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IN THE SUPERIOR COURT OF CALIFORNIA

COUNTY OF RIVERSIDE, RIVERSIDE HISTORIC COURTHOUSE

JOSUE ARANA, an individual, and NICHOLAS
BORJON, an individual on behalf of all others
similarly situated,

Plaintiff,

vs.

STATEWIDE TOWING AND RECOVERY,
INC., a California Corporation, CHRISTOPHER
O. KIRK, an individual, and DOES 1 through 20
inclusive,

Defendants.

Case No. CVRI2000629

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Indemnify for Necessary Expenditures in Violation of Labor Code § 2802;
2. Failure to Pay Minimum Wage in Violation of Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198;
3. Failure to Pay Overtime in Violation of Labor Code §§ 510 and 1198;
4. Failure to Furnish Compliant Wage Statements and Maintain Accurate Pay Records in violation of § 226, 1174 (d), and 1198;
5. Failure to Provide Meal Periods in Violation of §§ 226.7, 512 (a), and 1198;
6. Failure to Provide Rest Periods in Violation of Labor Code §§ 226.7 and 1198;
7. Failure to Timely Pay Wages in Violation of Labor Code § 204;
8. Willful Failure to Pay Wages in Violation of Labor Code §§ 201-203;

9. Civil Penalties in Violation of Labor Code §§ 2698, et seq.;

10. Unfair Competition in Violation of Labor Code §§17200, et seq.

Jury Trial Demanded

1. Plaintiff JOSUE ARANA and Plaintiff NICHOLAS BORJON, on behalf of themselves and all others similarly situated, and as aggrieved employees on behalf of all other aggrieved employees, are informed and believe and thereon allege as follows:

PARTIES, VENUE AND JURISDICTION

2. This Class Action is brought pursuant to Code of Civil Procedure § 382 to recover wages and all other available relief on behalf of Plaintiffs and all similarly situated current and former non-exempt, hourly-paid employees of Defendants.

3. This enforcement action is brought pursuant to the Private Attorneys General Act of 2004, California Labor Code §§ 2698, et seq. (“PAGA”) to recover civil penalties and any other available relief on behalf of Plaintiffs, the State of California, and other current and former aggrieved employees of Defendants and against whom one or more Labor Code violations or any provision regulating hours and days of work in the applicable Industrial Welfare Commission (“IWC”) Wage Order were committed, as set forth in this Complaint.

4. Plaintiff JOSUE ARANA worked as a Mobile Diesel Mechanic for STATEWIDE TOWING AND RECOVERY, INC. AND CHRISTOPHER O. KIRK, and DOES 1-20, a California Corporation, at 190 Main Street, Riverside, CA 92501, from November 12, 2019 to July 13, 2020. Plaintiff’s job duties included performing repairs and maintenance on flatbeds, wreckers (big trailers that haul other trailers), and land dolls (flatbed trailers). He usually went into the Riverside shop every day to perform maintenance and would be dispatched sporadically to various other locations throughout southern California to repair stranded trailers.

5. Plaintiff NICHOLAS BORJON worked as a Light Duty Flat Bed Driver for STATEWIDE TOWING AND RECOVERY INC. AND CHRISTOPHER O. KIRK, and DOES 1-20, a California

1 Corporation, at 190 Main Street, Riverside, CA 92501, from approximately September 5, 2017 to August
2 2020. His job duties included performing hauling of construction equipment, towing stranded vehicles,
3 and recovery of vehicles and trailers. Initially, Mr. Borjon went to the Fontana location, waiting to be
4 dispatched to an assignment from September 2017 to about August 2018. Then, starting in 2018 through
5 2020, Mr. Borjon would wait to be dispatched from the Riverside yard. He was dispatched to locations
6 throughout southern California to perform his job duties.

7 6. Plaintiff JOSUE ARANA was at all times relevant hereto a resident of Moreno Valley,
8 California.

9 7. Plaintiff NICHOLAS BORJON was at all times relevant hereto a resident of Rialto,
10 California.

11 8. At all relevant times herein, Defendant STATEWIDE TOWING AND RECOVERY, INC.
12 was a Corporation with its principal place of business in Riverside, California.

13 9. Defendant CHRISTOPHER O. KIRK was at all times relevant herein the principal of
14 STATEWIDE TOWING AND RECOVERY, INC..

15 10. Venue is proper pursuant to California Civil Procedure Code §§ 395 (a) and 395.5 because
16 this suit was filed in the county where the liability arises, where the breach occurred and where
17 Defendants' resided at the commencement of this action.

18 11. Plaintiffs are informed and believe, and based thereon allege, that there exists such a unity
19 of interest and ownership between STATEWIDE TOWING AND RECOVERY, INC., CHRISTOPHER
20 O. KIRK and DOES 1-20 that the individuality and separateness of defendants have ceased to exist.

21 12. Plaintiffs are informed and believe, and based thereon allege, that despite the formation of
22 purported corporate existence, STATEWIDE TOWING AND RECOVERY, INC., CHRISTOPHER O.
23 KIRK and DOES 1-20 are, in reality, one and the same.

24 13. STATEWIDE TOWING AND RECOVERY, INC., CHRISTOPHER O. KIRK and DOES
25 1-20 do not comply with all requisite corporate formalities to maintain a legal and separate existence.

26 14. The business affairs of STATEWIDE TOWING AND RECOVERY, INC.,
27 CHRISTOPHER O. KIRK and DOES 1-20 are, and at all times relevant were, so mixed and intermingled
28 that the same cannot reasonably be segregated, and the same are in inextricable confusion. STATEWIDE

1 TOWING AND RECOVERY, INC. is, and at all times relevant hereto was, used by DOES 1-20 and
2 CHRISTOPHER O. KIRK as a mere shell and conduit for the conduct of certain of Defendants' affairs,
3 and is, and was, the alter ego of DOES 1-20. The recognition of the separate existence of STATEWIDE
4 TOWING AND RECOVERY, INC. would not promote justice, in that it would permit Defendants to
5 insulate themselves from liability to Plaintiffs for violations of state law. The corporate existence of
6 STATEWIDE TOWING AND RECOVERY, INC. and DOES 1-20 should be disregarded in equity and
7 for the ends of justice because such disregard is necessary to avoid fraud and injustice to Plaintiffs herein.

8 15. Accordingly, STATEWIDE TOWING AND RECOVERY, INC., CHRISTOPHER O.
9 KIRK and DOES 1-20 are the alter egos of one another, and the fiction of their separate corporate existence
10 must be disregarded.

11 16. As a result of the aforementioned facts, Plaintiffs are informed and believe, and based
12 thereon allege that STATEWIDE TOWING AND RECOVERY, INC., CHRISTOPHER O. KIRK and
13 DOES 1-20 are joint employers by virtue of a joint enterprise, and that the employees and agents of
14 STATEWIDE TOWING AND RECOVERY, INC. were also employees of CHRISTOPHER O. KIRK
15 and DOES 1-20. STATEWIDE TOWING AND RECOVERY, INC. employees performed services for
16 each and every one of Defendants, and to the mutual benefit of all Defendants, and all Defendants shared
17 control of them as employees, either directly or indirectly, and the manner in which Defendants' business
18 was and is conducted.

19 17. The true names and capacities, whether individual, corporate, associate, or otherwise, of
20 the Defendants named herein as DOES 1-20, inclusive, are unknown to Plaintiffs at this time and therefore
21 these Defendants are sued by such fictitious names. Plaintiffs will seek leave to amend this Complaint to
22 insert the true names and capacities of these Defendants when they become known to Plaintiffs. Plaintiffs
23 are informed and believe and based thereupon allege, that each of the fictitiously named Defendants is
24 responsible for the wrongful acts alleged herein and are therefore liable to Plaintiffs as alleged hereinafter.

25 18. Plaintiffs are informed and believe and based thereupon allege, that at all times relevant
26 hereto, Defendants were the agents, employees, managing agents, supervisors, coconspirators, parent
27 corporation, joint employers, alter egos, successors, and/or joint ventures of the other Defendants, and
28 each of them, and in doing the things alleged herein, were acting at least in part within the course and

scope of said agency, employment, conspiracy, joint employer, alter ego status, successor status and/or joint venture and with the permission and consent of each of the other Defendants.

19. Plaintiffs are informed and believe and based thereupon allege, that Defendants, including those defendants named as DOES 1-20 acted in concert with one another to commit the wrongful acts alleged herein, and aided, abetted, incited, compelled and/or coerced one another in the wrongful acts alleged herein, and/or attempted to do so. Plaintiffs are further informed and believe, and based thereupon allege, that Defendants, including those defendants named as DOES 1-20 formed and executed a conspiracy or common plan pursuant to which they would commit the unlawful acts alleged herein, with all such acts alleged herein done as part of and pursuant to said conspiracy, intended to cause and actually causing Plaintiffs' harm.

20. Whenever and wherever reference is made in this Complaint to any act or failure to act by a Defendant or co-Defendant, such allegations and references shall also be deemed to mean the acts and/or failures to act by each Defendant acting individually, jointly and severally.

GENERAL ALLEGATIONS

21. Plaintiffs are informed and believe, and thereon allege, that Plaintiffs and class members were not paid for all hours worked because all hours worked were not recorded.

22. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should have known that Plaintiffs and class members were entitled to receive certain wages for overtime compensation and that they were in fact not receiving certain wages for overtime compensation.

23. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should have known that Plaintiffs and class members were entitled to receive at least minimum wages for compensation and that they were not receiving at least minimum wages for work that was required to be done off-the-clock. In violation of the California Labor Code, Plaintiffs and class members were not paid at least minimum wages for work done off-the-clock.

24. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should have known that Plaintiffs and class members were entitled to meal periods in accordance with the Labor Code or payment of one additional hour of pay at their regular rates of pay when they were not provided with timely, uninterrupted, 30 minute meal periods and that Plaintiffs and class members were not

1 provided with all meal periods or payment of one additional hour of pay at their regular rates of pay when
2 they did not receive a timely, uninterrupted, 30 minute meal period.

3 25. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should
4 have known that Plaintiffs and class members were entitled to 10 minute rest periods in accordance with
5 the Labor Code and applicable IWC Wage Order or payment of one additional hour of pay at their regular
6 rates of pay when they were not provided with a compliant 10 minute rest period and that Plaintiffs and
7 class members were not provided compliant 10 minute rest periods or payment of one additional hour of
8 pay at their regular rates of pay when they were not provided a compliant 10 minute rest period.

9 26. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should
10 have known that Plaintiffs and class members were entitled to timely payment of all wages earned upon
11 termination of employment. In violation of the California Labor Code, Plaintiffs and class members did
12 not receive payment of all wages due, including overtime wages, minimum wages, and meal and rest
13 period premiums, within the time periods required by law.

14 27. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should
15 have known that Plaintiffs and class members were entitled to timely payment of wages during their
16 employment. Plaintiffs and class members did not receive payment of all wages, including overtime
17 wages, minimum wages, and meal and rest period premiums in violation of the California Labor Code.

18 28. Plaintiffs are informed and believe, and thereon alleges, that Defendants knew or should
19 have known that Plaintiffs and class members were entitled to receive full reimbursement for all business-
20 related expenses and costs they incurred in direct consequence of the discharge of their duties and that
21 they did not receive full reimbursement of applicable business-related expenses and costs incurred.

22 29. Plaintiffs are informed and believe, and thereon allege, that at all times herein mentioned,
23 Defendants knew or should have known that they had a duty to compensate Plaintiffs and class members
24 for all hours worked, and that Defendants had the financial ability to pay such compensation, but
25 willfully, knowingly, and intentionally failed to do so.

26 **CLASS ACTION ALLEGATIONS**

27 30. Plaintiffs' proposed Class consists of:

28 All persons who worked for Defendants as non-exempt, hourly-paid

employees in California, within four years prior to the filing of the initial complaint until the date of trial (“Class”).

31. Plaintiffs’ proposed subclass consists of:

All persons who worked for Defendants as non-exempt, hourly-paid employees in California and who received at least one wage statement within one year prior to the filing of the initial complaint until the date of trial (“Subclass”).

32. Members of the Class and Subclass are referred to herein as “Class.”

33. Plaintiffs reserve the right to redefine the Class and to add additional subclasses as appropriate based on further investigation and discovery.

34. At all relevant times, Defendants have had a common and consistent policy and practice of failing to pay the proper minimum wage and overtime, reimburse for necessary business expenditures, furnish compliant wage statements, maintain accurate pay records, provide uninterrupted meal and rest periods and timely pay wages in violation of the Labor Code and IWC Wage Orders.

35. There is a well-defined community of interest in the litigation and the class members are readily ascertainable:

36. **Numerosity:** The members of the Class are sufficiently numerous that joinder of all members is impracticable. The membership of the entire Class is unknown to Plaintiffs at this time. However, the Class is estimated to be greater than 100 individuals and the identity of such membership is readily ascertainable by inspection of Defendants’ employment records.

37. **Commonality:** There are questions of law and fact common to the Class that are answerable on a common basis, and these questions predominate over individual questions. The questions of law and fact common to the Class include, without limitation:

- a. Whether Defendants required Plaintiffs and class members to work over 8 hours per day, over 12 hours per day, or over 40 hours per week and failed to pay them all legally required overtime compensation;
- b. Whether Defendants failed to pay Plaintiffs and class members at least minimum wages for all hours worked;

- c. Whether Defendants failed to provide Plaintiffs and class members with meal periods;
- d. Whether Defendants failed to provide Plaintiffs and class members with rest periods;
- e. Whether Defendants provided Plaintiffs and class members with complete and accurate wage statements as required by California Labor Code section 226 (a);
- f. Whether Defendants failed to pay earned overtime wages, minimum wages, and meal and rest period premiums due to Plaintiffs and class members upon their discharge;
- g. Whether Defendants failed to timely pay overtime wages, minimum wages, and meal and rest period premiums to Plaintiffs and class members during their employment;
- h. Whether Defendants failed to reimburse Plaintiffs and class members for necessary business expenditures, losses incurred by them in direct consequence of the discharge of their duties or obedience to the directions of the employer;
- i. Whether Defendants engaged in unlawful and unfair business practices in violation of California Business & Professions Code sections 17200, *et seq.*; and,
- j. The appropriate amount of damages, restitution, or monetary penalties resulting from Defendants' violations of California law.

38. **Typicality:** Plaintiffs' claims are typical of the claims of the Class he seeks to represent. As set forth herein, Defendants' common course of conduct causes Plaintiffs and similarly situated persons employed by Defendants the same or similar injuries and damages. Plaintiffs' claims are thereby representative of and co-extensive with the claims of the Class.

39. **Adequacy:** Plaintiffs will fairly and adequately represent the interests of all members of the Class he seeks to represent. Plaintiffs are members of the Class they seeks to represent, do not have any conflicts of interest with the Class, will prosecute the case vigorously on behalf of the Class, and have already devoted time and resources to the initial investigation of these claims. Plaintiffs' attorney is competent and experienced in litigating employment actions, including wage and hour class actions.

40. **Superiority of Class Action:** A class action is superior to other available methods for the fair and efficient adjudication of this controversy. In particular, Plaintiffs are informed and believe that some Class Members may be unwilling to bring individual lawsuits for fear of retaliation by Defendants. Because the damages suffered by certain individual members of the Class may be relatively small, the

1 expense and burden of individual litigation make it impracticable for Class Members to pursue their claims
2 separately. Each member of the Class has been damaged and is entitled to recovery by reason of
3 Defendants' illegal, fraudulent and unfair employment practices and policies. Class action treatment will
4 allow those similarly situated persons to litigate their claims in the manner that is most efficient and
5 economical for the parties and the judicial system. Class action treatment will also avoid inconsistent
6 outcomes because the same issues can be adjudicated in the same manner for all members of the Class.

7 **FIRST CAUSE OF ACTION**

8 **FAILURE TO INDEMNIFY FOR NECESSARY EXPENDITURES**

9 **IN VIOLATION OF LABOR CODE § 2802**

10 **(AGAINST ALL DEFENDANTS)**

11 41. Plaintiffs incorporate, by reference, all allegations in the foregoing paragraphs as though
12 fully set forth herein.

13 42. An employer shall indemnify his or her employee for all necessary expenditures or losses
14 incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her
15 obedience to the directions of the employer.

16 43. At all times during their employment, Mr. Arana and class members were required by
17 Defendants to furnish their own hand tools and in fact used those hand tools to perform their job duties.
18 Indeed, there were an insufficient quantity of hand tools at Defendants' locations to allow Mr. Arana or
19 Class Members to perform their job duties without having to supply their own tools. Despite that, Mr.
20 Arana and Class Members were required to supply their own hand tools, they never reimbursed for the
21 cost of these tools in violation of Labor Code § 2802.

22 44. Further, Mr. Arana and class members incurred mileage to drive to and from various
23 locations to perform maintenance on stranded vehicles and were never reimbursed for that mileage.

24 45. Mr. Arana also contends that Defendants failed to pay him or the class members double
25 minimum wage required by IWC Wage Order No. 4-2001, section 9 (b).

26 46. At all times relevant herein, Defendants have had a uniform practice and policy of paying
27 their employees less than twice the minimum wage in contravention of the applicable IWC Wage Orders
28 and California Labor Code §§ 1182, 1194, 1194.2, and 1197.

47. Plaintiffs are informed and believe and thereon allege that, at all relevant times, Defendants have maintained a policy, practice, or a lack of policy, which resulted in their failure to indemnify the Class for the reasonable expenses they incurred in the course of performing their duties. Specifically, Plaintiffs are informed and believe and thereon allege that at all relevant times, Defendants have not reimbursed Class Members for the purchase of their tools.

48. As a result of the foregoing, all members of the Class are entitled to recover all sums incurred by them for the purchase of the tools that were necessary for the performance of their jobs and which they were required to purchase in an amount according to proof at trial.

49. As a result of the foregoing, class members are further entitled to an award of interest at the same rate as judgments in civil actions, accruing from the date on which they incurred the necessary expenditures or losses and all reasonable costs, including attorney's fees incurred by them for enforcing the rights granted by Labor Code § 2802.

SECOND CAUSE OF ACTION

FAILURE TO PAY MINIMUM WAGE IN VIOLATION OF

LABOR CODE §§ 1182.12, 1194, 1197, 1197.1, and 1198

(AGAINST ALL DEFENDANTS)

50. Plaintiffs incorporate, by reference, all allegations in the foregoing paragraphs as though fully set forth herein.

51. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage to be paid to employees, and the payment of a wage less than the minimum so fixed is unlawful. Compensable work time is defined by the applicable wage order as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code. Regs. tit. 8, § 11010 (2) (G).

52. During the class period, Plaintiffs and class members were misclassified as exempt employees and were paid salaries regardless of the number of hours they worked. Further, Plaintiffs and Class Members were not paid for all hours worked, including time that they spent “on call” even after their shifts had ended.

1 53. Due to Defendants' company-wide scheduling practices and policies, Plaintiffs and class
2 members were forced to forego meal and rest periods and/or have their meal and rest periods interrupted
3 by work, and were not relieved of all duties for unpaid meal or rest periods, in order to meet their
4 deadlines and handle their workloads. Defendants did not pay minimum wages for meal and rest periods
5 Plaintiffs and class members worked through that qualified for a premium payment. Defendants did not
6 pay Plaintiffs and class members for the time they continued to perform their duties during their meal
7 and rest periods.

8 54. Defendants had no policy and/or practice for scheduling second meal periods for
9 employees or for authorizing and permitting Plaintiffs and class members to take second 30-minute meal
10 periods on days they worked in excess of 10 hours in one day. As a result, Defendants did not provide
11 Plaintiffs and class members with all second 30-minute meal periods to which they were entitled.

12 55. Defendants did not pay at least minimum wages for all hours worked by Plaintiffs and
13 class members. To the extent that these off-the-clock hours did not qualify for overtime premium
14 payment, Defendants did not pay at least minimum wages for those hours Plaintiffs and class members
15 worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and
16 1198. Accordingly, Defendants regularly failed to pay at least minimum wages to Plaintiffs and class
17 members for all of the hours they worked. Defendants' failure to pay Plaintiffs and class members
18 minimum wages violates California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

19 56. Pursuant to California Labor Code section 1194.2, Plaintiffs and class members are
20 entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest
21 thereon.

22 57. Defendants failure to pay the legal minimum wage to Plaintiffs and the Class as alleged
23 herein is unlawful and creates entitlement, pursuant to Labor Code §1194, to recovery by Plaintiffs and
24 the Class in a civil action for the unpaid balance of the full amount of the unpaid wages owed, including
25 interest thereon.

26 58. Pursuant to Labor Code §1194, Plaintiffs and the Class are entitled to an award of
27 reasonable attorneys' fees and costs incurred in this action.
28

THIRD CAUSE OF ACTION
FAILURE TO PAY OVERTIME WAGE
IN VIOLATION OF LABOR CODE §§ 510 and 1198
(AGAINST ALL DEFENDANTS)

59. Plaintiffs incorporate, by reference, all allegations in the foregoing paragraphs as though fully set forth herein.

60. Labor Code § 1198 makes it unlawful to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code § 1198 requires that “the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

61. The applicable IWC Wage Order required Defendants to pay Plaintiffs and class members working more than 8 hours in a day or more than 40 hours in a workweek, at the rate of time and one-half for all hours worked in excess of 8 hours in a day or 40 hours in a workweek. The applicable IWC Wage Order further required Defendants to pay Plaintiffs and class members working more than 12 hours in a day, overtime compensation at a rate of 2 times their regular rate of pay, and 2 times their regular rate of pay for hours worked in excess of 8 hours on the seventh consecutive day of a work in a workweek.

62. At all relevant times, Defendants willfully failed to pay all overtime wages owed to Plaintiffs and class members. At all relevant times, Plaintiffs and class members were not paid overtime premiums for all of the hours they worked in excess of 8 hours in a day, in excess of 12 hours in a day, and/or in excess of 40 hours in a week, and for all hours worked in excess of 8 hours on the seventh consecutive day of work in a workweek.

63. For example, Mr. Arana’s wage statements usually showed that he worked between 65-70 hours per week. However, this was not accurate. His actual time worked did not match the hours listed on the wage statements. He worked Monday to Friday, from 6:00 a.m. to 6:00 p.m. However, once or twice per week, he would work from 6:00 a.m. to about 7:00 p.m. or 7:30 p.m. Further, every third weekend, on Saturdays and Sundays, he was on call all 48 hours. On those weekends, he would get 4-6 calls on average, and sometimes up to 14 calls, and would travel to various cities, including Barstow, Downey, Borrego Springs and Temecula. He was never compensated overtime wages for this work.

1 64. During the class period, Plaintiffs and class members were misclassified as exempt
2 employees and were paid salaries regardless of the number of hours they worked. Further, Plaintiffs and
3 class members were not paid for all hours worked, including time that they spent “on call” even after their
4 shifts had ended. Because Plaintiffs and class members worked shifts in excess of 8 hours a day or more
5 and 40 hours a week or more, much of this off-the-clock work qualified for overtime premium pay.
6 Therefore, Plaintiffs and class members were not paid overtime wages for all of the overtime hours they
7 actually worked.

8 65. At all relevant times herein, Defendants had, and continue to have, a company-wide policy
9 of failing to implement any policies to authorize and permit employees to take compliant meal periods
10 and, instead, engaged in a practice of discouraging and impeding employees from taking meal periods by
11 assigning them a heavy workload, understaffing their facilities, and interrupting employees with business
12 phone calls and texts during their meal periods.

13 66. Additionally, Defendants, on a company-wide basis, failed to schedule meal periods even
14 though they are aware that employees are entitled to such meal periods. As a result of this company-wide
15 understaffing of its facilities, interrupting employees with business phone calls and texts during their meal
16 periods, and failure to schedule meal periods, Plaintiffs and class members were not always permitted
17 and authorized to take uninterrupted 30-minute meal periods during shifts to which they were entitled to
18 receive a meal period.

19 67. At all relevant times, Defendants had no policy for scheduling second meal periods and no
20 practice of permitting Plaintiffs and class members to take second 30-minute meal periods. As a result,
21 on days that Plaintiffs and class members worked in excess of 10 hours, they were not provided with
22 second 30-minute meal periods.

23 68. Defendants knew or should have known that, as a result of their policies and practices,
24 Plaintiffs and class members were performing some of their assigned duties off-the-clock and/or during
25 unpaid meal periods, and were suffered or permitted to perform work for which they were not paid.
26 Because Plaintiffs and class members worked shifts in excess of 8 hours a day or more and 40 hours a
27 week or more, much of this off-the-clock work qualified for overtime premium pay. Therefore, Plaintiffs
28 and class members were not paid overtime wages for all of the overtime hours they actually worked. To

1 the extent Plaintiffs and class members worked shifts in excess of 12 hours a day, or in excess of 8 hours
2 on the seventh consecutive day of a work in a workweek, Plaintiffs and class members were not paid
3 double time wages for all overtime hours they actually worked.

4 69. Defendants' failure to pay Plaintiffs and class members the balance of overtime
5 compensation, as required by California law, violates the provisions of California Labor Code §§ 510
6 and 1198. Pursuant to California Labor Code § 1194, Plaintiff and class members are entitled to recover
7 their unpaid overtime compensation, as well as interest, costs, and attorneys' fees.

8 70. Labor Code §558 (a) requires that any person acting on behalf of an employer who violates,
9 or causes to be violated, overtime rules pay a civil penalty in the amount of \$50 for each underpaid
10 employee for each pay period in which the employee was underpaid in addition to an amount sufficient to
11 recover underpaid wages. Also, Labor Code §558 (a) for each subsequent violation, the person acting on
12 behalf of an employer is liable in the amount of \$100 for each underpaid employee for each pay period
13 for which the employee was underpaid in addition to an amount sufficient to recover the underpaid wages.

14 71. In addition to the above withheld overtime wages, Plaintiffs and the Class are entitled to
15 civil penalties based upon Defendants' underpayment of overtime wages. Defendants violated Labor Code
16 §558 on each of the past pay periods within the one-year preceding the filing of this complaint, the first
17 of which Defendants are penalized \$50.00, and the remainder of which Defendants are penalized \$100.00
18 each, for a total due in Labor Code §558 penalties in an amount to be proven at trial.

19 **FOURTH CAUSE OF ACTION**

20 **FAILURE TO FURNISH ACCURATE WAGE STATEMENTS**
21 **AND FAILURE TO MAINTAIN ACCURATE PAYROLL RECORDS**
22 **IN VIOLATION OF LABOR CODE §§ 226 1174 (d), and 1198**
23 **(AGAINST ALL DEFENDANTS)**

24 72. Plaintiffs incorporates, by reference, all allegations in the foregoing paragraphs as though
25 fully set forth herein.

26 73. Pursuant to Labor Code §§ 226 and 1174, employers have a duty to provide their non-
27 exempt employees with accurate itemized statements showing total hours worked, hourly wages, gross
28 wages, total deductions net wages earned and name of the employer. An employer who violates these

1 Code sections is liable to its employees for the greater of actual damages suffered by the employee, or
2 \$50.00 in civil penalties for the initial pay period in which a violation occurred, and \$100.00 per employee
3 for each subsequent pay period, up to a statutory maximum of \$4,000.00.

4 74. Pursuant to Labor Code § 558.1, any employer or other person acting on behalf of an
5 employer, who violates, or causes to be violated, Labor Code section 226, may be held liable as the
6 employer for such violation. The term ‘other person acting on behalf of an employer’ is limited to a natural
7 person who is an owner, director, officer, or managing agent of the employer.

8 75. At all relevant times, Defendants have knowingly and intentionally provided Plaintiffs and
9 subclass members with uniform, incomplete, and inaccurate wage statements. During the class period,
10 Plaintiffs and subclass members’ wage statements incorrectly reflected an unvarying number of hours per
11 week, even though the actual hours that they worked per week varied.

12 76. For example, Mr. Arana’s wage statements usually showed that he worked between 65-70
13 hours per week. However, his actual time worked did not match the hours listed on the wage statements.
14 Indeed, he regularly worked between 60 – 108 hours per week. He worked 60 hours during a normal work
15 week; and would work an additional 48 hours on the weekends when he was working on-call. Despite this
16 fact, Mr. Arana’s wage statements consistently reflected that he worked between 65-70 hours per week.
17 Mr. Arana is deemed to have suffered an injury under Lab. Code § 226 (e)(2)(B)(i) as a result of
18 Respondents’ failure to list his correct number of hours worked because he was not able to readily
19 ascertain his actual number of hours worked per pay period without reference to other documents or
20 information.

21 77. Additionally, because Defendants failed to document time worked on Plaintiffs’ and
22 subclass members’ wage statements and employment records for time spent working during meal
23 periods, Defendants unlawfully deducted wages earned and meal period premiums that should have been
24 paid. Thus, Defendants did not furnish wage statements to Plaintiffs and subclass members containing
25 the correct amount of gross wages earned in violation of Labor Code § 226 (a) (1), accurate total hours
26 worked in violation of Labor Code § 226 (a) (2), correct amount of net wages earned in violation of Labor
27 Code § 226 (a) (5), or accurate number of hours worked at each corresponding hourly rate in violation of
28 Labor Code § 226 (a) (9).

1 78. To the extent that Defendants paid any meal break premium and/or rest break premium
2 payments, Defendants failed to identify such payments on Plaintiffs' and subclass members' wage
3 statements and employment records, and Defendants otherwise failed to provide information on the wage
4 statements sufficient to identify how many premium payments were paid during each pay period, the
5 specific dates worked giving rise to the premium payments owed, or to determine whether such premium
6 payments adequately and/or accurately compensated Plaintiffs and subclass members for any and all
7 premiums owed.

8 79. California Labor Code § 1198 provides that the maximum hours of work and the standard
9 conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable
10 IWC Wage Orders. § 1198 further provides that "the employment of any employees for longer hours than
11 those fixed by the order or under conditions of labor prohibited by the order is unlawful." Pursuant to the
12 applicable IWC Wage Order, employers are required to keep accurate time records showing when the
13 employee begins and ends each work period and meal period. At all relevant times, Defendants failed,
14 on a company-wide basis, to keep records of meal period start and stop times for Plaintiffs and Subclass
15 members in violation of section 1198.

16 80. California Labor Code section 1174 (d) provides that "every person employing labor in
17 this state shall ... keep a record showing the names and addresses of all employees employed and the
18 ages of all minors" and "keep, at a central location in the state or at the plants or establishments at which
19 employees are employed, payroll records showing the hours worked daily by and the wages paid to, and
20 the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at
21 the respective plants or establishments..." At all relevant times, and in violation of Labor Code § 1174
22 (d), Defendants willfully failed to maintain accurate payroll records for Plaintiff and Subclass members
23 showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-
24 the-clock hours that they worked.

25 81. Plaintiffs and subclass members are entitled to recover from Defendants the greater of their
26 actual damages caused by Defendants' failure to comply with California Labor Code § 226 (a), or an
27 aggregate penalty not exceeding four thousand dollars \$4,000 per employee, in addition to attorneys' fees
28 and costs.

FIFTH CAUSE OF ACTION
FAILURE TO PROVIDE MEAL PERIODS
LABOR CODE §§ 226.7, 512 (a) and 1198
(AGAINST ALL DEFENDANTS)

82. Plaintiffs incorporate, by reference, all allegations in the foregoing paragraphs as though fully set forth herein.

83. “An employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.” Labor Code § 512; IWC Wage Order Nos. 1–2001 to 16–2001, § 11; IWC Wage Order No. 17–2001, § 9; 8 Cal Code Regs §§ 11010-11160, § 11; 8 Cal Code Regs § 11170, § 9.

84. At all relevant times herein, Labor Code §§ 226.7 and 512 (a), 1198 and the applicable IWC Wage Order also require employers to provide a second meal break of not less than 30 minutes if an employee works over 10 hours per day or to pay an employee one additional hour of pay at the employee’s regular rate, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

85. “An employer shall not require an employee to work during a meal ... period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission If an employer fails to provide an employee a meal ... period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission ... the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal ... period is not provided.” Lab. Code § 226.7 (b) & (c).

1 86. At all relevant times, Plaintiffs and the Class regularly worked more than five hours per
2 day, and were thereby entitled to take uninterrupted 30-minute meal periods on each day of work.

3 87. At all relevant times herein, Defendants had, and continue to have, a company-wide policy
4 and/or practice of understaffing while simultaneously assigning demanding workloads, and interrupting
5 meal periods with work-related phone calls and texts which had the combined effect of preventing
6 Plaintiff and class members from taking all timely, uninterrupted meal periods to which they were
7 entitled. Additionally, Defendants had no policy and/or practice of scheduling meal periods for Plaintiffs
8 and class members. As a result of Defendants' policies and/or practices, Plaintiffs and class members
9 had to work through some or all of their meal periods, have their meal periods interrupted to return to
10 work, and/or wait extended periods of time before taking meal periods.

11 88. Defendants did not provide Plaintiffs and class members with second 30-minute meal
12 periods on days that they worked in excess of 10 hours in one day. Plaintiffs and class members worked
13 10 or more hour shifts and, at times, up to 12 or more hours in a shift without being permitted or
14 authorized to take a second 30-minute meal period.

15 89. Plaintiffs are also informed and believe that Defendants engaged in a systematic, company-
16 wide practice and/or policy of not paying meal period premiums for Plaintiffs and class members,
17 regardless of whether they were able to take a compliant meal break, in violation of the applicable IWC
18 Wage Order and Labor Code sections 226.7 and 512 (a). As a result, Defendants failed to provide
19 Plaintiffs and class members compliant meal periods in violation of California Labor Code sections 226.7
20 and 512 and failed to pay the full meal period premiums due.

21 90. As alleged herein, Plaintiffs and the Class are not exempt from the meal period
22 requirements of the applicable Code of Regulations and Industrial Welfare Commission Orders.
23 Consequently, Defendants' conduct violates the applicable IWC Wage Order, and California Labor Code
24 §§ 226.7, 512 (a), and 1198. Plaintiffs and class members are therefore entitled to recover from
25 Defendants one additional hour of pay at the employee's regular rate of compensation for each work day
26 that the meal period was not provided, plus interest thereon and costs of suit in an amount subject to proof
27 at trial.

SIXTH CAUSE OF ACTION
FAILURE TO PROVIDE REST PERIODS
LABOR CODE §§ 226.7 and 1198
(AGAINST ALL DEFENDANTS)

91. Employees must be given 10-minute net rest periods for every 4 hours of work, to be taken in the middle of each 4-hour period insofar as practicable. However, a rest period need not be provided for employees whose total daily work is less than 3.5 hours. Thus, employees are entitled to one 10-minute net rest period for shifts from 3.5 to 6 hours in length, two for shifts of more than 6 hours up to 10 hours, and three for shifts of more than 10 hours up to 14 hours, and so on. *Brinker Restaurant Corp. v Superior Court*, 53 Cal.4th 1004, 1029 (2012); Wage Order Nos. 1–2001 to 16–2001, §§11–12 (A); 8 Cal Code Regs §§11010-11160.

92. “An employer shall not require an employee to work during a rest ... period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission If an employer fails to provide an employee a rest ... period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission ... the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the rest ... period is not provided.” Lab. Code § 226.7 (b) & (c).

93. To comply with its obligation to provide rest periods under California Labor Code § 226.7 and the applicable IWC Wage Order, an employer must “relinquish any control over how employees spend their break time, and relieve their employees of all duties — including the obligation that an employee remain on call. A rest period, in short, must be a period of rest.” *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

94. Defendants’ company-wide policy and practice of understaffing while simultaneously assigning demanding workloads, prevented Plaintiffs and class members from being relieved of all duty in order to take compliant rest periods.

95. Defendants also had a uniform policy of failing to schedule rest breaks. As a result, Plaintiffs and class members missed their rest breaks, would be required to take them late, or would have

1 their rest breaks interrupted. Plaintiffs and class members were prevented from being relieved of all duty
2 in order to take compliant rest periods and instead would be required to continue working.

3 96. Plaintiffs and class members worked shifts in excess of 3 ½ hours, in excess of 6 hours,
4 and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they
5 were entitled.

6 97. Defendants have also engaged in a systematic, company-wide practice and/or policy of not
7 paying rest period premiums owed when rest periods are not authorized or permitted. Thus, Defendants
8 denied Plaintiffs and class members rest periods and failed to pay them rest period premium wages due,
9 in violation of Labor Code section 226.7 and the applicable IWC Wage Order.

10 98. As alleged herein, Plaintiffs and the Class are not exempt from the rest period requirements
11 of the applicable Code of Regulations and Industrial Welfare Commission Orders.

12 99. Defendants' conduct violates the applicable IWC Wage Order and California Labor Code
13 §§ 226.7 and 1198. Plaintiffs and class members are therefore entitled to recover from Defendants one
14 additional hour of pay at the employee's regular rate of compensation for each work day that the rest
15 period was not authorized or permitted, plus interest thereon and costs of suit in an amount subject to
16 proof at trial.

17 **SEVENTH CAUSE OF ACTION**

18 **FAILURE TO TIMELY PAY WAGES**

19 **IN VIOLATION OF LABOR CODE § 204**

20 100. Plaintiffs incorporate, by reference, all allegations in the foregoing paragraphs as though
21 fully set forth herein.

22 101. "All wages ... earned by any person in any employment are due and payable twice during
23 each calendar month, on days designated in advance by the employer as the regular paydays ... (d) The
24 requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or
25 semimonthly payroll if the wages are paid not more than seven calendar days following the close of the
26 payroll period." Labor Code § 204.

27 102. "In addition to, and entirely independent and apart from, any other penalty provided in this
28 article, every person who fails to pay the wages of each employee as provided in Sections ... 204 ... shall

1 be subject to a penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure
2 to pay each employee. (2) For each subsequent violation, or any willful or intentional violation, two
3 hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully
4 withheld.” Labor Code § 210.

5 103. At all times relevant herein, Defendants engaged in a practice of failing to pay Plaintiffs
6 and the Class by the seventh calendar day following the close of the payroll period. Indeed, as discussed
7 above, Plaintiffs and the Class are owed wages for unpaid minimum wage, unpaid overtime, meal periods,
8 rest periods and unreimbursed business expenses. At no time during their employment were these
9 outstanding sums ever paid to them. Instead, these outstanding sums continued to accumulate every pay
10 period. Therefore, Plaintiffs and the Class were not paid all wages earned by the seventh calendar day
11 following the close of their pay periods.

12 104. As a direct and proximate result of Defendants’ failure to timely pay wages, Plaintiffs and
13 the Class are entitled to penalties under Labor Code § 210 in an amount subject to proof at trial.

14 **EIGHTH CAUSE OF ACTION**

15 **WILLFUL FAILURE TO PAY WAGES**

16 **IN VIOLATION OF LABOR CODE §§ 201-203**

17 105. Plaintiffs incorporate, by reference, all allegations in the foregoing paragraphs as though
18 fully set forth herein.

19 106. “If an employer discharges an employee, the wages earned and unpaid at the time of
20 discharge are due and payable immediately.” Labor Code § 201.

21 107. “If an employee not having a written contract for a definite period quits his or her
22 employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the
23 employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is
24 entitled to his or her wages at the time of quitting.” Labor Code § 202.

25 108. “If an employer willfully fails to pay any wages of an employee who is discharged or who
26 quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate
27 until paid or until an action therefor is commenced.” Labor Code § 203.

28 109. Plaintiffs and the Class were not exempt from the requirements of Labor Code §§ 201-203.

1 110. Defendants engaged in a practice of failing to pay class members either immediately upon
2 discharge, or within 72 hours of their resignation in violation of Labor Code § 203. As discussed above,
3 class members are owed wages for unpaid minimum wage, overtime, meal periods and unreimbursed
4 business expenses. At no time since their separation of employment were these outstanding sums ever
5 paid to them. Further, Defendants knew or should have known that they owed these outstanding sums to
6 these aggrieved employees and intentionally failed and refused to pay these sums within the time required
7 by Labor Code § 201-202 and continue to refuse to do so.

8 111. At no time since Plaintiffs' or the Class's separation of employment did Defendants pay
9 them wait-time penalties as required by Labor Code § 203.

10 112. For example, Mr. Arana quit his job on July 13, 2020. At the time of quitting, Defendants
11 owed him unpaid minimum wages, unpaid overtime, unpaid meal period premiums, unpaid rest period
12 premiums, and reimbursement for necessary business expenses – all of which have not been remitted to
13 Mr. Arana to this day.

14 113. As a direct and proximate result of Defendants' willful failure to pay Plaintiffs' and the
15 Class's wages within the time required by Labor Code § 201-202, Plaintiffs and the Class incurred wait-
16 time penalties in an amount equal to their daily rate of pay over the period that the wages were not paid in
17 an amount subject to proof at trial.

18 **NINTH CAUSE OF ACTION**
19 **CIVIL PENALTIES IN VIOLATION OF**
20 **LABOR CODE § 2699, ET SEQ.**
21 **(AGAINST ALL DEFENDANTS)**

22 114. Plaintiffs incorporate, by reference, all allegations in the foregoing paragraphs as though
23 fully set forth herein.

24 115. Under Labor Code § 2698, et seq., Plaintiffs, as aggrieved employees, may bring an action
25 against defendants, on behalf of themselves and other current or former employees, seeking civil penalties
26 for defendants' violations of the California Labor Code.

27 116. Plaintiffs were aggrieved employees within the meaning of Labor Code §2698, et seq. by
28 virtue of the numerous Labor Code violations he was subjected to as plead herein.

117. Defendants also subjected the aggrieved employees on whose behalf Plaintiffs brings this enforcement action to all of the Labor Code violations plead herein, including failing to reimburse for necessary business expenditures in violation of Labor Code § 2802, failing to pay minimum wages in violation of Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198, failing to pay overtime in violation of Labor Code §§ 510 and 1198, failing to furnish compliant wage statements and maintain accurate pay records in violation of § 226, 1174 (d), and 1198, failing to provide meal periods in violation of §§ 226.7, 512 (a), and 1198, failing to provide rest periods in violation of Labor Code §§ 226.7 and 1198, failure to timely pay wages in violation of Labor Code § 204 and willful failure to pay wages in violation of Labor Code § 201-203.

118. On August 27, 2020, Plaintiffs provided written notice by online filing with the Labor and Workforce Development Agency and by certified mail to Defendants of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violation, as required by Labor Code § 2699.3 (a) (1) (A).

119. As of the filing of this Complaint, Plaintiffs have received no notice from the Labor and Workforce Development Agency of its intent to pursue an action against Defendants.

120. As a direct and proximate result of Defendants' California Labor Code violations as set forth herein, Plaintiffs are entitled to civil penalties of \$100 for each aggrieved employee per pay period for the initial violation, and \$200 for each aggrieved employee per pay period for each subsequent violation, pursuant to Labor Code § 2699 (f), for those Labor Code sections not expressly providing for a penalty, and civil penalties provided by the specific Labor Code sections that do expressly provide for a penalty.

121. Plaintiffs are also entitled to reasonable attorney's fees and costs, and 25% of the recovered civil penalties.

TENTH CAUSE OF ACTION

**UNFAIR COMPETITION IN VIOLATION OF
BUSINESS & PROFESSIONS CODE §§17200, ET SEQ.
(AGAINST ALL DEFENDANTS)**

122. Plaintiffs incorporate, by reference, all allegations in the foregoing paragraphs as though

1 fully set forth herein.

2 123. Defendants are a “person” as defined by California Business & Professions Code sections
3 17201.

4 124. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair, unlawful and
5 harmful to Plaintiffs, the Class, aggrieved employees and to the general public. Plaintiffs and the Class
6 have suffered injury in fact and have lost money as a result of Defendants’ unlawful business practices.
7 Plaintiffs and the Class seek to enforce important rights affecting the public interest within the meaning
8 of Code of Civil Procedure section 1021.5.

9 125. A violation of California Business & Professions Code §§ 17200, *et seq.* may be predicated
10 on the violation of any state or federal law.

11 126. The employment practices engaged in by Defendant as plead herein, including violations
12 of the Labor Code sections, Code of Regulations and Wage Orders, constitute unfair business practices in
13 violation of Business & Professions Code §§17200, *et seq.*

14 127. As a result of Defendants’ unfair business practices, Defendants have reaped unfair benefits
15 and illegal profits at the expense of Plaintiffs, the Class and members of the public.

16 128. Pursuant to California Business & Professions Code §§ 17200, *et seq.* Plaintiffs and the
17 Class are entitled to restitution of the wages withheld and retained by Defendants during a period that
18 commences four years prior to the filing of this Complaint; a permanent injunction requiring Defendants
19 to pay all outstanding wages due to Plaintiffs, the Class and aggrieved employees; and an award of
20 attorneys’ fees pursuant to California Code of Civil Procedure section 1021.5 and other applicable laws;
21 and an award of costs.

22 **PRAYER FOR RELIEF**

23 Plaintiffs and the Class pray for relief and judgment against Defendants as follows:

24 1. For damages, unpaid wages, penalties, injunctive relief, and attorneys’ fees in excess of
25 \$25,000, exclusive of interest and costs.

26 **Class Certification**

27 2. That this case be certified as a class action;

28 3. That Plaintiffs be appointed as the representatives of the Class and Subclass;

1 4. That counsel for Plaintiffs be appointed as class counsel.

2 **As to the First Cause of Action**

3 **(Unreimbursed Business Expenses)**

4 5. That the Court adjudge, declare and decree that Defendants violated Labor Code § 2802
5 by willfully failing to reimburse business expenses incurred by Plaintiffs and the Class;

6 6. For unreimbursed business expenses and for all actual, consequential, and incidental losses
7 and damages, according to proof;

8 7. For interest at the same rate as judgments in civil actions, accruing from the date on which
9 Plaintiffs and the Class incurred the necessary expenditures or losses pursuant to Labor Code § 2802;

10 8. For all reasonable costs and attorney's fees incurred by Plaintiffs' and the Class's
11 enforcement of the rights granted by Labor Code § 2802 pursuant to Labor Code § 2802 (c); and

12 9. For such other relief that the Court deems just and appropriate.

13 **As to the Second Cause of Action**

14 **(Unpaid Minimum Wages)**

15 10. That the Court adjudge, declare and decree that Defendants violated Labor Code §§
16 1182.12, 1194, 1197, 1197.1, 1198, applicable Wage Orders and Codes of Regulation by willfully failing
17 to pay minimum wages to Plaintiffs and class members;

18 11. For payment of unpaid wages in an amount subject to proof;

19 12. For liquidated damages pursuant to Labor Code §1194.2 in an amount subject to proof,
20 plus interest;

21 13. For prejudgment interest at the legal rate from the date the obligation became due through
22 the date of judgment in this matter;

23 14. For all reasonable costs and attorney's fees incurred by Plaintiffs' and the Class's
24 enforcement of the rights granted by Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 pursuant to
25 Labor Code § 1194 (a); and

26 15. For such other relief that the Court deems just and appropriate.

1 **As to the Third Cause of Action**

2 **(Unpaid Overtime)**

3 16. That the Court adjudge, declare and decree that Defendants violated Labor Code §§ 510
4 and 1198, applicable IWC Wage Orders and Codes of Regulation by willfully failing to pay overtime
5 wages to Plaintiffs and class members;

6 17. For payment of unpaid overtime wages in an amount subject to proof;

7 18. For prejudgment interest at the legal rate from the date the obligation became due through
8 the date of judgment in this matter;

9 19. For all reasonable costs and attorney's fees incurred by Plaintiffs' and the Class's
10 enforcement of the rights granted by Labor Code §§ 510 and 1198 pursuant to Labor Code § 1194 (a);
11 and

12 20. For such other relief that the Court deems just and appropriate.

13 **As to the Fourth Cause of Action**

14 **(Noncompliant Wage Statements and Payroll Records)**

15 21. That the Court adjudge, declare and decree that Defendants violated Labor Code §§ 226
16 and 1198, applicable IWC Wage Orders and Codes of Regulation by willfully failing to furnished
17 compliant, accurate itemized wage statements to Plaintiffs and class members and for failure to keep
18 accurate payroll records;

19 22. For consequential and incidental losses and damages according to proof;

20 23. For injunctive relief pursuant to Labor Code § 226 (h);

21 24. For statutory penalties pursuant to Labor Code § 226 (e);

22 25. For all reasonable costs and attorney's fees incurred by Plaintiffs' and the Class's
23 enforcement of the rights granted by Labor Code §§ 226 pursuant to Labor Code § 226 (e) (1); and

24 26. For such other relief that the Court deems just and appropriate.

25 **As to the Fifth Cause of Action**

26 **(Failure to Provide Meal Periods)**

27 27. That the Court declare, adjudge, and decree that Defendants violated California Labor
28 Code §§ 226.7, 512 (a), 1198, applicable IWC Wage Orders and Codes of Regulation by willfully failing

1 to provide all meal periods to Plaintiffs and class members;

2 28. That the Court make an award to the Plaintiffs and class members of one hour of pay at
3 each employee's regular rate of pay for each workday that a meal period was not provided;

4 29. For all actual, consequential, and incidental losses and damages, according to proof;

5 30. For premiums pursuant to California Labor Code section 226.7 (b);

6 31. For pre-judgment interest on any unpaid meal period premiums from the date such amounts
7 were due, or as otherwise provided by law;

8 32. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as
9 otherwise provided by law; and

10 33. For such other relief that the Court deems just and appropriate.

11 **As to the Sixth Cause of Action**

12 **(Failure to Provide Rest Periods)**

13 34. That the Court declare, adjudge, and decree that Defendants violated California Labor
14 Code §§ 226.7, 1198, applicable IWC Wage Orders and Codes of Regulation by willfully failing to
15 provide all rest periods to Plaintiffs and class members;

16 35. That the Court make an award to the Plaintiffs and class members of one hour of pay at
17 each employee's regular rate of pay for each workday that a rest period was not provided;

18 36. For all actual, consequential, and incidental losses and damages, according to proof;

19 37. For premiums pursuant to California Labor Code section 226.7 (b);

20 38. For pre-judgment interest on any unpaid rest period premiums from the date such amounts
21 were due, or as otherwise provided by law;

22 39. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as
23 otherwise provided by law; and

24 40. For such other relief that the Court deems just and appropriate.

25 **As to the Seventh Cause of Action**

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

27 41. That the Court declare, adjudge, and decree that Defendants violated California Labor
28 Code § 204, applicable IWC Wage Orders and Codes of Regulation by willfully failing to timely pay

1 wages to Plaintiffs and class members;

2 42. For penalties pursuant to Labor Code § 210, plus 25 percent of amounts unlawfully
3 withheld from Plaintiffs and class members;

4 43. For all actual, consequential, and incidental losses and damages, according to proof;

5 44. For pre-judgment interest on any unpaid wages from the date such amounts were due, or
6 as otherwise provided by law;

7 45. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as
8 otherwise provided by law; and

9 46. For such other relief that the Court deems just and appropriate.

10 **As to the Eighth Cause of Action**

11 **(Willful Failure to Pay Wages)**

12 47. That the Court declare, adjudge, and decree that Defendants violated California Labor
13 Code § 201-203, applicable IWC Wage Orders and Codes of Regulation by willfully failing to pay
14 minimum wages, overtime wages, and meal and rest premiums owed to Plaintiffs and class members
15 either upon discharge or within 72 hours of their resignation;

16 48. For wait time penalties pursuant to Labor Code § 203;

17 49. For all actual, consequential, and incidental losses and damages, according to proof;

18 50. For pre-judgment interest on any unpaid wages from the date such amounts were due, or
19 as otherwise provided by law;

20 51. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as
21 otherwise provided by law; and

22 52. For such other relief that the Court deems just and appropriate.

23 **As to the Ninth Cause of Action**

24 **(Civil Penalties under the PAGA)**

25 53. That the Court declare, adjudge, and decree that Defendants violated all California Labor
26 Code sections plead herein, including Labor Code §§ 201-204, 226, 226.7, 510, 512, 1174, 1182.12,
27 1194, 1197, 1197.1, 1198 and 2802;

28 54. For civil penalties pursuant to 210, 226.3, 256, 558, 1174.5, 1197.1, 2699 (a) and/or 2699

(a), (f) and (g), for violations of all California Labor Code sections plead herein, including Labor Code §§ 201-204, 226, 226.7, 510, 512, 1174, 1182.12, 1194, 1197, 1197.1, 1198 and 2802;

55. For attorneys' fees and costs pursuant to California Labor Code § 2699 (g) (1), and any and all other relevant statutes, for Defendants' violations of all California Labor Code sections plead herein, including Labor Code §§ 201-204, 226, 226.7, 510, 512, 1174, 1182.12, 1194, 1197, 1197.1, 1198 and 2802;

56. For pre-judgment and post-judgment interest as provided by law; and

57. For such other and further relief as the Court deems just and appropriate.

As to the Tenth Cause of Action

(Unfair Competition)

58. That the employment practices engaged in by Defendant as plead herein, including violations of the Labor Code, Code of Regulations and Wage Orders, constitute unfair business practices in violation of Business & Professions Code §§17200, et seq.;

59. For restitution of unpaid wages to Plaintiffs and all class members and prejudgment interest from the day such amounts were due and payable;

60. For the appointment of a receiver to receive, manage and distribute any and all funds disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result of violations of California Business & Professions Code sections 17200, et seq.;

61. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Code of Civil Procedure § 1021.5; and

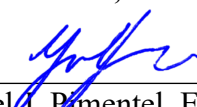
62. For such other and further relief as the Court deems just and appropriate.

DEMAND FOR JURY TRIAL

Plaintiffs and the Class hereby demand a trial by jury on all issues.

PIMENTEL LAW, P.C.

Dated: February 15, 2022

By: 

Gabriel J. Pimentel, Esq.
Yesenia L. Rodriguez, Esq.
Attorneys for the Plaintiffs