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on behalf of himself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

ANDY KENAREKI, an individual, on
behalf of himself and all others similarly
situated

Plaintiffs,

vs.

GETAROUND, INC., a California
Corporation, JAMES CORREA, an
individual, and DOES 1 through 50,
inclusive,

Defendants.

Case No. 20STCV25485

*[Assigned for all purposes to Honorable Yvette M.
Palazuelos, Dept. 9]*

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES AND
PENALTIES**

- 1. FAILURE TO PAY OVERTIME WAGES;**
- 2. FAILURE TO PAY MINIMUM WAGES;**
- 3. FAILURE TO PROVIDE MEAL PERIODS IN VIOLATION OF LABOR CODE § 226.7, 512, 1198;**
- 4. FAILURE TO PROVIDE REST PERIODS IN VIOLATION OF LABOR CODE § 226.7 AND THE I.W.C. WAGE ORDERS**
- 5. FAILURE TO KEEP ACCURATE AND PROVIDE ITEMIZED WAGE STATEMENTS IN VIOLATION OF LABOR CODE § 226, 1198, AND THE I.W.C. WAGE ORDERS;**
- 6. FAILURE TO PAY WAITING TIME PENALTIES IN VIOLATION OF LABOR CODE §§ 203;**
- 7. FAILURE TO REIMBURSE BUSINESS EXPENSES IN VIOLATION OF LABOR CODE § 2800 and 2802;**

8. UNLAWFUL BUSINESS PRACTICES
IN VIOLATION OF BUS. & PROF.
CODE § 17200, *ET SEQ.*; and

9. VIOLATION OF CALIFORNIA
PRIVATE ATTORNEYS GENERAL
ACT (“PAGA”) LABOR CODE § 2698,
et seq.

DEMAND FOR JURY TRIAL

Plaintiff ANDY KENAREKI (“Representative Plaintiff” or “Plaintiff”), individually, and on behalf of other members of the general public similarly situated alleges as follows:

I. INTRODUCTION

1. This case involved Defendants deliberate scheme to misclassify their employees as independent contractors. This is Class Action, pursuant to California Code of Civil Procedure §382 on behalf of Plaintiff and other non-exempt current and former employees employed by GETAROUND, INC.; and DOES 1 through 50 (collectively, “Defendants”). Defendants were joint employers of Plaintiffs in that they were operating as joint enterprises and both suffered and permitted Plaintiff to work for each of them; controlled Plaintiff’s hours and working conditions; controlled Plaintiff’s wages; both made the decision to hire Plaintiff and had control of termination of a Plaintiff’s employment and therefore jointly employed Plaintiff.

2. The California Legislature has passed Assembly Bill 5 (“AB5”), which codifies the 2018 California Supreme Court decision Dynamex Operations W., Inc. v. Superior Court, 4 Cal. 5th 903, 416 P.3d 1 (2018), reh’g denied (June 20, 2018). As such, California law presumes that a worker is an employee unless the employer can establish otherwise. A worker is properly considered an independent contractor to whom a wage order does not apply *only if* the hiring entity establishes all of the following;

- a) That the worker is free from control and direction of the hirer in connection with the performance of the work, both under the contract for the performance of such work and in fact;

b) That the worker performs work that is outside the usual course of the hiring entity's business; and

c) That the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed for the hiring entity.

3. By misclassifying their employees as independent contractors, Defendants have sought to avoid various duties and obligations owed to employees under California's Labor Code and Industrial Welfare Commission (hereinafter, the "IWC Wage Order(s)"), including, but not limited to; the duty to indemnify employees for all expenses and losses necessarily incurred in connection with their employment (Cal. Labor Code §2802; IWC Wage Order No. 9, §8-9), the duty to provide workers' compensation coverage (Cal. Labor Code §3200 *et seq.*), the duty to provide off-duty meal periods and rest breaks or premium pay in lieu thereof (Cal. Labor Code §512, 226.7; IWC Wage Order No. 9, §11), the duty to pay California minimum wage for all hours worked (Cal. Labor Code §1182.11, 1182.12, 1197; Minimum Wage Order; IWC Wage Order No. 8, §4), and the duty to pay overtime and double-time premium pay, to keep accurate employment records of those hours actually worked, and the duty to furnish employees with accurate employment records (Cal. Labor Code §510, 1174, 226, 1194; IWC Wage Order No. 9 §3, 7).

4. This is a civil action seeking recovery for Defendants' violations of California Labor Code ("Labor Code") including, but not limited to, §1194, *et seq.*, §1197, §200 *et seq.*, Labor Code §500 *et seq.*, California Business and Professions Code ("B& PC") §17000 *et seq.* and §17200, *et seq.*, the applicable IWC Wage Orders, and related common law principles.

5. Plaintiffs' action seeks monetary damages, including, but not limited to, full restitution from Defendants as a result of Defendants' unlawful, fraudulent and/or unfair business practices.

6. The acts complained of herein occurred, occur and will occur, at least in part, within the time period from four (4) years preceding the filing of Plaintiff's complaint, up to and through the time of trial for this matter.

7. The relevant employees are Defendants' current and former employees, who were or are employed in California who were or are paid on an hourly non-exempt basis.

8. The obligations and responsibilities of Defendants' current and former non-exempt, hourly paid employees employed in California by Defendants are virtually identical from location to location and employee to employee.

9. Any differences in job activities between the different individuals in these positions were and are legally insignificant to the issues presented by this action.

10. With regard to Defendants' California based non-exempt, hourly paid current and former employees that worked for Defendants, Defendants established a policy and practice of misclassifying their employees as independent contractors. As a result, Defendants have established a time keeping policy which does not compensate said employees for the time they actually worked and have failed to pay for all wages due including overtime wages for all hours worked and failed to pay the required minimum wage for all hours worked. Further, Defendants have failed to provide timely uninterrupted 30-minute meal periods or to pay a premium payment in lieu thereof; failed to provide paid rest periods or to pay a premium payment in lieu thereof; failed to timely furnish accurate itemized wage statements; failed to reimburse for business expenses; have violated Labor Code §203; and have conducted and continue to conduct unfair business practices.

11. Plaintiff ANDY KENARKI (“Plaintiff”) is an individual who resides in California and was employed by Defendants; and DOES 1 through 50 (“Defendants”) became employed by Defendants on or about February, 2018 as a non-exempt, hourly employee.

12. Plaintiff is informed and believes, and based on such information and belief, alleges that at all times mentioned herein, Defendants were and are corporations and/or other business entities of unknown form, existing under the laws of the State of California, and/or authorized to do business and doing business in the State of California.

13. At all relevant times, Defendants were employers whose employees are engaged throughout the State of California and were the employer of Plaintiff within the meaning of all applicable California state laws and statutes.

14. Representative Plaintiff is unaware of the true names and capacities, whether corporate, individual, or otherwise, of defendants named as DOES 1 through 50 inclusive. Pursuant to California Code of Civil Procedure section 474, Representative Plaintiff will seek leave of court to amend this complaint to state said Defendants' true names and capacities when the same have been ascertained. Representative Plaintiff is informed and believes, and based on such information and belief, alleges that said fictitiously-named defendants are responsible in some manner for the injuries and damages to Representative Plaintiff as further alleged herein. Defendants were joint employers of Plaintiff in that they were operating as a joint enterprises and both suffered and permitted Plaintiff to work for each of them; controlled Plaintiff's hours and working conditions; Controlled Plaintiff's wages; Defendants made the decision to hire Plaintiff and had control of Plaintiff's employment and therefore jointly employed Plaintiff.

15. Representative Plaintiff is informed, believes, and thereupon alleges, that at all times herein mentioned, Defendants ratified each and every act or omission complained of herein.

16. Defendants, and each of them, are now and/or at all times mentioned in this Complaint were in some manner legally responsible for the events, happenings, and circumstances alleged in this Complaint.

17. Defendants, and each of them, are now and/or at all times mentioned in this Complaint were, the agents, servants, and/or employees of some or all other Defendants, and vice versa, and in doing the things alleged in this Complaint, and that said acts and failures to act were within the course and scope of said agency, employment and/or direction and control of Defendants, and each of them.

18. Defendants are now and/or at all times mentioned in this Complaint were acting within the course and scope of that agency, servitude and/or employment.

19. Defendants, and each of them, are now and/or at all times mentioned in this

Complaint were members of and/or engaged in a joint venture, partnership and common enterprise, and were acting within the course and scope of, and in pursuance of said joint venture, partnership, and common enterprise.

20. Defendants, and each of them, at all times mentioned in this Complaint concurred and contributed to the various acts and omissions of each and every one of the other Defendants in proximately causing the complaints, injuries, and/or damages alleged in this Complaint. Defendants, and each of them, at all times mentioned in this Complaint approved of, condoned, and/or otherwise ratified each and every one of the acts and/or omissions alleged in this Complaint.

21. Defendants, and each of them, at all times mentioned in this Complaint aided and abetted the acts and omissions of each and every one of the other Defendants, thereby proximately causing the damages alleged in this Complaint.

22. Plaintiff seeks penalties, unpaid wages, and other compensation from Defendants for the relevant time period because Defendants have:

- a. misclassified their employees as independent contractors;
- b. failed to pay all wages due including overtime wages for all hours worked;
- c. failed to pay the required minimum wage for all hours worked;
- d. failed to provide meal periods
- e. failed to provide paid rest periods;
- f. failed to provide accurate wage statement(s)
- g. failed to provide itemized wage statement(s)
- h. violated Labor Code §§ 201, 202, 203;
- i. failed to reimburse for business expenses, and;
- j. Conducted unfair business practices.

VENUE AND JURISDICTION

23. Venue is proper under California Code of Civil Procedure section 395 and under California Government Code section 12965(b), in that Plaintiff's injuries were incurred within the County of Los Angeles, the actions giving rise to Representative Plaintiff's complaint arose

1 within the County of Los Angeles, and Defendants are located in the County of Los Angeles
2 and/or do business in the County of Los Angeles.

3 24. Further, this class action is brought pursuant to the California Code of Civil
4 Procedure section 382. The monetary damages and restitution sought by Plaintiff exceed the
5 minimal jurisdiction limits of the Superior Court and will be established according to proof at
6 trial.

7 25. This Court has jurisdiction over this action pursuant to the California
8 Constitution, Article VI, Section 10, which grants the Superior Court “original jurisdiction in all
9 other causes” except those given by statute to other courts. The statutes under which this action
10 is brought do not specify any other basis for jurisdiction.

11 26. This Court has jurisdiction over Defendants because, upon information and belief,
12 Defendants are citizens of California, have sufficient minimum contacts in California, or
13 otherwise intentionally availed themselves of the California market so as to render the exercise
14 of jurisdiction over them by the California courts consistent with traditional notions of fair play
15 and substantial justice.

16 27. Venue is proper in this Court because, upon information and belief, Defendants
17 maintain offices, have agents, and/or transact business in the State of California, County of Los
18 Angeles. The majority of the acts and omissions alleged herein relating to the other class
19 members took place in the State of California, including the County of Los Angeles, which has
20 the highest concentration of Defendants’ offices, and therefore percipient witnesses, in the State
21 of California.

22 28. The California Superior Court also has jurisdiction in this matter because the
23 individual claims of the members of the Classes herein are under the seventy-five thousand
24 (\$75,000) jurisdictional threshold for Federal Court and the aggregate claim is under the five
25 million dollar (\$5,000,000) threshold of the Class Action Fairness Act of 2005 (“CAFA”).
26 Further, there is no federal question at issue, as the issues herein are based solely on California
27 statutes and law, including the Labor Code, IWC Wage Order(s), CCP, and Business &
28 Profession Code.

GENERAL ALLEGATIONS:

29. CCP §382 provides in pertinent part: "... [W]hen the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all.

30. Plaintiff brings this suit as a class action pursuant to CCP § 382, on behalf of individuals who are entitled to the monies unlawfully withheld by Defendants. This is a Class Action Complaint, on behalf of Plaintiffs and all other persons similarly situated who worked for Defendants in California as non-exempt, hourly employees for: (i) failure to pay straight and overtime compensation in violation of Labor Code sections 223, 510, 558, 1194, 1198 and 1199; (ii) failure to pay minimum wages; (iii) failure to provide meal periods in violation of Labor Code sections 226.7, 512, 558 and 1198; (iv) failure to provide itemized wage statements in violation of Labor Code section 226; (v) failure to keep accurate payroll records in violation of Labor Code sections 226, 1198 and the IWC Wage Orders; (vi) failure to pay waiting time penalties in violation of Labor Code section 203; (vii) failure to provide rest breaks; (viii) failure to reimburse business expenses; (ix) unlawful business practices in violation of Bus. & Prof. Code section 17200 *et seq.*

31. For at least four (4) years prior to the filing of this complaint and through to the present, Defendants have had a consistent policy of misclassifying their employees as independent contractors. As a consequence, Defendants routinely fail to pay for straight and overtime hours worked by the Defendants' non-exempt, hourly California employees in violation of California law.

32. As a consequence, Representative Plaintiff and the members of the putative class were not properly paid all wages due when their employment with Defendants terminated. Defendants further failed to reimburse Representative Plaintiff and the members of the putative class for their necessary and business-related expenditures incurred during the performance of their employment obligations.

33. For at least four (4) years prior to the filing of this complaint and through to the present, Defendants have had a consistent policy of failing to provide to its non-exempt, hourly

employees with itemized wage statements that included the correct total hours worked by the employee, the correct net wages earned, the complete name and address of the correct legal entity that is the employer, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate.

34. Representative Plaintiff, on behalf of himself and all class members, brings this action pursuant to California Labor Code sections 203, 223, 226, 226.7, 510, 558, 1194, 1198 and 1199 seeking unpaid straight and overtime wages, compensation for unprovided and/or legally inadequate meal and rest periods, reporting time pay, penalties, injunctive and other equitable relief, interest, and reasonable attorneys' fees and costs pursuant to Labor Code sections 218.5, 218.6 and 1194 and any and all other applicable law.

35. Representative Plaintiff, on behalf of himself and all class members, pursuant to Business and Professions Code sections 17200-17208, also seeks injunctive relief, restitution, and disgorgement of all benefits Defendants enjoyed from their failure to correctly pay straight and overtime wages for all hours worked, unprovided meal periods, and any and all other injuries suffered as a result of the Defendants' failure to timely pay all wages due.

STATEMENT OF FACTS

36. Defendants employed Representative Plaintiff and other persons as hourly-paid, non-exempt employees within the State of California, including, but not limited to, the County of Los Angeles.

37. Although Defendants attempt to classify their employees as independent contractors, they are employees under California law.

38. Defendants directly hired and paid wages to Representative Plaintiff and the putative class members.

39. Defendants at all times exerted control and direction over Representative Plaintiff and the putative class members, including, but not limited to; requiring Plaintiff and the putative class members to clock-in and clock-out, managing the time, location, and manner in which Plaintiff and the putative class members performed their work tasks, and paid Plaintiff and the putative class members as hourly employees for the work performed.

40. Representative Plaintiff and members of the putative class performed work that was not outside the usual course of the hiring entity's business. Defendants are an online, peer-to-peer carsharing service that allows drivers to rent cars from private owners, and owners to rent out their cars for payment. Representative Plaintiff and the putative class members, hired as "Brand Ambassadors", perform this very function when working for Defendants.

41. Representative Plaintiff and the putative class members were not customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed for the hiring entity.

42. Defendants had the authority to hire and terminate Plaintiff and the putative class members, to set work rules and conditions governing Plaintiff's and the other class members' employment, and to supervise their daily employment activities.

43. Defendants continue to employ hourly-paid, non-exempt employees at their locations within the State of California. Such employees are, have been, and continue to be misclassified as independent contractors.

44. Defendants did not pay Representative Plaintiff, the putative class members, and other aggrieved employees for all hours worked, including time for legally inadequate meal periods.

45. The number of hours that the employees actually spent working for Defendants that is listed on the wage statements is also incorrect because of Defendants failure to record and compensate its employees for all the time that they are under the employer's control. Thus, the total earnings and the number of hours listed on the employee's pay stubs are incorrect as they do not include the hours worked or the pay that the employees should have received.

46. Defendants did not provide Plaintiff and the putative class members with an itemized wage statement that listed the correct number of hours worked or the correct and full name and address of the legal entity that is the employer. Plaintiff's and the putative class members' wage statements also did not list the correct number of hours worked by them due to uncompensated time that employees spent working during their meal periods, rest breaks, overtime, and double-time. Plaintiff's and the putative class members' wage statements also

1 failed to list all applicable hourly rates in effect during the pay period and the corresponding
2 number of hours worked at each hourly rate by these employees because of the Defendants
3 failure to pay overtime.

4 47. Defendants failed to compensate Plaintiff and the putative class members for all
5 hours worked, missed, short, late, and/or interrupted meal periods and/or rest breaks.

6 48. Plaintiff and the putative class members worked over eight (8) hours in a day,
7 and/or forty (40) hours in a week during their employment with Defendants.

8 49. Plaintiff is informed and believes, and based thereon alleges, that at all material
9 times set forth herein, Defendants were advised by skilled lawyers and other professionals,
10 employees, and advisors knowledgeable about California and federal labor and wage law and
11 employment and personnel practices, and about the requirements of California and federal law.

12 50. Plaintiff is informed and believes, and based thereon alleges, that Defendants
13 knew or should have known that Plaintiff and the putative class members were entitled to receive
14 certain wages for overtime compensation and that they were not receiving wages for overtime
15 compensation.

16 51. Plaintiff is informed and believes, and based thereon alleges, that Defendants
17 failed to provide to Plaintiff and the putative class members the required rest and meal periods
18 during the relevant time period as required under the Industrial Welfare Commission Wage
19 Orders and thus they are entitled to any and all applicable penalties.

20 52. Plaintiff is informed and believes, and based thereon alleges, that Defendants
21 knew or should have known the Plaintiff and the putative class members were entitled to receive
22 all meal periods or payments of one additional hour of pay at Plaintiff's and the putative class
23 members' regular rate of pay when a meal period was missed, and they did not receive all meal
24 periods of payment of one additional hour of pay at Plaintiff's and the other class members'
25 regular rate of pay when a meal period was missed.

26 53. Plaintiff is informed and believes, and based thereon alleges, that Defendants
27 knew or should have known that Plaintiff and the other class members were entitled to receive all
28 rest periods or payment of one additional hour of pay at Plaintiff's and the other class members'

regular rate of pay when a rest period was missed, and they did not receive all rest periods or payment of one additional hour of pay at Plaintiff and the other class members' regular rate of pay when a rest period was missed.

54. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff and the putative class members were entitled to receive all wages owed to them upon discharge or resignation, including overtime, minimum wages, and meal and rest period premiums, and they did not, in fact, receive all such wages owed to them at the time of their discharge or resignation.

55. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff and the putative class members were entitled to receive all wages owed to them during their employment. Plaintiff and the putative class members did not receive payment of all wages, including overtime and minimum wages and meal and rest period premiums, within any time permissible under California Labor Code section 204.

56. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff and the putative class members were entitled to receive complete and accurate wage statements in accordance with California law, however they did not receive complete and accurate wage statements from Defendants. The deficiencies included, *inter alia*, the failure to include the total number of hours worked by Plaintiff and the putative class members.

57. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Defendants had to keep complete and accurate payroll records for Plaintiff and the putative class members in accordance with California law, but, in fact, did not keep complete and accurate payroll records.

58. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff and the putative class members were entitled to reimbursement for necessary business-related expenses, including, but not limited to, cell phone and mileage reimbursement. However, Defendants did not reimburse employees for all necessary business-related expenses.

59. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that they had a duty to compensate Plaintiff and the putative class members pursuant to California law, and that Defendants had the financial ability to pay such compensation, but willfully, knowingly, and intentionally failed to do so, and falsely represented to Plaintiff and the putative class members that they were properly denied wages, all in order to increase Defendants' profits.

60. California Labor Code section 218 states that nothing in Article 1 of the Labor Code shall limit the right of any wage claimant to "sue directly...for any wages or penalty due to him [or her] under this article."

CLASS ACTION ALLEGATIONS

61. The putative classes Plaintiffs will seek to certify are currently composed of and defined as follows:

62. **Misidentification Class.** All of Defendants' California-based, non-exempt, hourly paid current and former employees, employed during the relevant time period (as defined, supra) whom Defendants misrepresented as Independent Contractors;

63. **Overtime Class.** All of Defendants' California-based, non-exempt, hourly paid current and former employees, employed during the relevant time period (as defined, supra) to whom Defendants failed to pay overtime wages (hereinafter, the "Overtime Class");

64. **Rounding Class.** All of Defendants' California-based, non-exempt, hourly paid current and former employees, employed during the relevant time period (as defined, supra) that were subject to Defendants rounding policies and practices. (hereinafter, the "Rounding Class");

65. **Minimum Wage Class.** All of Defendants' California-based, non-exempt, hourly paid current and former employees, employed during the relevant time period (as defined, supra) to whom Defendants failed to pay minimum wages (hereinafter, the "Minimum Wage Class");

66. **Meal Period Class.** All of Defendants' California-based, non-exempt, hourly paid current and former employees, employed during the relevant time period (as defined, supra) that were not provided a legally adequate meal period for each day in which such employees worked five (5) hours or more and were not provided compensation by Defendants of one (1)

hour of pay at their regular rate of compensation for each workday that a meal period was not provided (hereinafter, the “Meal Period Class”);

67. **Rest Period Class.** All of Defendants’ California-based, non-exempt, hourly paid current and former employees, employed during the relevant time period (as defined, supra) that were not provided a legally adequate rest period for each day in which such employees was not provided a 10-minute rest break for every four (4) hours of work, or every major fraction thereof as employees were not provided compensation by Defendants of one (1) hour of pay at their regular rate of compensation for each workday that rest breaks were not provided (hereinafter, the “Rest Period Class”);

68. **Waiting Time Penalties Class.** All of Defendants’ California-based, non-exempt, hourly paid current and former employees, employed during the relevant time period (as defined, supra) that did not receive all wages owed to them at the time of termination or resignation (hereinafter, the “LC203 Class”);

69. **Failure to Keep Accurate Pay Records Class.** All of Defendants’ California-based, non-exempt, hourly paid current and former employees, employed during the relevant time period (as defined, supra) who were not provided with accurate and complete time keeping records that recorded all work periods, the total numbers of hours worked, and correct wages owed (hereinafter, the “Pay Records Class”);

70. **Itemized Wage Statement Class.** All of Defendants’ California-based, non-exempt, hourly paid current and former employees, employed during the relevant time period (as defined, supra) that did not receive an itemized wage statement that listed the correct straight and/or overtime number of hours that the employee worked in the pay period, the correct corresponding rates of pay, the correct gross and net wages earned, and/or correct name and address of the legal entity that is their employer (hereinafter, the Itemized Wage Statement Class”);

71. **Failure to Reimburse Business Related Expenses Class.** All of Defendants’ California-based, non-exempt, hourly paid current and former employees, employed during the relevant time period (as defined, supra) who did not receive all wages owed for necessary

business-related expenses and costs in accordance with California Labor Code sections 2800 and 2802 (hereinafter, the Business Expense Class”).

72. Representative Plaintiff reserves the right under Rule 1855(b) of the California Rules of Court to amend or modify the class descriptions with greater specificity or further division into subclasses or limitation to particular issues.

73. This action has been brought and may properly be maintained as a class action under the provisions of Section 382 of the California Code of Civil Procedure because there is a well-defined community of interest in the litigation and the proposed Classes are easily ascertainable.

A. Numerosity

74. The potential members of the Classes as defined are so numerous that joinder of all the members of the Classes is impracticable. While the precise number of class members for each Class has not been determined at this time, Plaintiff is informed and believes that Defendants currently employ, and during the relevant time periods employed, at least 50 employees in the State of California, in non-exempt positions throughout California, who are or have been affected by Defendants’ policy of: (1) failing to pay overtime and for all time worked; (2) failing to provide employees with legally adequate meal and rest periods; (3) failing to pay all wages at termination; (4) failure to reimburse business expenses; (5) failure to pay minimum wages; and (6) failure to provide and keep accurate wage statements and records.

75. Upon information and belief, Plaintiff alleges that Defendants’ employment records will provide information as to the number and location of all members of the Classes.

B. Commonality

76. There are questions of law and fact common to the Classes that predominate over any questions affecting only individual Class members. These common questions of law and fact include, without limitation:

(a) Whether Defendants properly paid employees for all straight and overtime hours worked in accordance with Labor Code sections 510, 558 and 1198, and the IWC Wage Orders, Section 3;

(b) Whether Defendants violated Labor Code Sections 512, 226.7, and the IWC Wage Orders, Sections 11 by failing to properly provide meal periods of at least 30 off-duty minutes within the first 5 hours of their shift for employees working more than 5 hours in a day, and a second meal period to employees that worked over 10 hours in a day; and if so, whether Defendants failed to timely compensate said employees for one (1) hour of pay at each employee's regular rate of compensation for each workday that a meal period was not provided;

(c) Whether Defendants violated Labor Code Sections 512, 226.7, and the IWC Wage Orders by failing to authorize or permit rest periods of at least 10 off-duty minutes for every four (4) hours of their employees shifts or every major fraction thereof; and if so, whether Defendants failed to timely compensate said employees for one (1) hour of pay at each employee's regular rate of compensation for each workday that a meal period was not provided;

(d) Whether Defendants violated Labor Code Sections 201-204 by failing to pay straight and/or overtime wages, and compensation for denied and/or unprovided meal periods due and owing at the time that any class member's employment with Defendants terminated;

(e) Whether Defendants' time rounding policy and practices ensured that Defendants paid the legal straight time pay, minimum wage pay and/or overtime pay for all hours worked by Plaintiff and the putative class members;

(f) Whether Defendants violated Labor Code section 226 for their failure to furnish their employees with an accurate, legally adequate, itemized wage statement;

(g) Whether Defendants violated Labor Code sections 2800 and 2802 for their failure to reimburse their employees for all necessary business related expenses; and

(h) Whether Defendants violated Labor Code sections 226, 1174(d), 1198, and the IWC Wage Orders, Section 7 by failing to keep accurate time records.

C. Typicality

76. The claims of the Plaintiff are typical of the claims of the Classes. Plaintiff and all members of the Classes sustained injuries and damages arising out of and caused by Defendants' common course of conduct in violation of laws and regulations that have the force and effect of law and statutes as alleged therein.

D. Adequacy of Representation

77. The Plaintiff is an adequate representative of the Classes Plaintiff seeks to represent; will fairly protect the interests of the members of the Classes; has no interests antagonistic to the members of the Classes; will fairly and adequately represent and protect the interests of the members of the Classes; and will vigorously pursue this suit via attorneys who are competent, skilled and experienced in litigating matters of this type. Counsel who represents the Representative Plaintiff are competent and experienced.

E. Superiority of Class Action

78. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all class members is not practicable, and questions of law and fact common to the Classes predominate over any questions affecting only individual members of the Classes. Each member of each Class has been damaged and is entitled to recovery by reason of Defendants' illegal policy and/ or practice of failing to legally compensate class members as alleged above.

79. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Representative Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

PAGA ALLEGATIONS

80. At all relevant times set forth herein, PAGA was applicable to Plaintiff's employment by Defendant.

81. At all times set forth herein, PAGA provides for a civil penalty, including unpaid wages and premium wages, to be assessed and collected by the Labor and Workforce Development Agency ("LWDA") for violations of the California Labor Code, which may be alternatively recovered through a civil action brought by an aggrieved employee on behalf of himself and other current or former employees pursuant to procedures set forth under California Labor Code section 2699.3.

82. Representative Plaintiff was employed by Defendants and the alleged violations were committed against him during his time of employment and he is, therefore, an aggrieved employee, as defined by California Labor Code section 2699(c). Specifically, he is a former employee of Defendants, and one or more of the alleged violations were committed against him.

83. Pursuant to Labor Code sections 2699.3 and 2699.5, on July 10, 2020, Representative Plaintiff, served, via Certified Mail, the LWDA and his former employers, a written notice of the specific provisions of the California Labor Code that Defendants violated, including facts and theories supporting the alleged violations. The LWDA neither provided notice to the employer and Representative Plaintiff of its intention to investigate Defendants' alleged violations, nor did the LWDA provide such a notice within the requisite sixty-five (65) calendar days of the postmark date of Representative Plaintiff's Notice. The administrative prerequisites under California Labor Code section 2699.3(a) to recover civil penalties, in addition to other remedies, for violations of California Labor Code sections 201, 202, 203, 204, 206, 226(a), 226.7, 246, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1 1198, and 2802, 2810.5 have been satisfied. As such, Plaintiff may commence a civil action pursuant to California Labor Code section 2699 to recover civil penalties.

FIRST CAUSE OF ACTION

**(FAILURE TO KEEP ACCURATE PAYROLL RECORDS IN VIOLATION OF LABOR
CODE §§ 226, 558, 1198, the Wage Orders)**

(Against DEFENDANTS and DOES 1 through 50)

89. On behalf of the putative class, Plaintiff incorporates by reference and realleges each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

90. Defendants have had a consistent policy of failing to pay straight and overtime wages in violation of California state wage and hour laws by not paying overtime to Plaintiff and the putative class members when they work over eight (8) hours in a day and/or 40 hours in a workweek, as well as for the first eight (8) hours of work on the seventh consecutive day of work within a workweek. Defendants also have their employees work without payment, including, but

not limited to, 30 minutes of work time that Defendants automatically deducted each day for meal periods that were never provided and which are not legally adequate. Additionally, employees were not paid for all of the time that they spent working under their employer's control due to Defendants improper rounding practices and policy.

91. As a result of the unlawful acts of Defendants, Plaintiff and the putative class members have been deprived of their full straight and/or overtime wages in amounts to be determined at trial, and are entitled to the recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs, pursuant to Labor Code sections 218.5, 510, 558, 1194, 1197, 1198 and 1199.

SECOND CAUSE OF ACTION

FAILURE TO PAY MINIMUM WAGES

(Against DEFENDANTS and DOES 1 through 50)

92. On behalf of the putative class, Plaintiff incorporates by reference and realleges each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

93. Pursuant to Labor Code §1197, payment of less than the minimum wage fixed by the Labor Commission is unlawful.

94. Pursuant to the California Department of Industrial Relations: Effective January 1, 2020: every employer who has twenty-five (25) or fewer employees shall pay to each employee wages not less than twelve dollars (\$12.00) per hour for all hours worked, and every employer who has twenty-five (25) or more employees shall pay to each employee wages not less than thirteen dollars (\$13.00) per hour for all hours worked.

95. Defendants, as a matter of established company policy and procedure, at each and every one of the individual facilities owned and/or operated by Defendants, failed to pay Plaintiff and the putative class members for all hours worked, which resulted in the members of the Minimum Wage Class earning less than the legal minimum wage in the State of California.

96. Defendants' pattern and practice in uniform administration of corporate policy regarding Defendants' failure to pay the legal minimum wage to the members of the Minimum

Wage Class as described herein is unlawful and creates entitlement, pursuant to Labor Code §1194(a), to recovery by the members of the Minimum Wage Class, in a civil action, for the unpaid balance of the full amount of the unpaid minimum wages owed, calculated as the difference between the straight-time compensation paid and the applicable minimum wage, including interest thereon.

97. Pursuant to Labor Code §1194.2(a) (which provides that in any action under Labor Code §1194, an employee shall be entitled to recover liquidated damages) the members of the Minimum Wage Class seek recovery of liquidated damages on the straight-time portion of uncompensated hours of work (not including the overtime portion thereof) in an amount equal to the wages unlawfully unpaid and interest thereon.

98. Pursuant to Labor Code §218.6, Labor Code §1194(a) and CC §3287, the members of the Minimum Wage Class seek recover of pre-judgment interest on all amounts recovered herein.

99. Pursuant to Labor Code §1194(a), the members of the Minimum Wage Class request that the Court award reasonable attorneys' fees and costs incurred by them in this action.

THIRD CAUSE OF ACTION

(FAILURE TO PROVIDE MEAL PERIODS IN VIOLATION OF LABOR CODE §§ 226.7, 512, and IWC Wage Orders)

(Against DEFENDANTS and DOES 1 through 50)

100. On behalf of the putative class, Plaintiff incorporates by reference and realleges each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

101. Defendants do not have a written meal period policy and/or do not provide its employees with meal periods consistent with the requirements of Labor Code section 512. By employing these individuals for work periods of more than five (5) hours and ten (10) hours per day without providing legally adequate meal periods (such as short, on-duty, late, interrupted, or missed meal periods), and failing to provide compensation for unprovided and/or legally inadequate meal periods, as alleged above, Defendants violated the provisions of Labor Code

sections 512 and 226.7. As a result of the unlawful acts of Defendants, Plaintiff and the putative class members have been deprived of premium wages in amounts to be determined at trial, and are entitled to the recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs, under Labor Code sections 226.7 and 512, as well as the I.W.C. Wage Orders.

FOURTH CAUSE OF ACTION

**(FAILURE TO KEEP ACCURATE AND PROVIDE ITEMIZED WAGE STATEMENTS
IN VIOLATION OF LABOR CODE § 226, 1198, AND THE IWC WAGE ORDERS)**

(Against DEFENDANTS and DOES 1 through 50)

102. On behalf of the putative class, Plaintiff incorporates by reference and realleges each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

103. Section 226(a) of the California Labor Code requires Defendants to provide itemized wage statements at the time of payment of wages which include, but are not limited to, the following: gross wages earned; the correct total hours worked by the employee; the correct net wages earned; the inclusive dates of the period for which the employee is paid; the name and address of the correct legal entity that is the employer; and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

104. Plaintiff contends that he and the putative class members have been injured by Defendants' failure to provide all of the requisite information on its itemized wage statements in that such failure, *inter alia*: (1) masks possible and actual underpayments to Defendants' employees; (2) make it difficult for Defendants' employees to verify that they have in fact been paid the proper amounts owing for all hours worked; and (3) makes it difficult for Representative Plaintiff to identify his true employer for purposes of this litigation. Said conduct was done knowingly and intentionally, since Defendants are aware of California law, and with the design to harm Representative Plaintiffs and the putative class members.

105. At all times relevant during the liability period, Plaintiff and the putative class members were employees of Defendants covered by Labor Code sections 226, 558, 1198, and the Wage Orders.

106. Pursuant to Labor Code section 226, Defendants were required to furnish each of their employees with an accurate itemized statement reflecting, *inter alia*, total number of hours worked and wages earned. Defendants were also required to keep an accurate record of the beginning and end of all work periods for its employees, including off-duty meal periods.

107. Representative Plaintiff is informed, believes, and based thereon alleges, that at all times relevant during the liability period, Defendants maintained a policy and/or practice of utilizing an “auto-deduct” system whereby thirty (30) minutes were automatically deducted from the hours worked by Representative Plaintiff and the putative class members on a daily basis, whether or not a 30 minute off-duty meal period was actually provided or taken. Defendants also did not record and pay the time that its employees spent under its control, as the company utilized improper rounding policies and practices which resulted in the under payment of wages to Representative Plaintiff and the putative class members.

108. As a result of Defendants’ unlawful conduct, Representative Plaintiff and the putative class members have suffered damages in an amount subject to proof at trial. The precise amount of unpaid wages is not presently known to Representative Plaintiff, but can be determined directly from Defendants’ records or indirectly based on information from Defendants’ records.

109. Pursuant to Labor Code sections 218.5 and 218.6, Representative Plaintiff and the putative class members are entitled to recover the full amount of their unpaid wages, interest thereon, reasonable attorneys’ fees, and costs of suit.

FIFTH CAUSE OF ACTION

(FAILURE TO PAY WAITING TIME PENALTIES

IN VIOLATION OF LABOR CODE § 203, 558)

(Against DEFENDANTS and DOES 1 through 50)

110. On behalf of the putative class, Plaintiff incorporates by reference and realleges

each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

111. California Labor Code section 201 requires an employer who discharges an employee to pay all compensation due and owing to that employee immediately upon discharge. California Labor Code section 202 requires an employer of an employee who quits to pay all compensation due and owing to that employee not later than 72 hours thereafter, unless the employee gave 72 hours previous notice of the intention to quit, in which case the employee is entitled to wages at the time of quitting.

112. California Labor Code section 203 provides that if an employer willfully fails to pay compensation promptly upon separation from employment, as required by either Sections 201 or 202, then the employer is liable for waiting time penalties in the form of continued compensation for up to 30 work days.

113. Defendants willfully failed and refused to timely pay all straight time wages, overtime, and meal break compensation to Representative Plaintiff and the putative class members whose employment terminated. As a result, Defendants are liable to Representative Plaintiff and the putative class members for waiting time penalties, together with interest thereon and attorneys' fees and costs, under Labor Code section 203.

114. As a result of Defendants' unlawful conduct, Representative Plaintiff and putative class members have suffered damages in an amount, subject to proof at trial, to the extent they were not paid all wages due each pay period. The precise amount of unpaid wages is not presently known to Representative Plaintiff but can be determined directly from Defendants' records or indirectly based on information from Defendants' records.

115. Pursuant to Labor Code sections 218.5 and 218.6, Representative Plaintiff and the putative class members are entitled to recover the full amount of their unpaid wages, interest thereon, reasonable attorneys' fees and costs of suit.

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SIXTH CAUSE OF ACTION

**FAILURE TO PROVIDE REST PERIODS IN VIOLATION OF LABOR CODE §
226.7 & IWC WAGE ORDERS**

(Against DEFENDANTS and DOES 1 through 50)

116. On behalf of the putative class, Plaintiff incorporates by reference and realleges each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

117. At all times herein set forth, the California IWC Order and California Labor Code section 226.7 was applicable to Plaintiff and the putative class members employed by Defendants.

118. At all times herein set forth, California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. During the relevant time period, Defendants required Plaintiff and the putative class members to work four (4) or more hours without authorizing or permitting a ten (10) minute rest period per each four (4) hour period worked, or major fraction thereof.

119. During the relevant time period, Defendants willfully required Plaintiff and the other class members to work during rest periods and failed to pay Plaintiff and the other class members the full rest period premium for work performed during rest periods.

120. During the relevant time period, Defendants failed to pay Plaintiff and the putative class members the full rest period premium due pursuant to California Labor Code section 226.7.

121. Defendants' conduct violates applicable IWC Wage Orders and California Labor Code section 226.7.

122. Pursuant to the applicable IWC Wage Orders and California Labor Code section 226.7(b), Plaintiff and the putative class members are entitled to recover from Defendants one (1) additional hour of pay at the employees' regular hourly rate of compensation for each work day that the rest period was not provided

SEVENTH CAUSE OF ACTION

FAILURE TO REIMBURSE EMPLOYEE EXPENSES IN VIOLATION OF LABOR

CODE §§ 2800 and 2802

(Against DEFENDANTS and DOES 1 through 50)

123. On behalf of the putative class, Plaintiff incorporates by reference and realleges each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

124. Plaintiff and the putative class members incurred necessary business-related expenses and costs that were not fully reimbursed by Defendants, including, but not limited to, personal cell-phone usage, travel expenses, and parking expenses.

125. Defendants have intentionally and willfully failed to reimburse Plaintiff and the putative class members for all necessary business-related expenses and costs. Plaintiff and the putative class members are entitled to recover from Defendants their business-related expenses and costs incurred during the course and scope of their employment, plus interest accrued from the date on which the employee incurred the necessary expenditures at the same rate as judgments in civil actions in the State of California.

EIGHTH CAUSE OF ACTION

**(UNLAWFUL BUSINESS PRACTICES IN VIOLATION OF BUS. & PROF. CODE §
17200, *ET SEQ.*)**

(Against DEFENDANTS and DOES 1 through 50)

126. On behalf of the putative class, Plaintiff incorporates by reference and realleges each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

127. Defendants' failure to correctly pay wages as alleged herein, failure to keep accurate time records, and failure to compensate for overtime and unprovided meal periods constitute unlawful activity prohibited by Business and Professions Code section 17200, *et seq.*, including, but not limited to, Sections 17200, 17202, and 17203.

128. The actions of Defendants in failing to pay Plaintiff and the putative class

members in a lawful manner as alleged herein constitute false, unfair, fraudulent and/or deceptive business practices, within the meaning of Business and Professions Code section 17200, *et seq.*

129. As a result of its unlawful acts, Defendants have reaped and continue to reap unfair benefits at the expense of Plaintiff and the putative class members. Defendants should be enjoined from this activity and made to disgorge these ill-gotten gains and restore to Plaintiff and the putative class members the wrongfully withheld wages pursuant to Business and Professions Code section 17203. Plaintiff is informed and believes, and based thereon alleges, that Defendants are unjustly enriched through their failure to pay all earned wages and compensation for unprovided meal periods to Plaintiff and the putative class members.

130. Plaintiff is informed and believes, and based thereon alleges, that Plaintiff and the putative class members are prejudiced by Defendants' unfair practices.

131. As a direct and proximate result of the unfair business practices of Defendants, Plaintiff and the putative class members are entitled to equitable and injunctive relief, including full restitution and/or disgorgement of all wages, which have been unlawfully withheld from Plaintiff and the putative class members as a result of the business acts and practices described herein, and enjoin Defendants to cease and desist from engaging in the practices described herein.

132. The illegal conduct alleged herein is believed to be continuing, and there is no indication that Defendants will not continue such activity into the future. Plaintiff, on behalf of the putative class, alleges that if Defendants are not enjoined from the conduct set forth in this complaint, they will continue to fail to pay the correct wages, will continue to require employees to work during meal periods, will continue to fail to pay employees the correct rate of pay and for all hours worked, will continue to fail to provide legally adequate meal periods, and will continue to fail to provide appropriate compensation as described herein.

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1 **NINTH CAUSE OF ACTION**

2 **(VIOLATION OF LABOR CODE§ 2698, ET SEQ.)**

3 **(Against DEFENDANTS)**

4 133. On behalf of the putative class, Plaintiff incorporates by reference and realleges
5 each and every one of the allegations contained in the preceding and foregoing paragraphs of this
6 Complaint as if fully set forth herein.

7 134. PAGA expressly establishes that any provisions of the California Labor Code
8 which provides for a civil penalty to be assessed and collected by the LWDA, or any of its
9 departments, divisions, commissions, boards, agencies or employees for a violation of the
10 California Labor Code, may be recovered through a civil action brought by an aggrieved
11 employee on behalf of himself or herself, and other current or former employees.

12 135. Whenever the LWDA, or any of its departments, divisions, commissions,
13 boards, agencies, or employees has discretion to assess a civil penalty, a court in a civil action
14 is authorized to exercise the same discretion, subject to the same limitations and conditions,
15 to assess a civil penalty.

16 136. Plaintiff and the other hourly-paid or non-exempt employees, are
17 "aggrieved employees" within the meaning of California Labor Code section 2699(c) as they
18 are all current or former employees of Defendants, and one or more of the alleged violations
19 was committed against them.

20 **Failure to Pay Overtime**

21 137. Defendants' failure to pay legally required overtime wages to Plaintiff and the
22 other aggrieved employees is in violation of the Wage Orders and constitutes unlawful or
23 unfair activity prohibited by California Labor Code sections 510 and 1198.

24 **Failure to Provide Meal Periods**

25 138. Defendants' failure to provide legally required meal periods, and/or to pay meal
26 period premiums, to Plaintiff and the other aggrieved employees is in violation of the Wage
27 Orders and constitutes unlawful or unfair activity prohibited by California Labor Code
28 sections 226.7, 512(a), 1198, and the applicable Wage Orders.

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Failure to Provide Rest Periods

139. Defendants' failure to provide legally required rest periods, and/or to pay rest period premiums, to Plaintiff and the other aggrieved employees is in violation of the Wage Orders and constitutes unlawful or unfair activity prohibited by California Labor Code section 226.7.

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Failure to Pay Minimum Wages

140. Defendants' failure to pay legally required minimum wages to Plaintiff and the other aggrieved employees is in violation of the Wage Orders and constitutes unlawful or unfair activity prohibited by California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Failure to Keep Accurate and Provide Itemized Wage Statements

141. Defendants' failure to keep accurate, and provide itemized wage statements to Plaintiff and the other aggrieved employees in accordance with Labor Code section 226(a), 1174(d), and 1198 constitutes unlawful and/or unfair activity prohibited by California Labor Code section 226(a), 1174(d), and 1198.

Failure to Pay "Split Shift" Premiums

142. Defendants' failure to pay Representative Plaintiff and the other aggrieved employees one (1) hour's pay at the minimum wage in addition to the wages for that workday for any workday in which Representative Plaintiff and the other aggrieved employees were scheduled for and required to work a "split shift" constitutes unlawful or unfair activity prohibited by California Labor Code 1198 and California Code of Regulations 11050(4)(C).

Failure to Timely Pay Wages During Employment

143. Defendants' failure to timely pay wages to Plaintiff and the other aggrieved employees during employment in accordance with Labor Code section 204 constitutes unlawful and/or unfair activity prohibited by California Labor Code section 204.

Failure to Timely Pay Wages Upon Termination

144. Defendants' failure to timely pay wages to Plaintiff and the other aggrieved employees upon termination in accordance with Labor Code sections 201, 202, and 203

constitutes unlawful and/or unfair activity prohibited by California Labor Code sections 201, 202, and 203.

Failure to Provide Basic Information upon Hiring/ When Conditions of Employment Change

145. Defendants' failure to provide basic information to Plaintiff and the other aggrieved employees related to the conditions of their pay and their rights regarding sick leave in accordance with California Labor Code section 2810.5(a)(1)(A)-(C) constitutes unlawful and/or unfair activity prohibited by California Labor Code section 2810.5(a)(1)(A)-(C).

Failure to Reimburse Necessary Business-Related Expenses and Costs

146. Defendants' failure to reimburse Plaintiff and the other aggrieved employees for necessary business-related expenses and costs in accordance with California Labor Code sections 2800 and 2802 constitutes unlawful and/or unfair activity prohibited by California Labor Code sections 2800 and 2802.

Failure to Provide Notice of Paid Sick Time and Accrual

147. Defendants' failure to provide Plaintiff and the other aggrieved employees that works for the same employer for more than 30 days with written notice setting the amount of sick leave available (or paid time off in lieu thereof) for use in their itemized wage statements or in a separate writing accompanying such statements in accordance with Labor Code 246 constitutes unlawful and/or unfair activity prohibited by California Labor Code section 246.

148. Pursuant to California Labor Code section 2699, Plaintiff, individually, and on behalf of all aggrieved employees, requests and is entitled to recover from Defendants and each of them, business expenses, unpaid wages, and/or untimely wages according to proof, interest, attorneys' fees and costs pursuant to California Labor Code section 218.5, as well as all statutory penalties against Defendants, and each of them, including but not limited to:

- a. Penalties under California Labor Code section 2699 in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation;
- b. Penalties under California Code of Regulations Title 8 section 11010, et seq, in the amount of fifty dollars (\$50) for each aggrieved employee per pay period for the initial violation, and one hundred dollars (\$100) for each aggrieved employee per pay period for each subsequent violation;
- c. Penalties under California Labor Code section 210 in addition to, and entirely independent and apart from, any other penalties provided in the California Labor Code in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation; and
- d. Any and all additional penalties and sums as provided by the California Labor Code and/or other statutes.

149. Pursuant to California Labor Code section 2699(i), civil penalties recovered by aggrieved employees shall be distributed as follows: seventy-five percent (75%) to the Labor and Workforce Development Agency for the enforcement of labor laws and education of employers and employees about their rights and responsibilities and twenty-five percent (25%) to the aggrieved employees.

150. Further, Plaintiff is entitled to seek and recover reasonable attorneys' fees and costs pursuant to California Labor Code sections 210, 218.5 and 2699 and any other applicable statute.

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1 THEREFORE, Plaintiff, on behalf of the putative class members, requests relief as
2 described below:

3 **VI. PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as
5 follows:

6 1. That this action be certified as a class action, that Plaintiff be appointed as the
7 representative of the Class, and that counsel for Plaintiff be appointed as Class Counsel.

8 As to the Cause of Action for Misclassification of Employees as Independent
9 Contractors:

10 2. For preliminary and permanent injunctions enjoining Defendants from continuing
11 the unfair and unlawful business practice of misclassifying employees as independent
12 contractors, and requiring Defendants to establish appropriate and effective policies, procedures,
13 and practices in place to prevent future such violations;

14 3. Penalties pursuant to Labor Code § 226.8, 2753, and any and all other applicable
15 penalties under the Labor Code and other applicable law;

16 As to the Cause of Action for Failure to Pay Overtime wages:

17 4. For recovery of the unpaid balance of the full amount of all compensation due and
18 owing, calculated at the appropriate rate and according to proof; for pre-judgment interest as
19 allowed by Labor Code § 218.6, Labor Code § 1194(a) and CC § 3287;

20 5. For an award of reasonable attorneys' fees and costs pursuant to Labor Code §
21 1194(a);

22 As to the Cause of Action for Failure to Pay Minimum Wages

23 6. For recovery of liquidated damages, on the straight-time portion of
24 uncompensated hours of work (not including the overtime portion thereof) in an amount equal to
25 the wages unlawfully unpaid, and interest thereon.

26 7. Pursuant to Labor Code §218.6, Labor Code §1194(a) and CC §3287, the
27 members of the Minimum Wage Class seek recovery of pre-judgment interest on all amounts
28 recovered herein.

8. Pursuant to Labor Code §1194(a), the members of the Minimum Wage Class request that the Court award reasonable attorneys' fees and costs incurred by them in this action.

As to the Causes of Action for Failure to Provide Meal and Rest Periods:

9. For one (1) hour of pay at the regular rate of compensation for each member of the Meal Period Class for each workday that a meal and/or rest period was not provided;

10. For pre-judgment interest as authorized by Labor Code § 218.6 and CC § 3287;

11. For an award of reasonable attorneys' fees and costs.

As to the Causes of Action for Failure to Keep Accurate Payroll Records and Failure to Provide Itemized Wage Statements

12. Penalties pursuant to Labor Code § 226;

13. Reasonable attorney fees and costs;

As to the Cause of Action for Violations of Labor Code §203:

14. For recovery as authorized by Labor Code § 203;

15. For pre-judgment interest as allowed by CC § 3287;

As to the Cause of Action for Unfair Business Practices:

16. For an accounting, under administration of Plaintiffs and/or receiver, and subject to Court review, to determine the amount to be returned by Defendants, and the amounts to be refunded to members of the Classes who are owed monies by Defendants;

17. For an Order requiring Defendants to identify each of the members of the Classes by name, home address, and home telephone number;

18. For an Order requiring Defendants to make full restitution and payment pursuant to California law;

20. For the creation of an administrative process wherein each injured member of the Classes may submit a claim in order to receive his/her money;

21. For all other appropriate injunctive, declaratory, and equitable relief;

22. For interest to the extent permitted by law;

23. For an award of attorneys' fees and costs incurred in the investigation, filing, and prosecution of this action pursuant to CCP § 1021.5, B&PC § 17200, et. seq., Labor Code § 1194 and/or any other applicable provision of law;

As to the Cause of Action for Failure to Reimburse Business Expenses

24. For compensatory damages in an amount according to proof;

25. For Prejudgment interest;

26. For Reasonable Attorney Fees and Costs;

For The Tenth Cause of Action for Penalties Under PAGA:

27. Statutory attorney fees and costs;

28. Statutory Penalties under PAGA;

29. For costs of suit;

For All Causes of Action

30. For Prejudgment and Post Judgment Interest;

31. For Reasonable Attorney Fees and Costs for compensatory damages in a sum according to proof;

32. For wages pursuant to the California Labor Code;

33. For damages and/or penalties, an award of costs and reasonable attorney's fees pursuant to the California Labor Code; and

34. For such other and further relief as the Court deems just and proper.

Dated: April 11, 2023

HAIG B. KAZANDJIAN LAWYERS, APC

/s/ Cathy Gonzalez

By: _____
Haig B. Kazandjian, Esq.
Cathy Gonzalez, Esq.
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury.

Dated: April 11, 2023

HAIG B. KAZANDJIAN LAWYERS, APC

/s/ Cathy Gonzalez

By: _____
Haig B. Kazandjian, Esq.
Cathy Gonzalez, Esq.
Attorneys for Plaintiff

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 801 North Brand Boulevard, Suite 970, Glendale, California 91203.

On April 12, 2023, I served the foregoing document(s) described as:

FIRST AMENDED COMPLAINT

by method indicated below, on the interested parties in this action by placing a true copy thereof, enclosed in a sealed envelope, addressed as follows:

SEE ATTACHED SERVICE LIST

☐ **BY PERSONAL DELIVERY:** I caused a copy of the document to be delivered personally to the individual(s) named in the attached service list.

☐ **BY OVERNIGHT DELIVERY:** I enclosed the above-listed document(s) in an envelope or package provided by an overnight delivery carrier and addressed it to the referenced in attached service list. I placed the envelope or package for collection and overnight delivery at an area regularly utilized by said delivery carrier.

☐ **BY U.S. MAIL:** I enclosed said document(s) in a sealed envelope or package to each addressee. I placed the envelope for collection and mailing, following our firm's ordinary business practices. I am readily familiar with the firm's practice for collecting and processing correspondence for mailing. Under that practice, the correspondence is deposited with the United States Postal Service, with postage fully prepaid, on the same day in the ordinary course of business.

☒ **BY ELECTRONIC MAIL:** I transmitted the foregoing document(s) by electronic mail from **georgina@hbklawyers.com** to the electronic mail addresses indicated on the attached mailing list. The transmission was reported as complete and without error.

☐ **BY FAX TRANSMISSION:** I transmitted the foregoing document(s) by facsimile transmission from 818-696-2307 to the facsimile numbers indicated on the attached mailing list. The transmission was reported as complete and without error on the transmission report, which was properly issued by the transmitting facsimile machine and, pursuant to Rule 2.306(h)(4), a copy of which is attached to the original of this proof of service.

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

Executed on April 12, 2023, at Glendale, California.

/s/ Georgina Kregorian

Georgina Kregorian

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