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individually and on behalf of all others similarly situated

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

REGINALD JACKSON, and on behalf of all
others similarly situated,

Plaintiffs,

v.

FEDEX FREIGHT, INC., an Arkansas
Corporation, and DOES 1-50, inclusive,

Defendants.

CASE NO.:

Assigned For All Purposes To:
Judge:
Dept.:

**CLASS ACTION COMPLAINT
PURSUANT TO CALIFORNIA CODE OF
CIVIL PROCEDURE §382**

COMPLAINT FOR:

1. Failure to Pay Wages Including Overtime as Required by Labor Code §§ 510 and 1194
2. Failure to Provide Meal Periods as Required by Labor Code §§ 226.7, 512 and IWC Wage Orders
3. Failure to Provide Rest Periods as Required by Labor Code §§ 226.7, 512
4. Failure to Pay Timely Wages Required by Labor Code § 203
5. Failure to Provide Accurate Itemized Wage Statements as Required by Labor Code § 226
6. Failure to Indemnify Necessary Business Expenses as Required by Labor Code § 2802
7. Violation of Business & Professions Code § 17200, *et seq.*

DEMAND FOR JURY TRIAL

1 Plaintiff REGINALD JACKSON (“Plaintiff”), individually and on behalf of all others
2 similarly situated (hereinafter collectively referred to as the “Class” or “Class Members”), hereby
3 file this complaint against Defendant FEDEX FREIGHT, INC.; and DOES 1-50, inclusive
4 (collectively “Defendants”) and alleges on information and belief as follows:

5 **I. JURISDICTION AND VENUE**

6 1. This class action is brought pursuant to California Code of Civil Procedure §382.
7 The monetary damages and restitution sought by Plaintiff exceed the minimum jurisdiction limits
8 of the California Superior Court and will be established according to proof at trial.

9 2. This Court has jurisdiction over this action pursuant to the California Constitution
10 Article VI §10, which grants the California Superior Court original jurisdiction in all causes
11 except those given by statute to other courts. The statutes under which this action is brought do
12 not give jurisdiction to any other court.

13 3. This Court has jurisdiction over Defendants because, upon information and belief,
14 each Defendant either has sufficient minimum contacts in California, or otherwise intentionally
15 avails itself of the California market so as to render the exercise of jurisdiction over it by the
16 California Courts consistent with traditional notions of fair play and substantial justice.

17 4. Venue is proper in this Court because upon information and belief, one or more of
18 the Defendants, reside, transact business, or have offices in this County and/or the acts or
19 omissions alleged herein took place in this County.

20 **II. PARTIES**

21 5. Plaintiff was, at all times relevant to this action, a resident of California. Plaintiff
22 was employed by Defendants from approximately December 2018 to August, 2019 as a non-
23 exempt employee in Gardena, California. Plaintiff worked for Defendants primarily as a dock
24 worker, loading and unloading freight, securing freight trailers, driving forklifts and moving
25 trailers or containers around the yard and cleaning the dock. Plaintiff also worked for Defendants
26 as a truck driver, running pallets of freight from dock to destination as needed.

27 6. Defendant FEDEX FREIGHT, INC. is part of FedEx Corporation’s portfolio of
28 companies, operating as a provider of less-than-truckload (“LTL”) freight services across all

lengths of haul. As of May 31, 2019, FEDEX FREIGHT, INC. was operating approximately 28,000 vehicles from a network of 373 service centers and had approximately 49,000 employees.

7. Other than identified herein, Plaintiff is unaware of the true names, capacities, relationships, and extent of participation in the conduct alleged herein, of the Defendants sued as DOES 1 through 50, but are informed and believe and thereon alleges that said defendants are legally responsible for the wrongful conduct alleged herein and therefore sues these defendants by such fictitious names. Plaintiff will amend this complaint when their true names and capabilities are ascertained.

8. Plaintiff is informed and believes and thereon alleges that each defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and other members of the Class, and exercised control over their wages, hours, and working conditions. Plaintiff is informed and believes and thereon alleges that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other defendants.

III. CLASS ACTION ALLEGATION

9. Plaintiff brings this action individually and on behalf of all others similarly situated as a class action pursuant to Code of Civil Procedure § 382. The members of the Class are defined as follows:

All persons who are or have been employed by Defendants as non-exempt employees, or equivalent positions, however titled, in the state of California within four (4) years from the filing of the complaint in this action until its resolution (collectively referred to as the "Class" or "Plaintiff's Class" or "Class Members").

10. Plaintiff also seeks to represent the subclass(es) composed of and defined as follows:

Sub-Class 1: All Class Members who are or were employed by Defendants and were not accurately and fully paid all lawful wages owed to them including minimum wages and/or proper overtime compensation for all their hours worked.

Sub- Class 2: All Class Members who are or were employed by Defendants who worked in excess of six or ten hours in a work day but were not provided with a timely, uninterrupted, duty-free thirty-minute meal period (hereinafter collectively referred to as the "Meal Period Subclass").

1 **Sub-Class 3:** All Class Members who are or were employed by Defendants who worked in
2 excess of three and a half (3.5) or ten hours in a work day but were not authorized and
permitted a rest period (hereinafter collectively referred to as the “Rest Period Subclass”).

3 **Sub-Class 4:** All Class Members who are or were employed by Defendants at any time
4 within one (1) year from the filing of the complaint to the present and who received wage
5 statements from Defendants (hereinafter collectively referred to as the “Wage Statement
Subclass”).

6 **Sub-Class 5:** All Class Members who have been employed by Defendants at any time
7 within four (4) years from the filing of the complaint and the present and have separated
8 their employment (hereinafter collectively referred to as the “Waiting Time Penalty
Subclass”).

9 **Sub-Class 6:** All Class Members who are or were employed by Defendants and were not
10 reimbursed for all business expenses incurred in the discharge of their duties (hereinafter
11 collectively referred to as the “Reimbursement Subclass”).

12 **Sub-Class 7:** All Class Members who are or were employed by Defendants and subject to
13 Defendant’s Unfair Business Practices (hereinafter collectively referred to as the “Unfair
Business Practice Subclass”).

14 11. Plaintiff reserves the right under California Rule of Court 3.765(b) and other
15 applicable laws to amend or modify the class definition with respect to issues or in any other
16 ways. Plaintiff is a member of the Class as well as each of the Sub-Classes.

17 12. The term “Class” includes Plaintiff and all members of the Class and each of the
18 Sub-Classes, if applicable. Plaintiff seeks class-wide recovery based on the allegations set forth in
19 this complaint.

20 13. There is a well-defined community of interest in the litigation and the proposed
21 Class is easily ascertainable through the records Defendants are required to keep.

22 14. Numerosity. The members of the Class are so numerous that individual joinder
23 of all of them as plaintiffs is impracticable. While the exact number of the Class members is
24 unknown to Plaintiff at this time, Plaintiff is informed and believes and thereon alleges that there
25 are at least 100 (one hundred) Class members.

26 15. Commonality. Common questions of law and fact exist as to all Class members
27 and predominate over any questions that affect only individual members of the Class. These
28 common questions include, but are not limited to:

i. Whether Defendants violated Labor Codes sections 200, 1194, and 1197 for failing to pay minimum wages to Plaintiff and Class Members for time spent under Defendants' control and working "off the clock" without pay;

ii. Whether Defendants violated Labor Code sections 510, 1194 and applicable IWC Wage Orders by failing to pay all earned wages including overtime compensation to Plaintiff and Class Members who worked in excess of eight (8) hours in a work day and/or more than forty (40) hours in a workweek;

iii. Whether Defendants violated Labor Code section 226.7 and applicable IWC Wage Orders, by failing to authorize and permit compliant rest periods to Plaintiff and Class Members for every four hours or major fraction thereof worked and failing to compensate said employees one hours wages in lieu of rest periods;

iv. Whether Defendants violated Labor Code sections 226.7, 512 and applicable IWC Wage Orders, by failing to provide a compliant meal period to Plaintiff and Class Members on days they worked work periods in excess of five hour and/or ten hours and failing to compensate said employees one hour wages in lieu of meal periods;

v. Whether Defendants violated sections 226 of the Labor Code and applicable IWC Wage Orders by failing to, among other violations, maintain accurate records of Plaintiff and Class Members' earned wages, work periods, meal periods and deductions;

vi. Whether Defendants provided accurate itemized wage statements pursuant to Labor Code section 226;

vii. Whether Defendants violated Labor Code section 2802 and applicable IWC Wage Orders for failing to indemnify employees for the expenditures incurred in the performance of their job duties (i.e. use of their personal phones);

viii. Whether Defendants violated section 17200 *et seq.* of the Business and Professions Code by, including but not limited to, failing to pay proper minimum and/or overtime wages to Plaintiff and Class Members; failing to provide compliant rest and/or meal periods and failing to pay compensation in lieu thereof; failing to reimburse employee expenses; failing to

1 timely pay wages, failing to keep accurate records and itemized wage statements, all in violation
2 of Labor Code sections 201-202, 510, 226, 226.7, 226.3, 512, 1174, 1174.5, 1175, 1194, 1197,
3 1197.1, 2802, and applicable IWC Wage Orders which violation constitutes a violation of
4 fundamental public policy; and

5 ix. Whether Defendants violated section 17200 *et seq.* of the Business and
6 Professions Code and Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1194, 1198,
7 1199, 2802 and applicable IWC Wage Orders which violation constitutes a violation of
8 fundamental public policy.

9 16. Typicality. Plaintiff's claims herein alleged are typical of those claims which
10 could be alleged by any member of the Class and/or Subclass, and the relief sought is typical of
11 the relief which would be sought by each member of the Class and/or Subclass in separate actions.
12 Plaintiff and all members of the Class and or Subclass sustained injuries and damages arising out
13 of and caused by Defendants' common course of conduct in violation of California laws,
14 regulations, and statutes as alleged herein.

15 17. Adequacy. Plaintiff is qualified to, and will fairly and adequately protect the
16 interests of each member of the Class and/or Subclass with whom Plaintiff has a well defined
17 community of interest and typicality of claims, as demonstrated herein. Plaintiff acknowledges an
18 obligation to make known to the Court any relationships, conflicts, or differences with any
19 member of the Class and/or Subclass. Plaintiff's attorneys and the proposed Counsel for the Class
20 and Subclasses are versed in the rules governing class action discovery, certification, litigation,
21 and settlement and experienced in handling such matters. Other former and current employees of
22 Defendants may also serve as representatives of the Class and Subclasses if needed.

23 18. Superiority. A class action is superior to other available means for the fair and
24 efficient adjudication of the claims of the Class and would be beneficial for the parties and the
25 court. Class action treatment will allow a large number of similarly situated persons to prosecute
26 their common claims in a single forum, simultaneously, efficiently, and without the unnecessary
27 duplication of effort and expense that numerous individual actions would require. The damages
28 suffered by each Class member are relatively small in the sense pertinent to class action analysis,

1 and the expense and burden of individual litigation would make it extremely difficult or
2 impossible for the individual Class Members to seek and obtain individual relief. A class action
3 will serve an important public interest by permitting such individuals to effectively pursue
4 recovery of the sums owed to them. Further, class litigation prevents the potential for inconsistent
5 or contradictory judgments raised by individual litigation.

6 19. Public Policy Considerations: Employers in the state of California violate
7 employment and labor laws everyday. Current employees are often afraid to assert their rights out
8 of fear of direct or indirect retaliation. Former employees are fearful of bringing actions because
9 they believe their former employers may damage their future endeavors through negative
10 references and/or other means. The nature of this action allows for the protection of current and
11 former employees' rights without fear or retaliation or damage.

12 **IV. FACTUAL ALLEGATIONS**

13 20. At all times set forth herein, Defendants employed Plaintiff and other persons in the
14 capacity of non-exempt positions, however titled, throughout the state of California.

15 21. Plaintiff is informed and believes Class Members have at all times pertinent hereto
16 been non-exempt within the meaning of the California Labor Code and the implementing rules
17 and regulations of the IWC California Wage Orders.

18 22. Plaintiff is informed and believes that all Class Members are citizens of the state of
19 California.

20 23. Defendants employed Plaintiff as a non-exempt hourly paid employee during the
21 liability period in Defendants' various California locations.

22 24. Defendants continue to employ non-exempt employees, however titled, in
23 California and implement a uniform set of policies and practices to all non-exempt employees, as
24 they were all engaged in the generic job duties involved in freight shipping.

25 25. Plaintiff is informed and believes, and thereon alleges, that Defendants are and
26 were advised by skilled lawyers and other professionals, employees, and advisors with knowledge
27 of the requirements of California's wage and employment laws.

28 26. During the relevant time frame, Defendants compensated Plaintiff and Class

1 Members based upon an hourly rate.

2 27. On information and belief, during the relevant time frame, Plaintiff and Class
3 Members typically worked five to six days a week processing and/or delivering freight. It was not
4 uncommon for Plaintiff and Class Members to work ten to twelve hour shifts.

5 28. Plaintiff's and Class Members' duties when working on the dock included, but was
6 not limited to, loading and unloading freight, securing freight trailers, driving forklifts moving
7 trailers or containers around the yard and cleaning the dock. Plaintiff's and Class Members' duties
8 when working as a truck driver included, but was not limited to, running pallets of freight from
9 dock to destination as needed.

10 29. Plaintiff and the Class Members were not properly compensated for all hours
11 worked, in part because they were frequently required to work off the clock. For instance, during
12 training Plaintiff and Class Members did not have badges that allowed them to enter the facility so
13 they had to wait up to 15 minutes for the guard to let them in before the start of their shifts.
14 Likewise, during training, at the end of their work shift, Plaintiff and Class Members were
15 required to wait for the guard in order to exit the facility and were not compensated for the time 5
16 to 10 minutes they were "off the clock" and under Defendants' control.

17 30. Once they had badges, Plaintiff and Class Members often had to wait in line to
18 clock-in during shift changes. To avoid clocking-in late, Plaintiff and Class Members would arrive
19 early and wait in line to clock-in, as Plaintiff and Class Members were not allowed to clock-in
20 until five minutes before the start of their shifts. While waiting in line to clock-in it was common
21 for Plaintiff's and Class Members' supervisors to come and talk to them about work related issues.
22 Plaintiff and Class Members were not compensated for this time in which they under Defendant's
23 control and working off the clock.

24 31. Further Defendants would adjust the punch time and deduct a 30-minute meal
25 period even though Plaintiff and Class Members were not provided an uninterrupted, 30-minute
26 meal period due to the demands placed upon them and due to a lack of staffing to provide relief.

27 32. Plaintiff and the Class Members were regularly required to work shifts in excess of
28 five hours without being provided a lawful meal period and over ten hours in a day without being

1 provided a second lawful meal period as required by law.

2 33. Indeed, during the relevant time, as a consequence of Defendants' staffing and
3 scheduling practices, lack of coverage, work demands, and Defendants' policies and practices,
4 Defendants frequently failed to provide Plaintiff and the Class Members timely, legally complaint
5 uninterrupted 30-minute meal periods on shifts over five hours as required by law. Plaintiff and
6 Class Members would often work through their meal periods to meet their shipping quotas and
7 due to a lack of relief to take a meal period.

8 34. Similarly, as a consequence of Defendants' staffing and scheduling practices, lack
9 of coverage, work demands, and Defendants' policies and practices, Defendants frequently failed
10 to provide Plaintiff and the Class Members legally compliant second meal periods on shifts over
11 ten hours as required by law.

12 35. On information and belief, Plaintiff and Class Members did not waive their rights
13 to meal periods under the law.

14 36. Plaintiff and the Class Members were not provided with valid lawful on-duty meal
15 periods.

16 37. Despite the above-mentioned meal period violations, Defendants failed to
17 compensate Plaintiff, and on information and belief, failed to compensate Class Members, one
18 additional hour of pay at their regular rate as required by California law when meal periods were
19 not timely or lawfully provided in a compliant manner.

20 38. Plaintiff is informed and believes, and thereon alleges, that Defendants know,
21 should know, knew, and/or should have known that Plaintiff and the other Class Members were
22 entitled to receive premium wages based on their regular rate of pay under Labor Code §226.7 but
23 were not receiving such compensation.

24 39. In addition, during the relevant time frame, Plaintiff and the non-exempt employees
25 were systematically not authorized and permitted to take one net ten-minute paid, rest period for
26 every four hours worked or major fraction thereof, which is a violation of the Labor Code and
27 IWC wage order.

28 40. Defendants maintained and enforced scheduling practices, policies, and imposed
work demands that frequently required Plaintiff and Class Members to forego their lawful, paid

1 rest periods of a net ten minutes for every four hours worked or major fraction thereof. Such
2 requisite rest periods were not timely authorized and permitted. Plaintiff and Class Members
3 would often work through their rest periods to meet their work demands and due to a lack of relief
4 to take a meal period.

5 41. Despite the above-mentioned rest period violations, Defendants did not compensate
6 Plaintiff, and on information and belief, did not pay Class Members one additional hour of pay at
7 their regular rate as required by California law, including Labor Code section 226.7 and the
8 applicable IWC wage order, for each day on which lawful rest periods were not authorized and
9 permitted.

10 42. Moreover, Plaintiff and the Class Members were required to incur necessary
11 expenses in the discharge of their duties, including for the use of their personal cellphones as
12 Defendants communicated with Plaintiff and Class Members regarding work related issues such as
13 changes to their schedules. Defendants did not reimburse Plaintiff and Class Members for such
14 necessary expenses in accordance with Labor Code section 2802.

15 43. During the relevant time period, Plaintiff and Class Members were also not
16 provided any seats during their work shifts in violation of applicable IWC Wage Orders. During
17 the relevant time period, Plaintiff and Class Members were not provided suitable seating and when
18 employees were not engaged in duties, which required them to stand, no seating was placed in
19 reasonable proximity to their show stations. As such, Defendant failed to provide Plaintiff and
20 Class Members with suitable seating while performing their job duties in violation of California
21 Wage Orders.

22 44. Defendants also failed to provide accurate, lawful itemized wage statements to
23 Plaintiff and the Class Members in part because of the above specified violations. In addition,
24 upon information and belief, Defendants omitted an accurate itemization of total hours worked,
25 including premiums due and owing for meal and rest period violations, gross pay and net pay
26 figures from Plaintiff and the Class Members' wage statements.

27 45. Plaintiff is informed and believes, and thereon alleges, that at all times herein
28 mentioned, Defendants knew that at the time of termination of employment (or within 72 hours
thereof for resignations without prior notice as the case may be) they had a duty to accurately

1 compensate Plaintiff and Class Members for all wages owed, meal and rest period premiums, and
2 Defendants had the financial ability to pay such compensation, but willfully, knowingly,
3 recklessly, and/or intentionally failed to do so in part because of the above-specified violations.

4 46. Plaintiff and the Class Members are covered by applicable California IWC Wage
5 Orders and corresponding applicable provisions of the California Code of Regulations, Title 8,
6 section 11000 *et seq.*

7 **V. CAUSES OF ACTION**

8 **FIRST CAUSE OF ACTION**

9 **FAILURE TO PAY LAWFUL WAGES INCLUDING OVERTIME WAGES AND/OR** 10 **MINIMUM WAGE**

11 **(Against All Defendants)**

12 47. Plaintiff incorporates and re-alleges each and every allegation contained above as
13 though fully set forth herein.

14 48. As discussed herein, during the liability period Defendants' policies, practices and
15 work shift requirements resulted in Plaintiff and Class Members not receiving compensation for
16 all earned wages including overtime and/or minimum wage in violation of California state wage
17 and hour laws.

18 49. At all times relevant, the IWC wage orders applicable to Plaintiff's and the Class
19 require employers to pay its employees for each hour worked at least minimum wage. "Hours
20 worked" means the time during which an employee is subject to the control of an employer, and
21 includes all the time the employee is suffered or permitted to work, whether or not required to do
22 so, and in the case of an employee who is required to reside on the employment premises, that
23 time spent carrying out assigned duties shall be counted as hours worked.

24 50. At all relevant times, Labor Code §1197 provides that the minimum wage for
25 employees fixed by the IWC is the minimum wage to be paid to employees, and the payment of a
26 lesser wage than the established minimum is unlawful. Further, pursuant to the IWC Wage Order
27 and Labor Code, Plaintiff and Class Members are to be paid minimum wage for each hour
28 worked, and cannot be averaged.

1 51. At all times relevant, the IWC wage orders applicable to Plaintiff and Class
2 Members' employment by Defendants provided that employees working for more than eight (8)
3 hours in a day or forty (40) hours in a work week are entitled to overtime compensation at the rate
4 of one and one-half times the regular rate of pay for all hours worked in excess of eight (8) hours
5 in a day or forty (40) hours in a work week. An employee who works more than twelve (12) hours
6 in a day is entitled to overtime compensation at a rate of twice the regular rate of pay.

7 52. During the liability period, Defendants' policies and/or practices resulted in
8 Plaintiff and Non Exempt Employees not receiving minimum wages for time spent working "off
9 the clock" while subject to the control of Defendants all without pay.

10 53. During the liability period, Defendants' policies and/or practices resulted in
11 Plaintiff and Non Exempt Employees working off the clock and in excess of 8 hours in a workday
12 and/or 40 hours in a workweek without receiving the proper overtime compensation at the rate of
13 time and one-half (1 1/2) of such employee's regular rate of pay. Accordingly, Defendants owe
14 Plaintiff and Class Members overtime wages, and have failed to pay Plaintiff and Class Members
15 the overtime wages owed.

16 54. As a result of the unlawful acts of Defendants, Plaintiff and the Class he seeks to
17 represent have been deprived of compensation for all earned wages including minimum wage and/
18 or overtime wages in amounts to be determined at trial, and are entitled to recovery of such
19 amounts, plus interest and penalties thereon, attorneys' fees, and costs, pursuant to Labor Code
20 section 1194.

21 55. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as
22 described herein and below.

23 **SECOND CAUSE OF ACTION**

24 **FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF**

25 **(Against All Defendants)**

26 56. Plaintiff incorporates and re-alleges each and every allegation contained above as
27 though fully set forth herein.

28 57. Pursuant to Labor Code §512, no employer shall employ an employee for a work

1 period of more than five (5) hours without providing a meal break of not less than thirty (30)
2 minutes in which the employee is relieved of all of his or her duties. An employer may not
3 employ an employee for a work period of more than ten (10) hours per day without providing the
4 employee with a second meal period of not less than thirty (30) minutes, except that if the total
5 hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual
6 consent of the employer and the employee only if the first meal period was not waived.

7 58. Pursuant to the IWC wage orders applicable to Plaintiff's and Meal Period Subclass
8 members' employment by Defendants, in order for an "on duty" meal period to be permissible, the
9 nature of the work of the employee must prevent an employee from being relieved of all duties
10 relating to his or her work for the employer and the employees must consent in writing to the "on
11 duty" meal period. On information and belief, Plaintiff and Meal Period Subclass members did
12 not consent in writing to an "on duty" meal period. Further, the nature of the work of Plaintiff and
13 Meal Period Subclass members was not such that they were prevented from being relieved of all
14 duties. Despite the requirements of the IWC wage orders applicable to Plaintiff and Meal Period
15 Subclass members' employment by Defendants and Labor Code §512 and §226.7, Defendants did
16 not provide Plaintiff and Meal Period Subclass members with all their statutorily authorized meal
17 periods.

18 59. During the liability period, Defendants failed to provide Plaintiff and Meal Period
19 Subclass members, timely and uninterrupted meal periods of not less than thirty (30) minutes
20 pursuant to the IWC wage orders applicable to Plaintiff and Meal Period Subclass members'
21 employment by Defendants. As a proximate result of the aforementioned violations, Plaintiff and
22 the other Meal Period Subclass members have been damaged in an amount according to proof at
23 time of trial.

24 60. By their failure to provide a compliant meal period for each shift worked over five
25 (5) hours and their failure to provide a compliant second meal period for any shift worked over ten
26 (10) hours per day by Plaintiff and the Meal Period Subclass members, and by failing to provide
27 compensation in lieu of such non-provided meal periods, as alleged above, Defendants violated
28 the provisions of Labor Code sections 226.7 and 512 and applicable IWC Wage Orders.

1 61. Plaintiff and the Meal Period Subclass members Plaintiff seeks to represent did not
2 voluntarily or willfully waive meal periods and were regularly required to work shifts without
3 being provided all of their legally required meal periods. Defendants created a working
4 environment in which Plaintiff and Meal Period Subclass members were not provided all of their
5 meal periods due to shift scheduling and/or work related demands placed upon them by
6 Defendants as discussed above. On information and belief, Defendants' implemented a policy and
7 practice, which resulted in systematic and class-wide violations of the Labor Code. On
8 information and belief, Defendants' violations have been widespread throughout the liability
9 period and will be evidenced by Defendants' time records for the Meal Period Subclass members.

10 62. As a result of the unlawful acts of Defendants described herein, Plaintiff and the
11 Meal Period Subclass members Plaintiff seeks to represent have been deprived of premium wages
12 in amounts to be determined at trial. Pursuant to Labor Code §226.7, Plaintiff and Meal Period
13 Subclass members are entitled to recover one (1) hour of premium pay for each day in which a
14 meal period was not provided, along with interest and penalties thereon, attorneys' fees, and costs.

15 63. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as
16 described herein and below

17 **THIRD CAUSE OF ACTION**

18 **FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF**

19 **(Against All Defendants)**

20 64. Plaintiff incorporates and re-alleges each and every allegation contained above as
21 though fully set forth herein.

22 65. Pursuant to the IWC wage orders applicable to Plaintiff and Rest Period Subclass
23 members' employment by Defendants, "Every employer shall authorize and permit all employees
24 to take rest periods, which insofar as practicable shall be in the middle of each work period....
25 [The] authorized rest period time shall be based on the total hours worked daily at the rate of ten
26 (10) minutes net rest time per four (4) hours worked or major fraction thereof.... Authorized rest
27 period time shall be counted as hours worked, for which there shall be no deduction from wages."
28 Labor Code §226.7(a) prohibits an employer from requiring any employee to work during any rest

1 period mandated by an applicable order of the IWC.

2 66. Defendants were required to authorize and permit employees such as Plaintiff and
3 Rest Period Subclass members to take rest periods, based upon the total hours worked at a rate of
4 ten (10) minutes net rest per four (4) hours worked, or major fraction thereof, with no deduction
5 from wages. Despite said requirements of the IWC wage orders applicable to Plaintiff's and Rest
6 Period Subclass members' employment by Defendants, Defendants failed and refused to authorize
7 and permit Plaintiff and Class Members, to take ten (10) minute rest periods for every four (4)
8 hours worked, or major fraction thereof.

9 67. On information and belief Defendants created a working environment in which
10 Plaintiff and Rest Period Subclass members were not provided all of their rest periods due to shift
11 scheduling and/or work related demands placed upon them by Defendants as well as a lack of
12 sufficient staffing to meet the needs of Defendants' business as discussed above. On information
13 and belief, Defendants implemented a policy and practice, which resulted in systematic and class-
14 wide violations of the Labor Code. On information and belief, Defendants' violations have been
15 widespread throughout the liability period.

16 68. As a proximate result of the aforementioned violations, Plaintiff and Rest Period
17 Subclass members have been damaged in an amount according to proof at time of trial. Pursuant
18 to Labor Code §226.7, Plaintiff and Rest Period Subclass members are entitled to recover one (1)
19 hour of premium pay for each day in which Defendants failed to provide a rest period to Plaintiff
20 and the Rest Period Subclass, plus interest and penalties thereon, attorneys' fees, and costs.

21 69. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as
22 described herein and below.

23 **FOURTH CAUSE OF ACTION**

24 **FAILURE TO PAY TIMELY PAY WAGES**

25 **(Against All Defendants)**

26 70. Plaintiff incorporates and re-alleges each and every allegation contained above as
27 though fully set forth herein.

28 71. Labor Code §§201-202 requires an employer who discharges an employee to pay

1 compensation due and owing to said employee immediately upon discharge and that if an
2 employee voluntarily leaves his or her employment, his or her wages shall become due and
3 payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-
4 two (72) hours previous notice of his or her intention to quit, in which case the employee is
5 entitled to his or her wages on their last day of work.

6 72. Labor Code §203 provides that if an employer willfully fails to pay compensation
7 promptly upon discharge, as required by Labor Code §§201-202, the employer is liable for
8 waiting time penalties in the form of continued compensation for up to thirty (30) work days.

9 73. During the relevant time period, Defendants willfully failed and refused, and
10 continue to willfully fail and refuse, to pay Plaintiff and Waiting Time Penalty Subclass members
11 their wages, earned and unpaid, either at the time of discharge, or within seventy-two (72) hours
12 of their voluntarily leaving Defendants' employ. These wages include regular and overtime.

13 74. As a result, Defendants are liable to Plaintiff and members of the Waiting Time
14 Penalty Subclass for waiting time penalties pursuant to Labor Code §203, in an amount according
15 to proof at the time of trial.

16 75. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as
17 described herein and below.

18 **FIFTH CAUSE OF ACTION**

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

20 **(Against All Defendants)**

21 76. Plaintiff incorporates and re-alleges each and every allegation contained above as
22 though fully set forth herein.

23 77. Section 226(a) of the California Labor Code requires Defendants to itemize in wage
24 statements all deductions from payment of wages and to accurately report total hours worked by
25 Plaintiff and the Wage Statement Subclass including applicable hourly rates and reimbursement
26 expenses among other things. Defendants have knowingly and intentionally failed to comply with
27 Labor Code section 226 and 204 on wage statements that have been provided to Plaintiff and the
28 Wage Statement Subclass.

78. IWC Wage Orders require Defendants to maintain time records showing, among others, when the employee begins and ends each work period, meal periods, split shift intervals and total daily hours worked in an itemized wage statement, and must show all deductions and reimbursements from payment of wages, and accurately report total hours worked by Plaintiff and the Wage Statement Subclass. On information and belief, Defendants have failed to record all or some of the items delineated in Industrial Wage Orders and Labor Code §226.

79. Defendants have failed to accurately record all time worked.

80. Defendants have also failed to accurately record the meal and rest period premiums owed and all wages owed per pay period.

81. Plaintiff and the Wage Statement Subclass have been injured as they were unable to determine whether they had been paid correctly for all hours worked per pay period among other things.

82. Pursuant to Labor Code section 226, Plaintiff and the Wage Statement Subclass are entitled up to a maximum of \$4,000 each for record keeping violations.

83. Pursuant to Labor Code section 226.3, any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.

84. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described herein and below.

SIXTH CAUSE OF ACTION

FOR FAILURE TO INDEMNIFY NECESSARY BUSINESS EXPENSES

By Plaintiff and Class Against All Defendants

85. Plaintiff incorporates and re-alleges each and every allegation contained above as though fully set forth herein.

86. Labor Code § 2802 requires Defendants to indemnify Plaintiff and Reimbursement Subclass members for necessary expenditures incurred in direct consequences of the discharge of

1 his or her duties.

2 87. By their policy of unlawfully requiring that Plaintiff and Class Members use their
3 personal phones in the performance of their job duties without reimbursement, Defendant
4 willfully violated the provisions of Lab. Code § 2802

5 88. As a result of the unlawful acts of Defendants, Plaintiff and the Reimbursement
6 Subclass members have been deprived of un-reimbursed expense amounts to be determined at
7 trial, and are entitled to the recovery of such amounts, plus interest and penalties thereon,
8 attorneys' fees, and costs, pursuant to Labor Code § 2802.

9 89. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as
10 described herein and below.

11 **SEVENTH CAUSE OF ACTION**

12 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200, *et seq.***

13 **(Against All Defendants)**

14 90. Plaintiff incorporates and re-alleges each and every allegation contained above as
15 though fully set forth herein.

16 91. Defendants' conduct, as alleged in this complaint, has been, and continues to be,
17 unfair, unlawful, and harmful to Plaintiff and Unfair Business Practice Subclass members,
18 Defendants' competitors, and the general public. Plaintiff seeks to enforce important rights
19 affecting the public interest within the meaning of the California Code of Civil Procedure §1021.5.

20 92. Defendants' violations of the Labor Code and Wage Order provisions set forth
21 above constitute unlawful and/or unfair business acts or practices.

22 93. Defendants' policies, activities, and actions as alleged herein, are violations of
23 California law and constitute unlawful business acts and practices in violation of California
24 Business and Professions Code §§17200, *et seq.*

25 94. Plaintiff and Unfair Business Practice Subclass members have been personally
26 aggrieved by Defendants' unlawful and unfair business acts and practices alleged herein by the
27 loss of money and/or property.

28 95. As a direct and proximate result of the unfair business practices of Defendants, and

1 each of them, Plaintiff, individually and on behalf of all employees similarly situated is entitled to
2 restitution of the wages withheld and retained by Defendants during a period that commences four
3 (4) years prior to the filing of this complaint; an award of attorneys' fees, interest; and an award of
4 costs.

5 96. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as
6 described herein and below.

7 **VI.**

8
9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff prays for judgment as follows:

- 11 1. That the Court determine that this action may be maintained as a class action;
12 2. For compensatory damages in an amount according to proof with interest thereon;
13 3. For economic and/or special damages in an amount according to proof with interest
14 thereon;
15 4. For premium wages pursuant to Labor Code §§ 226.7 and 512;
16 5. For premium pay and penalties pursuant to Labor Code §§203,226;
17 6. For attorneys' fees, interests and costs of suit under Labor Code §§ 1194,2802
18 7. For such other and further relief as the Court deems just and proper.

19
20 **DEMAND FOR JURY TRIAL**

21 Plaintiff and members of the Class and Subclass request a jury trial in this matter.

22 Dated: May 7, 2020

JAMES HAWKINS APLC

23
24
25 By:



JAMES R. HAWKINS, ESQ.
ISANDRA FERNANDEZ, ESQ.
Attorneys for Plaintiff REGINALD
JACKSON individually and on behalf of all
others similarly situated.