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and all others similarly situated and aggrieved

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

JOHN GUTH, an individual, on behalf of
himself and all others similarly situated and
aggrieved,

Plaintiff,

vs.

THE GREEN GODDESS, INC., a California
Corporation; and DOES 1 to 100, inclusive,

Defendants.

Case No.:

20STCV12952

**CLASS ACTION & PAGA REPRESENTATIVE
ACTION COMPLAINT**

- (1) FAILURE TO PROVIDE MEAL PERIODS;
- (2) FAILURE TO PROVIDE REST BREAKS;
- (3) FAILURE TO PAY MINIMUM WAGES;
- (4) FAILURE TO PAY OVERTIME WAGES;
- (5) FAILURE TO REIMBURSE ALL
NECESSARY BUSINESS-RELATED
EXPENSES;
- (6) FAILURE TO FURNISH TIMELY AND
ACCURATE WAGE STATEMENTS;
- (7) FAILURE TO PAY ALL WAGES UPON
SEPARATION;
- (8) VIOLATION OF CALIFORNIA'S
UNFAIR COMPETITION LAW ("UCL"),
CAL. BUS. & PROF. CODE § 17200, ET
SEQ.; AND
- (9) CIVIL PENALTIES FOR VIOLATIONS
OF LABOR CODE, PURSUANT TO
CALIFORNIA'S PRIVATE ATTORNEYS'
GENERAL ACT ("PAGA"), §§ 2698, ET
SEQ.

DEMAND FOR JURY TRIAL

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1 **CLASS ACTION AND REPRESENTATIVE ACTION COMPLAINT**

2 Plaintiff JOHN GUTH (“Plaintiff” or “GUTH”), on behalf of himself and all others similarly
3 situated and aggrieved, by and through his attorneys, Shegerian & Associates, Inc., hereby files this Class
4 Action and PAGA Representative Action Complaint against Defendants THE GREEN GODDESS, INC.,
5 a California Corporation (“GREEN GODDESS”); and DOES 1 through 100 inclusive, (collectively,
6 “Defendants”), and states as follows:

7
8 **I. INTRODUCTION**

9 1. Plaintiff brings this class and representative action on behalf of himself and on behalf of
10 a class defined as all hourly, nonexempt employees of THE GREEN GODDESS, INC. in California at
11 any time during the time period beginning four years prior to the filing of this Complaint through the
12 present (“Class Period”).

13 2. Defendant THE GREEN GODDESS, INC. is a company engaged in providing cannabis-
14 based products to customers via its brick-and-mortar store and via delivery.

15 3. Defendants’ policy and practice is to deny earned wages, including premium and overtime
16 pay, to their hourly, nonexempt employees at Defendants’ locations in California. Defendants do not
17 provide their employees with legally compliant meal periods and rest breaks or premium pay in lieu
18 thereof. Defendants require their employees to be present and to perform work in excess of eight (8)
19 hours per day and/or forty (40) hours per work week by mandating that these employees perform work
20 off-the-clock including, but not limited to, performing work during meal periods and rest breaks.
21 Defendants do not provide minimum wages and overtime pay for this time. These off-the-clock working
22 periods are done for the sole benefit of Defendants and are a uniform policy and practice in all of
23 Defendants’ location(s) in California. This illegal policy and practice have been in effect by Defendants
24 throughout the Class Period, but Defendants continue to require their hourly, nonexempt employees to
25 work uncompensated.

26 4. Moreover, Defendants fail to timely compensate employees for all wages earned upon
27 separation and fail to properly and accurately calculate minimum wages and overtime wages and report
28 wages earned, hours worked, and wage rates. For these reasons, Plaintiff brings this action on behalf of

1 himself and other hourly, nonexempt employees of Defendants to recover unpaid wages, overtime
2 compensation, penalties, interest, injunctive relief, damages, and reasonable attorneys' fees and costs.

3 5. Defendants' deliberate failure to pay their hourly, nonexempt employees their earned
4 wages and overtime compensation violates the California Labor Code and the California Business &
5 Professions Code.

6 6. Defendants' policy and practice is to require employees to incur necessary, business-
7 related expenses for cellular data service, that Defendants' do not reimburse. Defendants' policy is to
8 not reimburse Plaintiff and Class Members for their cell data service in violation of Labor Code section
9 2802.

10 7. Plaintiff brings a class action under the California Code of Civil Procedure section 382
11 against Defendants on behalf of all nonexempt hourly, nonexempt employees of Defendants in California
12 for failing to provide compliant meal periods and rest breaks or premium pay in lieu thereof, for unpaid
13 minimum wages, unpaid overtime wages, failing to provide timely and accurate wage statements, waiting
14 time penalties, and other related penalties and damages under the California Labor Code and California
15 Business & Professions Code.

16 17 **II. JURISDICTION AND VENUE**

18 8. Venue lies properly with this Court, as it is the place where at least one Defendant resides,
19 is incorporated or has its principal place of business, or a substantial amount of the events which gave
20 rise to this suit occurred and/or a cause of action arose.

21 9. This Court has jurisdiction over this matter because Defendants are licensed to do
22 business in California, regularly conduct business in California, and committed and continue to commit
23 the unlawful acts alleged herein in California.

24 10. Venue is proper in this Court pursuant to California Code of Civil Procedure section
25 395.5. Defendants own and operate THE GREEN GODDESS, INC. in Los Angeles County, State of
26 California, which is where Plaintiff and some Class Members have worked and continue to work for
27 Defendants. Defendants' obligation to comply with the California Labor Code and California Business
28 & Professions Code and their liability for failing to do so therefore arise in, among other counties, the

County of Los Angeles.

III. PARTIES

11. Plaintiff GUTH is and was a resident of the City of Los Angeles in Los Angeles County, State of California. Plaintiff was employed by Defendants as an hourly, nonexempt employee in the position of Delivery Specialist at Defendants' brick-and-mortar location in Venice, California from approximately July 18, 2018 through approximately July 2019. Plaintiff typically worked five (5) to six (6) days per week for seven (7) to ten (10) hours per day and generally, about thirty-five (35) to forty (40) or more hours per week. At the time of Plaintiff's separation, Plaintiff was earning \$14.25 per hour plus tips and bonuses.

12. Defendant THE GREEN GODDESS, INC., a California Corporation ("GREEN GODDESS"), is a for-profit corporation incorporated in the State of California with its principal place of business at 1716 Main Street, Venice, California 90291. Defendant is doing business in the State of California, operating in the State of California, and is availing itself of the privileges and obligations associated therewith. Defendant GREEN GODDESS'S California office is located at 1716 Main Street, Venice, California 90291.

13. Defendants created the policies and procedures described herein and, at all times during the Class Period, participated in, endorsed, implemented, and performed the conduct alleged herein.

14. The practices and policies which are complained of by way of this Complaint are enforced throughout the State of California, including Los Angeles County.

15. Plaintiff is ignorant of the true names, capacities, relationships, and extent of participation in the conduct alleged herein, of the Defendants sued as Does 1-100, inclusive, but is informed and believes that said Defendants are legally responsible for the conduct alleged herein and therefore sues these Defendants by such fictitious names. Plaintiff will amend this Complaint to allege both the true names and capacities of the Doe Defendants when ascertained. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned herein, all Defendants, including Doe Defendants, and each of them, were agents, servants, employees, successors in interest, and/or joint venturers of their co-Defendants and were, as such, acting within the course, scope, and authority of said

1 agency, employment, and/or venture, and with the consent of their co-Defendants, and/or said acts were
2 ratified by their co-Defendants, and that each and every Defendant, as aforesaid, when acting as a
3 principal, was negligent in the selection and hiring, training, and supervision of each and every other
4 Defendant as an agent, servant, employee, successor in interest, and/or joint venturer. Plaintiff is
5 informed and believes that each Defendant acted in all respects pertinent to this action as the agent of
6 the other Defendant, carried out a joint scheme, business plan, or policy in all respects pertinent hereto,
7 and that the acts of each Defendant are legally attributable to each of the other Defendant.

8
9 **IV. FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

10 16. At all times herein relevant, Defendant GREEN GODDESS is a retail marijuana
11 dispensary with a brick-and-mortar store in Southern California. Green Goddess sells marijuana in a
12 variety of forms for recreational and medicinal use, which customers may purchase in-person at the
13 store or have delivered locally via a smartphone application.

14 17. At all relevant times, Defendants have been, and continue to be, a “person” as that term
15 is defined under California Business & Professions Code section 17021 and California Labor Code
16 sections 1-29.5.

17 18. At all times herein relevant, Plaintiff was employed by Defendants as an hourly,
18 nonexempt employee in the position of Delivery Specialist in California during the Class Period.

19 19. At all times relevant herein, at Defendant GREEN GODDESS’S brick-and-mortar
20 location in Venice, California, Defendant GREEN GODDESS employs hourly, nonexempt workers
21 such as Plaintiff under several job titles including, but not limited to, Delivery Specialist and Packer,
22 altogether engaged in carrying out Defendants’ purpose of selling marijuana products to customers.

23 20. At all times herein relevant, Plaintiff and Class Members were assigned to and required
24 and permitted to work without pay while performing tasks including, but not limited to: fulfilling and
25 packing orders from a smartphone application to be delivered that day; delivering orders to customers
26 via the employees’ personal vehicles; returning undelivered merchandise to the store at the end of the
27 shift; selling merchandise to customers at the company’s retail store; identification checkers; security
28 services; preparing and packing merchandise for sale in saleable units; receiving and inventorying

merchandise at Defendants' retail store location(s) in California. Plaintiff and Class Members were not properly compensated for this work.

21. At all times herein relevant, Plaintiff and Class Members were assigned to and required and permitted to work shifts lasting over four (4) hours and were not authorized nor permitted to take a ten (10) minute rest break during each shift or four (4) hour work period.

22. At all times herein relevant, Defendants failed to authorize and permit rest breaks during the Class Period. Plaintiff and Class Members were routinely required to work through rest breaks at the direction of Defendants and/or Defendants' knowledge and acquiescence. Furthermore, due to understaffing, Plaintiff and Class Members' rest breaks are frequently interrupted by incoming orders with a promised delivery window, at which time they must abandon their rest break and make themselves available to begin the delivery; accordingly, these rest breaks were on duty for which Defendants should have but did not compensate Plaintiff and Class Members with premium pay for missed rest breaks.

23. At all times herein relevant, Plaintiff and Class Members were assigned to and required to work for periods lasting in excess of five (5) hours and were not provided nor allowed to take thirty (30) minute, uninterrupted, off-duty meal periods. Defendants employed a practice of auto-deducting 30-minute meal periods from Plaintiff and Class Members' hours worked, regardless of whether meal periods were taken and certainly not at the time meal periods were actually taken. Furthermore, due to understaffing, Plaintiff and Class Members' meal periods are frequently interrupted by new deliveries they were required to immediately drive to fulfill despite being designated as "on hold" on their smartphone application indicating they were off-duty taking a meal period; accordingly, these meal periods were on duty for which Defendants should have but did not compensate Plaintiff and Class Members with premium pay for missed meal periods. Moreover, Plaintiff and Class Members often worked in excess of ten (10) hours without a second thirty (30) minute meal period even though their first meal period was not taken.

24. At all times herein relevant, Plaintiff and Class Members worked in excess of eight (8) hours per workday or forty (40) hours per work week. Defendants failed to pay for all hours worked in excess of eight (8) hours per day, and when compensated for overtime, failed to pay the correct amount of overtime by miscalculating the regular rate. Defendants failed to pay current and former hourly,

1 nonexempt employees one and one-half times (1½) their regular rate of pay for hours worked in excess
2 of eight (8) hours per day or forty (40) hours per workweek. Defendants also failed to pay their
3 employees at a rate no less than twice the regular rate of pay for work in excess of twelve (12) hours in
4 one day or for all hours worked in excess of eight (8) hours on the seventh consecutive day of work in
5 a workweek.

6 25. Defendants regularly failed to pay their hourly, nonexempt employees the correct amount
7 of and rate for overtime wages. Defendants have failed and continue to fail to include all amounts in
8 the regular rate of pay for purposes of calculating overtime. Unrelatedly, Defendants fail to record all
9 hours as overtime by failing to record all hours worked in a workday. This work, done primarily for the
10 employer's benefit, is time that hourly, nonexempt employees should be, but were not compensated for,
11 both straight hours and overtime hours worked in excess of forty (40) hours in a week, hours worked in
12 excess of eight (8) hours in a day, and for the first eight (8) hours worked on the seventh consecutive
13 day of work in a workweek.

14 26. Supervisors employed at Defendants' location(s), including Plaintiff's location, had
15 knowledge of and required Plaintiff to perform work during rest breaks and off-the-clock. Supervisors
16 throughout California were aware that Plaintiff and others similarly situated were performing work
17 during these times without proper wages and, where applicable, overtime compensation.

18 27. In light of Defendants' failure to record employees' off-the-clock time that employees
19 worked and Defendants' failure to acknowledge the noncompliant meal periods and rest breaks,
20 Defendants failed to properly calculate the hourly, nonexempt employees' hours and therefore,
21 employees' premium pay, minimum wages, and overtime wages due. Accordingly, Defendants failed
22 to provide accurate wage statements to their hourly, nonexempt employees identifying all hours worked
23 and all rates in effect during the pay period.

24 28. At all times herein relevant, the same unlawful practices and procedures described above
25 affect hourly, nonexempt workers of Defendants employed in California.

26 29. At all times herein relevant, Defendants failed to pay Plaintiff and Class Members for all
27 hours worked. Thus, Defendants did not pay Plaintiff and Class Members minimum wages in
28

1 accordance with law and, because Class Members worked shifts over eight (8) hours in duration,
2 Defendants also did not pay them all overtime wages in accordance with law.

3 30. Defendants' policy and practice is to require employees to incur necessary, business-
4 related expenses for cellular data service, that Defendants' do not reimburse. Plaintiff and Class
5 Members are required to clock-in and clock-out for their shifts and meal periods via their smartphone
6 application to track their hours worked. Plaintiff and Class Members receive orders for delivery while
7 out in the field and not at Defendants' store through their smartphone application. Plaintiff and Class
8 Members must have and use their smartphone cell data service to perform their job. Defendants' policy
9 is to not reimburse Plaintiff and Class Members for their cell data service in violation of Labor Code
10 section 2802.

11 31. Defendants' conduct, as alleged herein, has caused Plaintiff and Class Members damages
12 including, but not limited to, loss of wages and compensation and necessary, unreimbursed business
13 expenses. Defendants are liable to Plaintiff and the Class for failing to pay minimum wages, failing to
14 pay overtime wages, failing to pay all wages owed every pay period, failing to provide timely and
15 accurate wage statements, failing to pay all wages owed upon separation, and unfair competition.

16 32. Plaintiff has complied with the procedures for bringing suit specified in California Labor
17 Code section 2699.3. By letter dated January 9, 2020, Plaintiff gave written notice by certified mail to
18 the Labor and Workforce Development Agency ("LWDA"), and Defendants, of the specific provisions
19 of the Labor Code alleged to have been violated, including the facts and theories to support the alleged
20 violations.

21
22 **V. CLASS ACTION AND PAGA REPRESENTATIVE ACTION ALLEGATIONS**

23 33. Plaintiff is a member of and seeks to be the representative for the Class of similarly
24 situated employees who all have been exposed to, have suffered, and/or were permitted to work under
25 Defendants' unlawful employment practices as alleged herein.

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1 34. Plaintiff brings his first through ninth causes of action on behalf of himself and on behalf
2 of the following Class¹ of persons as well as all aggrieved persons:

3 All current and former hourly, nonexempt employees who have worked in
4 California for THE GREEN GODDESS, INC. at any time during the period
5 beginning four years prior to the filing of this Complaint through the
6 present.

7 35. This action is appropriately suited for a class action pursuant to Code of Civil Procedure
8 section 382 because there exists an ascertainable and sufficiently numerous Class, a well-defined
9 community of interest, and substantial benefits from certification that render proceeding as a class
10 superior to the alternatives.

11 36. Numerosity and Ascertainability. The size of the Class makes a class action both
12 necessary and efficient. On information and belief, the proposed Class includes hundreds of current and
13 former employees at Defendants' location(s) in California. Members of the Class are ascertainable
14 through Defendants' records but are so numerous that joinder of all individual Class Members would be
15 impractical.

16 37. Predominant Common Questions of Law and Fact. Pursuant to section 382, common
17 questions of law and fact exist as to all Class Members. These questions predominate over any
18 individualized issues. These common questions include but are not limited to:

- 19 a. Whether Defendants' policies and practices described in this Complaint were and are illegal;
20 b. Whether Defendants violated Labor Code section 226.7 and/or section 512 and engaged in a
21 pattern or practice of failing to provide timely, off-duty, thirty (30) minute meal periods to
22 Plaintiff and members of the Class who worked as hourly, nonexempt employees in California
23 during the Class Period;
24 c. Whether Defendants engaged in a pattern or practice of impeding Plaintiff and the members
25 of the Class who worked as hourly, nonexempt employees in California during the Class
26 Period from taking off-duty, thirty (30) minute meal periods on a timely basis;

27 ¹ Plaintiff reserves the right under California Rules of Court, Rule 3.765, to amend or modify the Class description
28 with greater particularity or further division into subclasses or limitation to particular issues.

- 1 d. Whether Defendants engaged in a pattern or practice of failing to properly compensate
2 Plaintiff and the members of the Class who worked as hourly, nonexempt employees in
3 California during the Class Period for missed, untimely, or on-duty meal periods as required
4 by California law;
- 5 e. Whether Defendants violated California Industrial Welfare Commission (“IWC”) Wage
6 Order No. 7-2001, section 11 by failing to provide Plaintiff and the members of the Class who
7 worked as hourly, nonexempt employees in California during the Class Period with timely,
8 off-duty, thirty (30) minute meal periods;
- 9 f. Whether Defendants engaged in an unfair practice and violated California Business and
10 Professions Code, section 17200, *et seq.* by failing to provide Plaintiff and the members of
11 the Class who worked as hourly, nonexempt employees in California during the Class Period
12 with their statutory, off-duty, meal periods on a timely basis;
- 13 g. Whether Defendants maintained accurate time records of off-duty, thirty (30) minute meal
14 periods taken by Plaintiff and members of the Class during the Class Period in accordance
15 with section 7 of IWC Wage Order No. 7-2001;
- 16 h. Whether Defendants failed to compensate, and therefore violated IWC Wage Order No. 7-
17 2001 and Labor Code section 226.7 by failing to provide ten (10) minute, uninterrupted rest
18 breaks as contemplated by California law for work periods in excess of four (4) hours;
- 19 i. Whether Defendants engaged in a pattern or practice of failing to properly compensate
20 Plaintiff and the members of the Class who worked as hourly, nonexempt employees in
21 California during the Class Period for failing to provide ten (10) minute, uninterrupted rest
22 breaks as contemplated by California law for work periods in excess of four (4) hours;
- 23 j. Whether Plaintiff and each member of the Class were not paid minimum wage for each hour
24 worked or part thereof during which they were required to perform acts at the direction and
25 for the benefit of Defendants;
- 26 k. Whether Defendants engaged in a pattern or practice of failing to pay Plaintiff and the
27 members of the Class who worked as hourly, nonexempt employees in California for the total
28 hours worked during the Class Period;

- 1 l. Whether Defendants have engaged in a common course of requiring or permitting their
- 2 hourly, nonexempt employees to not report all hours worked during the Class Period;
- 3 m. Whether Defendants engaged in a pattern or practice of failing to pay appropriate amounts of
- 4 overtime pay to Plaintiff and the Class for hours worked in excess of eight (8) hours in a day;
- 5 n. Whether Defendants engaged in a pattern or practice of failing to pay appropriate amounts of
- 6 double time for hours worked in excess of twelve (12) hours in a day;
- 7 o. Whether Defendants violated section 510 of the Labor Code and/or section 3 of IWC Wage
- 8 Order No. 7-2001 of the IWC by failing to pay overtime pay to Plaintiff and the Class for
- 9 hours worked in excess of eight (8) hours in a day;
- 10 p. Whether Defendants violated section 510 of the Labor Code and/or section 3 of IWC Wage
- 11 Order No. 7-2001 of the IWC by failing to pay overtime pay to Plaintiff and the Class for the
- 12 first eight (8) hours worked in a day on the seventh consecutive day in a workweek and double
- 13 time for all hours worked in excess of eight (8) hours on such days;
- 14 q. Whether Defendants violated Labor Code sections 218.5, 204, 1197, and 1198 by failing to
- 15 compensate Plaintiff and the Class for those acts Defendants required Plaintiff and members
- 16 of the Class to perform for the benefit of Defendants;
- 17 r. Whether Defendants have engaged in a common course of failing to maintain true and
- 18 accurate time records for all hours worked by their nonexempt employees;
- 19 s. Whether Defendants violated Labor Code section 226(a) by issuing inaccurate wage
- 20 statements to Plaintiff and members of the Class that failed to include payments for missed,
- 21 untimely, and/or on-duty meal periods among wages earned throughout the Class Period;
- 22 t. Whether Defendants violated Labor Code section 226 by issuing inaccurate wage statements
- 23 to Plaintiff and members of the Class that failed to accurately state the total hours worked, to
- 24 the detriment of Plaintiff and the Class;
- 25 u. Whether Defendants violated California Labor Code section 2802 by failing to reimburse
- 26 Plaintiff and Class Members for all necessary business-related expenses they incurred;
- 27 v. Whether Defendants have engaged in a common course of failing to pay nonexempt
- 28 employees all wages due upon termination;

1 w. Whether Defendants have engaged in unfair competition by the above-listed conduct; and

2 x. The nature and extent of class-wide injury and the measure of damages for the injury.

3 38. Typicality. Plaintiff's claims are typical of the members of the Class. Plaintiff, like other
4 members of the Class working for Defendants in California, was subjected to Defendants' policy and
5 practice of refusing to properly and fully pay overtime in violation of California wage and hour laws.
6 Plaintiff's job duties were and are typical of those of other class members who worked for Defendants in
7 California.

8 39. Adequacy of Representation. Plaintiff will fairly and adequately represent the interests of
9 the Class because his individual interests are consistent with and not antagonistic to the interests of the
10 Class, and because Plaintiff has selected counsel who has the requisite resources and ability to prosecute
11 this case as a class action and are experienced labor and employment attorneys who have successfully
12 litigated other cases involving similar issues.

13 40. Superiority of Class Mechanism. The class action mechanism is superior to any
14 alternatives that might exist for the fair and efficient adjudication of these claims. Proceeding as a class
15 action would permit the large number of injured parties to prosecute their common claims in a single
16 forum simultaneously, efficiently, and without unnecessary duplication of evidence, effort and judicial
17 resources. A class action is the only practical way to avoid the potentially inconsistent results that
18 numerous individual trials are likely to generate. Moreover, class treatment is the only realistic means
19 by which Plaintiff can effectively litigate against a large, well-represented corporate defendant like
20 Defendants. In the absence of a class action, Defendants would be unjustly enriched because they would
21 be able to retain the benefits and fruits of the many wrongful violations of the California state laws.
22 Numerous repetitive individual actions would also place an enormous burden on the courts as they are
23 forced to take duplicative evidence and decide the same issues relating to Defendants' conduct over and
24 over again.

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1 **VI. FIRST CAUSE OF ACTION**

2 **Failure to Provide Meal Periods**

3 **in Violation of Cal. Labor Code §§ 512 and 226.7; IWC Wage Order No. 7-2001, § 11**

4 **(Brought by Plaintiff on Behalf of Himself and the Class Against All Defendants)**

5 41. Plaintiff hereby re-alleges and incorporates by reference all paragraphs of this Complaint
6 as if fully set forth herein.

7 42. California Labor Code section 226.7(a) provides, “No employer shall require any
8 employee to work during any meal or rest period mandated by an applicable order of the Industrial
9 Welfare Commission.”

10 43. IWC Wage Order No. 7-2001 (11)(A) provides, in pertinent part: “No employer shall
11 employ any person for a work period of more than five (5) hours without a meal period of not less than
12 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work
13 the meal period may be waived by mutual consent of the employer and the employee.”

14 44. Section 512(k) of the California Labor Code provides, in pertinent part, that: “An
15 employer may not employ an employee for a work period of more than five hours per day without
16 providing the employee with a meal period of not less than 30 minutes, except that if the total work period
17 per day of the employee is no more than six hours, the meal period may be waived by mutual consent of
18 both the employer and employee. An employer may not employ an employee for a work period of more
19 than 10 hours per day without providing the employee with a second meal period of not less than 30
20 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be
21 waived by mutual consent of the employer and the employee only if the first meal period was not waived.”

22 45. As alleged herein, Defendants failed to authorize and permit timely, uninterrupted meal
23 periods during the Class Period. Plaintiff and members of the Class were routinely required to work
24 without a timely, uninterrupted meal period at the direction of Defendants and/or with Defendants’
25 knowledge and acquiescence. Defendants’ uniform adoption of a chronically understaffed staffing model
26 for their retail stores and delivery drivers also prevented Plaintiff and Class Members from being relieved
27 of all duties to take meal periods. The combination of Defendants’ failure to schedule meal periods and
28 their adoption of a chronically understaffed staffing model impeded and prevented Plaintiff and other

1 Class Members from taking timely, uninterrupted meal periods. As a result, Plaintiff and Class Members
2 were not relieved of their duties such that they could take duty-free meal periods, and thus had to work
3 through some or all of their meal periods, have their meal periods interrupted to return to work despite
4 being designated as “on hold” on their smartphone applications, and/or wait extended periods of time
5 before taking meal periods. For example, Plaintiff frequently worked a majority of his eight (8)-hour
6 shift alone with no one to relieve him for a meal period until after having worked over five (5) consecutive
7 hours into his shift. Because too few employees were staffed to handle the demands of and large volumes
8 of time-sensitive delivery orders requiring immediate attention, Plaintiff had to perform his duties
9 throughout the majority of his shift and therefore was not relieved of his duties to take compliant meal
10 periods.

11 46. Defendants also did not schedule second meal periods and had no practice in place for
12 permitting and authorizing Plaintiff and other employees to take second 30-minute meal periods on days
13 they worked in excess of 10 hours in one day. For example, during his employment, Plaintiff occasionally
14 worked over 10 hours in a day but did not receive a second compliant meal period on those days nor did
15 he consent to waiving them. Because of Defendants’ company-wide chronic understaffed staffing model
16 and time-sensitive nature of certain deliveries, Plaintiff and other Class Members were not relieved of all
17 duties such that they could take second 30-minute meal periods and instead had to work through them.
18 Accordingly, Defendants failed to provide all meal periods in violation of California Labor Code sections
19 226.7 and 512. Defendants knew or should have known that their company-wide adoption of a
20 chronically understaffed staffing model and scheduling policies would result in a failure to provide
21 Plaintiff and other Class Members with full and timely meal periods as required by the applicable IWC
22 Wage Order and Labor Code sections 226.7 and 512(a). Furthermore, Plaintiff and other Class Members
23 did not sign valid meal period waivers on days that they were entitled to meal periods but were not
24 relieved of all duties.

25 47. Moreover, Defendants engaged in a systematic, company-wide policy to not pay meal
26 period premiums. Alternatively, to the extent that Defendants did pay Plaintiff and other Class Members
27 one (1) additional hour of premium pay for missed meal periods, Defendants did not pay Plaintiff and
28 other Class Members at the correct rate of pay for premium wages because Defendants failed to include

1 all forms of compensation, such as commissions, incentive pay, and/or nondiscretionary bonuses, in the
2 regular rate of pay. As a result, to the extent Defendants paid Plaintiff and other Class Members premium
3 pay for missed meal periods, it did so at a lower rate than required by law. As a result, Defendants failed
4 to provide Plaintiff and other Class Members compliant meal periods and failed to pay the full meal
5 period premiums due, in accordance with California Labor Code sections 204, 210, 226.7, and 512.

6 48. By their actions in requiring their employees to work through meal periods and/or their
7 failure to relieve nonexempt, hourly, nonexempt employees of their duties for their off-duty meal periods,
8 Defendants have violated California Labor Code section 226.7 and section 11 of IWC Wage Order No.
9 7-2001 and is liable to Plaintiff and the Class.

10 49. As a result of the unlawful acts of Defendants, Plaintiff and the Class have been deprived
11 of timely off-duty meal periods and are entitled to recovery under Labor Code section 226.7(b) and
12 section 11 of IWC Wage Order No. 7-2001, in the amount of one additional hour of pay at the employee's
13 regular rate of pay for each work period during each day in which Defendants failed to provide their
14 hourly, nonexempt employees with timely, statutory, off-duty meal periods.

16 **VII. SECOND CAUSE OF ACTION**

17 **Failure to Provide Rest Breaks**

18 **in Violation of Cal. Labor Code §§ 226.7, 512, and 1194;**

19 **IWC Wage Order No. 7-2001, § 12**

20 **(Brought by Plaintiff on Behalf of Himself and the Class Against All Defendants)**

21 50. Plaintiff hereby re-alleges and incorporates by reference all paragraphs of this Complaint
22 as if fully set forth herein.

23 51. California Labor Code section 226.7(a) provides, "No employer shall require any
24 employee to work during any meal or rest period mandated by an applicable order of the Industrial
25 Welfare Commission."

26 52. IWC Wage Order No. 7-2001, section (12)(A) provides, in pertinent part: "Every
27 employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall
28 be in the middle of each work period. The authorized rest period time shall be based on the total hours

1 worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.
2 However, a rest period need not be authorized for employees whose total daily work times is less than
3 three and one-half (3½) hours. Authorized rest period time shall be counted as hours worked for which
4 there shall be no deduction from wages.”

5 53. IWC Wage Order No. 7-2001, section (12)(B) provides, “If an employer fails to provide
6 an employee with a rest period in accordance with the applicable provisions of this order, the employer
7 shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each
8 workday that the rest period is not provided.”

9 54. As alleged herein, Defendants failed to authorize and permit rest breaks during the Class
10 Period. Plaintiff and members of the Class were routinely required to work through rest breaks at the
11 direction of Defendants and/or with Defendants’ knowledge and acquiescence.

12 55. Furthermore, as with meal periods, Defendants’ scheduling policies, chronically
13 understaffed staffing model, resultant lack of break coverage, and frequent interruptions by trucks
14 arriving with parts at which time Plaintiff and Class Members must be or else make themselves available
15 during their rest breaks, Plaintiff and other Class Members were and are prevented from being relieved
16 of all duty in order to take compliant rest breaks, thereby forcing Plaintiff and other Class Members to
17 forgo rest breaks and/or remain on duty during them. As a result, Plaintiff and Class Members would
18 work shifts in excess of 3.5 hours without 10-minute rest breaks to which they were entitled. For
19 example, throughout their employment, during 8-hour or longer shifts, Plaintiff and Class Members
20 regularly worked without receiving at least one of their 10-minute rest breaks, continuing to perform his
21 duties or being interrupted while on a rest break despite being designated as “on hold” on their
22 smartphone applications, such as fulfilling and packing orders from a smartphone application to be
23 delivered that day; delivering orders to customers via the employees’ personal vehicles; returning
24 undelivered merchandise to the store at the end of the shift; selling merchandise to customers at the
25 company’s retail store; identification checkers; security services; preparing and packing merchandise for
26 sale in saleable units; and receiving and inventorying merchandise, without taking 10-minute rest breaks
27 because there were too few employees staffed to cover Plaintiff’s responsibilities that required attention
28 at all times.

56. At the same time, Defendants implemented a company-wide policy to not pay rest break premiums. Alternatively, to the extent that Defendants did pay Plaintiff and other Class Members one (1) additional hour of premium pay for missed rest breaks, Defendants did not pay Plaintiff and other Class Members at the correct rate of pay for premium wages because Defendants failed to include all forms of compensation, such as commissions, incentive pay, and/or nondiscretionary bonuses, in the regular rate of pay. As a result, to the extent Defendants paid Plaintiff and other Class Members premium pay for missed rest breaks, it did so at a lower rate than required by law. As a result, Plaintiff and other Class Members were denied rest breaks and Defendants failed to pay the full rest break premiums due, in violation of Labor Code section 226.7 and the applicable IWC Wage Order.

57. Defendants' unlawful conduct alleged herein occurred in the course of employment of Plaintiff and all others similarly situated and such conduct has continued through the filing of the initial Complaint.

58. As a direct and proximate result of Defendants' unlawful action, Plaintiff and the Class have been deprived of timely rest breaks and/or were not paid for rest breaks taken during the Class Period and are entitled to recovery under Labor Code section 226.7(b) in the amount of one (1) additional hour of pay at the employee's regular rate of compensation for each work period during each day in which Defendants failed to provide employees with timely and/or paid rest breaks.

VIII. THIRD CAUSE OF ACTION

Failure to Pay Minimum Wages

Upon Payment of Wages in Violation of Cal. Labor Code §§ 510, 1194, 1194.2,

and 1197; IWC Wage Order No. 7-2001, § 4

(Brought by Plaintiff on Behalf of Himself and the Class Against All Defendants)

59. Plaintiff hereby re-alleges and incorporates by reference all paragraphs of this Complaint as if fully set forth herein.

60. Labor Code section 510 provides in relevant part: “[e]ight hours of labor constitutes a day’s work. Any work in excess of eight hours in one work day 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

1 shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an
2 employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than
3 twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any
4 seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay
5 of an employee.”

6 61. Labor Code section 1197 provides: “The minimum wage for employees fixed by the
7 commission is the minimum wage to be paid to employees, and the payment of a less wage than the
8 minimum so fixed is unlawful.”

9 62. Labor Code section 1182.12 establishes the right of employees to be paid minimum wages
10 for all hours worked in amounts set by state law.

11 63. Labor Code section 1194, subdivision (a) provides: “Notwithstanding any agreement to
12 work for a lesser wage, an employee receiving less than the legal minimum wage or the legal overtime
13 compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the
14 full amount of this minimum wage or overtime compensation, including interest thereon, reasonable
15 attorney’s fees, and costs of suit.”

16 64. Labor Code section 1194.2 provides in pertinent part: “In any action under Section 1193.6
17 or Section 1194 to recover wages because of the payment of a wage less than the minimum wage fixed
18 by an order of the commission, an employee shall be entitled to recover liquidated damages in an amount
19 equal to the wages unlawfully unpaid and interest thereon.”

20 65. Pursuant to IWC Wage Order No. 7-2001, section (2)(H), at all times material hereto,
21 “hours worked” includes “the time during which an employee is subject to the control of an employer,
22 and includes all the time the employee is suffered or permitted to work, whether or not required to do
23 so.”

24 66. At all times relevant during the liability period, under the provisions of IWC Wage Order
25 No. 7-2001, Plaintiff and each Class Member should have received not less than the minimum wage in a
26 sum according to proof for the time worked, but not compensated.

27 67. For all hours that Plaintiff and Class Members worked, they are entitled to not less than
28 the California minimum wage and, pursuant to Labor Code section 1194.2(a) liquidated damages in an

1 amount equal to the unpaid minimum wages and interest thereon.

2 68. Pursuant to Labor Code section 1194, Plaintiff and Class Members are also entitled to
3 their attorneys' fees, costs, and interest according to proof.

4 69. At all times relevant during the liability period, Defendants willfully failed and refused,
5 and continue to willfully fail and refuse, to pay Plaintiff and Class Members the amounts owed.

6 70. As described above, Defendants required Plaintiff and other Class Members to work, such
7 as fulfilling and packing orders from a smartphone application to be delivered that day; delivering orders
8 to customers via the employees' personal vehicles; returning undelivered merchandise to the store at the
9 end of the shift; selling merchandise to customers at the company's retail store; identification checkers;
10 security services; preparing and packing merchandise for sale in saleable units; receiving and
11 inventorying merchandise, during their meal periods due to Defendants' lack of coverage for their
12 employees and decision to staff too few employees at a given time to handle the demands of and large
13 volumes of time-sensitive shipments requiring immediate loading and offloading. Defendants did not
14 pay at least minimum wages for off-the-clock hours that qualified for overtime premium payment. Also,
15 to the extent that these off-the-clock hours did not qualify for overtime premium pay, Defendants did not
16 pay at least minimum wages for those hours worked off-the-clock.

17 71. Defendants' unlawful conduct alleged herein occurred in the course of employment of
18 Plaintiff and all other similarly situated nonexempt, hourly, nonexempt employees, and Defendants have
19 done so continuously throughout the filing of this complaint.

20 72. As a direct and proximate result of Defendants' violation of Labor Code sections 510 and
21 1197, Plaintiff and other Class Members have suffered irreparable harm and money damages entitling
22 them to damages, injunctive relief or restitution. Plaintiff, on behalf of himself and on behalf of the Class,
23 seeks damages and all other relief allowable including all wages due while working as Defendants'
24 hourly, nonexempt employees, attorneys' fees, liquidated damages, prejudgment interest, and as to those
25 employees no longer employed by Defendants, waiting time penalties pursuant to Labor Code sections
26 200, *et seq.*

27 73. Plaintiff and Class Members are entitled to the unpaid amount of minimum wages, pre-
28 judgment interest, liquidated damages, statutory penalties, attorneys' fees, and costs according to Labor

Code sections 204, 558, 1194 *et seq.*, 1197, 1198, and Code of Civil Procedure 1021.5.

IX. FOURTH CAUSE OF ACTION

Failure to Pay Overtime Wages

in Violation of Cal. Labor Code §§ 510 and 1194, IWC Wage Order No. 7-2001, § 3

(Brought by Plaintiff on Behalf of Himself and the Class Against All Defendants)

74. Plaintiff hereby re-alleges and incorporates by reference all paragraphs of this Complaint as if fully set forth herein.

75. Pursuant to section 3 of IWC Wage Order No. 7-2001; California Code of Regulations, Title 8, Chapter 5, section 11040, section 12; and Labor Code sections 200, 204, 226, 500, 510, 512, 1194, and 1198, Defendants were required to compensate Plaintiff and members of the Class for all overtime hours worked, which is calculated at one and one-half (1½) 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 after eight (8) hours on the seventh day of any work week, or after twelve (12) hours in any work day.

76. Plaintiff and members of the Class were and are nonexempt employees entitled to the protections of IWC Wage Order No. 7-2001; California Code of Regulations, Title 8, section 11040, section 12; and Labor Code sections 200, 226, 500, 510, 512, 1194, and 1198. In addition, during the Class Period, Plaintiff and other members of the Class consistently worked five (5) days per week for shifts of approximately eight (8) hours or more. During the course of Plaintiff's employment, and during the course of the employment of the members of the Class, Defendants failed to compensate Plaintiff and the Class for overtime hours worked as required under the aforementioned Labor Codes and Regulations.

77. Under the aforementioned Wage Orders, statutes, and regulations, Plaintiff and members of the Class are entitled to one and one-half (1½) times and/or double their regular rate of pay for overtime work performed during the four (4) years preceding the filing of this Complaint, based on appropriate calculations of the "total remuneration" for each workweek.

78. In violation of state law, Defendants have knowingly and willfully refused to perform their obligations to compensate Plaintiff and the Class for all wages earned and all hours worked. As a

1 direct result, Plaintiff and the Class have suffered, and continue to suffer, substantial losses related to the
2 use and enjoyment of such wages, lost interest on such wages, and expenses and attorneys' fees in seeking
3 to compel Defendants to fully perform their obligations under state law, all to their respective damage in
4 amounts according to proof at time of trial, but in amounts in excess of the minimum jurisdiction of this
5 Court.

6 79. Defendants committed the acts alleged herein knowingly and willfully, with the wrongful
7 and deliberate intention of injuring Plaintiff and the Class, from improper motives amounting to malice,
8 and in conscious disregard of Plaintiff's rights and the rights of the Class. Plaintiff and the Class are thus
9 entitled to recover nominal, actual, compensatory, punitive, and exemplary damages in amounts
10 according to proof a time of trial, but in amounts in excess of the minimum jurisdiction of this Court.

11 80. Defendants' conduct described herein violates IWC Wage Order No. 7-2001; California
12 Code of Regulations, Title 8, section 11040, section 12; and Labor Code sections 200, 226, 500, 510,
13 512, and 1198. Therefore, pursuant to Labor Code sections 200, 203, 204, 226, 226.7, 512, 558, and
14 1194, Plaintiff and the Class are entitled to recover the unpaid balance of overtime compensation
15 Defendants owes Plaintiff and the Class, plus interest, penalties, attorneys' fees, expenses, and costs of
16 suit.

17
18 **X. FIFTH CAUSE OF ACTION**

19 **Failure to Reimburse All Necessary, Business-Related Expenses**

20 **in Violation of Cal. Labor Code § 2802**

21 **(Brought by Plaintiff on Behalf of Himself and the Class Against All Defendants)**

22 81. Plaintiff re-alleges and incorporates all preceding paragraphs as if set forth fully herein.

23 82. California Labor Code section 2802 provides that "An employer shall indemnify his or
24 her employee for all necessary expenditures or losses incurred by the employee in direct consequence of
25 the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though
26 unlawful unless the employee, at the time of obeying the directions, believed them to be unlawful."

27 83. During the applicable statutory period, Plaintiff and Class Members incurred necessary
28 expenditures and losses in direct consequence of the discharge of their employment duties and their

1 obedience to the directions of Defendants, Defendants did not reimburse Plaintiff and Class Members for
2 these expenditures or losses. The primary expenses at issue here are, but are not limited to, expenses for
3 cellular phone service.

4 84. Defendants have failed to fully reimburse Plaintiff and Class Members for these necessary
5 business-related expenses and losses.

6 85. Plaintiff and Class Members are entitled to recover their necessary unreimbursed
7 business-related expenses and losses incurred during the course and scope of their employment, plus
8 interest accrued from the date on which the employee incurred the necessary expenditures at the same
9 rate as judgments in civil actions in the State of California, pursuant to California Labor Code section
10 2802.

11 12 **XI. SIXTH CAUSE OF ACTION**

13 **Failure to Furnish Timely and Accurate Wage Statements**

14 **Upon Payment of Wages in Violation of Cal. Labor Code § 227.3**

15 **(Brought by Plaintiff on Behalf of Himself and the Class Against All Defendants)**

16 86. Plaintiff hereby re-alleges and incorporates by reference all paragraphs of this Complaint
17 as if fully set forth herein.

18 87. Labor Code section 226(a) sets forth reporting requirements for employers when they pay
19 wages, as follows: “Every employer shall . . . at the time of each payment of wages, furnish his or his
20 employees . . . an itemized statement in writing showing (1) gross wages earned; (2) total hours worked
21 by the employee . . . (3) the number of piece-rate units earned and any applicable piece rate if the
22 employee is paid on a piece-rate basis” Section (e) provides: “An employee suffering injury as a
23 result of a knowing and intentional failure by an employer to comply with subdivision (a) shall be entitled
24 to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a
25 violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay
26 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and shall be entitled to an
27 award of costs and reasonable attorney’s fees.”

28 88. Defendants failed to accurately record the overtime hours worked by Plaintiff and Class

Members.

89. Additionally, Defendants failed to accurately record all rates of pay in effect during the pay period.

90. Plaintiff and Class Members were damaged by these failures because, among other things, the failures hindered Plaintiff and the Class from determining the amounts of wages actually owed to them.

91. Plaintiff and Class members request recovery of Labor Code section 226(e) penalties according to proof, as well as interest, attorneys' fees and costs pursuant to Labor Code section 226(e), in a sum as provided by the Labor Code and/or other statutes.

XII. SEVENTH CAUSE OF ACTION

Failure to Pay All Wages Owed Upon Separation

in Violation of Cal. Labor Code §§ 201–203

(Brought by Plaintiff on Behalf of Himself and the Class Against All Defendants)

92. Plaintiff hereby re-alleges and incorporates by reference all paragraphs of this Complaint as if fully set forth herein.

93. Labor Code section 201 provides, in relevant part, “[I]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”

94. Labor Code section 202 provides, in relevant part, “[I]f an employee not having a written contract for a definite period quits his or his employment, his or his wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or his intention to quit, in which case the employee is entitled to his or his wages at the time of quitting.”

95. Section 203 of the California Labor Code provides that if an employer willfully fails to pay compensation promptly upon discharge or resignation, as required by sections 201 and 202, then the employer is liable for penalties in the form of continued compensation up to thirty (30) workdays.

96. At all times relevant during the liability period, Plaintiff and the other members of the Class were employees of Defendants covered by Labor Code section 203. Pursuant to Labor Code section 201, upon Plaintiff's and Class Members' separation dates, Defendants were required to pay

1 Plaintiff and the Class members all wages earned.

2 97. At the time of Plaintiff's and Class Members' respective separation dates, Plaintiff and
3 Class Members had unpaid wages. Defendants willfully failed to pay Plaintiff and other members of the
4 Class who are no longer employed by Defendants for their uncompensated hours, uncompensated
5 overtime, and missed, untimely, or on-duty meal periods and rest breaks upon their termination or
6 separation from employment with Defendants as required by California Labor Code sections 201 and
7 202. Thus, in violation of Labor Code section 201, Defendants failed to pay Plaintiff and the Class
8 members the full amount of wages due and owing them, in amounts to be proven at the time of trial, but
9 in excess of the jurisdictional minimum of this Court.

10 98. Defendants' failure to pay Plaintiff and the Class respective wages due and owed to them
11 was willful, and done with the wrongful and deliberate intention of injuring Plaintiff and the Class
12 Members and in conscious disregard of their rights.

13 99. Defendants' willful failure to pay former employee Plaintiff and the Class all of the wages
14 due and owing them constitutes violations of Labor Code sections 201 and 203, which provide that an
15 employee's wages will continue as a penalty up to thirty (30) days from the time the wages were due.
16 Therefore, former employee Plaintiff and the Class members are each entitled to penalties pursuant to
17 Labor Code section 203.

18 19 **XIII. EIGHTH CAUSE OF ACTION**

20 **Violations of California's Unfair Competition Law ("UCL"),**

21 **California Business and Professions Code §§ 17200, *et seq.***

22 **(Brought by Plaintiff on Behalf of Himself and the Class Against All Defendants)**

23 100. Plaintiff hereby re-alleges and incorporates by reference all paragraphs of this Complaint
24 as if fully set forth herein.

25 101. Section 17200 of the California Business and Professions Code (the "UCL") prohibits any
26 unlawful, unfair, or fraudulent business practices.

27 102. Through their actions alleged herein, Defendants have engaged in unfair competition
28 within the meaning of the UCL. Defendants' conduct, as alleged herein, constitutes unlawful, unfair,

1 and/or fraudulent business practices under the UCL.

2 103. Defendants' unlawful conduct under the UCL includes, but is not limited to, violating the
3 statutes alleged herein. Defendants' unfair conduct under the UCL includes, but is not limited to, failure
4 to pay Class Members wages and compensation they earned through labor provided, and failing to
5 otherwise compensate Class Members, as alleged herein. Defendants' fraudulent conduct includes, but
6 is not limited to, issuing wage statements containing false and/or misleading information about the time
7 the Class Members worked and the amount of wages or compensation due.

8 104. Defendants' violations of California wage and hour laws and illegal payroll practices or
9 payment policies constitute a business practice because they were done repeatedly over a significant
10 period of time, and in a systematic manner to the detriment of Plaintiff and Class Members.

11 105. Plaintiff has standing to assert this claim because he has suffered injury in fact and has
12 lost money as a result of Defendants' conduct.

13 106. For the four (4) years preceding the filing of this action, Plaintiff and Class Members have
14 suffered damages and request restitutionary disgorgement of all monies and profits to be disgorged from
15 Defendants in an amount according to proof at the time of trial and an injunction prohibiting them from
16 engaging in the unlawful, unfair, and/or fraudulent conduct alleged herein.

17
18 **XIV. NINTH CAUSE OF ACTION**

19 **For Civil Penalties Pursuant to California's Private Attorneys General Act of 2004 ("PAGA"),**

20 **§§ 2698, *et seq.*, for Violations of California Labor Code Sections**

21 **(Brought by Plaintiff on Behalf of Himself and the General Public Against All Defendants)**

22 107. Plaintiff hereby re-alleges and incorporates by reference all paragraphs of this Complaint
23 as if fully set forth herein.

24 108. PAGA provides that any provision of law under the Labor Code and applicable IWC Wage
25 Order that provides for a civil penalty to be assessed and collected by California's Labor and Workforce
26 Development Agency ("LWDA") for violations of the California Labor Code and applicable IWC Wage
27 Order may, as an alternative, be recovered by aggrieved employees in a civil action brought on behalf of
28 themselves and other current or former employees pursuant to procedures outlined in California Labor

1 Code section 2699.3.

2 109. PAGA defines an “aggrieved employee” in Labor Code section 2699(c) as “any person
3 who was employed by the alleged violator and against whom one or more of the alleged violations was
4 committed.”

5 110. Plaintiff and other current and former employees of Defendants are “aggrieved
6 employees” as defined by Labor Code section 2699(c) in that they are all Defendants’ current or former
7 employees and one or more of the alleged violations were committed against them.

8 111. Pursuant to Labor Code sections 2699.3 and 2699.5, aggrieved employees, including
9 Plaintiff, may pursue a civil action arising under PAGA, alleging violations of any provision listed in
10 section 2699.5, after the following requirements have been met:

- 11 a. The aggrieved employee shall give written notice (“Employee’s Notice”) by online filing
12 to the LWDA and by certified mail to the employer of the specific provisions of the
13 California Labor Code alleged to have been violated, including the facts and theories to
14 support the alleged violations;
- 15 b. The Employee’s Notice filed with the LWDA is accompanied by a seventy-five-dollar
16 (\$75) filing fee; and
- 17 c. The LWDA shall provide notice (“LWDA Notice”) to the employer and the aggrieved
18 employee by certified mail that it does not intend to investigate the alleged violation within
19 sixty (60) calendar days of the postmark date of the Employee’s Notice. Upon receipt of
20 the LWDA Notice, or if the LWDA Notice is not provided within sixty-five (65) calendar
21 days of the postmark date of the Employee’s Notice, the aggrieved employee may
22 commence a civil action pursuant to California Labor Code section 2699 to recover civil
23 penalties in addition to any other penalties to which the employee may be entitled.

24 112. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees, including
25 Plaintiff, may pursue a civil action arising under PAGA for violations of any provision other than those
26 listed in section 2699.5 after the following requirements have been met:

- 27 a. The aggrieved employee shall give written notice by online filing (“Employee’s Notice”)
28 to the LWDA and by certified mail to the employer of the specific provisions of the

California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations;

- b. The Employee's Notice filed with the LWDA is accompanied by a seventy-five-dollar (\$75) filing fee; and
- c. The employer may cure the alleged violation within thirty-three (33) calendar days of the postmark date of the Employee's Notice. The employer shall give written notice by certified mail within that period of time to the aggrieved employee or representative and the agency if the alleged violation is cured, including a description of actions taken, and no civil action pursuant to Section 2699 may commence. If the alleged violation is not cured within the 33-day period, the employee may commence a civil action pursuant to Section 2699.

113. On January 9, 2020, Plaintiff provided written notice by online filing to the LWDA and by certified mail to Defendants of the specific provisions of the California Labor Code alleged to have been violated, including facts and theories to support the alleged violations, in accordance with California Labor Code section 2699.3. Plaintiff's notice to the LWDA was accompanied by the \$75 filing fee. A true and correct copy of Plaintiff's written notice to the LWDA and Defendants dated January 9, 2020 is attached hereto as "**Exhibit 1.**"

114. As of the filing date of the initial complaint, over sixty-five (65) days have passed since Plaintiff sent the LWDA Notice described above, and the LWDA has not responded that it intends to investigate Plaintiff's claims. Defendants have not given notice that it has cured the alleged violations set forth in this Complaint. Thus, Plaintiff has satisfied the administrative prerequisites under California Labor Code section 2699.3(a) and (c) to recover civil penalties against Defendants, in addition to other remedies, for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

115. Labor Code section 558(a) provides that "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each

1 pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid
2 wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for
3 each pay period for which the employee was underpaid in addition to an amount sufficient to recover
4 underpaid wages.” Labor Code section 558(c) provides that “[t]he civil penalties provided for in this
5 section are in addition to any other civil or criminal penalty provided by law.”

6 116. Defendants, at all times relevant herein, were employers or persons acting on behalf of an
7 employer(s) who violated Plaintiff’s and other non-party aggrieved employees’ rights by violating
8 various sections of the California Labor Code as set forth above.

9 117. As set forth below, Defendants have violated numerous provisions of both the Labor Code
10 sections regulating hours and days of work as well as the applicable IWC Wage Order, including:

- 11 a. Violations of Labor Code sections 510, 1198, and the applicable IWC Wage Order for
12 Defendants’ failure to compensate Plaintiff and other Class Members with overtime wages
13 for all hours worked in excess of eight (8) in one day or forty (40) in one week and double
14 time for all hours worked in excess of twelve (12) hours, as set forth above;
- 15 b. Violations of Labor Code sections 1182.12, 1194, 1197, 1197.1, 1198, and the applicable
16 IWC Wage Order for Defendants’ failure to compensate Plaintiff and other Class
17 Members with at least minimum wages for all hours worked as set forth above;
- 18 c. Violations of Labor Code sections 226.7, 512(a), 1198, and the applicable IWC Wage
19 Order for Defendants’ failure to provide Plaintiff and other Class Members with meal
20 periods and/or rest breaks, as set forth above;
- 21 d. Violations of Labor Code sections 551 and 552, and the applicable IWC Wage Order for
22 Defendants’ failure to provide Plaintiff and other Class Members with one day’s rest in
23 seven, as set forth above;
- 24 e. Violations of Labor Code sections 226(a), 1198, and the applicable IWC Wage Order for
25 failure to provide accurate and complete wage statements to Plaintiff and other Class
26 Members as set forth above;
- 27 f. Violations of Labor Code sections 1174(d), 1198, and the applicable IWC Wage Order
28 for failure to maintain payroll records. California Labor Code section 1198 provides that

1 the maximum hours of work and the standard conditions of labor shall be those fixed by
2 the Labor Commissioner and as set forth in the applicable IWC Wage Orders. Section
3 1198 further provides that “[t]he employment of any employees for longer hours than
4 those fixed by the order or under conditions of labor prohibited by the order is unlawful.”
5 Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time
6 records showing when the employee begins and ends each work period and meal period.
7 During the relevant time period, Defendants failed, on a company-wide basis, to keep
8 records of meal period start and stop times for Plaintiff and other non-party aggrieved
9 employees in violation of section 1198. California Labor Code section 1174(d) provides
10 that “[e]very person employing labor in this state shall . . . [k]eep a record showing the
11 names and addresses of all employees employed and the ages of all minors” and “[k]eep,
12 at a central location in the state or at the plants or establishments at which employees are
13 employed, payroll records showing the hours worked daily by and the wages paid to, and
14 the number of piece-rate units earned by and any applicable piece rate paid to, employees
15 employed at the respective plants or establishments” During the relevant time period,
16 and in violation of Labor Code section 1174(d), Defendants willfully failed to maintain
17 accurate payroll records for Plaintiff and other non-party aggrieved employees showing
18 the daily hours they actually worked and the wages paid thereto as a result of failing to
19 record the off-the-clock hours that they worked;

- 20 g. Violations of Labor Code sections 201, 202, and 203 for failure to pay all earned wages
21 upon termination as set forth above;
- 22 h. Violations of Labor Code section 204 for failure to pay all earned wages during
23 employment as set forth above;
- 24 i. Violations of Labor Code section 2802 for failure to reimburse all necessary, business-
25 related losses and expenses;
- 26 j. Plaintiff and other non-party aggrieved employees are therefore entitled to recover
27 penalties, attorneys’ fees, costs, and interest thereupon, pursuant to Labor Code section
28 2699(f)-(g); and

1 k. Any and all additional applicable civil penalties and sums as provided by the California
2 Labor Code and/or other relevant statutes.

3 118. Pursuant to California Labor Code sections 2699(a), 2699.3, 2699.5, and section 558,
4 Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of
5 civil penalties for himself, all other non-party aggrieved employees, and the State of California against
6 Defendants, in addition to other remedies, for violations of California Labor Code sections 201, 202, 203,
7 204, 226(a), 226.7, 510, 512(a), 551, 552, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

8 119. In addition, Plaintiff seeks and is entitled to seventy-five percent (75%) of all penalties
9 obtained under California Labor Code section 2699 to be allocated to the LWDA, for education of
10 employers and employees about their rights and responsibilities under the California Labor Code, and
11 twenty-five percent (25%) to all aggrieved employees.

12 120. Further, Plaintiff is entitled to recover reasonable attorneys' fees and costs pursuant to
13 California Labor Code sections 2699(g)(1), 218.5, 1194(a) and any other applicable statute.

14
15 **XV. PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated and also on behalf
17 of the general public, respectfully requests that this Court find against Defendants as follows:

- 18 1. An order that this action may proceed and may be maintained as a class action;
19 2. All unpaid minimum wages and liquidated damages due to Plaintiff and each Class Member
20 on their minimum wage claims;
21 3. All unpaid overtime wages due to Plaintiff and each Class Member;
22 4. One hour of wages due to Plaintiff and each Class Member for each work period of more than
23 four (4) hours when they did not receive an uninterrupted ten (10) minute rest break;
24 5. One hour of wages due to Plaintiff and each Class Member for each work period of more than
25 five (5) hours when they did not receive an uninterrupted thirty (30) minute meal period;
26 6. All unpaid minimum wages and liquidated damages due to Plaintiff and each Class Member
27 on their minimum wage claim;
28 7. For restitution of all monies due to Plaintiff and members of the Class and disgorged profits

1 from the unlawful business practices of Defendants;

2 8. For waiting time penalties pursuant to Labor Code section 203;

3 9. Statutory penalties under Labor Code section 226(e);

4 10. For reimbursement of business expenses under California Labor Code section 2802;

5 11. For penalties pursuant to Labor Code sections 204, 206, 210, 225.5, 226, 226.3, 226.7, 510,
6 512, 551, 552, 558, 1174.5, 1182.12, 1194, 1194.2, 1197.1, 1198, and 2802;

7 12. For injunctive relief enjoining Defendants from engaging in the unlawful and unfair business
8 practices complained of herein;

9 13. For all civil penalties permitted by California's Private Attorneys General Act of 2004, Labor
10 Code sections 2698, *et seq.*, based on all the alleged statutory violations set forth in this Complaint;

11 14. For costs of suit and expenses incurred herein pursuant to Labor Code sections 226 and 1194;

12 15. Prejudgment interest at the maximum legal rate on all due and unpaid wages pursuant to Labor
13 Code section 218.6 and Civil Code sections 3287 and 3289;

14 16. For reasonable attorneys' fees pursuant to Labor Code sections 218.5, 226, 1194, 2699(g), and
15 Code of Civil Procedure 1021.5;

16 17. Accounting of Defendants' records for the liability period;

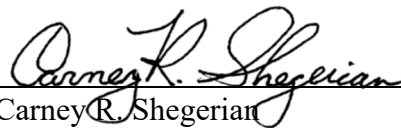
17 18. General, special, and consequential damages, to the extent allowed by law; and

18 19. All such other and further relief that the Court may deem just and proper.

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20 Dated: March 31, 2020

SHEGERIAN & ASSOCIATES, INC.

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22 By:



Carney R. Shegerian
Anthony Nguyen
Cheryl A. Kenner

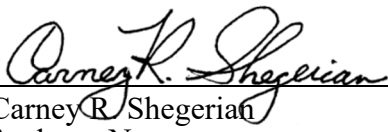
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25 Attorneys for Plaintiff JOHN GUTH and all
26 others similarly situated and aggrieved
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1 **DEMAND FOR JURY TRIAL**

2 Plaintiff JOHN GUTH, on behalf of himself and all others similarly situated, hereby demands a
3 jury trial with respect to all issues triable of right by jury.
4

5 Dated: March 31, 2020

SHEGERIAN & ASSOCIATES, INC.

6
7 By: 
8 Carney R. Shegerian
9 Anthony Nguyen
Cheryl A. Kenner

10 Attorneys for Plaintiff JOHN GUTH and all
11 others similarly situated and aggrieved
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EXHIBIT 1

SHEGERIAN & ASSOCIATES, INC.

January 9, 2020

VIA ONLINE SUBMISSION

David M. Lanier, Secretary
California Labor & Workforce
Development Agency
Attn: PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

VIA CERTIFIED MAIL

The Green Goddess, Inc.
1716 Main Street
Venice, CA 90291

NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO CALIFORNIA LABOR CODE SECTION 2698, *ET SEQ.*

To: The California Labor and Workforce Development Agency; The Green Goddess, Inc.

From: John Guth, on behalf of himself and all other current and former nonexempt, hourly employees for violations of the California Labor Code

To Whom It May Concern:

Shegerian & Associates, Inc. has been retained by former employee John Guth ("Mr. Guth") to seek compensation and all other available relief, including civil penalties on his behalf and on the behalf of all those similarly aggrieved (collectively, with Mr. Guth, "Claimants") who have been injured by violations of the California Labor Code. Mr. Guth, on behalf of himself and all other similarly aggrieved current and former hourly nonexempt employees of The Green Goddess, Inc. ("Green Goddess"), intends to seek civil penalties, attorneys' fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.* of the Labor Code Private Attorneys General Act of 2004 ("PAGA").

Factual Statement:

Green Goddess operates a retail marijuana dispensary brick-and-mortar store in California. Green Goddess sells marijuana in a variety of forms for recreational and medicinal use, which customers may purchase in person at the store or have delivered via a smartphone application. Claimant Mr. Guth worked for Green Goddess as an hourly, nonexempt employee in the position of Delivery Specialist, earning \$14.25 per hour plus tips and bonuses. Mr. Guth, on behalf of himself and all other similarly aggrieved current and former employees of Green Goddess are or were nonexempt, hourly employees who are or were engaged in packaging and selling marijuana products in-person and via delivery for Green Goddess's customers in California. As part of their employment with Green Goddess, Claimant and other nonexempt, hourly employees, collectively, "nonexempt, hourly employees," are or were assigned to and required to suffer and permitted to work without pay, while performing tasks collectively including, but not limited to: fulfilling and packing orders from a smartphone application to be delivered that day; delivering orders to customers via personal vehicles; returning undelivered merchandise to the store at the end of the shift; selling merchandise to customers at the company's brick-and-mortar store; identification checkers; security services; preparing and packing merchandise for sale in saleable units; receiving and inventorying merchandise.

Claimant Mr. Guth regularly worked five (5) to six (6) days per week for seven (7) to ten (10) hours or more per day. During the entire course of his employment, Green Goddess has failed to provide Mr. Guth and continues to fail to provide all others similarly situated with all overtime pay and compliant meal periods and rest breaks. As a consequence, Green Goddess has failed to comply with Labor Code sections 226.7, 510, and 512 and Industrial Welfare Commission ("IWC") Wage Order 7-2001, sections 3, 11, and 12. Green Goddess has also failed to pay minimum wages to Claimants in violation of Labor Code sections 510, 1194, 1197, and 1182.12, and IWC Wage Order No. 7-2001, section 4. Not all reporting pay owed under Wage Order No. 7-2001, section 5 was paid to Claimants either. In violation of Labor Code sections 510, 1194, 1197, and 1182.12, Green Goddess has failed to compensate Claimants at a rate of one and one-half (1.5) times their regular rate for all hours worked over eight (8) hours per workday and the first eight (8) hours worked on the seventh day of a workweek and at two (2) times their regular rate for hours worked over twelve (12) hours per workday and eight (8) hours on the seventh day of a workweek.

Green Goddess has also failed and continue to fail to pay all wages owed every pay period in violation of Labor Code section 204. Likewise, Green Goddess has failed and continues to fail to provide timely, accurate wage statements to Mr. Guth and other aggrieved persons in violation of Labor Code section 226(a). With regard to those no longer employed by Green Goddess, including Mr. Guth, Green Goddess violated Labor

Code section 203 by failing to pay all wages due upon separation. Finally, Green Goddess has failed to reimburse Claimants for all necessary, business-related expenses they incurred. Mr. Guth is informed and believes that such violations are ongoing, systematic, and continuous. He intends to bring an action against Green Goddess under the Private Attorneys General Act (“PAGA”) to recover wages and penalties as provided by California law.¹

Theories of Labor Code Violations and Remedies:

For a period of at least four (4) years prior to January 2020, but for our purposes here, one (1) year, Green Goddess has violated the California Labor Code and all applicable IWC Wage Orders. Claimant Mr. Guth was employed continuously from approximately July 18, 2018 through approximately July 2019 as a Delivery Specialist, completing Dynamic deliveries.

First, Claimants were at all times entitled to off-duty, uninterrupted but unpaid meal periods. Green Goddess, however, failed to authorize and permit Mr. Guth and all other similarly aggrieved employees to take compliant meal periods as required by Labor Code sections 226.7 and 512 and all applicable IWC Wage Orders, including but not limited to IWC Wage Order 7-2001, section 11. Mr. Guth and all similarly aggrieved persons took their meal periods late, had their meal periods interrupted, and remained on-duty as they were required to perform work during their meal periods. This was largely due to thinly staffed shifts combined with constant streams and/or sudden influxes of orders for delivery from Green Goddess’s customers for which Green Goddess reasonably could have corrected by assigning deliveries to employees who were on duty at the time and further

¹ Without limitation, Mr. Guth, if permitted, will seek any and all penalties otherwise capable of being collected by the Commission. This includes each provision as set forth in Labor Code section 2699.5 as follows:

The provisions of subdivision (a) of Section 2699.3 apply to any alleged violation of the following provisions: subdivision (k) of Section 96, Sections 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, and 224, subdivision (a) of Section 226, Sections 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230A, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, and 403, subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of Section 1174, Sections 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of Section 1198.3, Sections 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, paragraphs (1), (2), and (3) of subdivision (a) of, and subdivision (e) of, Section 1701.4, subdivision (a) of Section 1701.5, Sections 1701.8, 1701.10, 1701.12, 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651., and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3095, 6310, 6311, and 6399.7.

by adequate staffing. Claimants,' including Mr. Guth, meal periods were frequently interrupted by new deliveries they were required to immediately drive to fulfill despite being "on hold" on their smartphone application indicating they were off-duty taking a meal period; they were not permitted to complete their 30-minute meal period and then make the delivery. Similarly; Claimants' meal periods were on-duty because they were required to monitor their smartphone applications for new deliveries for the benefit of Green Goddess. Green Goddess did not compensate Claimants with an extra hour of pay for noncompliant meal periods for each workday on which they occurred. Accordingly, since Green Goddess required Mr. Guth and others similarly situated to work during their meal periods and did not subsequently compensate them for all noncompliant meal periods in violation of Labor Code sections 226.7(a) and 512, Claimants seek all available penalties as set forth in Labor Code section 558, all applicable IWC Wage Orders, including but not limited to IWC Wage Order 7-2001, section 20 and 2699(f).

Claimants were at all times entitled to take paid, off-duty rest breaks. However, Green Goddess failed to and continue to fail to authorize and permit Mr. Guth and all other similarly aggrieved employees to take off-duty rest breaks as required by Labor Code sections 226.7 and all applicable IWC Wage Orders, including but not limited to IWC Wage Order 7-2001, section 12. Again, this was largely due to understaffing combined with a rush of customers for which Green Goddess reasonably could have anticipated. Mr. Guth and all similarly aggrieved persons were required to perform work during their rest breaks by either taking no break or else having their break interrupted to return to work before a net-ten-minute break was taken, which means they were on-duty during their rest breaks. Like meal periods, this was largely due to thinly staffed shifts combined with constant streams and/or sudden influxes of orders for delivery from Green Goddess's customers for which Green Goddess reasonably could have corrected by assigning deliveries to employees who were on duty at the time and further by adequate staffing. Claimants,' including Mr. Guth, rest breaks were frequently interrupted by new deliveries they were required to immediately drive to fulfill despite being "on hold" on their smartphone application indicating they were off-duty taking a rest break; they were not permitted to complete their 10-minute rest breaks and then make the delivery. Similarly; Claimants' meal periods were on-duty because they were required to monitor their smartphone applications for new deliveries for the benefit of Green Goddess. Green Goddess did not compensate Claimants with an extra hour of pay for noncompliant rest breaks for each workday on which they occurred. Therefore, Claimants are entitled to recover wages and/or penalties as provided by Labor Code section 558 and all applicable IWC Wage Orders, including but not limited to IWC Wage Order 7-2001, section 20. Furthermore, since Green Goddess required its nonexempt employees to work during rest periods in violation of Labor Code section 226.7(b) without premium pay, Claimants seek all available penalties as set forth in Labor Code sections 558 and 2699.

Claimants also were at all times entitled to the payment of minimum wages. Green Goddess has failed and continue to fail to pay Claimants minimum wages for all hours worked as required by Labor Code sections 510, 1194, and 1194.2 and all applicable IWC Wage Orders, including but not limited to IWC Wage Order 7-2001, section 4. For instance, as explained above, Green Goddess did not authorize and permit Claimants to take compliant meal periods and rest breaks on eligible shifts. Green Goddess's corresponding failure to provide premium pay in lieu of authorizing and permitting compliant meal periods and rest breaks constitutes Green Goddess's failure to pay minimum wages for all hours worked every pay period and upon separation in violation of Labor Code sections 201, 202, 203, 204, 226(a), 510, 1182.12, 1194, and 1197. In essence, Green Goddess's failure to pay Claimants their premium pay constitutes Green Goddess's failure to pay minimum wages to Claimants. Claimants' time was never adjusted to account for this work performed at the beginning and end of their shifts. Accordingly, not all hours that Claimants worked were recorded, adjusted, nor subsequently compensated. In fact, Claimants have reason to believe that Green Goddess has falsified their time records after the fact to reflect compliant meal periods and rest breaks. Therefore, Claimants are entitled to recover wages and/or penalties as provided by Labor Code section 1197.1 and all applicable IWC Wage Orders, including but not limited to IWC Wage Order 7-2001, section 20.

At all times relevant herein, Claimants were entitled to the payment of overtime. That is, pursuant to Labor Code sections 510, 1194, 1197, and 1182.12, Green Goddess was required to compensate Claimants at a rate of one-and-one-half (1.5) times their regular rate for all hours worked over eight (8) hours per workday and the first eight (8) hours worked on the seventh day of a workweek and at two (2) times their regular rate for hours worked over twelve (12) hours per workday and eight (8) hours on the seventh day of a workweek. Green Goddess has failed to and continues to fail to pay Claimants all overtime wages owed, yet regularly required them to work in excess of eight (8) hours per day and/or forty (40) hours per week without premium pay under Labor Code section 1194. Claimant Mr. Guth regularly worked five (5) to six (6) days per week for over eight (8) hours per day but did not receive all overtime wages owed. In short, during the entire course of their employment, Green Goddess failed to provide Mr. Guth and continues to fail to provide all others similarly situated with all overtime pay in violation of 226.7, 510, and 512 and all applicable IWC Wage Orders, including but not limited to IWC Wage Order 7-2001, section 3.

Pursuant to Labor Code section 204, Claimants were entitled to be paid all wages owed every pay period. As explained above, by failing to pay Claimants all meal period and rest period premiums for every instance of noncompliance and by failing to pay all minimum wages and overtime wages every pay period, Green Goddess has failed and

continue to fail to pay all wages owed every pay period in violation of Labor Code section 204.

Likewise, pursuant to Labor Code sections 201–203, Claimants who have since separated from Green Goddess, including Mr. Guth, were entitled to be paid all wages owed upon separation within the statutorily allotted time—immediately (resignation with notice and termination) or within seventy-two (72) hours (resignation without notice). Claimants did not receive all wages owed upon separation based on Green Goddess’s prior failings to pay all wages owed every pay period, as explained in the preceding paragraph.

Claimants were at all times entitled to be provided timely and accurate wage statements by Green Goddess pursuant to Labor Code section 226. Because Green Goddess failed to pay Claimants their meal period and rest break premiums for noncompliant meal periods and rest breaks, and failed to pay Claimants minimum wages for all hours worked and for all overtime wages owed as well as the correct rate for overtime hours, Claimants’ wage statements were inaccurate in reflecting meal period and rest break premium compensation owed, all overtime and minimum wages, and all hours worked every pay period. As a consequence, Claimants’ wage statements also do not reflect the accurate amount of gross wages owed. Accordingly, Claimants seek all available penalties as set forth in Labor Code sections 226(e) and 2699.

Finally, Claimants were entitled to be reimbursed by Green Goddess for all necessary, business-related expenses they incurred in executing their duties for Green Goddess. California Labor Code section 2802 provides that “An employer shall indemnify his or her 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, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.” Green Goddess has failed to fully reimburse all necessary business-related expenses and losses Mr. Guth and other similarly aggrieved persons incurred, including, but not limited to, all costs incurred for the expense of the cell phones required for using the smart phone application to receive jobs. Claimants are entitled to recover their unreimbursed expenditures and losses pursuant to Labor Code section 2802.

Green Goddess’s uniform failure to authorize and permit off-duty rest breaks and meal periods or pay Claimants premium compensation in lieu thereof, failure to pay all minimum and overtime wages owed, failure to pay all wages owed every pay period and upon separation, failure to furnish timely and accurate wage statements, and failure to reimburse all necessary, business-related expenses violate Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512, 1182.12, 1194, 1197, 1197.1, 1198, and 2802, and as

such, penalties are recoverable as set forth in Labor Code sections 210, 1194, *et seq.*, and 2699.

Claimants are entitled to recover unpaid wages, with interest, and are entitled to an award of attorneys' fees as permitted by Labor Code section 1194, other penalties as permitted by Labor Code sections 210 and 2699, and waiting time penalties for former employees pursuant to Labor Code section 203.

Accordingly, Claimants seek the remedies set forth in the above-referenced Labor Code sections for themselves, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), and 2699.5, Mr. Guth, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for themselves, all other aggrieved employees, and the State of California against Green Goddess for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

Should you require any additional information, please feel free to contact me.

Very truly yours,

SHEGERIAN & ASSOCIATES, INC.

A handwritten signature in black ink that reads "Carney R. Shegerian". The signature is written in a cursive, flowing style.

Carney R. Shegerian

Enclosure:

Authorization for Records Release

CRS/ck