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7 on behalf of herself and similarly situated employees

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Superior Court of California,
County of Placer
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11 **SUPERIOR COURT OF CALIFORNIA**
12 **FOR THE COUNTY OF PLACER**

14	BLYTHE DUCHENEAUX, individually	)	Case No. S-CV-0044826
15	and on behalf of all others similarly	)	<u>CLASS ACTION</u>
16	situated,	)	FIRST AMENDED COMPLAINT FOR
17	Plaintiffs,	)	DAMAGES:
18	vs.	)	1. Violation of California Unfair
19	SYUFY PROPERTIES, INC;	)	Competition Law (Business &
20	VILLASPORT ROSEVILLE, LLC;	)	Professions Code § 17200 et seq.
21	VILLASPORT, LLC; Does 1 through 20,	)	2. Failure to Provide Accurate Wage
22	inclusive,	)	Statements;
23	Defendants.	)	3. Failure to Pay Minimum Wage for All
24		)	Hours Worked;
25		)	4. Failure to Provide Meal and Rest
26		)	Periods;
27		)	5. Waiting Time Penalties;
28		)	6. Failure to Pay Overtime Wages;
		)	7. Failure to Reimburse Business
		)	Expenses
		)	8. Civil Penalties Pursuant to Private
		)	Attorney General Act, Labor Code §
		)	2698 et seq.
		)	JURY TRIAL DEMANDED

1 Plaintiff BLYTHE DUCHENEAUX ("Plaintiff"), on behalf of herself and all other similarly
2 situated employees hereby files this First Amended Complaint against Defendants SYUFY
3 PROPERTIES, INC; VILLASPORT ROSEVILLE, LLC; VILLASPORT, LLC; Does 1 through 20
4 (collectively referred to as "Defendants"). Plaintiff alleges the following:

5 **INTRODUCTION**

6 1. This is a class and representative action brought by Plaintiff seeking damages for
7 failure to provide meal and rest periods, failure to pay overtime and minimum wages, inaccurate
8 wage statements, failure to reimburse for business expenses, and derivative civil and statutory
9 penalties. Plaintiff seeks these damages and penalties, plus interest and attorney's fees, on behalf of
10 herself and similarly situated employees.

11 2. During all relevant times, Plaintiff and similarly situated employees worked for
12 Defendants as employees. Defendants issued wage statements to Plaintiff and similarly situated
13 employees that did not comply with California law because, among other things, they did not include
14 all hours worked, and the rate of pay. As a matter of policy and practice, Defendants failed to
15 provide Plaintiff and similarly situated employees meal and rest periods, which is in violation of the
16 California Labor Code.

17 **JURISDICTION AND VENUE**

18 3. The Placer County Superior Court has jurisdiction in this matter due to alleged
19 violations of California Labor Code §§ 226, 226.3, 213, 2698 *et seq.*, Business and Professions Code
20 § 17200 *et seq.*

21 4. Venue is proper pursuant to Civil Procedure Code §§ 395(a) and 395.5, in that some
22 of the wrongful acts and violations of law asserted herein occurred within Placer County.

23 **PARTIES**

24 5. Plaintiff BLYTHE DUCHENEAUX is over the age of eighteen (18) and is a resident
25 of the State of California and an employee of Defendants.

26 6. Plaintiff is informed and believes, and thereupon alleges, that Defendant SYUFY
27 PROPERTIES, INC is now and/or at all times mentioned in this Complaint a California Corporation
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1 and the owner and operator of an industry, business and/or facility licensed to do business and
2 actually doing business in the State of California.

3 7. Plaintiff is informed and believes, and thereupon alleges, that Defendant
4 VILLASPORT, LLC is now and/or at all times mentioned in this Complaint a Colorado Limited
5 Liability Company and the owner and operator of an industry, business and/or facility licensed to do
6 business and actually doing business in the State of California.

7 8. Plaintiff is informed and believes, and thereupon alleges, that Defendant
8 VILLASPORT ROSEVILLE, LLC is now and/or at all times mentioned in this Complaint a
9 California Limited Liability Company and the owner and operator of an industry, business and/or
10 facility licensed to do business and actually doing business in the State of California.

11 9. Plaintiff is informed and believes, and based thereon alleges, that Defendants, jointly
12 and severally, have acted with deliberate indifference and conscious disregard to the rights of all
13 employees. Plaintiff is further informed and believes, and based thereon alleges, that Defendants
14 were at all relevant times advised by skilled California employment law attorneys and knew the
15 requirements of the California Labor Code with respect to employee wage statements, payment of
16 wages, reimbursement of business expenses, and provision of meal and rest periods.

17 10. Defendants proximately caused Plaintiff and similarly situated employees to be
18 subjected to the unlawful practices, wrongs, complaints, injuries, and/or damages alleged in this
19 Complaint.

20 11. Plaintiff is further informed and believes, and thereon alleges, that each of the
21 Defendants herein was, at all times relevant to this action, the agent, employee, or joint employer or
22 joint venturer of the remaining defendants and was acting within the course and scope of that
23 relationship. Plaintiff is further informed and believes, and thereon alleges, that each of the
24 Defendants herein gave consent to, ratified and authorized the acts alleged herein to each of the
25 remaining defendants. The true names and capacities of the defendants named herein Does 1 through
26 20, inclusive, whether individual, corporate, associate, or otherwise are unknown to Plaintiff, who
27 therefore sues such defendants by fictitious names pursuant to California Code of Civil Procedure
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1 section 474. Plaintiff will amend this complaint to show such true names and capacities of Does 1
2 through 20, inclusive, when they have been determined.

3 12. On May 14, 2020, Plaintiff filed her Labor Code § 2699.3 Private Attorney General
4 Act ("PAGA") notice with the California Labor & Workforce Development Agency ("LWDA").
5 The LWDA did not respond within 65 days of filing of the PAGA notice.

6 **CLASS ALLEGATIONS**

7 13. Plaintiff brings this action, on behalf of herself and all others similarly situated, as a
8 class action pursuant to California Code of Civil Procedure section 382. The classes that Plaintiff
9 seeks to represent are composed of and defined as follows:

10 All non-exempt employees who were employed by Defendants in California at any
11 time four (4) years prior to the filing of this Action up to the date that this matter is
12 certified as a class action.

13 14. This action has been brought and may be properly maintained as a class action,
14 pursuant to the provision of California Code of Civil Procedure section 382, because there is a well-
15 defined community of interest in the litigation and the proposed classes are easily ascertainable.

16 (a) Numerosity: The Plaintiff Class is so numerous that the individual joinder of all
17 members is impracticable under the circumstances of this case. While the exact
18 number of class members is unknown to Plaintiff at this time, Plaintiff is informed
19 and believes that Defendants may have employed hundreds of individuals falling
20 within the above stated class definitions throughout the State of California during the
21 applicable statute of limitations, who were subjected to the practices outlined in this
22 Complaint. As such, joinder of all members of the Plaintiff Class is not practicable.

23 (b) Common Questions Predominate: Common questions of law and fact exist as to all
24 members of the Plaintiff Class and predominate over questions that affect only
25 individual members of the class. These common questions of law and fact include,
26 without limitation, the following:

27 (1) Whether Defendants accurately stated all required information on
28 paystubs issued to members of the Plaintiff Class;

- (2) Whether Defendants maintained the time and payroll records for their employees as required under the California Labor Code;
- (3) Whether Defendants provided meal and rest periods to their employees as required under the California Labor Code;
- (4) Whether Defendants maintained policies and practices that provided meal and rest periods to their employees as required under the California Labor Code;
- (5) Whether Defendants paid overtime and minimum wages to their employees as required under the California Labor Code;
- (6) Whether Defendants reimbursed their employees for reasonable business expenses.

(c) Typicality: Plaintiff's claims are typical of the claims of the members of the Plaintiff Class. Plaintiff also sustained damages arising out of Defendants' common course of conduct in violation of the law as complained of herein. Defendants failed to provide meal and rest periods to their employees, failed to pay all overtime and minimum wages owed, and issued Plaintiff and all members of the putative class wage statements that did not comply with Labor Code section 226. Additionally, Defendants failed to reimburse Plaintiff and Class members for reasonable business expenses. As a result, each putative class member will have the same basis for their legal claims.

(d) Adequacy: Plaintiff will fairly and adequately protect the interests of the members of the putative class. Plaintiff resides in California and is an adequate representative of the putative class as she has no interests that are adverse to those of absent class members. Additionally, Plaintiff has retained counsel who have substantial experience in complex civil litigation and wage and hour matters.

(e) Superiority: A class action is superior to other available means for the fair and efficient adjudication of the controversy since individual joinder of all members of the classes is impracticable. Class action treatment will permit a larger number of

1 similarly situated persons to prosecute their common claims in a single forum
2 simultaneously, efficiently, and without the unnecessary duplication of effort and
3 expense that numerous individual actions would engender. Further, as damages
4 suffered by each individual member of the classes may be relatively small, the
5 expenses and burden of the individual litigation would make it difficult or impossible
6 for individual members of the class to redress the wrongs done to them, and an
7 important public interest will be served by addressing the matter as a class action.
8 The cost to the court system of adjudication of such individualized litigation would be
9 substantial. Individualized litigation would also present the potential for inconsistent
10 or contradictory judgments.

11 15. Plaintiff is unaware of any difficulties that are likely to be encountered in the
12 management of this action that would preclude its maintenance as a class action.

13 **GENERAL ALLEGATIONS**

14 16. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 14 as
15 though fully set forth herein.

16 17. Defendants own and manage a chain of athletic clubs and spas located in
17 California as well as in other states.

18 18. Plaintiff BLYTHE DUCHENEAUX worked for Defendants as an Ambassador
19 from approximately July 2019 through March 2020. Plaintiff was at all times classified by
20 Defendants as non-exempt employee, and was entitled to overtime pay, minimum wages, meal
21 and rest periods, and reimbursement for business expenses. However, Defendants failed to
22 provide meal and rest periods to Plaintiff and similarly situated employees, failed to pay all
23 overtime and minimum wages owed, and violated various other provisions of the Labor Code

24 19. Plaintiff brings this Class Action on behalf of herself and similarly situated
25 employees in order to fully compensate herself and Class Members for their losses incurred
26 during the class period caused by Defendants' uniform policies and practices which failed to
27 lawfully compensate these employees.

1 20. Defendants' uniform policies and practices alleged herein were unlawful, unfair
2 and deceptive business practices whereby Defendants retained and continues to retain wages due
3 Plaintiff and the other Class Members. Plaintiff and the other Class Members seek an injunction
4 enjoining such conduct by Defendant in the future, relief for the named Plaintiff and the other
5 Class Members who have been economically injured by Defendant' past and current unlawful
6 conduct, and all other appropriate legal and equitable relief.

7 21. Defendants routinely required Plaintiff and similarly situated employees to work
8 more than eight (8) hours per day, and/or forty (40) hours per week for which all overtime and
9 minimum wages were not paid. This includes but is not limited to off-the-clock time that
10 Plaintiffs and other Class Members were required to work and for which they were not paid.

11 22. In addition, Defendants failed to correctly calculate the regular rate of pay when
12 they paid overtime to their employees by, among other things, failing to incorporate incentive
13 pay and other forms of nondiscretionary remuneration.

14 23. Defendants also did not allow Plaintiff and similarly situated employees to take
15 their statutorily required meal and rest periods. Defendants frequently interrupted the meal and
16 rest periods of Plaintiff and similarly situated employees, requiring them to resume work or
17 requiring them to discuss work-related concerns during their meal and rest periods. Frequently,
18 Plaintiff and similarly situated employees were unable to take meal or rest periods during their
19 work shifts.

20 24. Defendants policy and practices did not allow for Plaintiff and similarly situated
21 employees to take a meal period during their shift, and no second meal period was provided
22 when Plaintiff and similarly situated employees worked a shift of ten hours or more. As a result,
23 Defendants failed to provide Plaintiff and other similarly situated employees a 30-minute, duty-
24 free meal period before the end of the fifth hour of work as required under the law.

25 25. Defendant's management staff were aware this was occurring and did not ensure
26 meal and/ or rest periods were provided to Plaintiff and similarly situated employees in
27 compliance with California law.
28

1 26. Defendants also failed to provide rest periods to Plaintiff and similarly situated
2 employees for every 4 hours worked or major fraction thereof. Defendants failed to pay Plaintiff
3 and similarly situated employees a missed rest period premium when statutorily-required rest
4 periods were not provided.

5 27. Defendants did not maintain a facially compliant policy regarding the provision of
6 meal and rest periods, and meal and rest periods were not provided in compliance with California
7 law. In fact, Defendants had no policy allowing for meal or rest periods for Plaintiff and
8 similarly situated employees.

9 28. Defendants also frequently fraudulently changed Plaintiff's and other similarly
10 situated employees' timecard and time entries in order to avoid payment of overtime, minimum
11 wages, and/ or meal and rest period penalties.

12 29. Nor did Defendants reimburse Plaintiff and similarly situated employees for cell
13 phone usage for business purposes. Plaintiff and similarly situated employees used their cell
14 phones for business purposes on a regular basis and were not reimbursed by Defendants for this
15 business use.

16 30. Under California Labor Code Section 2802, employers are required to indemnify
17 employees for all expenses incurred in the course and scope of their employment. Cal. Lab. Code
18 § 2802 expressly states that "an employer shall indemnify his or her employee for all necessary
19 expenditures or losses incurred by the employee in direct consequence of the discharge of his or
20 her duties, or of his or her obedience to the directions of the employer, even though unlawful,
21 unless the employee, at the time of obeying the directions, believed them to be unlawful."

22 31. Plaintiff, and similarly situated employees were required by Defendants to use
23 their own personal cellular phones for work-related reasons and to complete work tasks but were
24 not reimbursed or indemnified by Defendants for the cost associated with the use of their
25 personal cellular phones for Defendants' benefit.

26 32. As a result of the practices listed above, Defendants did not provide Plaintiff and
27 similarly situated employees legally compliant wage statements noting, among other things, total
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1 hours worked, gross wages earned, the applicable hourly rates in effect during the pay period and
2 the corresponding number of hours worked at each hourly rate.

3 33. Defendants also did not provide any aggrieved employees all wages owed upon
4 their termination or within seventy-two (72) hours of their separation from employment.

5 34. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
6 employees with an accurate itemized wage statement in writing showing, among other things,
7 gross wages earned and all applicable hourly rates in effect during the pay period and the
8 corresponding amount of time worked at each hourly rate. Aside from the violations listed above
9 in this paragraph, Defendants failed to issue to Plaintiff and similarly situated employees an
10 itemized wage statement that lists all the requirements under California Labor Code 226 et seq.

11 35. Defendants' uniform policies and practices to not provide Plaintiff and Class
12 Members meal and rest periods, not pay all minimum and overtime wages earned, not pay all
13 wages owed at termination or resignation, and not to provide compliant wage statements are
14 evidenced by Defendants' business records.

15 36. Defendants, as a matter of corporate policy, practice and procedure, intentionally,
16 knowingly and systematically failed to reimburse and indemnify Plaintiff and other Class
17 Members for required business expenses incurred in direct consequence of discharging their
18 duties on behalf of Defendants.

19 **FIRST CAUSE OF ACTION**
20 **UNFAIR COMPETITION**

21 37. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 36 as
22 though fully set forth herein.

23 38. Unfair competition shall mean and include any unlawful, unfair or fraudulent
24 business act or practice and unfair, deceptive, untrue or misleading advertising and any act
25 prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the
26 Business and Professions Code. *See* Cal. Bus. and Prof. Code §§ 17200 *et seq.*

27 39. Defendants committed numerous violations of the California Labor Code
28 throughout the employment relationship.

40. Plaintiff is also informed and believes and thereon alleges that such actions and/or conduct constitute a violation of the California Unfair Competition Law (“UCL”) (Business and Professions Code section 17200 *et seq.*) pursuant to *Cortez v. Purolator Air Filtration Products Co.*, 23 Cal. 4th 163 (2000).

41. As a direct and legal result of Defendant's conduct, as alleged herein, pursuant to the UCL (including B&P Code §17203), Plaintiff and similarly situated employees are entitled to restitution as a result of its unfair business practices, including, but not limited to, public injunctive relief, pursuant to B&P Code § 17203, and interest and penalties pursuant to B&P §§ 17203, 17208, violations of Labor Code §§ 1194, 226, and 226.7, all in an amount as yet unascertained but subject to proof at trial, for four (4) years from the filing of this Action.

SECOND CAUSE OF ACTION
FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS

42. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 41 as though fully set forth herein.

43. According to Labor Code section 226(a), an employer must provide an itemized statement to an employee, semi-monthly or at the time of each payment of wages, showing:

(1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payment of wages shall be

1 *recorded in ink or other indelible form, properly dated, showing the*
2 *month, day, and year, and a copy of the statement and the record of*
3 *the deductions shall be kept on file by the employer for at least three*
 years at the place of employment or at a central location within the
 State of California.

4 44. Defendants failed to provide an itemized statement or failed to provide an accurate
5 and complete itemized statement showing the requirements set forth in Labor Code section
6 226(a). Defendants failed to list on the wage statements provided to Plaintiff and similarly
7 situated employees wage statements listing all hour worked and the applicable rates of pay and
8 overtime rate. Plaintiff alleges that Defendants failed to provide accurate itemized wage
9 statements in accordance with Labor Code section 226(a) to all members of the Labor Code
10 Class.

11 45. Additionally, Plaintiff alleges she suffered injury as a result of Defendants'
12 knowing and intentional failure to provide accurate and complete information as required by any
13 one or more of items (1) to (9), inclusive, of Labor Code section 226, subdivision (a), and
14 Plaintiff cannot promptly and easily determine (*i.e.* a reasonable person in each Plaintiff's
15 position would not be able to readily ascertain the information without reference to other
16 documents or information) from the wage statement alone. Cal. Lab Code § 226(e)(2)(B)(iv).

17 46. As a proximate cause of Defendants' failure to provide accurate statements,
18 Plaintiff and Class Members were damaged and are entitled to statutory and civil penalties under
19 the Labor Code, and attorney's fees and costs, in an amount to be proven at trial.

20 **THIRD CAUSE OF ACTION**
21 **(Failure to Pay Minimum Wage for All Hours Worked)**

22 47. Plaintiff hereby incorporates by reference Paragraphs 1 through 46 of this
23 Complaint as if fully set forth herein and for a cause of action alleges as follows:

24 48. Defendants were required to compensate Plaintiff with at least the State's
25 minimum wage for all hours worked. *See* Cal. Labor Code § 1194; MW Order-2014; MW
26 Order-2017.

27 49. Defendants were aware of their obligation to pay the minimum wages but failed to
28 do so.

1 50. Defendants' conduct described herein violates California Labor Code section
2 1194, and Wage Orders. As a proximate result of Defendants' conduct, Plaintiff and the Plaintiff
3 Class have been damaged and deprived of minimum wages, in an amount to be established at
4 trial. Plaintiff and the Plaintiff Class now seek these wages, liquidated damages pursuant to
5 California Labor Code section 1194.2, attorney's fees and costs, and interest pursuant to
6 California Labor Code sections 1194.

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8 **FOURTH CAUSE OF ACTION**
9 **(Failure to Provide Meal and Rest Periods)**

10 51. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 50 as
11 though fully set forth herein.

12 52. An employer must provide an employee a meal period and/or rest period in
13 accordance with the applicable Wage Order and Labor Code sections 226.7 and 512.

14 53. Labor Code section 510 and Wage Order 2-2001, section 11(A) require an
15 employer to provide a meal period of not less than thirty (30) minutes for each work period of
16 more than five (5) hours. If an employee works longer than ten (10) hours in a workday, the
17 employer must provide a second meal period.

18 54. Labor Code section 510 and Wage Order 2-2001 section 12(A) require an
19 employer to provide a rest period of not less than ten (10) minutes for each work period of more
20 than four (4) hours or a major fraction thereof.

21 55. Plaintiff alleges that Defendants failed to provide Plaintiff and similarly situated
22 employees with meal breaks of at least thirty (30) minutes for several work periods that Plaintiff
23 and similarly situated employees worked more than five (5) hours in a day, or to take a second
24 meal break of at least thirty (30) minutes for several work periods that Plaintiff and similarly
25 situated employees worked more than ten (10) hours in a day.

26 56. Plaintiff further alleges that Defendants failed to provide rest breaks of at least ten
27 (10) minutes for each work period that he and similarly situated employees worked for four (4)
28 hours or major fraction thereof.

57. As a proximate cause of Defendants' failure to provide meal and rest periods, Plaintiffs and members of the Class are entitled to one (1) hour of pay at the regular rate of compensation for each meal period or rest period not provided, as a wage, from three (3) years of the filing of this action, in an amount to be established at trial. *See* Labor Code § 226.7 and Wage Order 2-2001 §§ 11(B), 12(B).

FIFTH CAUSE OF ACTION
(Waiting Time Penalties)

58. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 57 as though fully set forth herein.

59. An employer must pay an employee who is terminated all unpaid wages immediately upon termination. California Labor Code § 201.

60. An employer who willfully fails to pay an employee wages in accordance with California Labor Code sections 201 and/or 202 must pay the employee a waiting time penalty of up to thirty (30) days. California Labor Code § 203.

61. Plaintiff and similarly situated employees did not receive all wages at their termination or separation from employment, including, but not limited to, unpaid overtime and minimum wages, and unpaid meal and rest period penalties.

62. Defendants knew of their obligation to pay Plaintiff and Class Members and Defendants' failure to pay all wages was in complete disregard of their obligations. Such conduct shows Defendants' knowledge of their obligation to pay all wages owed upon termination and willful refusal.

63. As a proximate result of the Defendants' conduct, Plaintiff and Class members have been damaged and deprived of their wages and thereby seek their daily rate of pay multiplied by thirty (30) days for Defendants' failure to pay all wages due.

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SIXTH CAUSE OF ACTION
(Failure to Pay Overtime Wages)

64. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 63 as though fully set forth herein.

65. During the period Plaintiff and similarly situated employees were employed by Defendants, Defendants were required to compensate them one and one-half (1½) times the regular rate of pay for hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and two (2) times the regular rate of pay for hours worked in excess of twelve (12) hours per day. *See* California Labor Code §§ 510, 1194. Although Plaintiff and similarly situated employees regularly worked in excess of eight (8) hours a day and/or forty (40) hours per week, Defendants failed to pay all overtime wages owed to them.

66. Plaintiff and Class members were non-exempt employees under the administrative, executive, or professional exemptions of the applicable Wage Order and California Labor Code section 510.

67. Defendants purposefully failed to pay all overtime wages owed to Plaintiff and Class Members in order to avoid overtime and other wage and hour requirements under the Labor Code.

68. Defendants' conduct described herein violates California Labor Code sections 510 and 1194, and Wage Orders. As a proximate result of Defendants' conduct, Plaintiff and Class members have been damaged and deprived of overtime wages, in an amount to be established at trial. Plaintiff now seeks these wages, attorney's fees and costs, and interest pursuant to California Labor Code sections 1194.

SEVENTH CAUSE OF ACTION
(Failure to Reimburse Business Expenses)

69. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 68 as though fully set forth herein.

70. Labor Code section 2802(a) states that "An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct

1 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
2 the employer, even though unlawful, unless the employee, at the time of obeying the directions,
3 believed them to be unlawful.”

4 71. Defendants knew that Plaintiff and members of the Class incurred expenses for
5 work purposes, including but not necessarily limited to business use of employee cell phones.
6 However, Defendants did not reimburse Plaintiff or members of the Class for these expenses.

7 72. Defendants’ conduct described herein violated California Labor Code section
8 2802. As a proximate result of Defendants’ conduct, Plaintiff and members of the Class have
9 been damaged in an amount to be established at trial, and are entitled to recover these damages,
10 as well as interest and reasonable attorney’s fees and costs, pursuant to statute.

11 **EIGHTH CAUSE OF ACTION**
12 **CIVIL PENALTIES PURSUANT TO PAGA § 2698 ET SEQ.**

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14 73. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 72 as
15 though fully set forth herein.

16 74. Plaintiff brings this cause of action as a proxy for the State of California and in
17 this capacity, seeks penalties on behalf of all Aggrieved Employees for Defendants’ violations of
18 the California Labor Code, including but not necessarily limited to, those Labor Code violations
19 identified above.

20 75. On or about May 14, 2020, Plaintiff sent written notice to the LWDA regarding
21 Defendant’s violations of the California Labor Code, pursuant to Labor Code section 2698, *et*
22 *seq.*, PAGA. As of the date of the filing of this First Amended Complaint, the LWDA has not
23 informed Plaintiff whether the LWDA intends to investigate Plaintiff’s PAGA claims. As such,
24 Plaintiff has exhausted his administrative remedies under PAGA and may proceed in this Court.

25 76. Plaintiff is thus entitled to recover civil penalties on behalf of the State of
26 California and all Aggrieved Employees for all violations of the Labor Code from May 14, 2019,
27 through trial on this matter.
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DAMAGES

WHEREFORE Plaintiff requests relief as follows:

1. A jury trial;
2. For an order certifying the class and sub-classes;
3. For an order certifying Plaintiff's counsel as class counsel;
4. For an order appointing Plaintiff as class representative;
5. For penalties and liquidated damages under the California Labor Code according to proof allowed by law;
6. For compensatory damages, including, but not limited to, unpaid wages, plus interest, according to proof allowed by law;
7. For an award to Plaintiff of costs of suit incurred herein and reasonable attorney's fees;
8. For injunctive relief;
9. For an award of prejudgment and post-judgment interest; and
10. For an award to Plaintiff of such other and further relief as the Court deems just and proper.

Dated: August 11, 2020

Castle Law: California Employment Counsel, PC

By: 
Timothy B. Del Castillo
Kent L. Bradbury
Attorneys for Plaintiff BLYTHE DUCHENEAUX and
the Class

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JURY TRIAL DEMAND

Plaintiff hereby demands a trial by jury.

Dated: August 11, 2020

Castle Law: California Employment Counsel, PC

By: 

Timothy B. Del Castillo
Kent L. Bradbury
Attorneys for Plaintiff BLYTHE DUCHENEAUX and
the Class