTIFF for each pay period; and other methods to be
25 discovered.

26 26. In violation of California law, DEFENDANTS have knowingly and willfully
27 refused to perform their obligations to compensate PLAINTIFF and CLASS MEMBERS for all
28 wages earned and all hours worked. As a proximate result, PLAINTIFF and CLASS MEMBERS

1 have suffered, and continue to suffer, substantial losses related to the use and enjoyment of such
2 wages, lost interest on such wages, and expenses and attorneys' fees in seeking to compel
3 DEFENDANTS to fully perform their obligations under state law, all to their respective damages
4 in amounts according to proof at time of trial, and within the jurisdiction of this Court.

5 27. DEFENDANTS' conduct described herein violates California Labor Code §§ 510,
6 1194, 1198 and IWC Wage Order No. 1-2001, § 3. Therefore, pursuant to California Labor Code
7 §§ 200, 203, 226, 558, 1194, 1197.1, and other applicable provisions under the California Labor
8 Code and IWC Wage Orders, PLAINTIFF and CLASS MEMBERS are entitled to recover the
9 unpaid balance of wages owed to them by DEFENDANTS, plus interest, penalties, attorneys'
10 fees, expenses, and costs of suit.

11 **FOURTH CAUSE OF ACTION**

12 **Failure to Pay Minimum Wages**

13 **[Cal Labor Code §§ 1194, 1197; IWC Wage Order No. 1-2001, § 4]**

14 **(Against all DEFENDANTS)**

15 28. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the
16 allegations in the foregoing paragraphs.

17 29. Pursuant to California Labor Code §§ 1194, 1197, and IWC Wage Order No. 1-
18 2001, § 4, payment to an employee of less than the applicable minimum wage for all hours
19 worked in a payroll period is unlawful.

20 30. During the CLASS PERIOD, DEFENDANTS failed to pay PLAINTIFF and
21 CLASS MEMBERS minimum wages for all hours worked by, among other things: requiring,
22 permitting or suffering PLAINTIFF and CLASS MEMBERS to work off the clock; requiring,
23 permitting or suffering PLAINTIFF and CLASS MEMBERS to work through meal and rest
24 breaks; illegally and inaccurately recording time in which PLAINTIFF and CLASS MEMBERS
25 worked; failing to properly maintain PLAINTIFF's and CLASS MEMBERS' records; failing to
26 provide accurate itemized wage statements to PLAINTIFF and CLASS MEMBERS for each pay
27 period; and other methods to be discovered.

28 31. DEFENDANTS' conduct described herein violates California Labor Code §§

1 1194, 1197, and IWC Wage Order No. 1-2001, § 4. As a proximate result of the aforementioned
2 violations, PLAINTIFF and CLASS MEMBERS have been damaged in an amount according to
3 proof at trial. Therefore, pursuant to California Labor Code §§ 200, 203, 226, 558, 1194, 1197.1,
4 and other applicable provisions under the Labor Code and IWC Wage Orders, PLAINTIFF and
5 CLASS MEMBERS are entitled to recover the unpaid balance of wages owed to them by
6 DEFENDANTS, plus interest, penalties, attorneys' fees, expenses, and costs of suit.

7 **FIFTH CAUSE OF ACTION**

8 **Failure to Pay All Wages Due to Discharged and Quitting Employees**

9 **[Cal. Labor Code §§ 201, 202, 203]**

10 **(Against all DEFENDANTS)**

11 32. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the
12 allegations in the foregoing paragraphs.

13 33. Pursuant to California Labor Code § 201, 202, and 203, DEFENDANTS are
14 required to pay all earned and unpaid wages to an employee who is discharged. California Labor
15 Code § 201 mandates that if an employer discharges an employee, the employee's wages accrued
16 and unpaid at the time of discharge are due and payable immediately.

17 34. Furthermore, pursuant to California Labor Code § 202, DEFENDANTS are
18 required to pay all accrued wages due to an employee no later than 72 hours after the employee
19 quits his or her employment, unless the employee provided 72 hours previous notice of his or her
20 intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

21 35. California Labor Code § 203 provides that if an employer willfully fails to pay, in
22 accordance with California Labor Code §§ 201 and 202, any wages of an employee who is
23 discharged or who quits, the employer is liable for waiting time penalties in the form of continued
24 compensation to the employee at the same rate for up to 30 workdays.

25 36. During the CLASS PERIOD, DEFENDANTS have willfully failed to pay accrued
26 wages and other compensation to PLAINTIFF and CLASS MEMBERS in accordance with
27 California Labor Code §§ 201 and 202.

28 37. As a result, PLAINTIFF and CLASS MEMBERS are entitled to all available

1 statutory penalties, including the waiting time penalties provided in California Labor Code § 203,
2 together with interest thereon, as well as other available remedies.

3 38. As a proximate result of DEFENDANTS' unlawful actions and omissions,
4 PLAINTIFF and CLASS MEMBERS have been deprived of compensation in an amount
5 according to proof at the time of trial, but in excess of the jurisdiction of this Court, and are
6 entitled to recovery of such amounts, plus interest thereon, and attorneys' fees and costs, pursuant
7 to California Labor Code §§ 1194 and 2699.

8 **SIXTH CAUSE OF ACTION**

9 **Failure to Maintain Required Records**

10 **[Cal. Labor Code §§ 226; IWC Wage Order No. 1-2001, § 7]**

11 **(Against all DEFENDANTS)**

12 39. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the
13 allegations in the foregoing paragraphs.

14 40. During the CLASS PERIOD, as part of DEFENDANTS' illegal payroll policies
15 and practices to deprive PLAINTIFF and CLASS MEMBERS of all wages earned and due,
16 DEFENDANTS knowingly and intentionally failed to maintain records as required under
17 California Labor Code §§ 226, 1174, and IWC Wage Order No. 1-2001, § 7, including but not
18 limited to the following records: total daily hours worked by each employee; applicable rates of
19 pay; all deductions; meal periods; time records showing when each employee begins and ends
20 each work period; and accurate itemized statements.

21 41. As a proximate result of DEFENDANTS' unlawful actions and omissions,
22 PLAINTIFF and CLASS MEMBERS have been damaged in an amount according to proof at
23 trial, and are entitled to all wages earned and due, plus interest thereon. Additionally,
24 PLAINTIFF and CLASS MEMBERS are entitled to all available statutory penalties, including
25 but not limited to civil penalties pursuant to California Labor Code §§ 226(e), 226.3, and 1174.5,
26 and an award of costs, expenses, and reasonable attorneys' fees, including but not limited to those
27 provided in California Labor Code § 226(e), as well as other available remedies.

28 **SEVENTH CAUSE OF ACTION**

Failure to Furnish Accurate Itemized Wage Statements
[Cal. Labor Code §§ 226, 1174; IWC Wage Order No. 1-2001, § 7]
(Against all DEFENDANTS)

42. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the allegations in the foregoing paragraphs.

43. During the CLASS PERIOD, DEFENDANTS routinely failed to provide PLAINTIFF and CLASS MEMBERS with timely, accurate, and itemized wage statements in writing showing each employee's gross wages earned, total hours worked, all deductions made, net wages earned, the name and address of the legal entity or entities employing PLAINTIFF and CLASS MEMBERS, and all applicable hourly rates in effect during each pay period and the corresponding number of hours worked at each hourly rate, in violation of California Labor Code § 226 and IWC Wage Order No. 1-2001, § 7.

44. During the CLASS PERIOD, DEFENDANTS knowingly and intentionally failed to provide PLAINTIFF and CLASS MEMBERS with timely, accurate, and itemized wage statements in accordance with California Labor Code § 226(a).

45. As a proximate result of DEFENDANTS' unlawful actions and omissions, PLAINTIFF and CLASS MEMBERS have been damaged in an amount according to proof at trial, and seek all wages earned and due, plus interest thereon. Additionally, PLAINTIFF and CLASS MEMBERS are entitled to all available statutory penalties, including but not limited to civil penalties pursuant to California Labor Code §§ 226(e), 226.3, and 1174.5, and an award of costs, expenses, and reasonable attorneys' fees, including but not limited to those provided in California Labor Code § 226(e), as well as other available remedies.

EIGHTH CAUSE OF ACTION

Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties

[Cal. Labor Code § 2802]

(Against all DEFENDANTS)

46. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the

1 allegations in the foregoing paragraphs.

2 47. California Labor Code § 2802(a) requires an employer to indemnify an employee
3 for all necessary expenditures or losses incurred by the employee in direct consequence of the
4 discharge of his or her duties, or of his or her obedience to the directions of the employer.

5 48. During the CLASS PERIOD, DEFENDANTS knowingly and willfully failed to
6 indemnify PLAINTIFF and CLASS MEMBERS for all business expenses and/or losses incurred
7 in direct consequence of the discharge of their duties while working under the direction of
8 DEFENDANTS, including but not limited to expenses for uniforms, cell phone usage, and other
9 employment-related expenses, in violation of California Labor Code § 2802.

10 49. As a proximate result of DEFENDANTS' unlawful actions and omissions,
11 PLAINTIFF and CLASS MEMBERS have been damaged in an amount according to proof at
12 trial, and seek reimbursement of all necessary expenditures, plus interest thereon pursuant to
13 California Labor Code § 2802(b). Additionally, PLAINTIFF and CLASS MEMBERS are
14 entitled to all available statutory penalties and an award of costs, expenses, and reasonable
15 attorneys' fees, including those provided in California Labor Code § 2802(c), as well as other
16 available remedies.

17 **NINTH CAUSE OF ACTION**

18 **Unfair and Unlawful Business Practices**

19 **[Cal. Bus. & Prof. Code §§ 17200 et. seq.]**

20 **(Against all DEFENDANTS)**

21 50. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the
22 allegations in the foregoing paragraphs.

23 51. Each and every one of DEFENDANTS' acts and omissions in violation of the
24 California Labor Code and/or the applicable IWC Wage Order as alleged herein, including but
25 not limited to DEFENDANTS' failure and refusal to provide required meal periods,
26 DEFENDANTS' failure and refusal to provide required rest periods, DEFENDANTS' failure and
27 refusal to pay overtime compensation, DEFENDANTS' failure and refusal to pay minimum
28 wages, DEFENDANTS' failure and refusal to pay all wages due to discharged or quitting

employees, DEFENDANTS' failure and refusal to furnish accurate itemized wage statements; DEFENDANTS' failure and refusal to maintain required records, DEFENDANTS' failure and refusal to indemnify PLAINTIFF and CLASS MEMBERS for necessary expenditures and/or losses incurring in discharging their duties, constitutes an unfair and unlawful business practice under California Business and Professions Code § 17200 et seq.

52. DEFENDANTS' violations of California wage and hour laws constitute a business practice because DEFENDANTS' aforementioned acts and omissions were done repeatedly over a significant period of time, and in a systematic manner, to the detriment of PLAINTIFF and CLASS MEMBERS.

53. DEFENDANTS have avoided payment of wages, overtime wages, meal periods, rest periods, and other benefits as required by the California Labor Code, the California Code of Regulations, and the applicable IWC Wage Order. Further, DEFENDANTS have failed to record, report, and pay the correct sums of assessment to the state authorities under the California Labor Code and other applicable regulations.

54. As a result of DEFENDANTS' unfair and unlawful business practices, DEFENDANTS have reaped unfair and illegal profits during the CLASS PERIOD at the expense of PLAINTIFF, CLASS MEMBERS, and members of the public. DEFENDANTS should be made to disgorge their ill-gotten gains and to restore them to PLAINTIFF and CLASS MEMBERS.

55. DEFENDANTS' unfair and unlawful business practices entitle PLAINTIFF and CLASS MEMBERS to seek preliminary and permanent injunctive relief, including but not limited to orders that DEFENDANTS account for, disgorge, and restore to PLAINTIFF and CLASS MEMBERS the wages and other compensation unlawfully withheld from them. PLAINTIFF and CLASS MEMBERS are entitled to restitution of all monies to be disgorged from DEFENDANTS in an amount according to proof at the time of trial, but in excess of the jurisdiction of this Court.

TENTH CAUSE OF ACTION

Representative Action for Civil Penalties

1 [Cal. Labor Code §§ 2698–2699.5]

2 (Against All DEFENDANTS)

3 56. PLAINTIFF incorporates herein by specific reference as though fully set forth the
4 allegations in all preceding paragraphs, with exception of the allegations in paragraph 13 and the
5 subparagraphs thereto.

6 57. PLAINTIFF is an “aggrieved employee” within the meaning of California Labor
7 Code § 2699(c), and a proper representative to bring a civil action on behalf of herself and other
8 current and former employees of DEFENDANTS pursuant to the procedures specified in
9 California Labor Code § 2699.3, because PLAINTIFF and CLASS MEMBERS were employed
10 by DEFENDANTS and the alleged violations of the California Labor Code were committed
11 against PLAINTIFF and CLASS MEMBERS.

12 58. Pursuant to the California Private Attorneys General Act of 2004 (“PAGA”),
13 Labor Code §§ 2698–2699.5, PLAINTIFF and CLASS MEMBERS seeks to recover civil
14 penalties, including but not limited to penalties under California Labor Code §§ 2699, 210,
15 226.3, 558, 1174.5, 1197.1, and IWC Wage Order No. 1-2001, § 20, from DEFENDANTS in a
16 representative action for the violations set forth above, including but not limited to violations of
17 California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and
18 2802. PLAINTIFF and CLASS MEMBERS are also entitled to an award of reasonable attorneys’
19 fees and costs pursuant to California Labor Code § 2699(g)(1).

20 59. Pursuant to California Labor Code §§ 2699.3, PLAINTIFF gave written notice on
21 August 26, 2020 by online filing to the California Labor and Workforce Development Agency
22 (“LWDA”) and by certified mail to DEFENDANTS of the specific provisions of the
23 California Labor Code and IWC Wage Orders alleged to have been violated, including the facts
24 and theories to support the alleged violations. More than sixty-five (65) days have passed and the
25 LWDA has not provided notice to PLAINTIFF that it intends to investigate the alleged violations.

26 60. Therefore, PLAINTIFF has complied with all of the requirements set forth in
27 California Labor Code § 2699.3 to commence a representative action under PAGA.

28 **PRAYER FOR RELIEF**

1 **WHEREFORE**, PLAINTIFF, individually and on behalf of all other persons similarly
2 situated, respectfully prays for relief against DEFENDANTS and DOES 1 through 50, inclusive,
3 and each of them, as follows:

- 4 1. For compensatory damages in an amount to be ascertained at trial;
- 5 2. For restitution of all monies due to PLAINTIFF and CLASS MEMBERS, as well
6 as disgorged profits from DEFENDANTS' unfair and unlawful business practices;
- 7 3. For meal and rest period compensation pursuant to California Labor Code § 226.7
8 and IWC Wage Order No. 1-2001;
- 9 4. For liquidated damages pursuant to California Labor Code §§ 1194.2 and 1197.1;
- 10 5. For preliminary and permanent injunctive relief enjoining DEFENDANTS from
11 violating the relevant provisions of the California Labor Code and the IWC Wage Orders, and
12 from engaging in the unlawful business practices complained of herein;
- 13 6. For waiting time penalties pursuant to California Labor Code § 203;
- 14 7. For statutory and civil penalties according to proof, including but not limited to all
15 penalties authorized by the California Labor Code §§ 226(e) and §§ 2698–2699.5;
- 16 8. For interest on the unpaid wages at 10% per annum pursuant to California Labor
17 Code §§ 218.6, 1194, 2802, California Civil Code §§ 3287, 3288, and/or any other applicable
18 provision providing for pre-judgment interest;
- 19 9. For reasonable attorneys' fees and costs pursuant to California Labor Code
20 §§ 1194, 2699, 2802, California Civil Code § 1021.5, and any other applicable provisions
21 providing for attorneys' fees and costs;
- 22 10. For declaratory relief;
- 23 11. For an order requiring and certifying the First, Second, Third, Fourth, Fifth, Sixth,
24 Seventh, Eighth, and Ninth Causes of Action as a class action;
- 25 12. For an order appointing PLAINTIFF as class representative, and PLAINTIFF's
26 counsel as class counsel; and
- 27 13. For such further relief that the Court may deem just and proper.

DATED: August 26, 2020

Respectfully submitted,

MATERN LAW GROUP, PC

By: _____

Matthew J. Matern
Tagore O. Subramaniam
Max Sloves
Attorneys for Plaintiff
MIGUEL VALLES, individually, and on
behalf of other persons similarly situated

1 **DEMAND FOR JURY TRIAL**

2 PLAINTIFF hereby demands a jury trial with respect to all issues triable of right by jury.

3
4 DATED: August 26, 2020

Respectfully submitted,

5 **MATERN LAW GROUP, PC**

6 By:

7
8 _____
9 Matthew J. Matern
10 Tagore O. Subramaniam
11 Max Sloves
12 Attorneys for Plaintiff
13 MIGUEL VALLES, individually, and on
14 behalf of other persons similarly situated
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