

FILED
Superior Court of California
County of Los Angeles

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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**

JASON MITCHINER, Individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

MOVE SALES, INC. DBA REALTOR.COM;
MOVE, INC.; and DOES 1 through 25,
inclusive,

Defendants.

Case No.: 20STCV23141

Hon. Carolyn B. Kuhl – Dept. 12

[Filed as a matter of right pursuant to
Labor Code § 2699.3(a)(2)(C)]

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

1. Failure To Pay Earned Wages (Cal. Lab. Code §§ 204, 210);
2. Failure To Pay Minimum Wages (Cal. Lab. Code §§ 510, 1182.12, 1194, 1197, 1197.1, 1198);
3. Failure To Pay Overtime Compensation (Cal. Lab. Code §§ 510, 1198);
4. Unlawful Deduction of Wages (Cal. Lab. § 221);
5. Failure To Provide Meal Breaks (Cal. Lab. §§ 226.7, 512(a), 1198);
6. Failure To Reimburse For Business Expenses (Cal. Lab. Code §§ 2800 and 2802);
7. Failure To Provide And Maintain Itemized And Accurate Wage Statements (Cal. Lab. Code § 226(a), 1174(d), 1198);
8. Failure To Timely Pay All Wages Due Upon Separation of Employment Including Unused, Vested Vacation Wages (Cal. Lab. Code §§ 201, 202, 203, 227.3);

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9. Violation of the Unfair Competition Law (Cal. Bus. & Prof. Code § 17200, *Et Seq.*); and
10. Enforcement of Labor Code § 2698 *Et. Seq.* ("PAGA")

Jury Trial Demanded

Plaintiff Jason Mitchiner (hereinafter "Plaintiff") hereby brings this wage and hour Class Action against Defendant Move Sales, Inc. dba Realtor.com (hereinafter "Defendant Move Sales"), Move, Inc. (hereinafter "Defendant Move"), and Does 1 through 25 (collectively referred to as "Defendants"), individually and on behalf of all other similarly situated employees for damages and/or penalties for violations of California law, including without limitation, failure to pay all regular, minimum, and overtime wages owed, failure to provide off-duty meal periods, failure to reimburse business expenses, failure to provide accurate itemized wage statements, and failure to timely pay final wages, as follows:

INTRODUCTION

1. As discussed herein, this class and representative action concerns Defendants' numerous violations of California Labor Code §§ 201-203, 204, 210, 221, 226(a), 226.3, 226.7, 227.3, 246, 510, 512, 1174, 1174.5, 1182.12, 1194, 1197, 1197.1, 1198, 2800, 2802, the California Industrial Welfare Commission's ("IWC") Wage Orders, the California Business and Professions Code § 17200, *et seq.*, and under the PAGA.

2. Defendants operate a real estate listings website.

3. Plaintiff was employed by Defendants as a Broker Consultant or similar position.

4. Defendants employed Plaintiff and class members for more than eight hours per day and more than forty hours per workweek and failed to Plaintiff and class members overtime compensation for the overtime hours worked, in violation of Labor Code §§ 510, 1198 and the applicable IWC Wage Order. Specifically, Defendants failed to pay all overtime compensation to Plaintiff and class members because overtime rates paid to Class Members did not account for all non-discretionary bonuses, commissions, and wages, (including, for

1 example, "guaranteed commissions"). Additionally, overtime wages were often paid multiple
2 pay periods after they were earned, in violation of Labor Code § 204.

3 5. Defendants failed to provide Plaintiff and class members (as defined below) all
4 their earned wages, in violation of, among others, Labor Code § 204, 210, 1194 and the
5 applicable Wage Order (as well as pay liquidated damages owed under Labor Code §1194.2).
6 Defendants do not pay all commissions earned by Plaintiff and class members, including
7 illegally deducting wages from their commissions earned in violation of Labor Code § 221.
8 Additionally, Defendants have had, and continue to have, an illegal rounding time practice
9 and/or policy that is not neutral and undercompensates Plaintiff and class members ("Illegal
10 Rounding-Time Policy").

11 6. To perform their jobs, Plaintiff and class members were required to make use of
12 their own home-internet connection and use a personal cellphone for business-related purposes,
13 including without limitation, to coordinate with customers and with other employees.
14 Defendants did not fully reimburse Plaintiff and class members for these business-related
15 expenses in violation of Labor Code §§ 2800, 2802, and the applicable IWC Wage Order.

16 7. Defendants employed Plaintiff and class members for work periods of more
17 than five hours without a meal period of not less than thirty minutes and failed to fully
18 compensate Plaintiff and class members for these missed meal periods, in violation of Labor
19 Code §§ 226.7, 512(a), 1198 and the applicable IWC Wage Order. When Defendants denied
20 Plaintiff and class members their meal periods, Defendants failed to pay them the premium
21 compensation mandated by Labor Code §§ 226.7 at their regular rate of pay, and instead
22 under-compensated Plaintiff and class members.

23 8. Defendants knowingly and intentionally failed to provide Plaintiff and class
24 members with timely and accurate wage and hour statements, in violation of Labor Code §§
25 226(a), 1174(d), 1198 and the applicable IWC Wage Order including based on the above.

26 9. Defendants also failed to provide Plaintiff and class members their final wages,
27 including their Paid-Time-Off ("PTO"), immediately upon termination, or within seventy-two
28 hours of voluntarily leaving employment.

1 10. Further, Defendants also failed to comply with Labor Code § 246, which
2 requires that employer provide employees who work for thirty (30) or more days within a year
3 from the commencement of employment 1 hour of paid sick leave for every 30 hours worked
4 paid at the regular rate of pay, including non-discretionary bonuses, commissions, and wages
5 (e.g., guaranteed commissions). Defendants have violated Labor Code § 246 by willfully failing
6 to provide such mandatory paid sick leave to Plaintiff and other aggrieved employees.

7 11. On information and belief, Plaintiff alleges that Defendants applied the same
8 policies described above to all other members of the proposed Class. As alleged below, these
9 uniform policies, practices and procedures violated California's labor laws and constituted
10 unfair, fraudulent or illegal business practices under Business & Professions Code § 17200
11 *et seq.*

12 **PARTIES, JURISDICTION AND VENUE**

13 12. Plaintiff was employed by Defendants as a Broker Consultant or similar
14 position from approximately July of 2019 until June 2, 2020. During his employment with
15 Defendants, Plaintiff was an hourly, non-exempt employee.

16 13. Defendant Move Sales is a corporation organized under the laws of the state of
17 Delaware. Defendant Move Sales is headquartered in Westlake Village, California.

18 14. Defendant Move is a corporation organized under the laws of the state of
19 Delaware. Defendant Moves is headquartered in Santa Clara, California.

20 15. Plaintiff is informed and believes, and based thereon alleges, that at all times
21 mentioned herein, Defendants and DOES 1 through 25 are and were business entities,
22 individuals, and partnerships, licensed to do business and actually doing business in the State
23 of California. As such, and based upon all the facts and circumstances incident to Defendants'
24 businesses, Defendants are subject to California Labor Code §§ 201-203, 204, 210, 221,
25 226(a), 226.3, 226.7, 227.3, 246, 510, 512, 1174, 1174.5, 1182.12, 1194, 1197, 1197.1, 1198,
26 2800, 2802, the California Industrial Welfare Commission's ("IWC") Wage Orders, the
27 California Business and Professions Code § 17200, *et seq.*, and the PAGA.

16. Plaintiff does not know the true names or capacities of the Defendants sued herein as DOES 1 through 25, inclusive, and, for that reason, said Defendants are sued under such fictitious names. Plaintiff is informed and believe, and based thereon, alleges that each of said fictitious Defendants are and were responsible in some manner for the injuries complained of herein. Plaintiff will amend this Complaint to identify such fictitiously-named Defendants pursuant to Code of Civil Procedure § 474 once their identities become known.

17. The relief sought by Plaintiff on behalf of himself and the Class defined below exceeds the minimal jurisdictional limits of the Superior Court and will be established according to proof at trial. The Court has personal jurisdiction over each of the parties because they are either citizens of this State, doing business in this State or otherwise have minimum contacts with this State.

18. Venue is proper in this Court because Plaintiff worked in and received his pay in Los Angeles County.

19. Plaintiff is informed and believes and, based thereon, alleges that Defendants were at all times relevant hereto members of, and engaged in, a joint venture, partnership, association or common enterprise, and acting within the course and scope of, and in pursuance of, said joint venture, partnership, association or common enterprise. Furthermore, Plaintiff is informed and believe and, based thereon, alleges that at all times relevant hereto Defendants conspired together in, aided and abetted, contributed to, and/or acted as agents or employees of each other with respect to, the commission of the acts complained of herein. Defendants are therefore jointly and severally liable for the injuries complained of herein.

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1 **CLASS ALLEGATIONS**

2 20. Plaintiff brings this action pursuant to California Code of Civil Procedure §
3 382 on behalf of himself and class members defined below. The Plaintiff Class is comprised
4 of and defined as:

5 Plaintiff Class

6 All current and former non-exempt employees who worked for
7 Defendants in the State of California from April 6, 2016 to the date
8 of trial.¹

8 21. Plaintiff also seeks to certify the following Subclass:

9 Waiting Time Subclass

10 All members of the Plaintiff Class who separated their employment from April
11 6, 2017 to the date of trial.

12 22. Members of the Plaintiff Class described above will be collectively referred to
13 as "class members." Plaintiff reserves the right to establish other or additional subclasses, or
14 modify the Plaintiff Class definition, as appropriate based on investigation, discovery, and
15 specific theories of liability.

16 23. There exists a well-defined community of interest among the Plaintiff Class,
17 and the Plaintiff Class is readily ascertainable.

18 24. The class members are so numerous that joinder of all members in a single
19 action would not be feasible or practical, and the amount of individual damages is not large
20 enough to make individual lawsuits by each class member practical or feasible. Plaintiff is
21 informed and believes and based upon such information and belief alleges that there are in
22 excess of 50 class members.

23 25. Plaintiff's claims are typical of the claims of the rest of the Plaintiff Class, and
24 Plaintiff and his counsel will fairly and adequately represent the interests of the Class.

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28 ¹ The statute of limitations for this matter was tolled pursuant to Cal. Rules of Court,
Appendix I, Emergency Rule No. 9.

1 26. Common issues of fact and/or law predominate in this action over any
2 allegedly individual issues. Specifically, the following common questions of fact or law
3 predominate and make this action superior to individual actions:

4 (i) whether Plaintiff and the rest of the Plaintiff Class are entitled to
5 recover damages, penalties and other relief on the grounds that Defendants have used uniform
6 policies, practices and procedures that have consistently violated California labor laws and
7 regulations and caused Plaintiff and the rest of the Plaintiff Class to suffer the same or similar
8 injuries;

9 (ii) whether Defendants violated Labor Code §§ 204, 210, and the
10 applicable IWC Wage Order by failing to pay wages for all hours worked;

11 (iii) whether Defendants violated Labor Code §§ 1182.12, 1194, 1194.2,
12 1197, 1197.1, 1198 and the applicable IWC Wage Order by failing to pay minimum wage for
13 all hours worked;

14 (iv) whether Defendants violated Labor Code §§ 510, 1194, 1198, and the
15 applicable IWC Wage Order by failing to pay overtime compensation;

16 (v) whether Defendants violated Labor Code § 221 by making unlawful
17 deductions from the wages of Plaintiff and class members;

18 (vi) whether Defendants violated Labor Code §§ 226.7, 512, and and the
19 applicable IWC Wage Order by failing to provide meal periods for each five hours worked,
20 and not compensating employees with one hour of pay at the employees' regular rate of
21 compensation for each workday that a meal period was not provided;

22 (vii) whether Defendants violated Labor Code §§ 2800, 2802, and the
23 applicable IWC Wage Order by failing to indemnify Plaintiff and class members for all the
24 necessary expenditures or losses incurred in direct consequence of the discharge of their
25 duties, or of their obedience to the directions of their employer;

26 (viii) whether Defendants violated Labor Code § 226, and the applicable
27 IWC Wage Order by failing to provide and maintain timely and accurate itemized wage
28 statements;

1 (ix) whether Defendants violated Labor Code §§ 201, 202, 203, and 227.3
2 by failing to timely pay Plaintiff and Waiting Time Subclass members all wages due,
3 including unused, vested vacation wages, upon termination or within seventy-two (72) of
4 resignation; and

5 (x) whether Defendants' practices constitute unfair, fraudulent, or illegal
6 business practices under Business and Professions Code § 17200, *et seq.*

7 27. California labor laws under which Plaintiff asserts the following causes of
8 action on behalf of himself and the rest of the Plaintiff Class are broadly remedial in nature.
9 These labor laws serve an important public interest in establishing minimum working
10 conditions and standards in California. They furthermore protect employees from exploitation
11 by employers who may seek to take advantage of their superior economic and bargaining
12 power in setting onerous terms and conditions of employment. The class action mechanism
13 is a particularly efficient and appropriate procedure to redress the injuries alleged herein. If
14 each employee in the Plaintiff Class was required to file an individual action, Defendants
15 would be able to use their superior financial and legal resources to gain an unfair advantage
16 over each individual class member. Moreover, requiring each class member to pursue an
17 individual action would also discourage the assertion of meritorious causes of action by
18 employees who would likely be disinclined to file such individual actions due to a justifiable
19 fear of retaliation and damage to their careers at subsequent employment.

20 28. In addition, even if feasible, individual actions by each Plaintiff Class member
21 would create a substantial risk (i) of inconsistent or varying adjudications with respect to the
22 claims of each class member against Defendants, that in turn could establish potentially
23 incompatible standards of conduct for Defendants, and/or (ii) of adjudications with respect to
24 individual Plaintiff and class members that would, as a practical matter, be dispositive of the
25 interests of the other Plaintiff and class members. Furthermore, the claims of each individual
26 class member are not sufficiently large enough to make it economically feasible to bring each
27 class member's claims on an individual basis.

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1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY EARNED WAGES**

3 **BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

4 **(Cal. Labor Code §§ 204, 210)**

5 29. Plaintiff re-alleges and incorporates herein by this reference each and every
6 allegation set forth in all previous paragraphs of the Complaint.

7 30. Labor Code § 204 provides that all wages earned by an employee are due and
8 payable twice during each calendar month.

9 31. Defendants failed to timely pay Plaintiff and class members all of their earned
10 wages as required by Labor Code Section 204.

11 32. Plaintiff and class members have been deprived of their rightfully earned
12 wages as a direct and proximate result of Defendants' failure to pay said compensation.
13 Plaintiff and class members are entitled to recover such amounts, plus interest thereon,
14 attorney's fees and costs.

15 33. In addition, Plaintiff and class members are entitled to penalties pursuant to
16 Labor Code § 210 as follows: (1) for Defendants' initial violation, \$100 for each failure to
17 pay each Class Member; and (2) for each of Defendants' subsequent violations, or any willful
18 or intentional violation, \$200 for each failure to pay each Class Member, plus 25 percent of
19 the amount unlawfully held.

20 **SECOND CAUSE OF ACTION**

21 **FAILURE TO PAY MINIMUM WAGES**

22 **BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

23 **(Cal. Labor Code §§ 510, 1182.12, 1194, 1197, 1197.1, 1198)**

24 34. Plaintiff re-alleges and incorporates herein by this reference each and every
25 allegation set forth in all previous paragraphs of the Complaint.

26 35. Labor Code section 1194(a) states: "Notwithstanding any agreement to work
27 for a lesser wage, any employee receiving less than the legal minimum wage or the legal
28 overtime compensation applicable to the employee is entitled to recover in a civil action the

1 unpaid balance of the full amount of this minimum wage or overtime compensation, including
2 interest thereon, reasonable attorney's fees, and costs of suit."

3 36. Labor Code section 1194.2 states: "In any action under Section 98, 1193.6,
4 1194, or 1197.1 to recover wages because of the payment of a wage less than the minimum
5 wage fixed by an order of the commission or by statute, an employee shall be entitled to
6 recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest
7 thereon."

8 37. Labor Code section 1194.2 provides for liquidated damages equal to
9 unlawfully unpaid minimum wages, with interest.

10 38. Labor Code section 1197 states: "The minimum wage for employees fixed by
11 the commission is the minimum wage to be paid to employees, and the payment of a less wage
12 than minimum wage so fixed is unlawful."

13 39. Labor Code section 1197.1 states: "Any employer or other person acting either
14 individually or as an officer, agent, or employee of another person, who pays or causes to be
15 paid to any employee a wage less than the minimum fixed by an order of the commission shall
16 be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee,
17 and any applicable penalties imposed pursuant to Section 203. For any initial violation that is
18 intentionally committed, one hundred dollars (\$100) for each underpaid employee for each
19 pay period for which the employee is underpaid. For each subsequent violation for the same
20 specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay
21 period for which the employee is underpaid regardless of whether the initial violation is
22 intentionally committed."

23 40. Labor Code section 1198 states: "The maximum hours of work and the
24 standard conditions of labor fixed by the commission shall be the maximum hours of work
25 and the standard conditions of labor for employees. The employment of any employee for
26 longer hours than those fixed by the order or under conditions of labor prohibited by the order
27 is unlawful."

28 41. Pursuant to the "Minimum Wages" and "Hours & Days of Work" Sections of

1 the applicable IWC Wage Order, an employer may not pay employees less than the applicable
2 minimum wage for all hours worked, and provides that an employer may not pay non-exempt
3 employees less than the applicable overtime rate for all overtime hours worked.

4 42. During the relevant time period, Defendants regularly failed to pay at least
5 minimum wage to Plaintiff and class members for all hours worked pursuant to Labor Code
6 §§ 1194 and 1197.

7 43. Defendants' failure to pay Plaintiff and class members the minimum wage as
8 required violates Labor Code §§ 1194 and 1197.

9 44. As a direct result, Plaintiff and class members have suffered and continue to
10 suffer, substantial losses related to the use and enjoyment of such wages, including lost interest
11 on such monies and expenses and attorney's fees in seeking to compel Defendants to fully
12 perform their obligation under state law, all to their respective damage in amounts according
13 to proof at trial and within the jurisdictional limitations of this Court.

14 45. Defendants' unlawful acts deprived Plaintiff and class members of minimum
15 wages in amounts to be determined at trial, and they are entitled to recover these amounts,
16 along with liquidated damages for unpaid regular or minimum wages, interest, attorneys' fees,
17 and costs.

18 46. Plaintiff seeks to recover the full amount of the unpaid wages resulting from
19 Defendants' minimum wage violations including interest thereon, reasonable attorney's fees
20 and costs of suit, penalties, and liquidated damages to the fullest extent permissible including
21 those permitted pursuant to Labor Code sections 218.6, 1194, 1194.2, 1197.1, and Code of
22 Civil Procedure section 1021.5.

23 **THIRD CAUSE OF ACTION**

24 **FAILURE TO PAY OVERTIME COMPENSATION**

25 **BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

26 **(Cal. Labor Code §§ 510, 1198)**

27 47. Plaintiff re-alleges and incorporates herein by this reference each and every
28 allegation set forth in all previous paragraphs of the Complaint.

1 48. Labor Code § 1198 and the applicable IWC Wage Order provide that it is
2 unlawful to employ persons without compensating them at a rate of pay either one and one-
3 half (1½) or two (2) times the person's regular rate of pay, depending on the number of hours
4 or days worked by the person on a daily or weekly basis.

5 49. Specifically, section 3 of applicable IWC Wage Order provides that
6 Defendants are and were required to pay overtime compensation to Plaintiff and class
7 members at the rate of one and one-half times (1½) their regular rate of pay when working
8 and for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in
9 a workweek and for the first eight (8) hours of work on the seventh day of work in a workweek.

10 50. Section 4 of the applicable IWC Wage Order further provide that Defendants
11 are and were required to pay overtime compensation to Plaintiff and class members at a rate
12 of two times their regular rate of pay when working and for all hours worked in excess of
13 twelve (12) hours in a day or in excess of eight (8) hours on the seventh day of work in a
14 workweek.

15 51. Labor Code § 510 codifies the right to overtime compensation at one and one-
16 half (1½) times the regular hourly rate for hours worked in excess of eight (8) hours in a day
17 or forty (40) hours in a week and for the first eight (8) hours worked on the seventh consecutive
18 day of work, and overtime compensation at twice the regular hourly rate for hours worked in
19 excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day
20 of work in a workweek.

21 52. Labor Code § 510 and the applicable IWC Wage Order provide that
22 employment of more than six days in a workweek is only permissible if the employer pays
23 proper overtime compensation as set forth herein.

24 53. During the relevant time period, Defendants failed to pay Plaintiff and class
25 members overtime wages for all overtime hours worked when Plaintiff and class members
26 worked in excess of eight (8) hours in a day, forty (40) hours in a week and/or for a seventh
27 consecutive day of work in a workweek.

28 54. In violation of state law, Defendants knowingly and willfully refused to

1 perform their obligations and compensate Plaintiff and class members for all wages earned
2 and all hours worked.

3 55. Defendants' failure to pay Plaintiff and class members the unpaid balance of
4 overtime compensation, as required by California law, violates the provisions of Labor Code
5 §§ 510 and 1198, and is therefore unlawful.

6 56. As a direct result, Plaintiff and class members have suffered and continue to
7 suffer, substantial losses related to the use and enjoyment of such wages, including lost interest
8 on such monies and expenses and attorney's fees in seeking to compel Defendants to fully
9 perform their obligation under state law, all to their respective damage in amounts according
10 to proof at trial and within the jurisdictional limitations of this Court.

11 57. Defendants' unlawful acts deprived Plaintiff and class members of minimum
12 and/or overtime wages in amounts to be determined at trial, and they are entitled to recover
13 these amounts, along with liquidated damages for unpaid regular or minimum wages, interest,
14 attorneys' fees, and costs.

15 58. Pursuant to Labor Code § 1194, Plaintiff and class members are entitled to
16 recover their unpaid overtime compensation as well as interest, costs, and attorneys' fees.

17 **FOURTH CAUSE OF ACTION**

18 **UNLAWFUL DEDUCTION OF WAGES**

19 **(Violation of Cal. Labor Code § 221)**

20 59. Plaintiff re-alleges and incorporates herein by this reference each and every
21 allegation set forth in all previous paragraphs of the Complaint.

22 60. Labor Code § 221 provides, in pertinent part, "[i]t shall be unlawful for any
23 employer to collect or receive from an employee any part of wages theretofore paid by said
24 employer to said employee."

25 61. During the relevant time period, Defendants unlawfully deducted the wages of
26 Plaintiff and class members by illegally deducting from the commissions earned by Plaintiff and
27 class members in violation of Labor Code § 221.

28 62. Defendants' violation of Labor Code § 221 caused Plaintiffs and class

1 members to suffer substantial monetary losses, and expenses and attorney's fees in seeking to
2 compel Defendants to fully perform their obligations under California law, all to their damage
3 in amounts according to proof at the time of trial.

4 **FIFTH CAUSE OF ACTION**

5 **FAILURE TO PROVIDE MEAL BREAKS**

6 **BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

7 **(Cal. Labor Code §§ 226.7, 512(a), 1198)**

8 63. Plaintiff re-alleges and incorporates herein by this reference each and every
9 allegation set forth in all previous paragraphs of the Complaint.

10 64. Labor Code § 226.7 provides that no employer shall require an employee to
11 work during any meal period mandated by the IWC Wage Orders.

12 65. Section 11 of applicable IWC Wage Order states, "[n]o employer shall employ
13 any person for a work period of more than five (5) hours without a meal period of not less
14 than 30 minutes."

15 66. Labor Code § 512(a) provides that an employer may not require, cause, or
16 permit an employee to work for a period of more than five (5) hours per day without providing
17 the employee with an uninterrupted meal period of not less than thirty (30) minutes.

18 67. Labor Code § 512(a) also provides that an employer may not employ an
19 employee for a work period of more than ten (10) hours per day without providing the
20 employee with a second meal period of not less than thirty (30) minutes.

21 68. Labor Code § 226.7(c) and section 11 of applicable IWC Wage Order requires
22 an employer to pay an employee one (1) additional hour of pay at the employee's regular rate
23 of compensation for each workday that a compliant meal period is not provided.

24 69. At times during the relevant time period, Defendants failed to provide Plaintiff
25 and class members with complaint meal periods. Defendants did not properly pay meal period
26 premiums for missed or non-compliant meal periods pursuant to Labor Code § 226.7(c) and
27 section 11 of the applicable IWC Wage Order.

28 70. As a result of Defendants' failure to pay Plaintiff and class members an

additional hour of pay for each day a compliant meal period was not provided at their regular rate of pay, Plaintiff and class members suffered and continue to suffer a loss of wages and compensation. Because Defendants failed to provide meal periods, they are liable to Plaintiff and class members for one hour of additional premium pay at the regular rate of compensation for each workday that the meal periods were not provided, pursuant to Labor Code section 226.7 and the applicable IWC Wage Order, section 11(B).

71. As a direct result of Defendants' violations alleged herein, Plaintiff and class members have suffered and continue to suffer substantial losses related to the use and enjoyment of such wages, including lost interest on such monies and expenses and attorney's fees in seeking to compel Defendants to fully perform their obligation under state law, all to their respective damage in amounts according to proof at trial and within the jurisdictional limitations of this Court.

72. Defendants' unlawful acts deprived Plaintiff and class members of premium wages and/or other compensation in amounts to be determined at trial, and they are entitled to recover such amounts, plus interest, attorneys' fees, and costs.

73. Plaintiff seeks to recover in a civil action the full amount of the unpaid wages resulting from Defendants' meal period violations including interest thereon, reasonable attorney's fees and costs of suit, and penalties to the fullest extent permissible including those permitted pursuant to Labor Code sections 226.7 and 512, and Code of Civil Procedure section 1021.5.

SIXTH CAUSE OF ACTION

FAILURE TO REIMBURSE FOR BUSINESS EXPENSES

BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

(Cal. Labor Code §§ 2000, 2802)

74. Plaintiff re-alleges and incorporates herein by this reference each and every allegation set forth in all previous paragraphs of the Complaint as if fully set forth herein.

75. Labor Code § 2800 provides, in pertinent part, “[a]n employer shall in all cases indemnify his employee for losses caused by the employer’s want of ordinary care.”

1 76. Labor Code § 2802 provides, in pertinent part, “[a]n employer shall indemnify
2 his or her employee for all necessary expenditures or losses incurred by the employee in direct
3 consequence of the discharge of his or her duties...”

4 77. Further, Labor Code § 2802 additionally provides, in pertinent part: “(c)...the
5 term ‘necessary expenditures or losses’ shall include all reasonable costs, including but not
6 limited to, attorney’s fees incurred by the employee enforcing the rights granted by this
7 section.”

8 78. The applicable IWC Wage Order § 9 provides that: “When tools or equipment
9 are required by the employer or are necessary to the performance of a job, such tools and
10 equipment shall be provided and maintained by the employer . . .”

11 79. California Labor Code section 2804 mandates that this statutory right cannot
12 be waived.

13 80. During the relevant time period, Defendants were required to indemnify and
14 reimburse Plaintiff and class members for all expenditures or losses caused by the employer’s
15 want of ordinary care and/or incurred in direct consequent of the discharge of their duties, but
16 failed to indemnify and reimburse Plaintiff and class members for all expenditures or losses.

17 81. As a direct and proximate result, Plaintiff and class members have suffered,
18 and continue to suffer, substantial losses, related to the use and enjoyment of such monies to
19 be reimbursed, lost interest on such monies, and expenses and attorney’s fees in seeking to
20 compel Defendants to fully perform their obligations under California law, all to their damage
21 in amounts according to proof at the time of trial.

22 82. Accordingly, Plaintiff and class members are entitled to recover, and hereby
23 seek, an amount equal to incurred necessary expenditures, pre- and post-judgment interest,
24 applicable penalties, attorneys’ fees and costs, and any further equitable relief this Court may
25 deem just and proper.

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SEVENTH CAUSE OF ACTION
FAILURE TO PROVIDE AND MAINTAIN
ACCURATE AND ITEMIZED WAGE STATEMENTS
BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS
(Cal. Labor Code § 226(a), 1174(d), 1198)

83. Plaintiff re-alleges and incorporates herein by this reference each and every allegation set forth in all previous paragraphs of the Complaint.

84. Labor Code section 226(a) states in pertinent part: "Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing 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 only 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 (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 recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of 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."

85. The applicable IWC Wage Order, section 7(A) states in relevant part that the employer shall keep accurate information regarding, "(4) Total wages paid each payroll

1 period, including value of board, lodging, or other compensation actually furnished to the
2 employee; (5) Total hours worked in the payroll period and applicable rates of pay.”

3 86. Defendants have intentionally and willfully failed to provide Plaintiff and
4 members of the Wage Statement Subclass with complete and accurate wage statements. The
5 deficiencies include, among other things, the failure to list the gross wages earned, net wages
6 earned, and all hours worked.

7 87. As a result of Defendants’ violation of California Labor Code § 226(a),
8 Plaintiff and class members have suffered injury and damage to their statutorily protected
9 rights. Specifically, Plaintiff and class members have been injured by Defendants’ knowing
10 and intentional violation of California Labor Code § 226(a) because they were denied both
11 their legal right to receive, and their protected interest in receiving, accurate itemized wage
12 statements under California Labor Code § 226(a). In addition, because Defendants failed to
13 provide the accurate rates of pay on wage statements, Defendants have prevented Plaintiff and
14 class members from determining if all hours worked were paid at the appropriate rate and the
15 extent of the underpayment. Plaintiff has had to file this lawsuit in order to analyze whether
16 in fact Plaintiff was paid correctly and the extent of the underpayment, thereby causing
17 Plaintiff to incur expenses and lost time. Plaintiff would not have had to engage in these
18 efforts and incur these costs had Defendants provided the accurate rate of pay. This has also
19 delayed Plaintiff’s ability to demand and recover the underpayment of wages from
20 Defendants.

21 88. Labor Code section 226(e) states: “An employee suffering injury as a result of
22 a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to
23 recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in
24 which a violation occurs and one hundred dollars (\$100) per employee for each violation in a
25 subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000),
26 and is entitled to an award of costs and reasonable attorneys’ fees.”

27 89. Labor Code section 226(e)(2)(B) states: “An employee is deemed to suffer
28 injury for purposes of this subdivision if the employer fails to provide accurate and complete

1 information as required by any one or more of items (1) to (9), inclusive, of subdivision (a)
2 and the employee cannot promptly and easily determine from the wage statement alone one
3 or more of the following: (i) The amount of gross wages or net wages paid to the employee
4 during the pay period or any other information required to be provided on the itemized wage
5 statement pursuant to items (2) to (4), inclusive, (6) and (9) of subdivision (a)...” Because
6 Plaintiff’s wage statements did not include, among other things, an accurate accounting of
7 gross wages earned or the accurate total hours worked, he is deemed to have suffered injury.

8 90. Defendants’ violations of California Labor Code § 226(a) prevented Plaintiff
9 and class members from knowing, understanding and disputing the wages paid to them, and
10 resulted in an unjustified economic enrichment to Defendants. As a result of Defendants’
11 knowing and intentional failure to comply with California Labor Code § 226(a), Plaintiff and
12 class members have suffered an injury, the exact amount of damages and/or penalties is all in
13 an amount to be shown according to proof at trial.

14 91. Labor Code section 226(h) states: “An employee may also bring an action for
15 injunctive relief to ensure compliance with this section, and is entitled to an award of costs
16 and reasonable attorney’s fees.”

17 92. Labor Code section 226.3 states, in part: “Any employer who violates
18 subdivision (a) of section 226 shall be subject to a civil penalty in the amount of two hundred
19 fifty dollars (\$250) per employee per violation in an internal citation and one thousand dollars
20 (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails
21 to keep the records required in subdivision (a) of Section 226. The civil penalties provided for
22 in this section are in addition to any other penalty provided by law.”

23 93. As a direct result of Defendants’ violations alleged herein, Plaintiff and class
24 members have suffered, and continue to suffer, injury including substantial losses related to
25 the use and enjoyment of such wages, lost interest on such monies and expenses and attorney’s
26 fees in seeking to compel Defendants to fully perform their obligations under state law, all to
27 their respective damage in amounts according to proof at trial and within the jurisdictional
28 limitations of this Court.

1 94. Plaintiff seeks to recover in a civil action all remedies including damages,
2 unpaid wages, penalties, attorney's fees and costs, and injunctive relief to the fullest extent
3 permissible including those permitted pursuant to Labor Code sections 226(e) and (h), 226.3,
4 and Code of Civil Procedure section 1021.5.

5 **EIGHTH CAUSE OF ACTION**

6 **FAILURE TO TIMELY PAY ALL WAGES DUE UPON SEPARATION OF**
7 **EMPLOYMENT INCLUDING UNUSED, VESTED VACATION WAGES**

8 **(Cal. Labor Code §§ 201, 202, 203, 227.3)**

9 95. Plaintiff re-alleges and incorporates by this reference each and every
10 allegation set forth in all previous paragraphs of the Complaint.

11 96. Labor Code §§ 201 and 202 provide that if an employer discharges an
12 employee, the wages earned and unpaid at the time of discharge are due and payable
13 immediately, and that if an employee voluntarily leaves his employment, his wages shall
14 become due and payable not later than seventy-two (72) hours thereafter, unless the
15 employee has given seventy-two (72) hours previous notice of his intention to quit, in which
16 case the employee is entitled to his wages at the time of quitting.

17 97. Labor Code § 227.3 provides that when an employee is terminated without
18 having taken off his or her vested vacation time, all vested vacation shall be paid to said
19 employee as wages at the final rate of pay upon termination.

20 98. During the relevant time period, Defendants willfully failed to pay Plaintiff
21 and Waiting Time Subclass members all their earned wages upon termination including,
22 but not limited to, minimum, regular, and overtime wages, and all unused, vested vacation
23 wages, either at the time of discharge or within seventy-two (72) hours of their leaving
24 Defendants' employ.

25 99. Defendants' failure to pay Plaintiff and Waiting Time Subclass members all
26 their earned wages at the time of discharge or within seventy-two (72) hours of their leaving
27 Defendants' employ is in violation of Labor Code §§ 201, 202, and 227.3.

28 100. Labor Code § 203 provides that if an employer willfully fails to pay wages

1 owed immediately upon discharge or resignation, then the wages of the employee shall
2 continue as a penalty from the due date at the same rate until paid or until an action is
3 commenced; but the wages shall not continue for more than thirty (30) days.

4 101. Plaintiff and Waiting Time Subclass members are entitled to recover from
5 Defendants the statutory penalty which is defined as Plaintiff's and Waiting Time Subclass
6 members' regular daily wages for each day they were not paid, at their regular hourly rate
7 of pay, up to a thirty (30) day maximum pursuant to Labor Code § 203.

8 **NINTH CAUSE OF ACTION**

9 **VIOLATION OF THE UNFAIR COMPETITION LAW**

10 **(California Business & Professions Code § 17200, *et seq.*)**

11 102. Plaintiff re-alleges and incorporates herein by this reference each and every
12 allegation set forth in all previous paragraphs of the Complaint.

13 103. California Business and Professions Code §§ 17200, *et seq.*, prohibits acts of
14 unfair competition, which includes any "unlawful, unfair or fraudulent business act or practice
15"

16 104. A violation of California Business and Professions Code §§ 17200, *et seq.* may
17 be predicated on the violation of any state or federal law. In the instant case, Defendants'
18 policies and practices have violated state law causing Plaintiff and class members to suffer
19 and continue to suffer injuries in fact. As alleged herein, Defendants systematically engaged
20 in unlawful conduct in violation of the California Labor Code and IWC Wage Orders, such as
21 failing to timely pay all minimum, regular, and overtime wages, failing to provide meal
22 periods or provide premium wages at the regular rate of pay in lieu of, failing to reimburse
23 business expenses, failing to furnish accurate itemized wage statements, and failing to timely
24 pay all wages upon separation of employment, including unused, but vested vacation wages.

25 105. This cause of action is brought under Business and Professions Code sections
26 17203 and 17204, commonly called the Unfair Competition Law. Under this cause of action
27 and pursuant to Business and Professions Code section 17208, Plaintiff and all Plaintiff Class
28 Members seek restitution of wages and expenses, where such amounts were due each of the

1 class members during the Class Period, commencing four (4) years prior to filing of this
2 complaint, according to proof.

3 106. As a result of Defendants' violations of the California Labor Code and IWC
4 Wage Orders, Plaintiff and class members suffered a loss of wages and monies, all in an
5 amount to be shown according to proof at trial.

6 107. Defendants' violations of the California Labor Code and IWC Wage Orders
7 constitute violations of the UCL.

8 108. Plaintiff meets the standing requirements for seeking relief pursuant to
9 Business and Professions Code Section 17203, in that he has suffered an injury in fact and has
10 lost money as a result of Defendants' policies, practices and procedures, as more fully set forth
11 elsewhere in this pleading.

12 109. As a result of the unfair business practices of Defendants, as alleged herein,
13 Plaintiff and class members are entitled to restitution of all unpaid wages and expenses in an
14 amount to be shown according to proof at trial.

15 110. Plaintiff and class members seek to enforce important rights affecting the
16 public interest within the meaning of California Code of Civil Procedure § 1021.5.
17 Defendants' conduct, as alleged herein, has been, and continues to be, unfair, unlawful and
18 harmful to class members and to the general public. Based on Defendants' conduct as alleged
19 herein, Plaintiff and class members are entitled to an award of attorneys' fees pursuant to
20 California Code of Civil Procedure § 1021.5.

21 **TENTH CAUSE OF ACTION**

22 **ENFORCEMENT OF LABOR CODE § 2698 ET SEQ. ("PAGA")**

23 111. Plaintiff hereby re-alleges and incorporate by reference all paragraphs above,
24 as though fully set forth herein.

25 112. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that
26 provides for a civil penalty to be assessed and collected by the Labor and Workforce
27 Development Agency ("LWDA") or any of its departments, divisions, commissions, boards,
28 agencies or employees for violation of the code may, as an alternative, be recovered through

1 a civil action brought by an aggrieved employee on behalf of himself and other current or
2 former employees pursuant to the procedures specified in Labor Code § 2699.3.

3 113. Defendants' conduct violates numerous Labor Code sections including, but
4 not limited to, the following:

5 (a) Violation of Labor Code §§ 201, 202, 203, 204, 210, 227.3, 510, 511,
6 558, 1182.12, 1194, 1197 and 1198 for failure to timely pay all earned wages
7 (including minimum wages and overtime wages) owed to Plaintiff and other
8 aggrieved employees during employment and upon separation of employment,
9 including vested vacation wages, as herein alleged;

10 (b) Violation of Labor Code §§ 221 and 225.5 for the unlawful deduction
11 of wages owed to Plaintiff and other aggrieved employees;

12 (c) Violation of Labor Code § 246 by willfully failing to provide
13 mandatory paid sick leave to Plaintiff and other aggrieved employees;

14 (d) Violation of Labor Code §§ 226.7 and 512 for failure to provide meal
15 periods to Plaintiff and other aggrieved employees and failure to pay premium wages
16 for missed meal periods as herein alleged;

17 (e) Violation of Labor Code § 226.7 for failure to permit rest breaks to
18 Plaintiff and other aggrieved employees and failure to pay premium wages for missed
19 rest periods as herein alleged;

20 (f) Violation of Labor Code §§ 226 and 226.3 for failure to provide
21 accurate itemized wage statements to Plaintiff and other aggrieved employees as
22 herein alleged; and

23 (g) Violation of Labor Code §§ 2800 and 2802 for failure to reimburse
24 reasonable and necessary business expenses of Plaintiff and other aggrieved
25 employees as herein alleged.
26
27
28

114. Plaintiff is an “aggrieved employee” because he was employed by the alleged violator and had one or more of the alleged violations committed against them, and therefore is properly suited to represent the interests of all other aggrieved employees.

115. Plaintiff has exhausted the procedural requirements under Labor Code § 2699.3 as to Defendants and is therefore able to pursue a claim for penalties on behalf of himself and all other aggrieved employees under PAGA.

116. PAGA imposes a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation.

117. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiff is entitled to recover civil penalties, in addition to other remedies, for violations of the Labor Code sections cited above.

118. For bringing this action, Plaintiff is entitled to attorney’s fees and costs incurred herein.

PRAYER

WHEREFORE, Plaintiff prays for judgment on behalf of himself and the Class against all Defendants, as follows:

ON THE FIRST CAUSE OF ACTION

1. For all unpaid earned wages and penalties;
2. For all actual, consequential, and incidental losses and damages, according to proof;
3. For prejudgment interest; and
4. For reasonable attorneys’ fees and costs under Labor Code § 218.5.

ON THE SECOND CAUSE OF ACTION

1. For all underpaid wages;
2. For liquidated damages pursuant to Labor Code § 1194(a);
3. For prejudgment interest; and
4. For reasonable attorneys’ fees and costs under Labor Code § 1194.

1 **ON THE THIRD CAUSE OF ACTION**

- 2 1. For unpaid overtime wages and penalties;
3 2. For prejudgment interest; and
4 3. For reasonable attorneys' fees and costs under Labor Code § 1194.

5 **ON THE FOURTH CAUSE OF ACTION**

- 6 1. For the wages which were unlawfully deducted from the wages of the Plaintiff
7 and the Class; and
8 2. For prejudgment interest; and
9 3. For reasonable attorneys' fees and costs.

10 **ON THE FIFTH CAUSE OF ACTION**

- 11 1. For unpaid wage premiums for failing to provide compliant meal periods and
12 penalties;
13 2. For prejudgment interest; and
14 3. For reasonable attorneys' fees and costs under Labor Code § 218.5.

15 **ON THE SIXTH CAUSE OF ACTION**

- 16 1. For the unreimbursed expenses incurred by Plaintiffs and the Class;
17 2. For prejudgment interest; and
18 3. For reasonable attorneys' fees and costs under Labor Code § 2802.

19 **ON THE SEVENTH CAUSE OF ACTION**

- 20 1. For damages and penalties under Labor Code § 226(e);
21 2. For prejudgment interest; and
22 2. For reasonable attorneys' fees and costs under Labor Code § 226(e).

23 **ON THE EIGHTH CAUSE OF ACTION**

- 24 1. For the wages of each Class Member who is no longer employed by
25 Defendants at their regular daily rate up to a maximum of thirty (30) days;
26 2. For prejudgment interest; and
27 3. For reasonable attorneys' fees.

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1 **ON THE NINTH CAUSE OF ACTION**

- 2 1. For restitution of all unpaid wages, overtime and other monies withheld from
3 Plaintiffs and the rest of the Class as a result of Defendants' unfair, unlawful
4 or fraudulent business practices; and
5 2. For reasonable attorneys' fees and costs under Code of Civil Procedure §
6 1021.5.

7 **ON THE TENTH CAUSE OF ACTION**

- 8 1. Civil penalties pursuant to Labor Code § 558:
9 a. \$50 for each underpaid employee for each pay period per violation; and
10 b. \$100 per employee per pay period for subsequent violations per violation;
11 and
12 2. Civil penalties pursuant to Labor Code § 2699(f):
13 a. \$100 for each aggrieved employee per pay period for the initial violation
14 per violation; and
15 b. \$200 for each aggrieved employee per pay period for each subsequent
16 violation per violation; and
17 3. For other penalties under PAGA as allowed as the court may deem
18 appropriate; and
19 4. Attorneys' fees and costs litigation expenses pursuant to Labor Code section
20 2699(g) and/or Code of Civil Procedure section 1021.5.

21 **ON ALL CAUSES OF ACTION**

- 22 1. For certification of the action as a class action;
23 2. For attorneys appearing on the above caption to be named class counsel and
24 for named Plaintiff to be appointed class representative;
25 3. A declaratory judgment that the practices complained of in this Complaint are
26 unlawful under California Law;
27 4. For penalties under PAGA, 75% of which will be paid to the LWDA and 25%
28 of which will distributed to the aggrieved employees;

- 1 5. For reasonable attorneys' fees under the California Labor Code and all related
2 statutes, including California Code of Civil Procedure § 1021;
3 6. For costs of the suit incurred herein; and
4 7. For such further relief as the Court may deem appropriate.

5
6 DATED: October 20, 2020

Lebe Law, APLC

7
8 By: _____

Jonathan M. Lebe

9
10 Attorney for Plaintiff Jason Mitchiner
11 individually and on behalf of all other similarly
12 situated

13 **DEMAND FOR JURY TRIAL**

14 Plaintiff demands a trial by jury on all claims so triable.

15 DATED: October 20, 2020

Lebe Law, APLC

16
17 By: _____

Jonathan M. Lebe

18 Attorney for Plaintiff Jason Mitchiner
19 individually and on behalf of all other similarly
20 situated
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PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California, I am over the age of eighteen years and not a party to the within entitled action; my business address is 777 S. Alameda Street, Los Angeles, CA 90021

On October 20, 2020 I served the foregoing First Amended Complaint on the interested parties, by placing a true copy thereof, by the method of service specified below:

Corey Singer
CGS@msk.com

Adam Levin
AXL@msk.com

Mitchell Silberberg & Knupp LLP
2049 Century Park East, 18th Floor
Los Angeles, CA 90067

Counsel for Defendants

☒ (VIA ELECTRONIC SERVICE) Pursuant to court order and Cal. Rules of Court, Appendix I, Emergency Rule No. 12, I caused the documents to be sent to the persons at the electronic notification addresses listed above via CaseAnywhere. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

☒ (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Dated: October 20, 2020



Jonathan M. Lebe