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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF SAN MATEO**

13 FRANCISCO AGUILERA, as an individual
14 and on behalf of all others similarly situated,

15 Plaintiff,

16 vs.

17 CRUNCH LLC, a Delaware limited
18 liability company; and DOES 1 through
19 100,

20 Defendants.

Electronically
FILED

by Superior Court of California, County of San Mateo

ON 7/8/2020

By /s/ Wai Shan Lee
Deputy Clerk

Case No.: 20-CIV-01727

Amended As a Matter of Right Pursuant to
Labor Code Section 2699.3(a)(2)(C)

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT:**

- (1) **MINIMUM WAGE VIOLATIONS**
(LABOR CODE §§ 1182.12, 1194,
1194.2, AND 1197);
- (2) **FAILURE TO PAY ALL
OVERTIME WAGES (LABOR
CODE §§ 204, 510, 558, 1194, AND
1198);**
- (3) **MEAL PERIOD VIOLATIONS**
(LABOR CODE §§ 226.7, 512);
- (4) **REST PERIOD VIOLATIONS**
(LABOR CODE §§ 226.7, 516);
- (5) **FAILURE TO REIMBURSE FOR
NECESSARY BUSINESS
EXPENSES (LABOR CODE § 2802);**
- (6) **FAILURE TO PROVIDE
ACCURATE, ITEMIZED WAGE
STATEMENTS (LABOR CODE
§ 226 *et seq.*);**
- (7) **WAITING TIME PENALTIES**
(LABOR CODE §§ 201-203); AND
- (8) **UNFAIR COMPETITION (BUS &
PROF CODE § 17200 *et seq.*).**

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(9) CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS
GENERAL ACT (LABOR CODE §
2698 *et seq.*)

DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE

1 Plaintiff Francisco Aguilera ("Plaintiff"), on behalf of himself and all others similarly
2 situated, hereby brings this First Amended Class and Representative Action Complaint
3 ("Complaint") against; Crunch, LLC, a Delaware limited liability company; and DOES 1 to 100,
4 inclusive (collectively "Defendants"), and on information and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this
7 Complaint for recovery of unpaid wages and penalties under California Business & Professions
8 Code § 17200 *et seq.*, Labor Code §§ 201-204, 221, 226 *et seq.*, 226.7, 510, 512, 516, 558,
9 1182.12, 1194, 1194.2, 1197, 1198, 2698 *et seq.*, and 2802; and Industrial Welfare Commission
10 Wage Order 2 ("Wage Order 2"), in addition to seeking declaratory relief and restitution. This
11 Complaint is brought pursuant to California Code of Civil Procedure § 382. This Court has
12 jurisdiction over Defendants' violations of the California Labor Code because the amount in
13 controversy exceeds this Court's jurisdictional minimum.

14 **VENUE**

15 2. Venue is proper in this judicial district pursuant to Cal. Code of Civ. Proc. §§
16 395(a) and 395.5, as at least some of the acts and omissions complained of herein occurred in the
17 County of San Mateo. Defendants own, maintain offices, transact business, have agent(s) within
18 the County of San Mateo, and/or otherwise are found within the County of San Mateo, and
19 Defendants are within the jurisdiction of this Court for purposes of service of process.

20 **PARTIES**

21 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
22 Plaintiff was and currently is, a California resident. During the four years immediately preceding
23 the filing of the Complaint in this action and within the statute of limitations periods applicable
24 to each cause of action pled herein, Plaintiff was employed by Defendants as a non-exempt
25 employee. Plaintiff was, and is, a victim of Defendants' policies and/or practices complained of
26 herein, lost money and/or property, and has been deprived of the rights guaranteed by Labor Code
27 §§ 201-204, 221, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, and
28 2802; California Business & Professions Code § 17200 *et seq.* ("Unfair Competition Law"); and

1 Wage Order 2, which sets employment standards for the Personal Service Industry.

2 4. Plaintiff is informed and believes, and based thereon alleges, that during the four
3 years preceding the filing of the Complaint and continuing to the present, Defendants did (and
4 continue to do) business by operating fitness centers in California and the greater United States,
5 and employed Plaintiff and other, similarly-situated non-exempt employees within San Mateo
6 County and the state of California and, therefore, were (and are) doing business in San Mateo
7 County and the State of California.

8 5. Plaintiff does not know the true names or capacities, whether individual, partner,
9 or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said
10 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
11 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed,
12 and believes, and based thereon alleges, that each of said fictitious defendants, whether individual,
13 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,
14 and proximately caused Plaintiff and the Classes (as defined in Paragraph 20) to be subject to the
15 unlawful employment practices, wrongs, injuries and damages complained of herein.

16 6. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
17 herein, Defendants were and are the employers of Plaintiff and all members of the Classes.

18 7. At all times herein mentioned, each of said Defendants participated in the doing
19 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
20 Defendants, and each of them, were the agents, servants, and employees of each and every one of
21 the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned
22 were acting within the course and scope of said agency and employment. Defendants, and each
23 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or
24 omissions complained of herein.

25 8. At all times mentioned herein, Defendants, and each of them, were members of
26 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
27 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
28 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all

1 members of the Classes.

2 **GENERAL FACTUAL ALLEGATIONS**

3 9. Plaintiff commenced employment with Defendants as a non-exempt employee, in
4 the position of "Membership Sales Advisor" from approximately 2017 until his resignation on
5 approximately February 15, 2020. Plaintiff typically worked five days a week with a varied
6 schedule that ultimately equated to approximately 40-50 hours of work per week. Plaintiff's job
7 duties included generating sales leads, selling gym memberships, and selling personal training
8 services.

9 **Missed/Shortened Meal Periods**

10 10. During Plaintiff's employment with Defendants, Plaintiff was not provided all
11 required meal periods due to Defendants' meal period policies/practices which fail to provide
12 uninterrupted, duty-free 30-minute meal periods prior to the sixth hour of work commencing.
13 Plaintiff and the putative class were trained to clock in and out for their meal periods using the
14 "Ulipro" application on a computer monitor at the front desk of the gym. Plaintiff and the putative
15 class were afforded an hour-long unpaid meal period each shift. Defendants maintained a strict
16 policy that employees were not permitted to clock back in until their hour for their meal period
17 had elapsed. As a result of this policy/practice, Plaintiff and the putative class would work off-
18 the-clock during their meal periods at least two times per week as they would be tasked with
19 attending to clients who would arrive at the facility while they were on their meal period. On
20 these occasions, Plaintiff and the putative class would immediately cut short their meal period
21 and meet with the clients in their efforts to close sales on behalf of the Defendants. Furthermore,
22 Plaintiff and the putative class faced intense pressure to meet sales benchmarks set by Defendants
23 which in practice disincentivized their exercise of legally compliant meal periods and encouraged
24 working off-the-clock to close sales. Defendants were aware, or reasonably should have been
25 aware, that this off-the-clock work was being performed but failed to compensate Plaintiff and
26 the putative class for such off-the-clock work, most of which constituted overtime hours worked.

27 11. Defendants required Plaintiff and other non-exempt employees to sign unlawful
28 on-duty meal period agreements that required Plaintiff and other non-exempt employees to

1 remain on property and to work through their meal periods, despite the nature of the work not
2 prohibiting Plaintiff and the putative class from taking a meal period because Defendants could
3 have provided adequate relief for Plaintiff and the putative class to take a full and uninterrupted
4 meal period. As a result of this policy/practice, Plaintiff and the putative class were not permitted
5 to take off-duty meal periods because Defendants did not provide for coverage of their job duties
6 despite the opportunity to do so.

7 12. In addition to Defendants' failure to provide Plaintiff and other non-exempt
8 employees with all legally required first meal periods, Defendants also failed to provide second
9 meal periods to Plaintiff and other non-exempt employees when they worked shifts in excess of
10 10.0 hours.

11 13. On those occasions when Plaintiff and the putative class were not provided with
12 all legally-compliant meal periods to which they were entitled, Defendants failed to compensate
13 Plaintiff and the putative class with the required meal period premium for each workday in which
14 they experienced a meal period violation as mandated by Labor Code § 226.7. Further, upon
15 information and belief during at least a portion of the class period, Defendants maintained no
16 payroll code or other mechanism for the payment of meal period premium payments required by
17 Labor Code § 226.7 in the event that a legally compliant meal period was not provided to their
18 non-exempt employees.

19 **Missed Rest Periods**

20 14. Plaintiff and the putative class were also not authorized and permitted to take all
21 required rest periods due to Defendants' rest period policies/practices, which fail to authorize and
22 permit all rest periods for every four hours worked, or major fraction thereof. At no point during
23 their employment with Defendants were Plaintiff and the putative class permitted to exercise
24 legally compliant rest periods. As stated above, Plaintiff was constantly required to attend to his
25 work duties, without interruption of breaks, and therefore, Defendants failed to authorize and
26 permit Plaintiff to take off-duty rest periods that were completely free of employer control, in
27 violation of California law. Furthermore, management never mentioned to Plaintiff and the
28 putative class that they were permitted by law to exercise their right to take duty-free

1 uninterrupted rest periods while they were working. The prevailing attitude of management at
2 the facility was that employees were not to take any breaks outside of their one-hour meal periods
3 and at no point did anyone ever exercise their right to do so. As a result of these
4 policies/practices, Defendants failed to authorize and permit Plaintiff and the putative class off-
5 duty rest periods that were completely free of employer control, in violation of California law.
6 On those occasions when Plaintiff and the putative class were not authorized and permitted to
7 take all legally-compliant rest periods to which they were entitled, Defendants failed to
8 compensate Plaintiff and the putative class with the required rest period premium for each
9 workday in which they experienced a rest period violation as mandated by Labor Code § 226.7.
10 Furthermore, upon information and belief during at least a portion of the class period, Defendants
11 maintained no payroll code or other mechanism for the payment of rest period premium payments
12 under Labor Code § 226.7 in the event that a legally compliant rest period was not provided to
13 their non-exempt employees. Lastly, the fact that Plaintiff and Defendants entered into an on-
14 duty meal period agreement inherently concedes that Plaintiff was unable to take lawfully
15 required rest periods.

16 **Off-The-Clock Work**

17 15. Plaintiff and the putative class regularly performed work off-the-clock for the
18 benefit of Defendants outside of the instances described above. Specifically, as Plaintiff and the
19 putative class faced intense pressure from management to meet sales goals and benchmarks, they
20 would regularly perform off-the-clock work in their efforts to meet the standards set by
21 Defendants. For example, if Plaintiff and the putative class had potential clients that they were
22 working on closing sales with contacting them on their days off, they would come into the facility
23 and perform work off-the-clock. This sort of occurrence was common throughout the entirety of
24 Plaintiff and the putative class' employment with Defendants, however it was exceedingly
25 frequent towards the end of the month. As employees were evaluated on whether they met their
26 sales goals at the end of the month, Plaintiff and the putative class would frequently perform work
27 off-the-clock so as to meet Defendants monthly sales requirements. Defendants either knew or
28 should have known that Plaintiff and the putative class were performing numerous hours of work

1 off-the-clock on a monthly basis but at no point discouraged the practice or provided any sort of
2 compensation for this time.

3 16. Furthermore, Plaintiff and the putative class were constantly barraged with work
4 related text messages, emails, and phone calls from their supervisors while off-the-clock and on
5 their days off. They would be required to speak with management about work related duties and
6 items for time that would add up to multiple hours per month and at no point were they ever
7 provided any sort of compensation for this time spent working in furtherance of Defendants'
8 business objectives while off-the-clock.

9 **Failure to Reimburse for All Necessary Business Expenses**

10 17. Defendants failed to adequately reimburse Plaintiff for all reasonable and
11 necessary work expenditures, including failing to reimburse for mileage despite requiring
12 Plaintiff to drive or take public transportation to various venues at the direction of Defendants. In
13 addition, Plaintiff and the putative class would perform the vast majority of their work duties on
14 their personal cellular phones and were never reimbursed for the use of their cellular phones to
15 perform work on behalf of Defendants.

16 **Inaccurate Wage Statements**

17 18. As a result of Defendants' failure to pay all minimum wages, overtime wages,
18 meal and rest period premium wages, Defendants maintained inaccurate payroll records, and
19 issued inaccurate and facially deficient wage statements.

20 **Regular Rate of Pay**

21 19. Plaintiff and other non-exempt employees routinely worked in excess of 8 hours
22 per workday and/or 40 hours per workweek, but did not receive overtime compensation equal to
23 one and one-half times their regular rate of pay for working overtime hours. Specifically,
24 Defendants paid Plaintiff and other non-exempt employees commission earnings, non-
25 discretionary bonuses, and other forms of non-discretionary pay that are not excludable from the
26 regular rate of pay (hereinafter the aforementioned forms of pay are referred to as "Incentive
27 Pay"). Despite Defendants' payment of Incentive Pay to Plaintiff and other non-exempt
28 employees, Defendants failed to properly calculate the regular rate of pay, thereby causing

1 Plaintiff and other non-exempt employees to be underpaid all required overtime wages. For
2 example, Plaintiff's wage statement numbered 44816 for the pay period ending on August 15,
3 2019, shows that Plaintiff worked 93.82 hours including 6.64 hours of overtime paid at 1.5 times
4 Plaintiff's hourly rate of pay (i.e. \$18.00). However, in the same pay period Plaintiff also received
5 \$300.13 of "Commission" pay and \$9.98 for "PT Sales Comm." Therefore, Plaintiff's overtime
6 rate of pay of pay when including commissions earned, which are properly included in the
7 overtime rate of pay, should have been \$19.77.

8 **Failure to Timely Pay All Final Wages**

9 20. As a further result of Defendants' failure to pay all minimum wages, overtime
10 wages, and meal and rest period premium wages, Defendants failed to pay all wages owed to
11 Plaintiff upon his separation of employment from Defendants.

12 **CLASS ACTION ALLEGATIONS**

13 21. **Class Definitions:** Plaintiff brings this action on behalf of himself and the
14 following Classes pursuant to § 382 of the Code of Civil Procedure:

- 15 a. The Minimum Wage Class consists of all Defendants' current and former non-
16 exempt employees in California who were subject to Defendants' timekeeping
17 systems and/or practices, during the four years immediately preceding the filing
18 of the Complaint through the present.
- 19 b. The Overtime Class consists of all Defendants' current and former non-exempt
20 employees in California who worked more than eight (8) hours per day and/or
21 forty (40) hours per week and: (i) were subject to Defendants' timekeeping
22 systems and/or practices; and/or (ii) received Incentive Pay and worked overtime
23 during a corresponding pay period, during the four years immediately preceding
24 the filing of the Complaint through the present.
- 25 c. The Meal Period Class consists of all Defendants' current and former non-exempt
26 employees in California who: worked at least one shift: (i) in excess of 5.0 hours;
27 and/or (ii) in excess of 10.0 hours, during the four years immediately preceding
28 the filing of the Complaint through the present;

1 d. The Rest Period Class consists of all Defendants' current and former non-exempt
2 employees in California who worked at least one shift of 3.5 hours or more, during
3 the four years immediately preceding the filing of the Complaint through the
4 present;

5 e. The Employee Expense Class consists of all Defendants' current and former non-
6 exempt employees in California who: (i) were not reimbursed for mileage
7 expenses; and/or (ii) cellular phone expenses necessarily incurred in the
8 performance of their duties, during the four years immediately preceding the filing
9 of the Complaint through the present;

10 f. The Wage Statement Class consists of all members of the Minimum Wage Class,
11 Overtime Class, Meal Period Class, and Rest Period Class, who received a wage
12 statement during the one year immediately preceding the filing of the Complaint
13 through the present; and

14 g. The Waiting Time Class consists of all Defendants' formerly employed members
15 of the Minimum Wage Class, the Overtime Class, Meal Period Class, and Rest
16 Period Class, who separated from employment during the three years immediately
17 preceding the filing of the Complaint through the present.

18 22. **Numerosity/Ascertainability:** The members of the Classes are so numerous that
19 joinder of all members would be unfeasible and not practicable. The membership of the Classes
20 is unknown to Plaintiff at this time; however, it is estimated that the members of the Classes
21 number greater than two hundred (200) individuals. The identity of such membership is readily
22 ascertainable via inspection of Defendants' employment records.

23 23. **Common Questions of Law and Fact Predominate/Well Defined Community**
24 **of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly
25 situated employees, which predominate over questions affecting only individual members. Those
26 common questions include, without limitation:

27 i. Whether Defendants failed to properly include all forms of compensation when
28 computing the respective regular rate for members of the Overtime Class;

- 1 ii. Whether Defendants violated the applicable Labor Code provisions including, but
- 2 not limited to §§ 510 1194 by requiring work, including overtime work, and not
- 3 paying for said work in accordance with the laws of the state of California;
- 4 iii. Whether Defendants provided all legally compliant meal periods to members of
- 5 the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;
- 6 iv. Whether Defendants authorized and permitted all legally compliant rest periods to
- 7 members of the Rest Period Class pursuant to Labor Code §§ 226.7 and 516;
- 8 v. Whether Defendants failed to reimburse members of the Employee Expense Class
- 9 for business expenditures necessarily incurred in the performance of their duties;
- 10 vi. Whether Defendants provided accurate, itemized wage statements to members of
- 11 the Classes; and
- 12 vii. Whether Defendants' policies and/or practices for the timing and amount of
- 13 payment of final wages to members of the Waiting Time Class at the time of
- 14 separation from employment were lawful.

15 24. **Predominance of Common Questions:** Common questions of law and fact
16 predominate over questions that affect only individual members of the Classes. The common
17 questions of law set forth above are numerous and substantial and stem from Defendants' policies
18 and/or practices applicable to each individual class member, such as Defendants' uniform
19 timekeeping, meal and rest period, non-reimbursement, wage statement, and payment of final
20 wages policies/practices. As such, the common questions predominate over individual questions
21 concerning each individual class member's showing as to their eligibility for recovery or as to the
22 amount of their damages.

23 25. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because
24 Plaintiff was employed by Defendants as a non-exempt employee in California during the
25 statute(s) of limitations period applicable to each cause of action pled in the Complaint. As alleged
26 herein, Plaintiff, like the members of the Classes, was not paid for all hours worked, provided all
27 required meal periods, was not authorized and permitted to take all required rest periods, did not
28 receive meal and rest period premium wages when he was not provided compliant meal and rest

1 periods, was subject to Defendants' unlawful failure to reimburse, did not receive accurate and
2 itemized wage statements, and was not paid all wages owed at time of separation of employment
3 from Defendants.

4 **26. Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps
5 to represent fairly and adequately the interests of the members of the Classes. Moreover,
6 Plaintiff's attorneys are ready, willing and able to fully and adequately represent the members of
7 the Classes and Plaintiff. Plaintiff's attorneys have prosecuted and defended numerous wage-
8 and-hour class actions in state and federal courts in the past and are committed to vigorously
9 prosecuting this action on behalf of the members of the Classes.

10 **27. Superiority:** The California Labor Code is broadly remedial in nature and serves
11 an important public interest in establishing minimum working conditions and standards in
12 California. These laws and labor standards protect the average working employee from
13 exploitation by employers who have the responsibility to follow the laws and who may seek to
14 take advantage of superior economic and bargaining power in setting onerous terms and
15 conditions of employment. The nature of this action and the format of laws available to Plaintiff
16 and members of the Classes make the class action format a particularly efficient and appropriate
17 procedure to redress the violations alleged herein. If each employee were required to file an
18 individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they
19 would be able to exploit and overwhelm the limited resources of each individual plaintiff with
20 their vastly superior financial and legal resources. Moreover, requiring each member of the
21 Classes to pursue an individual remedy would also discourage the assertion of lawful claims by
22 employees who would be disinclined to file an action against their former and/or current employer
23 for real and justifiable fear of retaliation and permanent damages to their careers at subsequent
24 employment. Further, the prosecution of separate actions by the individual class members, even
25 if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications
26 with respect to the individual class members against Defendants herein; and which would
27 establish potentially incompatible standards of conduct for Defendants; and/or legal
28 determinations with respect to individual class members which would, as a practical matter, be

dispositive of the interest of the other class members not parties to adjudications or which would substantially impair or impede the ability of the class members to protect their interests. Further, the claims of the individual members of the Classes are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses attending thereto. As such, the Classes identified in Paragraph 21 are maintainable as a Class under § 382 of the Code of Civil Procedure.

FIRST CAUSE OF ACTION

MINIMUM WAGE VIOLATIONS

(AGAINST ALL DEFENDANTS)

28. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

29. Wage Order 2, § 4 and California Labor Code §§ 1197 and 1182.12 establish the right of employees to be paid minimum wages for all hours worked in amounts set by state law. Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid wages and interest accrued thereon. At all relevant times herein, Defendants failed to conform their pay practices to the requirements of the law by failing to pay Plaintiff and the Minimum Wage Class for all hours actually worked including, but not limited to, all hours they were subject to the control of Defendants and/or suffered or permitted to work under the California Labor Code and Wage Order 2.

30. California Labor Code § 1198 makes unlawful the employment of an employee under conditions that the IWC prohibits. California Labor Code §§ 1194(a) and 1194.2(a) provide that an employer who has failed to pay its employees the legal minimum wage is liable to pay those employees the balance of the unpaid wages as well as liquidated damages in an amount equal to the wages due and interest thereon.

31. As a direct and proximate result of Defendants' unlawful conduct as alleged herein, Plaintiff and the Minimum Wage Class have sustained economic damages, including but not limited to, unpaid wages and lost interest in an amount to be established at trial, and they are

1 entitled to recover economic and statutory damages and penalties and other appropriate relief as
2 a result of Defendants' violations of the California Labor Code and Wage Order 2.

3 32. Defendants' practice and uniform administration of corporate policy regarding
4 illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiff and
5 members of the Minimum Wage Class in a civil action for the unpaid amount of minimum wages,
6 liquidated damages, including interest thereon, statutory penalties, and attorneys' fees and costs
7 of suit according to California Labor Code §§ 204, 558, 1194, *et seq.*, 1197, 1198 and Code of
8 Civil Procedure § 1021.5.

9 **SECOND CAUSE OF ACTION**

10 **FAILURE TO PAY ALL OVERTIME WAGES**

11 **(AGAINST ALL DEFENDANTS)**

12 33. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

13 34. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194,
14 and 1198, which provide that non-exempt employees are entitled to overtime wages for all
15 overtime hours worked, and provide a private right of action for the failure to pay all overtime
16 compensation for overtime work performed.

17 35. At all times relevant herein, Defendants were required to properly compensate
18 Plaintiff and members of the Overtime Class for all overtime hours worked pursuant to California
19 Labor Code § 1194 and Wage Order 2. Wage Order 2, § 3 requires an employer to pay an
20 employee "one and one-half (1½) times [the] employee's regular rate of pay" for work in excess
21 of 8 hours per work day and/or in excess of 40 hours of work in the workweek. Wage Order 2, §
22 3 also requires an employer to pay an employee double the employee's regular rate of pay for
23 work in excess of 12 hours each work day and/or for work in excess of 8 hours on the seventh
24 consecutive day of work in the workweek. Defendants caused Plaintiff to work overtime hours,
25 but did not compensate Plaintiff or members of the Off-The-Clock Class at one and one-half times
26 their regular rate of pay for such hours.

27 36. The foregoing policies and practices are unlawful and create entitlement to
28 recovery by Plaintiff and the Overtime Class in a civil action for the unpaid amount of overtime

1 premiums owing, including interest thereon, statutory penalties, and attorneys' fees and costs of
2 suit according to California Labor Code §§ 204, 510, 558, 1194, and 1198, Wage Order 2, and
3 Code of Civil Procedure § 1021.5.

4 **THIRD CAUSE OF ACTION**

5 **MEAL PERIOD VIOLATIONS**

6 **(AGAINST ALL DEFENDANTS)**

7 37. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

8 38. Plaintiff is informed and believes, and based thereon alleges, that Defendants
9 failed in their affirmative obligation to provide all of their non-exempt employees in California,
10 including Plaintiff and members of the Meal Period Class, with all legally compliant meal periods
11 in accordance with the mandates of the California Labor Code and Wage Order 2, § 11. Despite
12 Defendants' violations, Defendants did not pay an additional hour of pay to Plaintiff and members
13 of the Meal Period Class at their respective regular rates of compensation, in accordance with
14 California Labor Code §§ 226.7, and 512.

15 39. As a result, Defendants are responsible for paying premium compensation for meal
16 period violations including interest thereon, as well as statutory penalties, civil penalties, and
17 costs of suit, pursuant to Labor Code §§ 226.7, 512, and 558, Wage Order 2, and Civil Code §§
18 3287(b) and 3289.

19 **FOURTH CAUSE OF ACTION**

20 **REST PERIOD VIOLATIONS**

21 **(AGAINST ALL DEFENDANTS)**

22 40. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

23 41. Wage Order 2, § 12 and California Labor Code §§ 226.7 and 516 establish the
24 right of employees to be authorized and permitted to take a paid rest period of at least ten (10)
25 minutes net rest time for each four (4) hour period worked, or major fraction thereof.

26 42. As alleged herein, Defendants failed to authorize and permit Plaintiff and members
27 of the Rest Period Class to take all required rest periods.

28 43. The foregoing violations create an entitlement to recovery by Plaintiff and

1 members of the Rest Period Class in a civil action for the unpaid amount of rest period premiums
2 owing, including interest thereon, as well as statutory penalties, civil penalties, and costs of suit
3 according to California Labor Code §§ 226.7, 516, 558, and Civil Code §§ 3287(b) and 3289.

4 **FIFTH CAUSE OF ACTION**

5 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

6 **(AGAINST ALL DEFENDANTS)**

7 44. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

8 45. At all relevant times herein, Defendants were subject to Labor Code § 2802, which
9 states that “an employer shall indemnify his or her employees for all necessary expenditures or
10 losses incurred by the employee in direct consequence of the discharge of his or her duties, or of
11 his or her obedience to the directions of the employer...”

12 46. Due to Defendants’ unlawful policy and practice of requiring employees to use
13 their personal vehicles and cellular phones in the performance of their job duties, Defendants have
14 violated Labor Code § 2802.

15 47. Plaintiff and members of the Employee Expense Class are entitled to attorneys’
16 fees and costs of suit pursuant to Labor Code § 2802(c) for bringing this action.

17 48. Pursuant to Labor Code §2802(b), any action brought for the reimbursement of
18 necessary expenditures carries interest at the same rate as judgments in civil actions. Thus,
19 Plaintiff and members of the Employee Expense Class are entitled to interest, which shall accrue
20 from the date on which they incurred the initial necessary expenditure.

21 **SIXTH CAUSE OF ACTION**

22 **WAGE STATEMENT VIOLATIONS**

23 **(AGAINST ALL DEFENDANTS)**

24 49. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

25 50. Plaintiff is informed and believes, and based thereon alleges, that Defendants
26 knowingly and intentionally, as a matter of uniform practice and policy, failed to furnish Plaintiff
27 and the Wage Statement Class with accurate, itemized wage statements that included, among
28 other requirements, accurate total gross wages earned, meal and rest period premiums, and total

1 net wages earned in violation of Labor Code §226 *et seq.*

2 51. Defendants' failure to furnish Plaintiff and the members of the Wage Statement
3 Class with complete and accurate, itemized wage statements resulted in actual injury, as said
4 failures led to, among other things, the non-payment of all of their meal and rest period premiums,
5 and deprived them of the information necessary to identify discrepancies in Defendants' reported
6 data.

7 52. Defendants' failures created an entitlement to Plaintiff and members of the Wage
8 Statement Class in a civil action for damages and/or penalties pursuant to Labor Code § 226,
9 including statutory penalties civil penalties, reasonable attorneys' fees, and costs according to suit
10 pursuant to Labor Code § 226 *et seq.*

11 **SEVENTH CAUSE OF ACTION**

12 **WAITING TIME PENALTIES**

13 **(AGAINST ALL DEFENDANTS)**

14 53. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

15 54. This cause of action is brought pursuant to Labor Code §§ 201-203, which require
16 an employer to pay all wages immediately at the time of termination of employment in the event
17 the employer discharges the employee or the employee provides at least 72 hours of notice of
18 his/her intent to quit. In the event the employee provides less than 72 hours of notice of his/her
19 intent to quit, said employee's wages become due and payable not later than 72 hours upon said
20 employee's last date of employment.

21 55. Defendants failed to timely pay Plaintiff all of his final wages at the time of
22 termination, which include, among other things, underpaid minimum and overtime wages, meal
23 and rest period premium wages, and reimbursement for necessary business expenses. Further,
24 Plaintiff is informed and believes, and based thereon alleges, that as a matter of uniform policy
25 and practice, Defendants continue to fail to pay members of the Waiting Time Class all earned
26 wages at the end of employment in a timely manner pursuant to the requirements of Labor Code
27 §§ 201-203. Defendants' failure to pay all final wages was willful within the meaning of Labor
28 Code § 203.

1 56. Defendants' willful failure to timely pay Plaintiff and the members of the Waiting
2 Time Class their earned wages upon separation from employment results in a continued payment
3 of wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and
4 members of the Waiting Time Class are entitled to compensation pursuant to Labor Code § 203,
5 plus reasonable attorneys' fees and costs of suit.

6 **EIGHTH CAUSE OF ACTION**
7 **UNFAIR COMPETITION**
8 **(AGAINST ALL DEFENDANTS)**

9 57. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

10 58. Defendants have engaged and continue to engage in unfair and/or unlawful
11 business practices in California in violation of California Business and Professions Code § 17200
12 *et seq.*, by failing to pay Plaintiff and the Classes all overtime and minimum wages, provide all
13 required meal periods and failing to authorize and permit all required rest periods, and failing to
14 pay meal and rest period premium wage payments, failing to reimburse for necessary business
15 expenditures, unlawfully deducting earned wages, failing to furnish accurate, itemized wage
16 statements, and willfully failing to timely pay Plaintiff and members of the Waiting Time Class
17 all final wages upon separation of employment.

18 59. Defendants' utilization of these unfair and/or unlawful business practices deprived
19 Plaintiff and continues to deprive members of the Classes of compensation to which they are
20 legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage
21 over Defendants' competitors who have been and/or are currently employing workers and
22 attempting to do so in honest compliance with applicable wage and hour laws.

23 60. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged
24 herein, Plaintiff for himself and on behalf of the members of the Classes, seeks full restitution of
25 monies, as necessary and according to proof, to restore any and all monies withheld, acquired
26 and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

27 61. The acts complained of herein occurred within the last four years immediately
28 preceding the filing of the Complaint in this action.

1 62. Plaintiff was compelled to retain the services of counsel to file this court action to
2 protect his interests and those of the Classes, to obtain restitution and injunctive relief on behalf
3 of Defendants' current non-exempt employees, and to enforce important rights affecting the
4 public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs,
5 which he is entitled to recover under Code of Civil Procedure § 1021.5.

6 **NINTH CAUSE OF ACTION**
7 **PRIVATE ATTORNEYS GENERAL ACT**
8 **(AGAINST ALL DEFENDANTS)**

9 63. Plaintiff re-alleges and incorporates by reference all prior paragraphs as though
10 full set forth herein.

11 64. Defendants have committed several Labor Code violations against Plaintiff,
12 Members of the Classes, and other aggrieved employees. Plaintiff, an "aggrieved employee"
13 within the meaning of Labor Code § 2698 et seq., acting on behalf of himself and other aggrieved
14 employees, brings this representative action against Defendants to recover the civil penalties due
15 to Plaintiff, the members of the Classes, other aggrieved employees, and the State of California
16 according to proof pursuant to Labor Code § 558 and § 2699 (a) and (f) including, but not limited
17 to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 for each
18 subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each
19 failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each
20 initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per
21 employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent
22 violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each
23 initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per
24 employee per pay period; and/or (5) \$100.00 for each initial violation and \$200 for each
25 subsequent violation per employee per pay period for those violations of the Labor Code for
26 which no civil penalty is specifically provided, based on the following Labor Code violations:

- 27 a. Failing to pay minimum wages for all hours worked to Plaintiff, the Minimum
28 Wage Class, and other similarly aggrieved employees in violation of Labor
 Code §§ 1182.12, 1194, 1194.2, and 1197;

- b. failing to pay Plaintiff, the Overtime Class, and other aggrieved employees all earned overtime compensation in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;
- c. Failing to provide all legally required meal periods, and failing to pay meal period premium pay, to Plaintiff, the Meal Period Class, and other similarly aggrieved employees in violation of Labor Code §§ 226.7, 512, 558, and 1198;
- d. Failing to timely pay all final wages and compensation earned by Plaintiff, the Waiting Time Penalty Class, and other aggrieved employees at the time of separation in violation of Labor Code §§ 201, 202, and 203;
- e. Failing to reimburse Plaintiff and the Employee Expense Class for all required business expenses incurred in violation of Labor Code § 2802;
- f. Failing to authorize and permit all legally required rest periods, and failing to pay rest period premiums, to Plaintiff, the Rest Period Class, and other similarly aggrieved employees in violation of Labor Code §§ 226.7, 512, and 558;
- g. Failing to furnish Plaintiff, the Wage Statement Class, and other aggrieved employees with complete, accurate, itemized wage statements in violation of Labor Code § 226;
- h. Failing to pay non-exempt employees all earned wages at least twice during each calendar month in violation of Labor Code § 204; and
- i. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees in violation of Labor Code §§ 558 and 1174.

65. On April 9, 2020, Plaintiff notified Defendants via certified mail, and notified the California Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code § 2698 et seq. with respect to violations of the California Labor Code identified in Paragraph 65 (a)-(i). The LWDA has not provided notice that it intends to investigate the violations, and therefore Plaintiff has exhausted her administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

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66. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and the interests of other aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which she is entitled to receive under California Labor Code § 2699(g).

PRAYER

WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf this suit is brought against Defendants, as follows:

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiff as representative of the Classes;
3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
4. Upon the First Cause of Action, for payment of minimum wages, liquidated damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2, and 1197;
5. Upon the Second Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
6. Upon the Third Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;
7. Upon the Fourth Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;
8. Upon the Fifth Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code § 2802;
9. Upon the Sixth Cause of Action, for actual damages, statutory and civil penalties pursuant to Labor Code § 226, *et seq.*;
10. Upon the Seventh Cause of Action, for statutory penalties pursuant to Labor Code § 203.;
11. Upon the Eighth Cause of Action, for restitution to Plaintiff and members of the Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or

1 practices declared by this Court to be in violation of Business and Professions Code § 17200 *et*
2 *seq.*;

3 12. Upon the Ninth Cause of Action, for civil penalties due to Plaintiff, other
4 aggrieved employees, and the State of California according to proof pursuant to Labor Code §§
5 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for
6 each failure to pay each employee and \$200 for each subsequent violation or willful or intentional
7 violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the
8 amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent
9 violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial
10 violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per
11 employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent
12 violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for
13 each initial violation and \$200 for each subsequent violation per employee per pay period for
14 those violations of the Labor Code for which no civil penalty is specifically provided, based on
15 the following Labor Code violations;

16 13. Prejudgment interest on all due and unpaid wages pursuant to California Labor
17 Code § 218.6 and Civil Code §§ 3287 and 3289; On all causes of action, for attorneys' fees and
18 costs as provided by Labor Code §§ 218.5, 221, 226, 1194, *et seq.*, and 2699(g); and Code of
19 Civil Procedure § 1021.5; and

20 14. For such other and further relief the Court may deem just and proper.

21
22 Dated: July 8, 2020

Respectfully submitted,
STANBURY BROWN LAW

23
24 By:



25 Daniel J. Brown
26 Ethan C. Surls
27 Attorneys for Plaintiff
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2 **DEMAND FOR JURY TRIAL**

3 Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

4
5 Dated: July 8, 2020

6 Respectfully submitted,
7 STANBURY BROWN LAW

8 By:

9 

10 Daniel J. Brown
11 Ethan C. Surls
12 Attorneys for Plaintiff
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ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO: 327,605 NAME: Ethan C. Surls FIRM NAME: Stansbury Brown Law STREET ADDRESS: 2610 1/2 Abbot Kinney Blvd. CITY: Venice STATE: CA ZIP CODE: 90291 TELEPHONE NO.: (323) 207-0250 FAX NO.: E-MAIL ADDRESS: esurls@stansburybrownlaw.com ATTORNEY FOR (name): Francisco Aguilera		FOR COURT USE ONLY Electronically FILED by Superior Court of California, County of San Mateo ON 7/8/2020 By <u>/s/ Wai Shan Lee</u> Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO STREET ADDRESS: 400 COUNTY CENTER MAILING ADDRESS: CITY AND ZIP CODE: REDWOOD, CA 94063 BRANCH NAME: SOUTHERN BRANCH		
PLAINTIFF/PETITIONER: FRANCISCO AGUILERA DEFENDANT/RESPONDENT: CRUNCH, LLC		CASE NUMBER: 20-CIV-01727
		JUDICIAL OFFICER: Marie S. Weiner
PROOF OF ELECTRONIC SERVICE		DEPARTMENT: 2

1. I am at least 18 years old.

a. My residence or business address is (specify):
 2610 1/2 Abbot Kinney Blvd., Venice, CA 90291

b. My electronic service address is (specify):
 esurls@stansburybrownlaw.com

2. I electronically served the following documents (exact titles):
 First Amended Class and Representative Action Complaint

☐ The documents served are listed in an attachment. (Form POS-050(D)/EFS-050(D) may be used for this purpose.)

3. I electronically served the documents listed in 2 as follows:

a. Name of person served: Shannon Nakabayashi

On behalf of (name or names of parties represented, if person served is an attorney):
 Crunch, LLC

b. Electronic service address of person served :
 Shannon.Nakabayashi@jacksonlewis.com

c. On (date): 07/08/2020

☐ The documents listed in item 2 were served electronically on the persons and in the manner described in an attachment.
 (Form POS-050(P)/EFS-050(P) may be used for this purpose.)

Date: 07/08/2020

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Ethan Surls

(TYPE OR PRINT NAME OF DECLARANT)



(SIGNATURE OF DECLARANT)