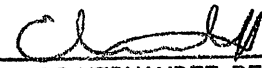


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FILED
 SUPERIOR COURT OF CALIFORNIA
 COUNTY OF SAN BERNARDINO
 SAN BERNARDINO DISTRICT

MAY 29 2020

BY 
 EDUARDO HERNANDEZ, DEPUTY

Brian J. Mankin, Esq. [CSB No. 216228]
 Peter J. Carlson, Esq. [CSB No. 295611]
 FERNANDEZ & LAUBY LLP
 4590 Allstate Drive
 Riverside, CA 92501
 Tel: (951) 320-1444
 Fax: (951) 320-1445
 bjm@fernandezlauby.com
 pjcl@fernandezlauby.com

Attorneys for Plaintiff, on a representative basis and on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

RUDOLPH OLLARSABA, individually, on a
 representative basis, and on behalf of all
 others similarly situated;

Plaintiff,

vs.

PUMPMAN, LLC, a California Limited
 Liability Company; PUMPMAN
 INTERMEDIATE HOLDINGS, LLC, a
 Delaware Limited Liability Company; and
 DOES 1 through 20, inclusive;

Defendants.

Case No.:

CIV DS 2008889

COMPLAINT

CLASS ACTION CLAIMS

- (1) Failure to Pay Minimum Wages;
- (2) Failure to Pay Overtime Wages;
- (3) Failure to Provide Meal Periods;
- (4) Failure to Provide Rest Breaks;
- (5) Failure to Reimburse Expenses;
- (6) Failure to Timely Pay Final Wages;
- (7) Failure to Provide Accurate Itemized Wage Statements;
- (8) Unfair and Unlawful Competition;

PAGA CLAIMS

- (9) Failure to Pay Minimum Wages;
- (10) Failure to Pay Overtime Wages;
- (11) Failure to Provide Meal Periods;
- (12) Failure to Provide Rest Breaks;
- (13) Failure to Reimburse Expenses;
- (14) Failure to Timely Pay Wages Each Period;
- (15) Failure to Timely Pay Final Wages; and
- (16) Failure to Provide Accurate Itemized Wage Statements

JURY TRIAL DEMANDED

BY FAX

1 Plaintiff Rudolph Ollarsaba (“Plaintiff”) on behalf of himself, on a representative basis,
2 and on behalf of others similarly situated, complains and alleges as follows.

3 **I. INTRODUCTION AND GENERAL ALLEGATIONS**

4 1. Plaintiff brings this action against his former employer(s), Defendants Pumpman,
5 LLC, Pumpman Intermediate Holdings, LLC, and DOES 1 through 20, inclusive, (collectively,
6 “Defendants”) on behalf of all current and former nonexempt employees employed by
7 Defendants in California (the “Class” or “Represented Employees”), for California Labor Code
8 violations stemming from Defendants’ failure to pay all wages owed, including minimum,
9 regular, and overtime wages, failure to provide meal periods, failure to provide rest breaks,
10 failure to reimburse business expenses, failure to timely pay wages, and failure to provide
11 accurate itemized wage statements.

12 2. Plaintiff was employed by Defendants from August 2019 through March 2020.

13 3. Plaintiff alleges on information and belief that the Represented Employees were
14 subjected to the same policies, working conditions, and corresponding wage and hour violations
15 to which Plaintiff was subjected during his employment.

16 4. Plaintiff and the Represented Employees were not provided proper minimum,
17 regular, and overtime wages due to Defendants’ failure to accurately record and compensate for
18 all hours worked.

19 5. Additionally, Defendants paid Plaintiff and the Represented Employees on an
20 hourly basis but also paid additional earned compensation in the form of bonuses, “on-call” pay,
21 and similar pay. However, during workweeks where the Plaintiff and the Represented Employees
22 worked overtime hours and earned additional nondiscretionary compensation, Defendants failed
23 to include this additional nondiscretionary compensation in the calculations for the regular rate
24 of pay and instead paid overtime at only 1.5 times the base rate of pay – violating the well-
25 established rule that overtime must always be paid at time and one-half the regular rate of pay.

26 6. Also, at all relevant times, Defendants paid Plaintiff and the Represented
27 Employees on an hourly basis but used multiple rates within the same workweek. However,
28 during workweeks where the Plaintiff and the Represented Employees earned more than one rate

1 of pay, Defendants improperly paid overtime based solely on 1.5 times the base rate of pay, in
2 violation of California law.

3 7. Furthermore, Plaintiff and the Represented Employees were denied 30-minute
4 off-duty meal periods, as mandated by California law, during their employment with Defendants.
5 As a result of Defendants' policies and practices, Plaintiff and the Represented Employees were
6 subjected to meal period violations when they were: (1) unable to take meal periods due to
7 workload, (2) forced to take on-duty meal period while under the control of Defendants, (3)
8 forced to take meal periods, if such a meal occurred, after the 5th hour of work, and (4) not
9 provided a mandated second meal period for shifts in excess of 10 hours.

10 8. Defendants also failed to provide Plaintiff and the Represented Employees with
11 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as
12 mandated by California law. Defendants did not schedule rest breaks and the Represented
13 Employees were often not authorized and/or permitted to take mandated rest breaks due to being
14 overwhelmed by their hectic workload. Additionally, Plaintiff and the Represented Employees
15 were not permitted to leave the premises for rest breaks, in violation of California law.
16 Furthermore, on occasions when Plaintiff and the Represented Employees worked in excess of
17 10 hours in a shift, Defendants failed to authorize and/or permit a third mandated rest break.

18 9. Defendants also required Plaintiff and the Represented Employees to incur
19 necessary business-related expenses and costs without reimbursement, including, but not limited
20 to, acquiring and maintaining a smart phone and related monthly data plan to communicate with
21 Defendants via phone and text message.

22 10. Plaintiff also alleges that he and the Represented Employees were not paid all
23 wages due and owing each pay period (Labor Code § 204) and upon separation of employment
24 within the time required by Labor Code §§ 201 – 203. Plaintiff further alleges that Defendants
25 engaged in the practice of failing to pay all wages due and owing to Plaintiff and the Represented
26 Employees at the time their employment ended with Defendants, including, but not limited to
27 minimum, regular, and overtime wages, wage premiums, among others.
28

1 11. Plaintiff further alleges that Defendants failed to provide accurate itemized wage
2 statements that fully complied with the requirements of Labor Code § 226(a), as detailed below.

3 12. Plaintiff alleges that Defendants' violations of the wage and hour components of
4 the Labor Code and IWC Wage Orders enabled them to decrease expenses and to increase their
5 level of productivity and profits, thereby allowing Defendants to gain an unfair advantage over
6 its competitors.

7 13. At all material times, Defendants and DOES 1 through 20 were and/or are the
8 Represented Employees' employers or persons acting on behalf of the Represented Employees'
9 employer, within the meaning of California Labor Code § 558, who violated or caused to be
10 violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating
11 hours and days of work in any Order of the Industrial Welfare Commission and, as such, are
12 subject to penalties for each underpaid employee as set forth in Labor Code § 558 and under
13 California law.

14 14. Plaintiff brings this lawsuit seeking declaratory, injunctive, equitable, and
15 monetary relief against Defendants and each of them, on behalf of himself and the Represented
16 Employees to recover, among other things, unpaid wages and benefits, interest, attorneys' fees,
17 penalties, costs and expenses pursuant to California Labor Code §§ 200, 201, 202, 203, 204,
18 218.6, 221, 223, 226, 226.3, 226.7, 256, 510, 512, 558, 1194, 1194.2, and 2802, among possibly
19 other sections inadvertently omitted. Plaintiff also reserves the right to name additional
20 representatives throughout the State of California.

21 15. Pursuant to Labor Code § 2699.3(a), on May 20, 2020, Plaintiff gave written
22 notice by online filing to the Labor and Workforce Development Agency ("LWDA") and by
23 certified mail to Defendants of the specific provisions of the Labor Code alleged to have been
24 violated, including the facts and theories to support the alleged violations. Plaintiff is currently
25 complying with the procedures for bringing suit specified in California Labor Code § 2699.3,
26 and this Complaint will be deemed amended to include the PAGA allegations enumerated below
27 when more than sixty-five (65) days have passed since the Notice was mailed to Defendants and
28 the LWDA chooses not to investigate the allegations herein.

1 **II. JURISDICTION**

2 16. This Court has jurisdiction over the claims for relief of Plaintiff and the
3 Represented Employees pursuant to the Labor Code and the IWC Wage Orders.

4 **III. VENUE**

5 17. Venue as to each Defendant is proper in this Court pursuant to Code of Civil
6 Procedure § 395(a) and § 395.5. Defendants transact business in San Bernardino County and the
7 unlawful acts alleged herein have a direct effect on Plaintiff and the Represented Employees in
8 San Bernardino County. Furthermore, Defendants employed or employ Plaintiff and
9 Represented Employees in San Bernardino County.

10 **IV. PARTIES**

11 **Plaintiff**

12 18. Plaintiff and Class Representative Rudolph Ollarsaba was employed by
13 Defendants from August 2019 through March 2020 and performed work for Defendants in San
14 Bernardino County.

15 **Defendants**

16 19. Plaintiff is informed and believes and thereon alleges that Defendant Pumpman,
17 LLC is a California Limited Liability Company authorized to and doing business in San
18 Bernardino County, California, and is and/or was the legal employer of Plaintiff and the
19 Represented Employees during the applicable statutory periods.

20 20. Plaintiff is informed and believes and thereon alleges that Defendant Pumpman
21 Intermediate Holdings, LLC is a Delaware Limited Liability Company authorized to and doing
22 business in San Bernardino County, California, and is and/or was the legal employer of Plaintiff
23 and the Represented Employees during the applicable statutory periods.

24 21. Plaintiff is ignorant of the true names, capacities, relationships, and extent of
25 participation in the conduct herein alleged, of Defendants sued herein as DOES 1 through 20,
26 inclusive, but on information and belief alleges that those Defendants are legally responsible for
27 the payment of penalties and damages to Plaintiff and all Represented Employees by virtue of
28 Defendants' unlawful actions and practices and therefore sue these Defendants by such fictitious

1 names. Plaintiff will amend this complaint to allege the true names and capacities of the DOE
2 Defendants when ascertained.

3 22. Plaintiff is informed and believes and thereon alleges that he and the Represented
4 Employees worked under the joint direction and control of Defendants and that Defendants, and
5 each of them, acted in all respects pertinent to this action as the agent of the other Defendants,
6 carried out a joint scheme, business plan or policy in all respect pertinent hereto, and the acts of
7 each Defendant are legally attributable to the other Defendants. On information and belief, a
8 unity of interest and ownership between each Defendant exists such that all Defendants acted as
9 a single employer of Plaintiff and other Represented Employees.

10 23. Furthermore, Plaintiff is informed and believes and thereon alleges that
11 Defendants, and each of them, are an integrated enterprise and should be treated as a single
12 employer because these entities share an interrelation of operations, with common human
13 resources and personnel policies and shared common offices and facilities. Additionally,
14 Defendants also have a shared website, common management, a centralized control of labor
15 operations, and common ownership or financial control.

16 24. Plaintiff is informed and believes and thereon alleges that, in conducting
17 themselves in the manner described herein, Defendants, and each of them, were acting in active
18 concert with one another such that the acts of each were and are fully attributable to the others in
19 all material respects. Plaintiff is further informed and believes that at all relevant times
20 Defendants and each of them are now, and at all material times herein mentioned were, the
21 agents, servants, employees, partners, affiliates, and/or representatives of each of their remaining
22 co-Defendants, and were, at all times herein mentioned, acting within the course, scope, and
23 purpose of such relationship(s) and with the knowledge, consent and/or ratification of each of
24 their remaining co-Defendants.

25 25. Plaintiff is further informed and believes that at all relevant times, Defendants
26 have been inadequately capitalized to conduct business, have failed to follow appropriate
27 corporate formalities, and have simply been a shell and instrumentality through which
28 Defendants DOES 11 through 20, inclusive, have conducted their personal affairs. Accordingly,

the corporate veil should be pierced and any liability attached to Defendants should be imposed jointly and severally against Defendants DOES 11 through 20. Adherence to the fiction of the separate existence of these corporate entities would permit abuse of the corporate privilege, thereby sanctioning fraud and promoting injustice.

V. CLASS ACTION ALLEGATIONS

26. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

27. Plaintiff brings this action on behalf of himself and all others similarly situated as a class action, pursuant to Code of Civil Procedure § 382.

28. The relevant time period for this class action is defined as the time period beginning four years prior to the filing of this action until class certification (the “Relevant Time Period”).

29. The Class, also referred to as the “Represented Employees,” that Plaintiff seeks to represent is defined as follows:

California Class

All current and former nonexempt employees employed by Defendants in California during the Relevant Time Period.

30. Plaintiff also seeks to represent the following subclasses:

Meal Break Subclass

All nonexempt Represented Employees who worked a shift in excess of 5 hours during the Relevant Time Period.

Rest Break Subclass

All nonexempt Represented Employees who worked a shift of at least 3.5 hours during the Relevant Time Period.

Unreimbursed Expense Subclass

All Represented Employees who were required to incur expenses to discharge their duties for Defendants without reimbursement.

Waiting Time Penalties Subclass

All Represented Employees who separated from their employment with Defendants during the period three years before the filing of this action and ending when final judgment is entered.

Wage Statement Penalties Subclass

All Represented Employees during the period one year before the filing of this action and ending when final judgment is entered.

31. Plaintiff reserves the right to amend or modify the class description with greater specificity or further division into subclasses or limitation to particular issues as appropriate.

32. Plaintiff, as Class Representative, is a member of the class and subclasses that he seeks to represent.

33. This action has been brought and may properly be maintained as a class action under Code of Civil Procedure § 382 because there is a well-defined community of interest in the litigation and the proposed class is easily ascertainable from Defendants' personnel and payroll records.

34. **Numerosity:** The potential members of the Class as defined are so numerous that a joinder of all Represented Employees is impracticable. Although the exact number is currently unknown to Plaintiff, this information is easily ascertainable from Defendants' payroll and personnel records.

35. **Commonality:** There are questions of law and fact common to the class which predominate over any questions affecting only individual members of the class, including without limitation:

i. Whether Defendants violated the California Labor Code and applicable IWC Wage Order by failing to pay wages to Plaintiff and the Represented Employees for all hours worked;

1 ii. Whether Defendants violated the California Labor Code and applicable
2 IWC Wage Order by failing to pay proper overtime wages to Plaintiff and the Represented
3 Employees for hours above 8 and/or 12 per day and/or 40 per week;

4 iii. Whether Defendants violated the California Labor Code and applicable
5 IWC Wage Order by failing to provide compliant meal periods to Plaintiff and the Meal Break
6 Subclass and whether Defendants failed to compensate Plaintiff and the Meal Break Subclass
7 with one additional hour of wages at the regular rate of pay for each instance when a compliant
8 meal period was not provided;

9 iv. Whether Defendants violated the California Labor Code and applicable
10 IWC Wage Order by failing to provide compliant rest breaks to Plaintiff and the Rest Break
11 Subclass and whether Defendants failed to compensate Plaintiff and the Rest Break Subclass
12 with one additional hour of wages at the regular rate of pay for each instance when a paid rest
13 break was not provided;

14 v. Whether Defendants violated the California Labor Code and applicable
15 IWC Wage Order by failing to reimburse Plaintiff and the Unreimbursed Expense Subclass for
16 business expenses incurred while discharging their duties or in obedience to the directions of
17 their employer;

18 vi. Whether Defendants violated the California Labor Code by failing to
19 timely pay all wages due upon separation of employment between Defendants and Plaintiff and
20 the Waiting Time Penalties Subclass, whether such separation was voluntary or involuntary;

21 vii. Whether Defendants violated the California Labor Code by failing to
22 provide Plaintiff and the Wage Statement Penalties Subclass with complete, accurate, itemized
23 wage statements;

24 viii. Whether Defendants violated California Business & Professions Code §§
25 17200 *et seq.* due to the: failure to pay all wages owed, failure to provide mandated paid rest
26 breaks, failure to provide mandated meal periods, failure to reimburse business expenses, and
27 failure to timely pay final wages; and
28

ix. Whether Plaintiff and Represented Employees are entitled to equitable relief pursuant to California Business & Professions Code §§ 17200 *et seq.*

36. **Typicality:** Plaintiff's claims, as the Class Representative, are typical of the claims of The Class. Plaintiff, like other members of The Class, was subjected to Defendants' ongoing Labor Code and Wage Order violations including pertaining to the failure to pay all wages owed, failure to provide mandated meal periods, failure to provide mandated paid rest breaks, failure to reimburse business expenses, to timely pay final wages, and failure to provide accurate itemized wage statements.

37. **Adequacy of Representation.** Plaintiff, as the Class Representative, will fairly and adequately represent and protect the interests of the Class. Plaintiff's interests are not in conflict with those of the Class. Class Representative's counsel are competent and experienced in litigating large employment class actions and other complex litigation matters, including cases like this case.

38. **Superiority of Class Action.** Class certification is appropriate because a class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Represented Employees is not practicable, and questions of law and fact common to the Class predominate over any questions affecting only individual members of the Class. Each Represented Employee has been damaged and is entitled to recovery by reason of Defendants' illegal policies and practices set forth above. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system.

FIRST CAUSE OF ACTION

FAILURE TO PAY MINIMUM WAGES

(Labor Code §§ 200, 1194, 1194.2, 1197; IWC Wage Order § 4)

Plaintiff and the Represented Employees Against All Defendants

39. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

1 40. Plaintiff and the Represented Employees were not exempt from the requirement
2 to be paid at least the applicable California minimum wage throughout the statutory period for
3 each hour worked.

4 41. Plaintiff and the Represented Employees were not provided proper minimum and
5 regular wages due to Defendants' failure to accurately record and compensate for all hours
6 worked.

7 42. As a result of Defendants' policies or practices described above, Plaintiff and the
8 Represented Employees, a were required to perform off-the-clock work that Defendants either
9 knew or should have known they were performing.

10 43. Consequently, Defendants violated California Labor Code laws and minimum
11 wage laws, *inter alia*, Labor Code §§ 200, 221, 222, 223, 1197, IWC Wage Order 9, § 4, and
12 Cal. Code Regs., tit. 8, section 11090, subds. 1 and 4(B).

13 44. Plaintiff is informed and believes and thereon alleges that Defendants
14 intentionally, willfully, and improperly failed to pay wages to Plaintiff and the Represented
15 Employees for each hour worked in violation of Labor Code §§ 221-223, 1194 and 1197.

16 45. Defendants' conduct was willful, as Defendants knew that Plaintiff and the
17 Represented Employees were entitled to be paid wages throughout the statutory period for each
18 hour worked, including proper minimum and regular wages, yet Defendants chose not to pay
19 them in accordance thereto.

20 46. At all material times, Defendants DOES 1 through 20 were and/or are the
21 employer of Plaintiff and the Represented Employees or were persons acting on behalf of said
22 employer(s), within the meaning of California Labor Code § 558, who violated or caused to be
23 violated Labor Code § 204 and a provision or provisions of Part 2, Chapter 1 of the California
24 Labor Code regulating hours and days of work respectively.

25 47. During employment of Plaintiff and the Represented Employees, Defendants
26 failed to pay them all wages to which they were entitled, thereby receiving an economic benefit.

27 48. As a result of the Defendants' wrongful conduct, Plaintiff and the Represented
28 Employees have been damaged in amounts to be proven at trial.

FAILURE TO PAY OVERTIME WAGES

Plaintiff and the Represented Employees Against All Defendants

9 50. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
10 alleged herein.

51. Plaintiff and the Represented Employees were employees of Defendants who did not receive proper protections and benefits of the laws governing payment of overtime wages.

52. Labor Code § 204 requires that the employer timely pay all overtime wages to its employees. Labor Code § 510(a) and the applicable IWC Wage Order § 3(A) provide that any work performed in excess of eight (8) hours in one workday or in excess of forty (40) hours in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Furthermore, any work performed in excess of twelve (12) in one workday shall be compensated at twice the regular rate of pay for an employee.

53. At all relevant times, Plaintiff and the Represented Employees were required by Defendants to work hours in excess of 8 and/or 12 per day and/or 40 per week. However, due to Defendants' failure to accurately record and compensate for all hours worked, Plaintiff and the Represented Employees did not receive proper overtime compensation.

54. Among other violations, Defendants paid Plaintiff and the Represented Employees on an hourly basis but also paid additional earned compensation in the form of bonuses, “on-call” pay, and similar pay. However, during workweeks where the Plaintiff and the Represented Employees worked overtime hours and earned additional nondiscretionary compensation, Defendants failed to include this additional nondiscretionary compensation in the calculations for the regular rate of pay and instead paid overtime at only 1.5 times the base rate

1 of pay – violating the well-established rule that overtime must always be paid at time and one-
2 half the regular rate of pay.

3 55. Additionally, at all relevant times, Defendants paid Plaintiff and the Represented
4 Employees on an hourly basis but used multiple rates within the same workweek. However,
5 during workweeks where the Plaintiff and the Represented Employees earned more than one rate
6 of pay, Defendants improperly paid overtime based solely on 1.5 times the base rate of pay, in
7 violation of California law.

8 56. Defendants violate Labor Code §§ 204 and 510 and the applicable IWC Wage
9 Order § 3(A) every pay period with respect to Plaintiff and the Represented Employees because
10 Defendants required its employees to work hours in excess of 8 and/or 12 per day and/or 40 per
11 week without proper overtime compensation.

12 57. Plaintiff is informed and believes and thereon alleges that Defendants
13 intentionally, willfully, and improperly failed to pay proper overtime wages to Plaintiff and the
14 Represented Employees in violation of Labor Code §§ 204, 221-223, 510, 1194 and 1197.

15 58. Defendants' conduct was willful, as Defendants knew that Plaintiff and the
16 Represented Employees were entitled to be paid proper overtime wages throughout the statutory
17 period, yet Defendants chose not to pay them in accordance thereto.

18 59. At all material times, Defendants DOES 1 through 10 were and/or are the
19 employer of Plaintiff and the Represented Employees or were persons acting on behalf of said
20 employer(s), within the meaning of California Labor Code § 558, who violated or caused to be
21 violated Labor Code § 204 and a provision or provisions of Part 2, Chapter 1 of the California
22 Labor Code regulating hours and days of work respectively.

23 60. During the employment of Plaintiff and the Represented Employees, Defendants
24 failed to pay them all wages to which they were entitled, thereby receiving an economic benefit.

25 61. As a result of Defendants' wrongful conduct, Plaintiff and the Represented
26 Employees have been damaged in amounts to be proven at trial.
27
28

62. Plaintiff, on behalf of himself and the Represented Employees, seeks recovery of all unpaid overtime wages, penalties, interest, attorneys' fees, and costs of suit against Defendants in an amount to be proven at trial.

THIRD CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

(Labor Code §§ 226.7 and 512; IWC Wage Order § 11, 12)

Plaintiff and the Meal Break Subclass Against All Defendants

63. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

64. Plaintiff and the Meal Break Subclass are and/or were employees of Defendants who did not receive proper protections and benefits of the laws governing mandatory meal periods.

65. Labor Code § 226.7 requires employers, including Defendants, to provide employees with meal periods as mandated by the Industrial Welfare Commission.

66. Labor Code § 512(a), in part, provides that employers, including Defendants, may not employ an employee for a work period of more than five hours per day without providing an employee the opportunity to take an uninterrupted meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and the employee. Employers may not employ an employee for a work period more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes.

67. Pursuant to Labor Code § 226.7(b) and the applicable IWC Wage Order § 11(B), Defendants shall pay an employee one additional hour of pay at the employee's regular rate of pay for each meal period that is missed.

68. At all relevant times herein, Plaintiff and the Meal Break Subclass were denied the 30-minute meal periods to which they were entitled. As a result of Defendants' policies and practices, Plaintiff and the Represented Employees were subjected to meal period violations when they were: (1) unable to take meal periods due to workload, (2) forced to take on-duty meal

1 period while under the control of Defendants, (3) forced to take meal periods, if such a meal
2 occurred, after the 5th hour of work, and (4) not provided a mandated second meal period for
3 shifts in excess of 10 hours.

4 69. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage
5 Order every pay period because Plaintiff and the Meal Break Subclass were not provided with all
6 mandatory meal periods and Defendants failed to pay Plaintiff and the Meal Break Subclass one
7 additional hour of compensation at the regular rate of pay in lieu thereof.

8 70. At all relevant times herein, Defendants failed to provide Plaintiff and the Meal
9 Break Subclass all mandated meal periods and failed to pay wage premiums in lieu of mandated
10 meal or rest periods, thereby receiving an economic benefit.

11 71. On information and belief, Plaintiff and the Meal Break Subclass did not
12 voluntarily or willfully waive the mandated meal periods. Any expressed or implied waivers
13 obtained from Plaintiff and the Meal Break Subclass were not willfully obtained, were not
14 voluntarily agreed to, were a condition of employment, or were a part of a contract of an
15 unlawful adhesion. Defendants did not permit or authorize Plaintiff and the Meal Break Subclass
16 to take meal periods in accordance with California law.

17 72. By their failure to provide Plaintiff and the Meal Break Subclass with meal
18 periods as required by California law, and failing to pay one hour of additional wages in lieu of
19 each meal period not provided, Defendants willfully violated Labor Code §§ 226.7 and 512, and
20 IWC Wage Order § 11. Accordingly, Defendants are liable for one hour of additional wages at
21 the employee's regular rate of compensation for each work day that a meal period was not
22 lawfully provided in an amount to be proven at time of trial.

23 73. Also, as a direct result of Defendants' violations of Labor Code §§ 226.7 and 512,
24 and IWC Wage Order § 11, Defendants, and each of them, are liable to Plaintiff and the Meal
25 Break Subclass for unpaid wage premiums, penalties, costs, and interest.

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FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE REST BREAKS

(Labor Code §§ 226.7 and 512; IWC Wage Order § 12)

Plaintiff and the Rest Break Subclass Against All Defendants

74. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

75. Plaintiff and the Rest Break Subclass are and/or were employees of Defendants who did not receive proper protections and benefits of the laws governing mandatory rest breaks.

76. Labor Code § 226.7 requires employers, including Defendants, to provide rest breaks to its employees as mandated by Order of the Industrial Welfare Commission.

77. The IWC Wage Order § 12 states, in part, that every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. Employees shall receive a 10-minute rest period every four hours or major fraction thereof that they are required to work. Authorized rest period time shall be counted, as hours worked, for which there shall be no deduction from wages.

78. Pursuant to Labor Code § 226.7(b) and Section 12(B) of the applicable Wage Order, Defendants shall pay Plaintiff and the Represented Employees one additional hour of pay at his regular rate of compensation for each day that the rest period is not provided.

79. At all relevant times, Defendants also failed to provide Plaintiff and the Rest Break Subclass with 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as mandated by California law. Defendants did not schedule rest breaks and the Rest Break Subclass were often not authorized and/or permitted to take mandated rest breaks due to being overwhelmed by their hectic workload. Additionally, Plaintiff and the Rest Break Subclass were often not permitted to leave the premises for rest breaks, in violation of California law. Furthermore, on occasions when Plaintiff and the Rest Break Subclass worked in excess of 10 hours in a shift, Defendants failed to authorize and/or permit a third mandated rest break.

80. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage Order every pay period because Plaintiff and the Rest Break Subclass were not provided with all

1 mandatory rest periods and Defendants failed to pay Plaintiff and the Represented Employees
2 one additional hour of compensation in lieu thereof.

3 81. At all relevant times herein, Defendants failed to provide Plaintiff and the Rest
4 Break Subclass all mandated rest breaks and failed to pay wage premiums in lieu of mandated
5 rest periods, thereby receiving an economic benefit.

6 82. By their failure to provide Plaintiff and the Rest Break Subclass with rest breaks
7 as required by California law, and failing to pay one hour of additional wages in lieu of each rest
8 break not provided, Defendants willfully violated Labor Code §§ 226.7 and 512, and IWC Wage
9 Order § 12. Accordingly, Defendants are liable for one hour of additional wages at the
10 employee's regular rate of compensation for each workday that a paid rest break was not
11 lawfully provided in an amount to be proven at time of trial.

12 83. Also, as a direct result of Defendants' violations of Labor Code §§ 226.7 and 512,
13 and IWC Wage Order § 12, Defendants, and each of them, are liable to Plaintiff and the Rest
14 Break Subclass for unpaid wage premiums, penalties, costs, and interest.

15 **FIFTH CAUSE OF ACTION**

16 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

17 (Labor Code § 2802)

18 *Plaintiff and the Unreimbursed Expense Class against All Defendants*

19 84. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
20 alleged herein.

21 85. Plaintiff and the Unreimbursed Expense Subclass are and/or were employees of
22 Defendants who did not receive proper protections and benefits of the laws governing
23 reimbursement of business expenses.

24 86. Labor Code § 2802(a) requires that the employer indemnify its employees for
25 expenses and losses incurred while discharging their duties or in obedience to the directions of
26 their employer.

27 87. At all relevant times herein mentioned, as a condition of employment, Defendants
28 required Plaintiff and the Unreimbursed Expense Subclass to incur necessary business-related

1 expenses and costs without reimbursement, including, but not limited to, acquiring and
2 maintaining a smart phone and related monthly data plan to communicate with Defendants via
3 phone and text message.

4 88. At all relevant times herein, Defendants violated Labor Code § 2802(a) when they
5 failed to reimburse Plaintiff and the Unreimbursed Expense Subclass for expenses incurred as a
6 direct consequence of employment with Defendants and/or under the direction of Defendants.

7 89. At all relevant times herein, Defendants failed to reimburse the Unreimbursed
8 Expense Subclass, including Plaintiff, for expenses incurred while discharging duties to
9 Defendants, thereby receiving an economic benefit.

10 90. As a direct result of Defendants' violation of Labor Code § 2802 and IWC Wage
11 Order § 9(B), Plaintiff and the Unreimbursed Expense Subclass have suffered, and continue to
12 suffer, substantial losses related to such incurred expenses, expenses, and attorney's fees in
13 seeking to compel Defendants to fully perform their obligations under the law, all in an amount
14 to be proved at time of trial.

15 91. Labor Code § 2802(b) states that "[a]ll awards made by a Court for
16 reimbursement of necessary expenditures" shall carry interest, at the same rate as judgments in
17 civil actions, and said interest will accrue from the date on which the employee incurred the
18 necessary expenditure or loss including, but not limited to, reasonable costs and attorney's fees
19 incurred by the employee enforcing the rights granted pursuant to Labor Code § 2802. The exact
20 amount of the necessary expenditures or losses is in an amount to be proven at time of trial.

21 92. Furthermore, Labor Code § 2802(c) states that "[f]or the purposes of this section,
22 the term 'necessary expenditures or losses' shall include all reasonable costs, including, but not
23 limited to, attorney's fees incurred by the employee in enforcing the rights granted by this
24 section." Therefore, Plaintiff and the Unreimbursed Expense Subclass seek to recover the
25 unreimbursed expenses, interest on the unreimbursed expenses, and the costs and attorney's fees
26 necessarily incurred in pursuing same. The exact amount of reimbursements, interest, costs, and
27 attorney's fees will be in an amount to be proved at the time of trial.
28

SIXTH CAUSE OF ACTION

FAILURE TO TIMELY PAY FINAL WAGES

(Labor Code §§ 201 – 203)

Plaintiff and the Waiting Time Penalties Subclass against All Defendants

93. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

94. Plaintiff and the Waiting Time Penalties Subclass are and/or were employees of Defendants who did not receive proper protections and benefits of the laws governing the timing and payment of wages.

95. Labor Code § 201 requires that the employer immediately pay any wages, without abatement or reduction, to any employee who is discharged.

96. Labor Code § 202 requires that the employer pay all wages earned and unpaid, without abatement or reduction, no later than 72 hours of receiving an employee's notice of intent to quit or immediately at the time of quitting if at least a 72-hour notice was provided.

97. Labor Code §§ 201-203 cause the unpaid wages of the employee to continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, but the wages shall not continue for more than thirty (30) days.

98. At all relevant times, Defendants employed a policy and practice whereby Plaintiff and the Waiting Time Penalties Subclass were not paid all wages due and owing upon separation of employment within the time required by Labor Code §§ 201 and 202.

99. Also, at all relevant times, Defendants engaged in the practice of failing to pay all wages due and owing to Plaintiff and the Waiting Time Penalties Subclass upon separation of employment, including, but not limited to, minimum, regular, and overtime wages, as well as meal and rest period premiums.

100. Plaintiff alleges that, at all times material to this action, Defendants had a planned pattern and practice of failing to timely pay Plaintiff and the Waiting Time Penalties Subclass all wages due and owing upon separation of employment as required by Labor Code §§ 201 and 202. Consequently, pursuant to Labor Code § 203, Defendants owe Plaintiff and the Waiting

Time Penalties Subclass the above-described waiting time penalty, all in an amount to be shown according to proof at trial and within the jurisdiction of this Court.

SEVENTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Labor Code § 226)

Plaintiff and the Wage Statement Penalties Subclass against All Defendants

101. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

102. Plaintiff and the Wage Statement Penalties Subclass are and/or were employees of Defendants who did not receive proper protections and benefits of the laws governing the provision of accurate itemized wage statements.

103. Labor Code § 226(a) requires an employer to provide its employees with itemized wage statements accurately stating gross wages earned, all deductions, net wages earned, the inclusive dates of the pay period, the employee's name and the last four digits of his or her Social Security number (or employee identification number), the name and address of the legal entity that is the employer, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

104. Defendants violate Labor Code § 226(a) every pay period with respect to Plaintiff and the Wage Statement Penalties Subclass because Defendants failed to provide a wage statement to Plaintiff and the Wage Statement Penalties Subclass that complied with the requirements of Labor Code § 226(a).

105. Specifically, Defendants' uniform wage statements listed line-items for regular hours, overtime hours, and double time hours, and then summed all hours into a "Total Work Hrs" line-item. However, the "Total Work Hrs" line-item fails to accurately state total hours worked in the period because Defendants' wage statements specifically state that the overtime hours were worked in the prior period (e.g. "Correction: 9.67 OT Hours for 2/17/20 – 2/23/20" appears on the paystub for the period 2/24/20 – 3/1/20). Additionally, on the occasions that a Represented Employee worked a prevailing wage job during a pay period, Defendants' practice

1 was to issue two wage statements for the same pay period, one of which would list the prevailing
2 wage hours and the other that would list the non-prevailing wage hours. As a result of these
3 practices, Defendants' wage statements failed to accurately state the total hours worked each
4 period, in direct violation of Labor Code § 226(a)(2).

5 106. Defendants' wage statements also failed to state the accurate overtime rate of pay,
6 and further failed to accurately state gross wages earned, all deductions, and net wages earned.

7 107. Therefore, Defendants violate Labor Code § 226(a) every pay period with respect
8 to Plaintiff and the Wage Statement Penalties Subclass because Defendants failed to provide a
9 wage statement to Plaintiff and the Wage Statement Penalties Subclass that complied with the
10 requirements of Labor Code § 226(a).

11 108. Defendants' failure to provide the required writing deprived Plaintiff and the
12 Wage Statement Penalties Subclass of the ability to know, understand, and question the
13 calculation and rate of pay and hours used to calculate the wages paid by Defendants. Therefore,
14 Plaintiff and the Wage Statement Penalties Subclass had no way to dispute the resulting
15 miscalculation of wages, all of which resulted in an unjustified economic enrichment to said
16 Defendants. As a direct result, Plaintiff and the Wage Statement Penalties Subclass have suffered
17 and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost
18 interest on such wages and expenses and attorney's fees in seeking to compel Defendants to fully
19 perform its obligation under state law, all to their respective damages in amounts according to
20 proof at trial.

21 109. As a result of Defendants' knowing and intentional failure to comply with Labor
22 Code § 226(a), Plaintiff and the Wage Statement Penalties Subclass have suffered an injury in
23 that each was prevented from knowing, understanding and disputing the wage payments paid to
24 them. Furthermore, Plaintiff and the Wage Statement Penalties Subclass have each suffered an
25 injury in that the failure to show all wages earned on the itemized wage statements resulted in
26 Plaintiff and the Represented Employees being denied all necessary deductions, payments, and
27 withholdings owed by the employer, including, but not limited to, the failure to make all
28

1 necessary contributions for unemployment benefits, social security benefits, proper payment of
2 taxes and withholdings, and other mandated state and federal benefits.

3 110. Plaintiff has also been injured as a result of having to bring this action to attempt
4 to obtain correct wage information following Defendants' refusal to comply with many of the
5 mandates of California's Labor Code and related laws and regulations.

6 111. Labor Code § 226(e) requires Defendants to pay the greater of all actual damages
7 or fifty dollars (\$50.00) per employee for the initial pay period in which a violation occurred, and
8 one hundred dollars (\$100.00) per employee for each violation in subsequent pay periods, plus
9 attorney's fees and costs, to Plaintiff and the Wage Statement Penalties Subclass who were
10 injured by Defendants' failure to comply with Labor Code § 226(a). The exact amount of the
11 applicable penalty is all in an amount to be shown according to proof at trial.

12 **EIGHTH CAUSE OF ACTION**

13 **UNFAIR AND UNLAWFUL COMPETITION**

14 (Business and Professions Code § 17200 *et seq.*)

15 *Plaintiff and the Represented Employees against All Defendants*

16 112. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
17 alleged herein.

18 113. California Business & Professions Code § 17200, *et seq.*, prohibits acts of unfair
19 competition, which includes any "unlawful, unfair or fraudulent business act or practice." The
20 Represented Employees, including Plaintiff, have suffered and continue to suffer injuries in fact,
21 due to the unfair and unlawful business practices of Defendants as alleged herein.

22 114. Defendants, and each of them, are "persons" as defined under Business &
23 Professions Code § 17021.

24 115. As alleged herein, Defendants engaged in conduct that violated California's wage
25 and hour laws, including failure to pay minimum, regular, and overtime wages, failure to provide
26 mandated meal periods and rest breaks, failure to reimburse business expenses, and failure to
27 timely pay final wages, all to decrease their costs and increase their profits.
28

1 116. At all times relevant herein, Defendants did not pay Plaintiff and the Represented
2 Employees wages and monies and other financial obligations to which they were entitled.

3 117. As a result of Defendants' failure to comply with the Labor Code and IWC
4 Orders, Represented Employees, including Plaintiff, suffered a loss of wages and monies, all in
5 an amount to be shown according to proof at trial. Defendants' ongoing violations of the
6 foregoing statutes and laws constitute a violation of Bus. & Prof. Code § 17200, *et seq.*

7 118. Defendants' violations of the California Labor Code and IWC Wage Orders and
8 its scheme to lower its payroll costs as alleged herein, constitute unlawful and unfair business
9 practices because it was done in a systematic manner over a period of time to the detriment of the
10 Plaintiff and all others similarly-situated.

11 119. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
12 unlawful, and harmful to Plaintiff, other Represented Employees, and to the general public.
13 Plaintiff seek to enforce important rights affecting the public interest within the meaning of Code
14 of Civil Procedure § 1021.5.

15 120. A violation of California Business & Professions Code § 17200, *et seq.* may be
16 predicated on the violation of any state or federal law. All of the acts described herein as
17 violations of, among other things, the California Labor Code and IWC Wage Orders, are
18 unlawful and in violation of public policy, and in addition are immoral, unethical, oppressive,
19 fraudulent and unscrupulous, and thereby constitute unfair, unlawful and/or fraudulent business
20 practices in violation of California Business and Professions Code §§ 17200, *et seq.*

21 121. Plaintiff, individually, and on behalf of the Represented Employees, has no plain,
22 speedy, and/or adequate remedy at law to redress the injuries which they have suffered as a
23 consequence of Defendants' unfair, unlawful and/or fraudulent business practices. As a result of
24 the unfair, unlawful and/or fraudulent business practices described above, Plaintiff, individually,
25 and on behalf of the Represented Employees, has suffered and will continue to suffer irreparable
26 harm unless Defendants, and each of them, are restrained from continuing to engage in said
27 unfair, unlawful and/or fraudulent business practices.
28

1 122. Plaintiff, individually, and on behalf of the Represented Employees, is entitled to,
2 and does, seek such relief as may be necessary to disgorge the profits which Defendants have
3 acquired, or of which Plaintiff and Represented Employees have been deprived, by means of the
4 above-described unfair, unlawful and/or fraudulent business practices. Plaintiff and the
5 Represented Employees are not obligated to establish individual knowledge of the unfair
6 practices of Defendants in order to recover restitution.

7 123. Plaintiff, individually, and on behalf of the Represented Employees, is further
8 entitled to and do seek a declaration that the above described business practices are unfair,
9 unlawful and/or fraudulent, and injunctive relief restraining Defendants, and each of them, from
10 engaging in any of the above-described unfair, unlawful and/or fraudulent business practices in
11 the future.

12 124. Pursuant to Business & Professions Code §§ 17200, et seq., Plaintiff and
13 Represented Employees are entitled to restitution of the wages withheld and retained by
14 Defendants during a period that commences four years prior to the filing of this complaint; a
15 permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and
16 Represented Employees; an award of attorneys' fees pursuant to California Code of Civil
17 Procedure § 1021.5 and other applicable laws; and an award of costs.

18 **VI. LABOR CODE PRIVATE ATTORNEYS GENERAL ACT CAUSES OF ACTION**
19 **(Cal. Lab. Code. §§ 2698 – 2699.5)**

20 125. Plaintiff is an “aggrieved employee” under the PAGA as he was employed by
21 Defendants during the applicable statutory period and suffered one or more of the Labor Code
22 violations alleged herein. As such, Plaintiff may recover the remedies described herein in a civil
23 action filed on behalf of himself and all other similarly situated current and former aggrieved
24 employees in California against whom one or more of the alleged violations was committed
25 (hereinafter the “Aggrieved Employees”).

26 126. Pursuant to Labor Code § 2699.3(a), on May 20, 2020, Plaintiff gave written
27 notice by online filing to the Labor and Workforce Development Agency (“LWDA”) and by
28

1 certified mail to Defendants of the specific provisions of the Labor Code alleged to have been
2 violated, including the facts and theories to support the alleged violations.

3 127. Therefore, once more than sixty-five (65) days have passed since that date,
4 Plaintiff will have fully satisfied the administrative prerequisites to suit under the PAGA and this
5 Complaint will be deemed amended to include the PAGA allegations enumerated below. Once
6 this occurs, Plaintiff seeks to recover all applicable and available PAGA remedies pursuant to
7 Labor Code § 2699, as well as attorneys' fees, costs, and/or other damages as permitted by
8 PAGA through a representative action pursuant to the PAGA and the California Supreme Court
9 in *Arias v. Superior Court* (2009) 46 Cal. 4th 969. Plaintiff is not required to, nor does he, seek
10 class certification of the PAGA claims under Code of Civil Procedure § 382.

11 **NINTH CAUSE OF ACTION**

12 **PAGA ASSESSMENT FOR FAILURE TO PAY MINIMUM WAGES**

13 (Labor Code §§ 200, 1194, 1194.2, 1197; IWC Wage Order § 4)

14 *Plaintiff and the Aggrieved Employees against All Defendants*

15 128. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
16 alleged herein.

17 129. Plaintiff and the Aggrieved Employees were not exempt from the requirement to
18 be paid at least the applicable California minimum wage throughout the statutory period for each
19 hour worked.

20 130. Plaintiff and the Aggrieved Employees were not provided proper minimum and
21 regular wages due to Defendants' failure to accurately record and compensate for hours worked.

22 131. As a result of Defendants' policies or practices described above, Plaintiff and the
23 Aggrieved Employees were required to perform off-the-clock work that Defendants either knew
24 or should have known they were performing.

25 132. Consequently, Defendants violated California Labor Code laws and minimum
26 wage laws, *inter alia*, Labor Code §§ 200, 221, 222, 223, 1197, IWC Wage Order 9, § 4, and
27 Cal. Code Regs., tit. 8, section 11090, subds. 1 and 4(B).
28

1 133. Plaintiff is informed and believes and thereon alleges that Defendants
2 intentionally, willfully, and improperly failed to pay wages to Plaintiff and the Aggrieved
3 Employees for each hour worked in violation of Labor Code §§ 221-223, 1194 and 1197.

4 134. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
5 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
6 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

7 **TENTH CAUSE OF ACTION**

8 **PAGA ASSESSMENT FOR FAILURE TO PAY OVERTIME WAGES**

9 (Labor Code §§ 204 and 510; IWC Wage Order § 3(A))

10 *Plaintiff and the Aggrieved Employees against All Defendants*

11 135. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
12 alleged herein.

13 136. Plaintiff and the Aggrieved Employees were “nonexempt” employees of
14 Defendants who did not receive proper protections and benefits of the laws governing payment
15 of overtime wages.

16 137. Labor Code § 204 requires that the employer timely pay all overtime wages to its
17 employees. Labor Code § 510(a) and the applicable IWC Wage Order § 3(A) provide that any
18 work performed in excess of eight (8) hours in one workday or in excess of forty (40) hours in
19 any one workweek shall be compensated at the rate of no less than one and one-half times the
20 regular rate of pay for an employee. Furthermore, any work performed in excess of twelve (12)
21 in one workday shall be compensated at twice the regular rate of pay for an employee.

22 138. At all relevant times, Plaintiff and the Aggrieved Employees were required by
23 Defendants to work hours in excess of 8 and/or 12 per day and/or 40 per week. However, due to
24 Defendants' failure to accurately record and compensate for all hours worked, Plaintiff and the
25 Aggrieved Employees did not receive proper overtime compensation.

26 139. Among other violations, Defendants paid Plaintiff and the Aggrieved Employees
27 on an hourly basis but also paid additional earned compensation in the form of bonuses, “on-
28 call” pay, and similar pay. However, during workweeks where the Plaintiff and the Aggrieved

1 Employees worked overtime hours and earned additional nondiscretionary compensation,
2 Defendants failed to include this additional nondiscretionary compensation in the calculations for
3 the regular rate of pay and instead paid overtime at only 1.5 times the base rate of pay – violating
4 the well-established rule that overtime must always be paid at time and one-half the regular rate
5 of pay.

6 140. Additionally, at all relevant times, Defendants paid Plaintiff and the Aggrieved
7 Employees on an hourly basis but used multiple rates within the same workweek. However,
8 during workweeks where the Plaintiff and the Aggrieved Employees earned more than one rate
9 of pay, Defendants improperly paid overtime based solely on 1.5 times the base rate of pay, in
10 violation of California law.

11 141. Defendants violate Labor Code §§ 204 and 510 and the applicable IWC Wage
12 Order § 3(A) every pay period with respect to Plaintiff and the Aggrieved Employees because
13 Defendants failed to pay Plaintiff and the Aggrieved Employees for all overtime hours worked,
14 and required Plaintiff and the Aggrieved Employees to work without being properly
15 compensated for all overtime wages earned.

16 142. Plaintiff is informed and believes and thereon alleges that Defendants
17 intentionally, willfully, and improperly failed to pay wages to Plaintiff and the Aggrieved
18 Employees for each hour worked in violation of Labor Code §§ 204, 221-223, 510, 1194 and
19 1197.

20 143. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
21 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
22 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

23 **ELEVENTH CAUSE OF ACTION**

24 **PAGA ASSESSMENT FOR FAILURE TO PROVIDE COMPLIANT MEAL PERIODS**

25 (Labor Code § 226.7 and 512; IWC Wage Order § 11, 12)

26 *Plaintiff and the Aggrieved Employees against All Defendants*

27 144. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
28 alleged herein.

1 145. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
2 who did not receive proper protections and benefits of the laws governing mandatory meal
3 periods.

4 146. Labor Code § 226.7 requires employers, including Defendants, to provide
5 employees with meal periods as mandated by the Industrial Welfare Commission.

6 147. Labor Code § 512(a), in part, provides that employers, including Defendants, may
7 not employ an employee for a work period of more than five hours per day without providing an
8 employee the opportunity to take an uninterrupted meal period of not less than 30 minutes,
9 except that if the total work period per day of the employee is no more than six hours, the meal
10 period may be waived by mutual consent of both the employer and the employee. Employers
11 may not employ an employee for a work period more than 10 hours per day without providing
12 the employee with a second meal period of not less than 30 minutes.

13 148. Pursuant to Labor Code § 226.7(b) and the applicable IWC Wage Order § 11(B),
14 Defendants shall pay an employee one additional hour of pay at the employee's regular rate of
15 pay for each meal period that is missed.

16 149. At all relevant times herein, Plaintiff and the Aggrieved Employees were denied
17 the 30-minute meal periods to which they were entitled. As a result of Defendants' policies and
18 practices, Plaintiff and the Aggrieved Employees were subjected to meal period violations when
19 they were: (1) unable to take meal periods due to workload, (2) forced to take on-duty meal
20 period while under the control of Defendants, (3) forced to take meal periods, if such a meal
21 occurred, after the 5th hour of work, and (4) not provided a mandated second meal period for
22 shifts in excess of 10 hours.

23 150. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage
24 Order every pay period with respect to Plaintiff and the Aggrieved Employees because Plaintiff
25 and the Aggrieved Employees were not provided with all mandatory meal periods and
26 Defendants failed to pay the Aggrieved Employees one additional hour of compensation at the
27 regular rate of pay in lieu thereof.
28

1 151. On information and belief, Plaintiff and the Aggrieved Employees did not
2 voluntarily or willfully waive the mandated meal periods. Any expressed or implied waivers
3 obtained from Plaintiff and the Aggrieved Employees were not willfully obtained, were not
4 voluntarily agreed to, were a condition of employment, or were a part of a contract of an
5 unlawful adhesion. Defendants did not permit or authorize Plaintiff and the Aggrieved
6 Employees to take meal periods in accordance with California law.

7 152. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
8 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
9 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

10 **TWELFTH CAUSE OF ACTION**

11 **PAGA ASSESSMENT FOR FAILURE TO PROVIDE REST BREAKS**

12 (Labor Code § 226.7 and 512; IWC Wage Order § 12)

13 *Plaintiff and the Aggrieved Employees against All Defendants*

14 153. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
15 alleged herein.

16 154. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
17 who did not receive proper protections and benefits of the laws governing mandatory rest breaks.

18 155. Labor Code § 226.7 requires employers, including Defendants, to provide rest
19 breaks to its employees as mandated by Order of the Industrial Welfare Commission.

20 156. The IWC Wage Order § 12 states, in part, that every employer shall authorize and
21 permit all employees to take rest periods, which insofar as practicable shall be in the middle of
22 each work period. Employees shall receive a 10-minute rest period every four hours or major
23 fraction thereof that they are required to work. Authorized rest period time shall be counted, as
24 hours worked, for which there shall be no deduction from wages.

25 157. Pursuant to Labor Code § 226.7(b) and Section 12(B) of the applicable Wage
26 Order, Defendants shall pay Plaintiff and the Aggrieved Employees one additional hour of pay at
27 his regular rate of compensation for each day that the rest period is not provided.

1 158. Defendants failed to provide Plaintiff and the Aggrieved Employees with 10
2 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as mandated
3 by California law. Defendants did not schedule rest breaks and the Aggrieved Employees were
4 often not authorized and/or permitted to take mandated rest breaks due to being overwhelmed by
5 their hectic workload. Additionally, Plaintiff and the Aggrieved Employees were often not
6 permitted to leave the premises for rest breaks, in violation of California law. Furthermore, on
7 occasions when Plaintiff and the Aggrieved Employees worked in excess of 10 hours in a shift,
8 Defendants failed to authorize and/or permit a third mandated rest break.

9 159. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage
10 Order every pay period with respect to Plaintiff and the Aggrieved Employees because Plaintiff
11 and the Aggrieved Employees were not provided with all mandatory rest periods and Defendants
12 failed to pay the Aggrieved Employees one additional hour of compensation in lieu thereof.

13 160. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
14 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
15 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

16 **THIRTEENTH CAUSE OF ACTION**

17 **PAGA ASSESSMENT FOR FAILURE TO REIMBURSE BUSINESS EXPENSES**

18 (Labor Code § 2802)

19 *Plaintiff and the Aggrieved Employees against All Defendants*

20 161. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
21 alleged herein.

22 162. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
23 who did not receive proper protections and benefits of the laws governing reimbursement of
24 business expenses.

25 163. Labor Code § 2802(a) requires that the employer indemnify its employees for
26 expenses and losses incurred while discharging their duties or in obedience to the directions of
27 their employer.
28

1 164. At all relevant times herein mentioned, as a condition of employment, Defendants
2 required Plaintiff and the Aggrieved Employees to incur necessary business-related expenses and
3 costs without reimbursement, including, but not limited to, acquiring and maintaining a smart
4 phone and related monthly data plan to communicate with Defendants via phone and text
5 message.

6 165. At all relevant times herein, Defendants violated Labor Code § 2802(a) when they
7 failed to reimburse the Aggrieved Employees for expenses incurred as a direct consequence of
8 Plaintiff's employment with Defendants and/or under the direction of Defendants.

9 166. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
10 the assessment of all applicable and available remedies pursuant to Labor Code § 2699, and
11 seeks to recover all attorneys' fees, costs, and/or any other damages permitted under the PAGA.

12 **FOURTEENTH CAUSE OF ACTION**

13 **PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY WAGES EACH PERIOD**

14 (Labor Code § 204)

15 *Plaintiff and the Aggrieved Employees against All Defendants*

16 167. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
17 alleged herein.

18 168. Plaintiff and the Aggrieved Employees are and/or were "nonexempt" employees
19 of Defendants who did not receive proper protections and benefits of the laws regarding the
20 timing of payment of wages each period.

21 169. Labor Code § 204(a) states that all wages earned by a person are due and payable
22 twice during each calendar month, and further states that wages earned during the first through
23 fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that
24 wages earned between the sixteenth and last day of the month must be paid by the tenth day of
25 the following month.

26 170. Furthermore, Labor Code § 204(d) states "[t]he requirements of this section shall
27 be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if
28 the wages are paid not more than seven calendar days following the close of the payroll period."

1 171. At all relevant times herein, Defendants did not provide Plaintiff and the
2 Aggrieved Employees with all wages due and owing each period within the time required by
3 Labor Code § 204. Moreover, Defendants did not provide Plaintiff and the Aggrieved
4 Employees with all wages due and owing each pay period, including, but not limited to,
5 minimum, regular, and overtime wages, as well as meal and rest period premiums, within the
6 time specified by Labor Code § 204.

7 172. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
8 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
9 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

10 **FIFTEENTH CAUSE OF ACTION**

11 **PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY FINAL WAGES**

12 (Labor Code §§ 201 – 203 and 256)

13 *Plaintiff and the Aggrieved Employees against All Defendants*

14 173. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
15 alleged herein.

16 174. Plaintiff and the Aggrieved Employees are and/or were “non-exempt” employees
17 of Defendants who did not receive proper protections and benefits of the laws governing the
18 timing and payment of final wages.

19 175. Labor Code § 201 requires that the employer immediately pay any wages, without
20 abatement or reduction, to any employee who is discharged.

21 176. Labor Code § 202 requires that the employer pay all wages earned and unpaid,
22 without abatement or reduction, no later than 72 hours of receiving an employee's notice of
23 intent to quit or immediately at the time of quitting if at least a 72-hour notice was provided.

24 177. Labor Code §§ 201-203 cause the unpaid wages of the employee to continue as a
25 penalty from the due date thereof at the same rate until paid or until an action therefore is
26 commenced, but the wages shall not continue for more than thirty (30) days.

27 178. At all relevant times here, Defendants did not provide Plaintiff and the Aggrieved
28 Employees with all wages due and owing upon separation of employment, including, but not

1 limited to, minimum, regular, and overtime wages, as well as meal and rest period premiums,
2 within the time specified by Labor Code §§ 201 – 203.

3 179. Plaintiff alleges that, at all times material to this action, Defendants had a planned
4 pattern and practice of failing to timely pay to Plaintiff and the Aggrieved Employees all wages
5 due and owing upon separation of employment as required by Labor Code §§ 201 and 202.

6 180. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
7 the assessment of all applicable and available PAGA remedies pursuant to Labor Code §§ 256
8 and 2699, and seeks to recover all attorneys' fees, costs, and/or any other damages permitted
9 under PAGA.

10 **SIXTEENTH CAUSE OF ACTION**

11 **PAGA ASSESSMENT FOR**

12 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

13 (Labor Code § 226)

14 *Plaintiff and the Aggrieved Employees against All Defendants*

15 181. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
16 alleged herein.

17 182. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
18 who did not receive proper protections and benefits of the laws governing the provision of
19 accurate itemized wage statements.

20 183. Labor Code § 226(a) requires an employer to provide its employees with itemized
21 wage statements accurately stating gross wages earned, all deductions, net wages earned, the
22 inclusive dates of the pay period, the employee's name and the last four digits of his or her
23 Social Security number (or employee identification number), the name and address of the legal
24 entity that is the employer, and all applicable hourly rates in effect during the pay period and the
25 corresponding number of hours worked at each hourly rate by the employee.

26 184. Defendants violate Labor Code § 226(a) every pay period with respect to Plaintiff
27 and the Aggrieved Employees because Defendants failed to provide a wage statement to Plaintiff
28 and the Aggrieved Employees that complied with the requirements of Labor Code § 226(a).

1 185. Specifically, Defendants’ uniform wage statements listed line-items for regular
2 hours, overtime hours, and double time hours, and then summed all hours into a “Total Work
3 Hrs” line-item. However, the “Total Work Hrs” line-item fails to accurately state total hours
4 worked in the period because Defendants’ wage statements specifically state that the overtime
5 hours were worked in the prior period (*e.g.* “Correction: 9.67 OT Hours for 2/17/20 – 2/23/20”
6 appears on the paystub for the period 2/24/20 – 3/1/20). Additionally, on the occasions that an
7 Aggrieved Employee worked a prevailing wage job during a pay period, Defendants’ practice
8 was to issue two wage statements for the same pay period, one of which would list the prevailing
9 wage hours and the other that would list the non-prevailing wage hours. As a result of these
10 practices, Defendants’ wage statements failed to accurately state the total hours worked each
11 period, in direct violation of Labor Code § 226(a)(2).

12 186. Defendants’ wage statements also failed to state the accurate overtime rate of pay,
13 and further failed to accurately state gross wages earned, all deductions, and net wages earned.

14 187. Therefore, Defendants violate Labor Code § 226(a) every pay period with respect
15 to Plaintiff and the Aggrieved Employees because Defendants failed to provide complete and
16 accurate wage statements to Plaintiff and the Aggrieved Employees that complied with the
17 requirements of Labor Code § 226(a).

18 188. As a result of the Defendants’ violations of Labor Code §226(a)(9), Plaintiff seeks
19 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
20 and seeks to recover all attorneys’ fees, costs, and/or any other damages permitted under PAGA.
21 See *Raines v. Coastal Pacific Food Distributors, Inc.* (2018) 23 Cal.App.5th 667, 675 (“Section
22 226.3 provides the civil penalty for failure to comply” with Labor Code § 226).

23 **VII. PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff, on behalf of himself, on a representative basis, and all others
25 similarly situated, prays for judgment and relief against Defendants, jointly and severally, as
26 follows:

27 1. As to the Ninth through Sixteenth Causes of Action, the assessment of all
28 applicable and available remedies under the PAGA;

2. For reasonable attorneys' fees and costs as permitted under the PAGA;
3. That the First through Eighth Causes of Action be certified as a class action;
4. That Plaintiff be appointed as Class Representative;
5. That counsel for Plaintiff be appointed Class Counsel;
6. For all applicable statutory penalties recoverable under the First through Eighth Causes of Action to the extent permitted by law, including those pursuant to Labor Code and Orders of the Industrial Welfare Commission;
7. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted by law, including those pursuant to the Labor Code;
8. For injunctive relief and/or restitution as provided by the Labor Code and Business and Professions Code § 17200, *et seq.*;
9. For a declaratory judgment that Defendants have violated Labor Code §§ 200, 201, 202, 203, 204, 208, 210, 218.6, 221, 226, 226.3, 226.7, 227.3, 256, 510, 512, 558, 1194, and 2802 among other sections inadvertently omitted;
10. For an award of damages in the amount of unpaid compensation including, but not limited to, unpaid wages, benefits, and penalties according to proof, including interest thereon;
11. For pre- and post-judgment interest; and
12. For such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, hereby demands a jury trial as to the First through Sixteenth Causes of Action pled herein.

Dated: May 22, 2020

FERNANDEZ & LAUBY LLP

BY:



Brian J. Mankin, Esq.
Peter J. Carlson, Esq.
Attorneys for Plaintiff