

James R. Hawkins, Esq. SBN 192925
james@jameshawkinsaplc.com
Christina M. Lucio, Esq. SBN 253677
christina@jameshawkinsaplc.com
JAMES HAWKINS APLC
9880 Research Drive, Suite 200
Irvine, CA 92618
TEL: (949) 387-7200
FAX: (949) 387-6676

Attorneys for Plaintiff, JONATHAN FLORES,
on behalf of himself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

JONATHAN FLORES, on behalf of himself
and all others similarly situated,

Plaintiff,

vs.

WEST COAST DINER MANAGEMENT,
INC., a California corporation, DOING
BUSINESS AS DENNY'S and DOES 1-50,
inclusive,

Defendants.

Case No.

Assigned For All Purposes to:

**CLASS ACTION COMPLAINT FOR
DAMAGES FOR:**

- 1) Failure To Authorize And Permit Rest
Periods;**
- 2) Failure to Pay Reporting Time Pay**
- 3) Failure to Timely Pay Wages Due and
Payable During Employment**
- 4) Failure to Timely Pay Wages Owed
Upon Separation From
Employment;**
- 5) Failure to Furnish Accurate Itemized
Wage Statements;**
- 6) Failure to Reimburse Necessary
Expenses;**
- 7) Violation of the Unfair Competition
Law;**

JURY TRIAL DEMANDED

1 Plaintiff JONATHAN FLORES (“Plaintiff”), individually and on behalf of all others
2 similarly situated, hereby asserts claims against defendants WEST COAST DINER
3 MANAGEMENT, INC. dba DENNY’S, a California corporation (“West Coast”) and DOES 1-
4 50, inclusive (collectively “Defendants”) in this complaint as follows:

5 **INTRODUCTION**

6 1. This is a Class Action, pursuant to California Code of Civil Procedure section
7 382, on behalf of Plaintiff and any and all persons who are or were employed by Defendants as
8 non-exempt employees, however titled, working in Defendants’ restaurants in the State of
9 California within four (4) years prior to the filing of the Complaint in this action until the
10 resolution of this lawsuit (collectively referred to as the “Class” or “Class Members” or “Non-
11 Exempt Employees”).

12 2. During the “liability period,” as defined as the applicable statute of limitations for
13 each and every cause of action contained herein – i.e. Plaintiff’s claims under the Unfair
14 Competition Law is four (4) years; Plaintiff’s claims for either unpaid wages or actual damages is
15 three (3) years; and Plaintiff’s claims for statutory penalties is one (1) year from the filing of this
16 action through the present (referred to as “the liability period(s)”) – Defendants consistently
17 maintained and enforced against its Non-Exempt Employees unlawful practices and policies in
18 violation of California state wage and hour laws, including failing to lawfully and accurately pay
19 Plaintiff and Class Members for all hours worked, including failing to pay reporting time pay;
20 failing to lawfully authorize and permit rest periods; failing to pay one hour of pay at the
21 employee’s regular rate of pay when legally mandated rest periods were not lawfully authorized
22 and permitted; failing to reimburse necessary expenses; failing to timely pay all owed wages at
23 termination; failing to provide accurate itemized wage statements; and failing to keep accurate
24 records.

25 3. Defendants implemented uniform policies and practices that deprived Plaintiff
26 and Class Members of earned wages; reporting time pay, reimbursements for necessary expenses;
27 accurate itemized wage statement; and lawful rest breaks.

28 4. Such actions and policies, as described above and further herein, were and

1 continue to be in violation of the California Labor Code. Plaintiff, on behalf of herself and all
2 Class members, bring this action pursuant to the California Labor Code, including sections 201,
3 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 516, 558, 1174, 1194, 1194.2, 1195, 1197,
4 1198, 2802, applicable IWC California Wage Orders and California Code of Regulations, Title 8,
5 section 11000 *et seq.*, seeking unpaid wages, unpaid rest period compensation, penalties,
6 liquidated damages, unreimbursed expenses, and reasonable attorneys' fees and costs.

7 5. Plaintiff, on behalf of himself and others similarly situated, pursuant to Business
8 and Professions Code sections 17200-17208, also seeks restitution from Defendants for their
9 failure to pay to Plaintiffs and Class Members all of their wages, including reporting time wages,
10 minimum, overtime and premium wages, unreimbursed expenses, and for unpaid rest period
11 compensation.

12 **JURISDICTION AND VENUE**

13 6. This action is brought as a Class Action on behalf of Plaintiff and similarly
14 situated employees of Defendants pursuant to California Code of Civ. Proc. Section 382. The
15 monetary damages and restitution sought by Plaintiff exceeds the minimum jurisdiction limits of
16 the California Superior Court and will be established according to proof at trial.

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

21 8. This Court has jurisdiction over this Action pursuant to California Code of Civil
22 Procedure, Section 410.10 and California Business & Professions Code, Section 17203.

23 9. This Court has jurisdiction over Defendants because, upon information and belief,
24 each Defendant is either a resident of California, has sufficient minimum contacts in California,
25 or otherwise intentionally avails itself of the California market so as to render the exercise of
26 jurisdiction over them by the California Courts consistent with traditional notions of fair play and
27 substantial justice. Defendants have done and are doing business throughout California.

28 10. The unlawful acts alleged herein have a direct effect on Plaintiff and the other

1 similarly situated Non-Exempt Employees. Defendant West Coast Diner Management, Inc. is
2 headquartered within Alameda County and it is believed that Defendants have employed over
3 one hundred Class Members as Non-Exempt Employees throughout the state.

4 11. The California Superior Court also has jurisdiction in this matter because the
5 individual claims of the Class Members described herein are presently believed to be under the
6 seventy-five thousand dollar (\$75,000.00) jurisdictional threshold for Federal Court and the
7 aggregate potential damages and recovery by all of the claims of the Plaintiff's Class, including
8 attorneys' fees, placed in controversy by Plaintiff's class-wide claims, is presently believed to be
9 under the five million dollar (\$5,000,000.00) threshold of the Class Action Fairness Act of 2005.
10 Further, there is no federal question at issue, as the issues herein are based solely on California
11 statutes and law, including the Labor Code, IWC Wage Orders, the California Code of Civil
12 Procedure, the California Civil Code, and the California Business and Professions Code.

13 12. Venue is proper in this Court because one or more of the Defendants reside,
14 transact business, are headquartered or have offices in this County, and the acts or omissions
15 alleged herein took place in this County.

16 **PARTIES**

17 13. Plaintiff Jonathan Flores is an individual who, at all times relevant herein, resided
18 in the State of California. He was employed by Defendants from August 2017 to September
19 2019. He has held positions as a Server and as a Manager.

20 14. Plaintiff worked as a non-exempt employee for Defendants at their Denny's
21 restaurant location at 1255 De La Torre; Salinas, CA 93905.

22 15. Defendant West Coast Diner Management, Inc. is a California corporation in good
23 standing. West Coast Diner Management, Inc.'s headquarters is located at 3550 Mowry Ave.
24 #301; Fremont, CA 94538. West Coast Diner Management, Inc. operates numerous Denny's
25 family restaurant locations throughout California.

26 16. Plaintiff was employed by Defendants during the liability period as a non-exempt
27 restaurant employee in Salinas, California.

28 17. Plaintiff and the members of the putative class were employed by Defendants in

1 their restaurants as non-exempt restaurant employees, however titled, (the “Class Members” or
2 “Non-Exempt Employees”) during the liability period. This includes, without limitation, servers,
3 bussers, hosts, cooks, and all other restaurant personnel.

4 18. Whenever in this complaint reference is made to any act, deed, or conduct of
5 Defendants, the allegation means that Defendants engaged in the act, deed, or conduct by or
6 through one or more of West Coast Management, Inc.’s officers, directors, agents, employees, or
7 representatives, who was actively engaged in the management, direction, control, or transaction
8 of the ordinary business and affairs of Defendants.

9 19. Whenever reference in this Complaint reference is made to “Defendants,” such
10 allegations shall be deemed to mean the acts of Defendants acting individually, jointly, and/or
11 severally.

12 20. The true names and capacities of Defendants, whether individual, corporate,
13 associate, or otherwise, sued herein as DOES 1 through 50, inclusive, are currently unknown to
14 Plaintiff, who therefore sue Defendants by such fictitious names under Code of Civil Procedure §
15 474. Plaintiffs will seek leave of court to amend this Complaint to reflect the true names and
16 capacities of the Defendants designated hereinafter as DOES when such identities become
17 known.

18 21. Plaintiff is informed and believes, and thereon allege, that the Doe Defendants are
19 the partners, agents, or principals and co-conspirators of Defendants and of each other; that
20 Defendants and the Doe Defendants performed the acts and conduct herein alleged directly, aided
21 and abetted the performance thereof, or knowingly acquiesced in, ratified, and accepted the
22 benefits of such acts and conduct, and therefore each of the Doe Defendants is liable to the extent
23 of the liability of the Defendants as alleged herein.

24 22. Plaintiff is further informed and believes, and thereon alleges, that at all times
25 material herein, each Defendant was completely dominated and controlled by its co-Defendants
26 and each was the alter ego of the other. Whenever and wherever reference is made in this
27 complaint to any conduct by Defendant or Defendants, such allegations and references shall also
28 be deemed to mean the conduct of each of the Defendants, acting individually, jointly, and

severally. Whenever and wherever reference is made to individuals who are not named as Defendants in this complaint, but were employees and/or agents of Defendants, such individuals, at all relevant times acted on behalf of Defendants named in this complaint within the scope of their respective employments.

FACTUAL ALLEGATIONS

23. Plaintiff incorporates the allegation set forth above.

24. Plaintiff typically worked approximately 35 hours a week and 5 days a week.

25. Plaintiff and the Non-Exempt Employees were, and at all times pertinent hereto, have been non-exempt employees within the meaning of the California Labor Code, and the implementing rules and regulations of the IWC California Wage Orders.

26. At all times relevant herein, the hours and working conditions of Plaintiffs and other similarly situated employees were governed by the California Labor Code and IWC Wage Order 5-2001.

27. During the relevant time frame, Defendants compensated Plaintiff and the Non-Exempt Employees based upon an hourly wage.

28. Plaintiff and the putative class members were employed by Defendants as non-exempt restaurant employees in Defendants' Denny's restaurants throughout the State of California.

29. In addition, during the relevant time frame, Plaintiff and the Non-Exempt Employees were systematically not authorized and permitted to take one net ten-minute paid, rest period for every four hours worked or major fraction thereof, which is a violation of the Labor Code and IWC wage order.

30. Defendants maintained and enforced scheduling practices, labor budgets, staffing models, policies, and imposed work demands that frequently required Plaintiff and the Non-Exempt Employees to forego their lawful, paid rest periods of a net ten minutes for every four hours worked or major fraction thereof. Such requisite rest periods were not authorized and permitted.

31. Despite the above-mentioned rest period violations, Defendants did not

1 compensate Plaintiff, and on information and belief, did not pay Non-Exempt Employees one
2 additional hour of pay at their regular rate as required by California law, including Labor Code
3 section 226.7 and the applicable IWC wage order, for each day on which lawful rest periods were
4 not authorized and permitted.

5 32. In addition, Defendants also failed to reimburse Plaintiff and the Class Members
6 for necessary expenses, including writing utensils (like pens), note pads/paper, shoes, and
7 uniform maintenance.

8 33. Moreover, Defendants failed to provide reporting time pay to Plaintiff and Class
9 Members when they were required to report to work and were furnished with less than half said
10 employee's usual or scheduled day's work.

11 34. Defendants failed to provide accurate itemized wage statements to Plaintiff and
12 the Class Members that properly and accurately itemized the actual hours worked, rates of pay
13 including reporting time pay and rest period premiums, and the employer's correct name.

14 35. Moreover, Defendants have consistently failed to pay all wages owed at
15 separation and have failed to provide accurate itemized wage statements to Plaintiffs reflecting
16 all wages earned and owed. Such violations have resulted, at least in part, from Defendant's
17 consistent decision not to pay reporting time pay and premium wages for non-provided rest
18 periods.

19 36. All Non-Exempt Employees, including Plaintiff, are similarly situated in that they
20 are all subject to Defendants' uniform policies and systemic practices as specified herein.

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

24 38. Plaintiff is informed and believes, and thereon alleges, that at all times herein
25 mentioned, Defendants knew that at the time of termination of employment (or within 72 hours
26 thereof for resignations without prior notice as the case may be) they had a duty to accurately
27 compensate Plaintiffs and Class Members for all wages owed including minimum wages, straight
28 time wages, overtime, meal and rest period premiums, and that Defendants had the financial

1 ability to pay such compensation, but willfully, knowingly, recklessly, and/or intentionally failed
2 to do so in part because of the above-specified violations.

3 **CLASS ACTION ALLEGATIONS**

4 39. Plaintiff brings this action on her own behalf, as well as on behalf of each and
5 every other person similarly situated, and thus, seeks class certification under California Code of
6 Civil Procedure §382.

7 40. All claims alleged herein arise under California law for which Plaintiff seeks
8 relief as authorized by California law.

9 41. The **proposed class** is comprised of and defined as: All persons currently or
10 formerly employed by Defendants as non-exempt restaurant employees, however titled, working
11 in Defendants' restaurants throughout the state of California within four (4) years prior to the
12 filing of the Complaint in this action until the resolution of this lawsuit. (hereinafter collectively
13 referred to as the "Class" or "Class Members").

14 42. Plaintiff also seeks to represent Subclasses included in the Plaintiff's Class, which
15 are composed of Class Members satisfying the following definitions:

16 a. All Class Members who worked more than three and a half hours in a
17 workday and were not authorized and permitted to take a lawful net 10-minute rest period and
18 were not paid compensation of one hour premium wages at the employee's regular rate in lieu
19 thereof (hereinafter collectively referred to as the "**First Rest Period Subclass**");

20 b. All Class Members who worked more than six hours in a workday and
21 were not authorized and permitted to take a second lawful net 10-minute rest period and were not
22 paid compensation of one hour premium wages at the employee's regular rate in lieu thereof
23 (hereinafter collectively referred to as the "**Second Rest Period Subclass**");

24 c. All Class Members who worked more than ten hours in a workday and
25 were not authorized and permitted to take a third lawful net 10-minute rest period and were not
26 paid compensation of one hour premium wages at the employee's regular rate in lieu thereof
27 (hereinafter collectively referred to as the "**Third Rest Period Subclass**");

28 d. All Class Members who were required to report for work and were

1 furnished with less than half said employee's usual or scheduled day's work. (hereinafter
2 collectively referred to as the “**Reporting Time Subclass**”);

3 e. All Class Members who did not receive all owed wages at the time of
4 separation or within 72 hours in the case of resignation (hereinafter collectively referred to as the
5 “**Waiting Time Subclass**”);

6 f. All Class Members who were not provided with accurate and complete
7 itemized wage statements (hereinafter collectively referred to as the “**Inaccurate Wage**
8 **Statement Subclass**”);

9 g. All Class Members who were employed by Defendants and subject to
10 Defendant’s Unfair Business Practices (hereinafter collectively referred to as the “**Unfair**
11 **Business Practices Subclass**”).

12 h. All Class Members who were not reimbursed for all necessary
13 expenditures (collectively “**Indemnification Subclass**”).

14 43. Plaintiff reserves the right, under Rule 3.765, California Rules of Court, to amend
15 or modify the descriptions of the Class and Subclasses to provide greater specificity as
16 appropriate, or if it should be deemed necessary by the Court or to further divide the Class
17 Members into additional Subclasses or to limit the Subclasses to particular issues. Any reference
18 herein to the Class Members or the Plaintiffs’ Class includes the members of each of the
19 Subclasses.

20 44. As set forth in further detail below, this action has been brought and may properly
21 be maintained as a class action under the provisions of section 382 of the Code of Civil
22 Procedure because there is a well-defined community of interest in the litigation, and the
23 proposed Class and Subclasses are easily ascertainable through Defendants’ records.

24 a. Numerosity: The members of the Class and Subclasses are so numerous
25 that joinder of all members of the Class and Subclasses would be unfeasible and impractical. The
26 membership of the entire Class and Subclasses is unknown to Plaintiff at this time, however, the
27 Class is estimated to be hundreds of individuals. Accounting for employee turnover during the
28 relevant periods necessarily increases this number substantially. Plaintiff alleges Defendants’

1 employment records would provide information as to the number and location of all Class
2 Members. Joinder of all members of the proposed Class is not practicable.

3 b. The proposed class is easily ascertainable. The number and identity of the
4 class members are determinable from Defendants' payroll records and time records for each class
5 member.

6 c. Commonality: There are common questions of law and fact as to the
7 Class and Subclasses that predominate over questions affecting only individual Class Members.
8 These common questions of law and fact include, without limitation:

9 1) Whether Defendants paid reporting time pay to Class Members who were
10 furnished with less than half the employee's usual or scheduled day's work;

11 2) Whether Defendants paid at least 2 hours of reporting time pay to Class
12 Members who were required to report to work regardless of the length of the scheduled shift;

13 3) Whether Defendants authorized and permitted a lawful, net 10-minute rest
14 period to the Class Members for every four (4) hours or major fraction thereof worked;

15 4) Whether Defendants had a policy and practice of authorizing and
16 permitting second rest periods on shifts over six hours;

17 5) Whether Defendants had a policy and practice of authorizing and
18 permitting third rest periods on shifts over ten hours;

19 6) Whether Defendants required employees to remain on the premises during
20 rest periods;

21 7) Whether Defendants had a policy and practice of complying with Labor
22 Code section 226.7 and the IWC Wage Order on each instance that a lawful rest period was not
23 provided;

24 8) Whether Defendants timely paid all wages upon separation in accordance
25 with Labor Code sections 201-202;

26 9) Whether Defendants failed to reimburse employees for necessary expenses
27 in accordance with Labor Code section 2802;

28 10) Whether Defendants were required to reimburse employees for expenses

1 incurred for writing utensils;

2 11) Whether Defendants were required to reimburse employees for expenses
3 incurred for shoes or uniform maintenance;

4 12) Whether Defendants omitted or misidentified required information from
5 itemized wage statements;

6 13) Whether Defendants maintained accurate records of Class Members' hours
7 worked, earned wages, work periods, meal periods and deductions;

8 14) Whether Defendants engaged in unfair competition in violation of section
9 17200 et seq. of the Business and Professions Code;

10 15) Whether Defendants' conduct was willful and/or reckless;

11 16) Whether Defendants provided accurate itemized wage statements in
12 violation of Labor Code § 226; and

13 17) The appropriate amount of damages, restitution, and/or monetary penalties
14 resulting from Defendants' violations of California law.

15 d. Typicality: Plaintiff is qualified to, and will fairly and adequately protect
16 the interests of each member of the Class and Subclasses with whom he has a well-defined
17 community of interest. Plaintiff's claims herein alleged are typical of those claims which could
18 be alleged by any member of the Class and/or Subclasses, and the relief sought is typical of the
19 relief which would be sought by each member of the Class and/or Subclasses in separate actions.
20 All members of the Class and/or Subclasses have been similarly harmed by Defendants' failure
21 to authorize and permit lawful rest periods, failure to pay reporting time pay, failure to provide
22 accurate wage statements, failure to timely pay wages at termination, failure to reimburse
23 necessary expenses, and failure to accurately pay all wages earned including all owed premiums
24 and reporting time wages, all due to Defendants' policies and practices that affected each
25 member of the Class and/or Subclasses similarly. Further, Defendants benefited from the same
26 type of unfair and/or wrongful acts as to each member of the Class and/or Subclasses.

27 e. Adequacy: Plaintiff is qualified to, and will fairly and adequately protect
28 the interests of each member of the Class and/or Subclasses with whom he has a well-defined

1 community of interest and typicality of claims, as demonstrated herein. Plaintiff acknowledges
2 that she has an obligation to make known to the Court any relationships, conflicts, or differences
3 with any member of the Class and/or Subclasses, and no such relationships or conflicts are
4 currently known to exist. Plaintiff's attorneys and the proposed counsel for the Class and
5 Subclasses are versed in the rules governing class action discovery, certification, litigation, and
6 settlement and experienced in handling such matters. Other former and current employees of
7 Defendants may also serve as representatives of the Class and Subclasses if needed.

8 f. Superiority: The nature of this action makes the use of class action
9 adjudication superior to other methods. A class action will achieve economies of time, effort,
10 judicial resources, and expense, which would not be achieved with separate lawsuits. The
11 prosecution of separate actions by individual members of the Class and/or Subclasses would
12 create a risk of inconsistent and/or varying adjudications with respect to the individual members
13 of the Class and/or Subclasses, establishing incompatible standards of conduct for the
14 Defendants, and resulting in the impairment of the rights of the members of the Class and/or
15 Subclasses and the disposition of their interests through actions to which they were not parties.
16 Thus, a class action is superior to other available means for the fair and efficient adjudication of
17 this controversy because individual joinder of all Class Members is not practicable, and questions
18 of law and fact common to the Class predominate over any questions affecting only individual
19 Class Members. Each member of the Class has been damaged and is entitled to recovery by
20 reason of Defendants' unlawful policies and practices, including Defendants' failure to authorize
21 and permit lawful rest periods, failure to pay reporting time pay, failure to provide accurate wage
22 statements, failure to timely pay wages at termination, failure to reimburse necessary expenses,
23 and failure to accurately pay all wages earned including all owed premiums and reporting time
24 wages, all due to Defendants' policies and practices that affected each member of the Class
25 and/or Subclasses similarly. Class action treatment will allow those similarly situated persons to
26 litigate their claims in the manner that is most efficient and economical for both parties and the
27 judicial system. Plaintiff is unaware of any difficulties that are likely to be encountered in the
28 management of this action that would preclude its maintenance as a class action.

1 g. Public Policy Considerations: Employers in the state of California violate
2 employment and labor laws every day. However, current employees are often afraid to assert
3 their rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing
4 actions because they believe their former employers may damage their future endeavors through
5 negative references and/or other means. The nature of this action allows for the protection of
6 current and former employees' rights without fear of retaliation or damage. Additionally, the
7 citizens of California have a significant interest in ensuring employers comply with California's
8 labor laws and in ensuring those employers who do not are prevented from taking further
9 advantage of their employees.

10 **CLASS ACTION CLAIMS**

11 **FIRST CAUSE OF ACTION**

12 **FAILURE TO AUTHORIZE AND PERMIT LAWFUL REST PERIODS**

13 **(By Plaintiff and the Rest Period Subclasses Against All Defendants)**

14 45. Plaintiff incorporates by reference and realleges each and every allegation
15 contained above, as though fully set forth herein.

16 46. Labor Code section 1198 makes it unlawful to employ an employee under
17 conditions of labor that are prohibited by the applicable Wage Order.

18 47. Pursuant to the IWC wage order 5-2001, Plaintiff's and Class Members'
19 employment by Defendants, "Every employer shall authorize and permit all employees to take
20 rest periods, which insofar as practicable shall be in the middle of each work period.... [The]
21 authorized rest period time shall be based on the total hours worked daily at the rate of ten (10)
22 minutes net rest time per four (4) hours worked or major fraction thereof.... Authorized rest
23 period time shall be counted as hours worked, for which there shall be no deduction from
24 wages."

25 48. Labor Code §226.7(a) prohibits an employer from requiring any employee to work
26 during any rest period mandated by an applicable order of the IWC.

27 49. Defendants were required to authorize and permit employees such as Plaintiff and
28 Class Members to take rest periods during shifts in excess of 3.5 hours, based upon the total

1 hours worked at a rate of ten (10) minutes net rest per four (4) hours worked, or major fraction
2 thereof, with no deduction from wages.

3 50. Specifically, Defendants were required to authorize and permit Plaintiff and the
4 Class Members to take one lawful net ten minute rest period on a shift between 3.5 and 6 hours;
5 to take two (2) lawful net ten minute rest periods on shifts over six hours to ten hour shifts and
6 three (3) lawful net ten (10) minute rest periods on shifts over ten hours.

7 51. Despite said requirements of the IWC wage orders applicable to Plaintiff's and
8 Class Member's employment with Defendants, Defendants failed and refused to authorize and
9 permit Plaintiff and Class Members to take lawful, net ten (10) minute rest periods for every four
10 (4) hours worked, or major fraction thereof.

11 52. Defendants did not pay Plaintiff one additional hour of pay at his regular rate of
12 pay for each day that a rest period violation occurred. On information and belief, the other
13 members of the Class endured similar violations as a result of Defendants' rest period policies
14 and practices and Defendant did not pay said Class Members premium pay as required by law.

15 53. By their failure to authorize and permit Plaintiff and the Class Members to take a
16 lawful, net ten (10) minute rest period free from work duties every four (4) hours or major
17 fraction thereof worked, including failure to provide two (2) total rest periods on six to ten hour
18 shifts and three (3) total ten (10) minute rest periods on days on which Plaintiff and the other
19 Class Members work(ed) work a third rest period for shifts in excess of ten (10) hours, and by
20 their failure to provide compensation for such unprovided rest periods as alleged herein,
21 Defendants willfully violated the provisions of Labor Code sections 226.7, 1198, and the
22 applicable IWC Wage Order(s).

23 54. As a result of the unlawful acts of Defendants, Plaintiff and the Class she seeks to
24 represent have been deprived of premium wages in amounts to be determined at trial, and are
25 entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and
26 costs, under Labor Code sections 218.5, 218.6, 226.7, the applicable IWC Wage Orders, and
27 Civil Code 3287.
28

1 **SECOND CAUSE OF ACTION**

2 **FAILURE TO PROVIDE REPORTING TIME PAY**

3 **(By Plaintiff and the Reporting Time Subclass Against All Defendants)**

4 55. Plaintiff incorporates by reference each and every paragraph above, and realleges
5 each and every allegation contained above as though fully set forth herein.

6 56. Section 5 of Wage Order 5-2001 (Reporting Time Pay) provides:

7 (A) Each workday an employee is required to report for work and does report, but is not
8 put to work or is furnished less than half said employee's usual or scheduled day's work,
9 the employee shall be paid for half the usual or scheduled day's work, but in no event for
10 less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay,
11 which shall not be less than the minimum wage.

12
13 (B) If an employee is required to report for work a second time in any one workday and is
14 furnished less than two hours of work on the second reporting, said employee shall be
15 paid for two hours at the employee's regular rate of pay, which shall not be less than the
16 minimum wage.

17 57. Labor Code Section 1198 states: "The maximum hours of work and the standard
18 conditions of labor fixed by the commission shall be the maximum hours of work and the
19 standard conditions of labor for employees. The employment of any employee for longer hours
20 than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

21 58. The "primary purpose of the reporting time regulation" is "to guarantee at least
22 partial compensation for employees who report to work expecting to work a specified number of
23 hours, and who are [] deprived of that amount because of inadequate scheduling or lack of proper
24 notice by the employer." *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012).

25 59. Reporting time pay constitutes wages. *Murphy v. Kenneth Cole Productions, Inc.*
26 (2007) 40 Cal. 4th 1094. The IWC's purpose in adopting reporting time pay requirements was
27 two-fold: "to compensate employees" and "encourag[e] proper notice and scheduling". *Id.* at
28 pp. 1111-1112.

60. Plaintiff and the Class were required by Defendants to report to work and were furnished less than half said employee's usual or scheduled day's work, but were not paid for half the usual or scheduled day's work, and in no event for less than two (2) hours as required by law.

61. In violation of state law, Defendants knowingly and willfully refused to perform their obligations to provide Plaintiff and the Class reporting time pay as required under law, on days that Plaintiffs and Class Members reported to work their scheduled shifts, but without prior warning sent home or were not provided work, and ordered to leave the premises without pay.

62. As a proximate result of the these knowing and deliberate violations, Plaintiffs and the Class have been damaged in an amount according to proof at time of trial. Plaintiff and the Class are entitled to recover unpaid wages, liquidated damages, penalties, attorneys fees and costs. In addition, pursuant to Labor Code § 218.5 and 218.6, Plaintiffs and Class Members are entitled to an award of reasonable attorneys' fees and costs and to interest on all due and unpaid wages.

THIRD CAUSE OF ACTION

**FAILURE TO TIMELY PAY WAGES DUE AND PAYABLE DURING
EMPLOYMENT**

(By Plaintiff and the Class Against All Defendants)

63. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

64. Labor Code section 204 requires that all wages are due and payable twice in each calendar month.

65. The wages required by Labor Code §§ 226.7, 510, 1194, 1198, IWC Wage Order 5-2001 and other sections became due and payable to each employee in each month that he or she was not paid reporting time pay, provided with a rest period or paid minimum wage, straight or overtime wages to which he or she was entitled.

66. Defendants violated Labor Code § 204 by systematically refusing to pay wages due under the Labor Code.

67. Labor Code section 210 (a) provides that “In addition to, and entirely independent

1 and apart from, any other penalty provided in this article, every person who fails to pay the wages
2 of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and
3 1197.5, shall be subject to a penalty as follow:

4 (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each
5 employee.

6 (2) For each subsequent violation, or any willful or intentional violation, two hundred
7 dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount
8 unlawfully withheld.

9 103. As a result of the unlawful acts of Defendants, Plaintiff and the Class he seeks to
10 represent have been deprived of wages in amounts to be determined at trial, and are entitled to
11 recovery of such amounts, penalties, plus interest thereon, attorneys fees, and costs, pursuant to
12 Labor Code § 210, 218.5, 218.6, 510, 1194.

13 **FOURTH CAUSE OF ACTION**

14 **FAILURE TO TIMELY PAY WAGES OWED AT SEPARATION**

15 **(By Plaintiff and the Waiting Time Subclass Against All Defendants)**

16 68. Plaintiff incorporates by reference and realleges each and every allegation
17 contained above, as though fully set forth herein.

18 69. Labor Code § 201 requires employer to pay all wages earned and unpaid at the
19 time the employer discharges an employee from employment.

20 70. Labor Code § 202 requires Defendants to pay their employees all wages due
21 within seventy-two (72) hours of separation of employment.

22 71. Section 203 of the Labor Code provides that if an employer willfully fails to
23 timely pay such wages the employer must, as a penalty, continue to pay the subject employee's
24 wages until the back wages are paid in full or an action is commenced. The penalty cannot
25 exceed 30 days of wages.

26 72. Plaintiff and Class Members are entitled to compensation for all forms of wages
27 earned, including but not limited to minimum wages, reporting time wages, overtime, and
28 premium rest period compensation, but to date have not received such compensation, therefore

1 entitling them to Labor Code § 203 penalties.

2 73. More than thirty (30) days have passed since affected Waiting Time Subclass
3 Members have left Defendants' employ, and on information and belief, they have not received
4 payment pursuant to Labor Code § 201-203.

5 74. Plaintiff and Waiting Time Subclass Members are thus entitled to 30 days' wages
6 as a penalty under Labor Code § 203, together with interest thereon and attorneys' fees and costs.

7 **FIFTH CAUSE OF ACTION**

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

9 **(By Plaintiff and the Inaccurate Wage Statement Subclass Against All Defendants)**

10 75. Plaintiff incorporates each and every allegation set forth in all of the foregoing
11 paragraphs as if fully set forth herein.

12 76. California Labor Code § 226 provides an employer must furnish employees with
13 an "accurate itemized" statement in writing showing: "(1) gross wages earned, (2) total hours
14 worked by the employee..., (3) the number of piece rate units earned and any applicable piece
15 rate if the employee is paid on a piece-rate basis, (4) all deductions..., (5) net wages earned, (6)
16 the inclusive dates of the period for which the employee is paid, (7) the legal entity that is the
17 employer..., (8) the name and address of the employer, and (9) all applicable hourly rates in
18 effect during the pay period and the corresponding number of hours worked at each hourly rate
19 by the employee..."

20 77. Further, the IWC Wage Orders require in pertinent part: Every employer shall
21 keep accurate information with respect to each employee including the following: (3) Time
22 records showing when the employee begins and ends each work period. Meal periods, split shift
23 intervals, and total daily hours worked shall also be recorded...(5) Total hours worked in the
24 payroll period and applicable rates of pay...."

25 78. Labor Code section 1174 of the California also requires Defendants to maintain
26 and preserve, in a centralized location, among other items, records showing the names and
27 addresses of all employees employed and payroll records showing the hours worked daily by, and
28 the wages paid to, its employees.

79. On information and belief and based thereon, Defendants have knowingly and intentionally failed to comply with Labor Code section 1174, including by implementing the policies and procedures and committing the violations alleged in the preceding causes of action and herein. Defendants' failure to comply with Labor Code section 1174 is unlawful pursuant to Labor Code section 1175.

80. During all relevant periods, Defendants willfully violated California Labor Code section 226 and 1174 by failing to provide accurate itemized wage statements that properly and accurately itemized the actual hours worked, rates of pay including reporting time pay and rest period premiums, and the employer's correct name.

81. By failing to keep accurate records and provide accurate itemized wage statements as required by section 226, Defendants have injured Plaintiff and the Class Members by making it confusing and difficult to identify the entity that is the employer and to calculate the unpaid wages and losses and expenditures (including wages, interest, and penalties thereon) due Plaintiffs and Class Members.

82. Pursuant to Labor Code section 226, and in light of Defendants' violations alleged above, Plaintiffs and the class members are each entitled to recover up to a maximum of \$4,000, along with an award of costs and reasonable attorneys' fees.

SIXTH CAUSE OF ACTION

FAILURE TO REIMBURSE NECESSARY EXPENSES

(By Plaintiff and Indemnification Subclass Against All Defendants)

83. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

84. Plaintiff repeats and incorporates herein by reference each and every allegation set forth above, as though fully set forth herein.

85. Labor Code § 2802 requires Defendants to indemnify Plaintiff and Class Members for necessary expenditures incurred in direct consequence of the discharge of his or her duties.

86. Plaintiff and the members of the Indemnification Class were required to incur expenses in the performance of their assigned job duties. For example, Plaintiff and the

1 Indemnification Class Members were required to incur numerous out of pocket expenses,
2 including without limitation, for writing utensils (like pens), note pads/paper, shoes, and uniform
3 maintenance in direct consequence of the discharge of their duties.

4 87. Upon information and belief, the Defendants did not reimburse Plaintiff or the
5 Plaintiff's subclass for such expenses.

6 88. As a result of the unlawful acts of Defendants, Plaintiff and the Subclass Members
7 have been deprived of unreimbursed sums in amounts to be determined at trial, and are entitled
8 to the recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs,
9 pursuant to Labor Code §2802.

10 SEVENTH CAUSE OF ACTION

11 VIOLATION OF THE UNFAIR COMPETITION LAW

12 (By Plaintiff and Unfair Business Practices Subclass Against All Defendants)

13 89. Plaintiff incorporates by reference and realleges each and every allegation
14 contained above, as though fully set forth herein.

15 90. Defendants' conduct, as alleged in this complaint, has been, and continues to be,
16 unfair, unlawful, and harmful to Plaintiff and Class Members, Defendants' competitors, and the
17 general public. Plaintiff also seeks to enforce important rights affecting the public interest within
18 the meaning of the California Code of Civil Procedure § 1021.5.

19 91. Defendants' policies, activities, and actions as alleged herein are violations of
20 California law and constitute unlawful business acts and practices in violation of California
21 Business and Professions Code §§ 17200, *et seq.*

22 92. A violation of California Business and Professions Code §§ 17200, *et seq.*, may
23 be predicated on the violation of any state or federal law.

24 93. The state law violations, including violations of the relevant IWC Wage Order,
25 detailed herein above are the predicate violations for this cause of action.

26 94. By way of example only, in the instant case Defendants' policy of failing to
27 lawfully authorize and permit Plaintiff and the Class to take rest periods or pay one (1) hour of
28 premium pay when a rest period was not lawfully authorized and permitted violates Labor Code

1 § 1198, and § 226.7, and the IWC Wage Order 5-2001. Defendants further violated the law
2 through their policies of failing to fully and accurately compensate Plaintiff and the Class
3 Members for all hours worked, including reporting time pay as well as failing to provide accurate
4 itemized wage statement, and failing to reimburse for necessary expenses as specified above.

5 95. Plaintiff and the Class Members have been personally aggrieved by Defendants'
6 unlawful and unfair business acts and practices alleged herein by the loss of money and/or
7 property.

8 96. Pursuant to California Business and Professions Code §§ 17200, *et seq.*, Plaintiff
9 and the Class Members are entitled to reimbursement for expenses, and restitution of the
10 premium wages, minimum wages, and reporting time pay withheld and retained by Defendants
11 during a period that commences four (4) years prior to the filing of this complaint; an award of
12 attorneys' fees pursuant to California Code of Civil Procedure §1021.5; interest; and an award of
13 costs.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiff pray judgment against Defendants, as follows:

16 **Class Certification**

- 17 1. That this action be certified as a class action;
18 2. That Plaintiff be appointed as the representatives of the Class;
19 3. That Plaintiff be appointed as the representatives of the Subclasses; and
20 4. That counsel for Plaintiff be appointed as counsel for the Class and Subclasses.
- 21
22
23
24
25
26
27
28

1 **On the First Cause of Action**

2 **(Failure to Authorize and Permit Lawful Rest Periods)**

- 3 1. For one (1) hour of premium pay for each day in which a required rest period was
4 not lawfully authorized and permitted; and
- 5 2. For reasonable attorneys' fees and costs pursuant to statute;
- 6 3. For interest; and
- 7 4. For such other and further relief as the Court deems proper.

8 **On the Second Cause of Action**

9 **(Failure to pay Reporting Time Pay)**

- 10 1. For the unpaid balance of the full amount of reporting time pay owed, as well as
11 interest thereon,
- 12 2. Penalties according to statute,
- 13 3. Liquidated damages according to statute,
- 14 4. Reasonable attorneys' fees, and costs of suit;
- 15 5. For interest and
- 16 6. For such other and further relief as the Court deems proper.

17 **On the Third Cause of Action**

18 **(Failure to Timely Pay Wages Due and Payable During Employment)**

- 19 1. For unpaid wages;
- 20 2. For penalties pursuant to Labor Code § 210 and 25% of the amount of wages
21 unlawfully withheld;
- 22 3. For interest;
- 23 4. For reasonable attorneys' fees and costs pursuant to statute; and
- 24 5. For such other and further relief as the Court deems proper.

25 **On the Fourth Cause of Action**

26 **(Failure to Timely Pay Wages At Separation)**

- 27 1. For unpaid wages;
- 28 2. For penalties pursuant to Labor Code § 203;

3. For interest;
4. For reasonable attorneys' fees and costs pursuant to statute; and
5. For such other and further relief as the Court deems proper.

On the Fifth Cause of Action

(Failure to Provide Accurate Itemized Wage Statements)

1. For statutory penalties, including penalties pursuant to Labor Code section 226;
2. For reasonable attorneys' fees and costs; and
3. For such other and further relief as the Court deems proper;

On the Sixth Cause of Action

(Failure to Reimburse Necessary Expenses)

1. For unreimbursed sums;
2. For reasonable attorneys' fees and costs pursuant to statute;
3. For interest; and
4. For such other and further relief as the Court deems proper.

On the Seventh Cause of Action

(Violation of the Unfair Competition Law)

1. For an order enjoining Defendants from continuing to engage in the aforementioned unlawful business practice in violation of California Business & Professions Code §17200; and

2. That Defendants, jointly and/or severally, pay restitution and/or disgorgement of sums to Plaintiff and Class Members for the Defendants' past failure to pay overtime, minimum, reporting time wages, and regular wages, for Defendants' past failure to reimburse necessary expenses, and for premium wages for rest periods that were not authorized and permitted to Plaintiff and Class Members over the last four (4) years in an amount according to proof;

3. For reasonable attorneys' fees that Plaintiff and Class Members are entitled to recover under California Code of Civil Procedure § 1021.5 and Labor Code section 218.5, 218.6, and 1194;

4. For pre-judgment interest on any unpaid premium wages, reporting time wages,

1 minimum wages, straight time wages, and overtime wages due from the day that such amounts
2 were due;

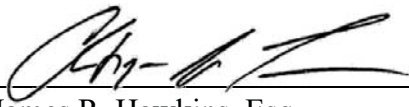
3 5. For costs of suit incurred herein that Plaintiff and Class Members are entitled to
4 recover under the Labor Code; and

5 6. For such other and further relief as the Court deems proper.
6
7

8 Respectfully submitted,
9

10 Dated: June 29, 2020

JAMES HAWKINS APLC

11
12 By:  _____

13 James R. Hawkins, Esq.

14 Christina M. Lucio, Esq.

15 *Attorneys for Plaintiff*

16 JONATHAN FLORES, on behalf of himself and all
17 others similarly situated
18
19
20
21
22
23
24
25
26
27
28