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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SACRAMENTO

CHRIS ROGERS, an individual on his own behalf and in his representative capacity, on behalf of all others similarly-situated

Plaintiff,

vs.

PODS ENTERPRISES, LLC, a Florida limited liability company; and DOES 1 through 25, inclusive,

Defendant.

Case No. 34 2021 00298372

CLASS AND REPRESENTATIVE ACTION

- 1) Failure to Provide Meal Periods in violation of Labor Code §§ 226.7 and 512 and applicable IWC Wage Orders
- 2) Failure to Provide Rest Periods in violation of Labor Code § 226 and applicable IWC Wage Orders
- 3) Failure to Maintain Record of all hours worked Labor Code §1174
- 4) Failure to Pay Wages for All Hours Worked in Violation of Labor Code 1194(a)
- 5) Failure to Pay Overtime Earned in violation of Labor Code §§ 510, and applicable IWC Wage Orders
- 6) Failure to Pay All Wages When Due Labor Code § 204
- 7) Failure to Provide Accurately Itemized Wage Statements in Violation of Labor Code § 226(a)
- 8) Failure to Pay All Wages Due Upon Termination Labor Code § 201 (a)
- 9) Failure to Reimburse Expenses Labor Code §2802
- 10) Unlawful Business Practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*
- 11) PAGA Penalties Pursuant to Labor Code 2698 *et. seq.*

DEMAND FOR JURY TRIAL

1 Plaintiff Chris Rogers ("Plaintiff Rogers"), on his own behalf and on behalf of all others
2 similarly situated, hereby files this Complaint against Defendant, PODS Enterprises, LLC
3 ("PODS" or "Defendant") and DOES 1 through 25, inclusive.

4 Plaintiff is informed and believes and on the basis of that information and belief, alleges as
5 follows:

6 **I. INTRODUCTION**

7 1. This is a Class Action, pursuant to Code of Civil Procedure section 382 and a
8 Representative Action pursuant to Labor Code § 2698 *et seq.* (Private Attorneys General Act of
9 2004) (the "PAGA") on behalf of Plaintiff individually and on behalf of all current or former
10 similarly situated nonexempt employees of PODS Enterprises, LLC, a Florida limited liability
11 company and any subsidiaries or affiliated companies. The nonexempt employees currently or
12 formerly employed by Defendant within the State of California are herein after referred to
13 individually as "Class Members" and collectively as the "Class" or "Classes".
14

15 2. Plaintiff is informed and believes and based thereon alleges that Defendant currently
16 employs and during the relevant period have employed thousands of employees in the State of
17 California in hourly, nonexempt positions.

18 3. The acts complained of herein occurred, occur and will occur at least in part, within the
19 time period from four (4) years preceding the filing of this Complaint, up to and through the time
20 of trial for this matter (the "Class Period").

21 4. Plaintiff alleges that Defendant violated numerous provisions of the California Labor
22 Code, including violations of Labor Code §§ 200-203, 204, 226(a), 226.7, 510, 512, 1174 (d),
23 1194 (a) 2802 and applicable Wage Order No. 9-2001, for unpaid wages, for missed and/or non-
24 compliant, rest and meal break violations, for unpaid premiums for meal and rest break violations,
25 for failure to track, record and maintain accurate records of all hours worked, failure to pay
26 overtime, for failure to pay all wages when due, for failure to reimburse expenses incurred in the
27 discharge of work related duties, for failure to issue accurately itemized wage statements and for
28 failure to pay all wages due upon discharge or termination of employment, as further detailed

1 herein. Plaintiff alleges that these acts, which violate the California Labor Code, constitute
2 predicate unlawful and unfair business practices in violation of California's Unfair Competition
3 laws.

4 5. Plaintiff brings this action as an individual and on behalf of all others similarly situated
5 and seeks compensation for all uncompensated work, liquidated and/or other damages as
6 permitted by applicable law, as well as attorneys' fees, and applicable penalties as provided by
7 statute, plus interest and costs.

8 **II. JURISDICTION AND VENUE**

9 6. The Court has jurisdiction over Plaintiff and the Class Members' claims pursuant to
10 Business and Professions Code sections 17200-17208 and also seeks injunctive relief and
11 restitution of ill-gotten benefits arising from Defendant's unlawful business acts and practices
12 under California Business and Professions Code section 17200-17208.

13 7. Venue is proper in this judicial district, pursuant to Code of Civil Procedure section 395.
14 Plaintiff is a resident of California and the Class Members worked for Defendant all over the state
15 of California, including Sacramento County. Defendant conducts business in Sacramento County,
16 California and the unlawful acts alleged herein had a direct effect on Plaintiff and those similarly
17 situated within the State of California including within the County of Sacramento.

18 **III. THE PARTIES**

19 8. Plaintiff, Chris Rogers, is a resident of Sacramento, California and at all relevant times
20 work for Defendant in Sacramento. As a former employee of Defendant, Plaintiff Rogers will
21 serve as an adequate, typical and active participant and class representative for the proposed Class
22 and/or potential subclasses.

23 9. At all times relevant to this Complaint, Defendant PODS Enterprise, LLC, ("PODS") was
24 a Florida limited liability company, with its principal headquarters at 13535 Feather Sound Drive,
25 4th Floor, Clearwater, Florida 33762 and with its main California office located at 4450 Edison
26 Ave., in Chino, California.

27 10. PODS Enterprises, LLC is an organization that owns and operates moving and temporary
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1 on-site storage container services. PODS operates its storage container services with facilities
2 across the continental U.S., including nearly 42 storage facilities within the state of California
3 where it employed Plaintiff and the putative Class Members.

4 11. Plaintiff is unaware of the true names and capacities of Defendants sued as DOES 1
5 through 25, inclusive, and therefore Plaintiff sue these Defendants by fictitious names. Plaintiff is
6 informed and believes and thereupon alleges that each of the fictitiously named Defendants is in
7 some manner responsible for the wrongful acts and resulting damages to Plaintiff as alleged in
8 this Complaint. Plaintiff will amend this Complaint to show the true names and capacities of
9 these fictitiously named Defendants after their true names and capacities have been ascertained.

10 12. Plaintiff is further informed and believes that all of the acts and conduct described herein
11 below of each named Defendant and DOES 1 through 25, inclusive, were done in the capacity as
12 managing agents, employees, and/or representatives of each other Defendant, and each such
13 Defendant was acting within the scope of such agency, employment and/or representation in
14 doing the wrongful acts alleged herein below and with permission and consent.

15 13. This complaint challenges Defendant' systemic illegal employment practices resulting in
16 violations of the state provisions of the Labor Code against Plaintiff and similarly-situated,
17 current or former employees of Defendant, during the Class Period.

18 14. Plaintiff is informed and believes and thereon alleges Defendant acted intentionally and
19 with deliberate indifference and conscious disregard to Plaintiff and the putative Class Members'
20 rights by failing to pay all wages when due, failing to provide compliant rest and meal breaks,
21 failing to pay meal period wages and rest break premiums, failing to record and maintain accurate
22 records of time work, including time worked while off the clock, failing to pay overtime wages,
23 failing to provide accurate wage statements, and failing to reimburse for expenses incurred in the
24 discharge of work related duties and failure to pay all wages due upon termination of
25 employment.

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27 **IV. FACTUAL SUMMARY**

28 15. Plaintiff, Chris Rogers was at all relevant times herein a resident of Sacramento,

1 California. He was employed by Defendant as a full-time, hourly, nonexempt storage center
2 worker when he was first hired November 6, 2014 and was eventually promoted to the
3 storage center warehouse manager at the PODS warehouse facility in Sacramento,
4 California.

5 16. Typical job duties of Plaintiff and the nonexempt Class Members included
6 activities related to customer service, organizing, moving and facilitating delivery and
7 transport of PODS' storage containers.

8 17. Plaintiff and the proposed Class Members were largely full-time workers,
9 who worked regularly scheduled shifts of eight hours a day, five days per workweek.

10 18. During the Class Period, Plaintiff and those similarly situated employees
11 were routinely prohibited from receiving proper, timely, and compliant meal and rest
12 breaks. The amount of work that Defendant demanded be completed each shift left no time
13 or opportunity to take Labor Code compliant rest or meal breaks. Even during a purported
14 meal break period, Plaintiff, Rogers routinely ate his lunch at his desk while continuing to
15 work, answering questions or assisting other employees in the warehouse. There was never
16 an occasion when Plaintiff just had an actual, non-working, duty-free meal break.

17 19. Defendant is and was well aware that Plaintiff and the Class Members were
18 either skipping their rest break and meal break periods and/or were continuing to perform
19 their job duties and continue to work during their rest and meal breaks.

20 20. Upon information and belief, Plaintiff alleges that at no time did he or the
21 Class Members he seeks to represent ever sign a valid meal break waiver.

22 21. Although Defendant has written rest and meal break policies, due to the
23 foregoing described policies and working conditions, Defendant actively impeded and
24 failed to relieve Plaintiff and Class Members of all duties and relinquish all control, to
25 allow them the opportunity to take a 10-minute rest break for every four hours or major
26 fraction thereof worked, let alone a 30-minute duty free meal break after each five-hour
27 work period.
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1 22. Although Defendant is and was aware of the rest and meal break violations,
2 Defendant failed to pay Plaintiff and the Class Members the obligatory premium pay wage
3 equal to one hour of pay at their regular hourly rate of pay for each missed rest or meal
4 break during each and every pay period during the statutory period.

5 23. Missed breaks, or on duty breaks also meant Plaintiff and the Class Members
6 were working while off-the-clock. Consequently, the off-the-clock hours worked and
7 overtime wages due are and were never recorded or compensated by Defendant.

8 24. Accordingly, actual hours worked and corresponding wages due are not and
9 were not accurately itemized or reflected on Plaintiff and the Class Members wage
10 statements every two weeks during the Class Period.

11 25. Furthermore, Plaintiff and similarly situated Aggrieved Employees routinely
12 utilized their personal cell phones for work. Although Defendant provided certain
13 employees with company-issued cell phones, Plaintiff and certain other Class Members
14 were not provided a company-issued cell phone and had to use their own personal cell
15 phones. Plaintiff and such Class Members routinely used their personal cell phones to
16 contact supervisors, and to communicate with other colleagues when they were moving
17 around the warehouses. At no time has Defendant ever reimbursed Plaintiff or the Class
18 Members for the expenses they incurred in the utilization of their personal cell phones for
19 work related communications and duties.

20 26. As a further and additional consequence of the above-described actions and
21 working conditions, Plaintiff and the Class Members are/were not being properly paid all
22 of the wages they were due twice monthly on the pay dates set by Defendant, for each and
23 every pay period, during the statutory period, as none of their pay stubs ever reflected all
24 the wages they earned, including time worked off the clock during their rest and meal
25 breaks and overtime hours worked as a result. In addition to the failure to accurately
26 itemize such earnings, Defendant failed to include premium pay penalties to which Plaintiff
27 and the Class Members were entitled for the rest and meal break violations.
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1 27. As stated supra, Plaintiff's employment with Defendant ended on or about
2 June 30, 2020. When Plaintiff was terminated, he was not paid all outstanding wages he
3 was due as alleged hereinabove, in accordance with the provisions of Labor Code Section
4 201, immediately upon termination.

5 28. Upon information and belief, Plaintiff alleges thereon, that during the Class
6 Period, at the time of separation of employment, similarly situated Class Members were not
7 paid their full wages due in accord with Labor Code Sections 201-202, either, immediately
8 upon termination or discharge or, for such employees not having a written contract for a
9 definite period of time, and who quit, no later than 72 hours thereafter, as applicable.

10 29. As a result of the foregoing conduct, policies and practices, Defendant
11 engaged in, ratified and enforced the following unlawful practice and policies against
12 Plaintiff and the Class Members he seeks to represent:

13 a.) Failing to pay former employee Class Members who were discharged, laid off,
14 or resigned in accordance with the requirements of Labor Code §§ 201, 202, and
15 203.

16 b.) Failing to pay nonexempt employees overtime wages for all hours worked in
17 excess of an eight-hour day in violation of Labor Code Section 510, 1194 and IWC
18 Wage Order No. 9-2001.

19 c.) Failing to maintain accurate records of earned wages and work periods in
20 violation of Labor Code §§ 226 and 1174(d) and IWC Wage Order No. 9-2001.

21 d.) Failing to provide nonexempt employees meal periods under Labor Code
22 Section 226.7 and IWC Wage Order No. 9-2001.

23 e.) Failing to provide non-exempt employees rest periods under Labor Code
24 Section 226.7 and IWC Wage Order No. 9-2001.

25 f.) Failing to furnish timely and accurate itemized wage statements to non-
26 exempt employees under Labor Code Section 226.
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1 g.) Failing to pay employees all wage due, each and every pay period under Labor
2 Code Section 204.

3 h.) Failing to reimburse employees for cell phone use and expenses necessarily
4 incurred in the discharge of their duties.

5 i.) Defendant engaged in unfair business practices under Business and Professions
6 Code Section 17200 et seq.

7 30. On information and belief Plaintiff alleges that Defendant's actions as
8 described throughout this Complaint were willful.

9 31. Because Defendant failed to comply Labor Code section 226(a) by failing to
10 provide itemized wage statements showing all deductions from payment of wages and
11 accurately reporting total hours worked, the non-exempt Plaintiffs and the similarly situated
12 Class Members they seek to represent are entitled to penalties not to exceed \$4,000 for each
13 employee pursuant to Labor Code section 226(b).

14 32. The Plaintiff, as an individual, and on behalf of all others similarly situated,
15 seeks injunctive relief, compensation for all uncompensated work, and/or all other damages
16 permitted by applicable law, as well as attorneys' fees, penalties, interest and costs.

17 33. Plaintiff also brings this case as a representative action seeking penalties for the
18 State of California in a representative capacity as provided by the Private Attorneys General Act
19 ("PAGA") to the extent permitted by law, and as aggrieved employees who held same or similar
20 positions identified herein and who were subject to Defendant's violations of the Labor Code.
21 A true and correct copy of the November 30, 2020 written notice showing compliance with
22 Labor Code § 2699.3 is attached hereto as **Exhibit A** and demonstrates that the named Plaintiff
23 is an aggrieved employee who has standing to bring a representative action on behalf of the State
24 of California and Labor and Workforce Development Agency (the "LWDA") as a private
25 attorney general. No notice of cure by Defendant was provided and no notice of investigation
26 was received from the LWDA in the statutorily proscribed 65-day period since the mailing of
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1 the written notice. Accordingly, Plaintiff also files this as representative action as specifically
2 permitted and authorized by Labor Code § 2699.3(a)(2)(A).

3 V. CLASS ACTION ALLEGATIONS

4 34. Plaintiff brings this action on behalf of himself and on behalf of all others
5 similarly situated pursuant to California Code of Civil Procedure Section 382. Plaintiff
6 seeks to represent a Class composed of and defined as follows under California Labor Code
7 Section 203 (a):

8 **“All persons who are employed or have been formerly employed**
9 **by Defendant, PODS ENTERPRISES, LLC (“Defendant”) in the**
10 **State of California, and who, within four (4) years preceding the**
11 **filing of this complaint until the time of trial (the “Class Period”)**
12 **as nonexempt employees who were subjected to Defendant’s**
13 **unlawful acts as stated herein, including those who are/were**
14 **impeded from taking a rest break, and/or deprived of taking a**
15 **rest break at the rate of every four hours (or major fraction**
16 **thereof), and who, as a result of such missed rest breaks has not**
17 **been compensated in an amount equal to one hour of pay at such**
18 **individual’s regular hourly rate of pay, during any given pay**
19 **period during their term of employment; and who were/are**
20 **impeded or deprived of taking a meal break after every working**
21 **period of more than five hours and has not been compensated**
22 **for such missed meal break(s) in an amount equal to one hour of**
23 **pay at such individuals’ regular hourly rate of pay, during any**
24 **given pay period during their term of employment; and who**
25 **Defendant knowingly and willfully paid to pay all wages when**
26 **due during any given pay period during their term of**
27 **employment, including overtime hours worked; and who**
28 **Defendant failed to furnish accurately itemized wage statements**
reflecting all hours worked and accurate corresponding rates of
pay; and who Defendant failed to pay all wages due when such
employee voluntarily or involuntarily ended their employment
with Defendant during the Class Period and who incurred
expenses for work-related purposes including for personal cell
phone use or expenses related to the purchase of work attire and
who Defendant failed to reimburse for such work related
expenses incurred.”

1 Plaintiff reserves the right under Rule 3.764, California Rules of Court, to amend or modify
2 the class description with greater specificity or further division into subclasses or limitation
3 to particular issues.

4 35. This action has been brought and may properly be maintained as a class action
5 under the provisions of section 382 of the Code of Civil Procedure because there is a well-
6 defined community of interest in the litigation and the proposed Class Members are easily
7 ascertainable.

8 36. Numerosity: Plaintiffs are informed and believe and based on such information
9 and belief alleges that the potential Members of the Class as defined are so numerous that
10 joinder of all the Members of the Class is impracticable. The exact number of the Members of
11 the class is presently unknown to Plaintiffs, but upon information and belief, Plaintiffs allege
12 that the exact number and specific identities of the Members of the Class may be readily
13 ascertained through inspection of Defendant's business records, but it is estimated that there
14 are in excess of 500 class Members.

15 37. Commonality: There are questions of law and fact common to the individual
16 Plaintiffs and to the Class that predominate over any questions affecting only individual
17 Members of the Class. These common questions of law and fact include, without limitation:

- 18 a.) Whether Defendant's policies, operational and payment practices constitute a
19 violation of the IWC Order No. 9 Section 12 for failure to provide proper rest break
20 periods;
21 b.) Whether Defendant's policies, operational and payment practices constitute a
22 violation of the IWC Order No. 9, Section 12 (B) for failure to compensate
23 premium pay wages as provided therein for missed rest breaks;
24 c.) Whether Defendant's policies, operational and payment practices constitute a
25 violation of the IWC Order No. 9, Section 11 for failure to provide proper meal
26 break periods;
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- 1 d.) Whether Defendant's policies, operational and payment practices constitute a
2 violation of the IWC Order No. 9, Section 11 (D) for failure to compensate
3 premium pay wages as provided therein for missed meal breaks;
- 4 e.) Whether Defendant's policies, operational and payment practices constitute
5 violation of Labor Code § 1174(d) for failure to maintain accurate business
6 records;
- 7 f.) Whether Defendant's policies, operational and payment practices constitute
8 violation of Labor Code §1194 for failure to pay Plaintiff and Class Member for
9 each hour worked;
- 10 g.) Whether Defendant's policies, operational and payment practices constitute
11 violation of Labor Code §510 for failure to pay overtime wages earned;
- 12 h.) Whether Defendant's policies, operational and payment practices constitute
13 violation of Labor Code § 226 for failure to provide accurately itemized wage
14 statements;
- 15 i.) Whether the Plaintiff and Class Members are entitled to Waiting Time Penalties as
16 provided by Labor Code § 203 due to Defendant's policies, operational and
17 payment practices alleged herein;
- 18 j.) Whether Defendant's policies, operational and payment practices constitute
19 violation of Labor Code § 2802 for failure to reimburse Plaintiff and the Class
20 Members for expenses incurred in the discharge of work-related duties;
- 21 k.) Whether Defendant's policies, operational and payment practices constitute
22 violation of Labor Code § 204 for failure to pay all wages earned by any person
23 twice during each calendar month;
- 24 l.) Whether Defendant's policies, operational and payment practices constitute
25 violation of Labor Code § 201-203 for failure to pay all wages due and owed upon
26 discharge or termination;
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1 m.) Whether Defendant's policies, operational and payment practices constitute Unfair
2 Business Practices pursuant to Business and Professions Code section 17200, et
3 seq.

4 38. Typicality: Plaintiffs' claims are typical of the claims of the Class.
5 Defendant's common course of conduct in violation of law as alleged herein has caused
6 Plaintiffs and Class Members to sustain the same or similar injuries and damages. Plaintiffs'
7 claims are thereby representative of, and co-extensive with the claims of the Class.

8 39. Adequacy of Representation: Plaintiff is a Member of the Class and does not
9 have any known existing conflicts of interest with other Class Members. Plaintiff will prosecute
10 the case vigorously on behalf of the Class. Counsel representing Plaintiff is competent and
11 experienced in litigating employment class actions. Plaintiff will fairly and adequately protect
12 the interest of Class Members.

13 40. Superiority of Class Action: A class action is superior to other available means
14 for the fair and efficient adjudication of this controversy. Individual joinder of all Class
15 Members is not practicable, and questions of law and fact common to the Class predominate
16 over any questions affecting only individual Members of the Class. Plaintiff makes the use of
17 the class action format particularly effective and the appropriate procedure to afford relief to
18 Plaintiff and the members of the Class for the wrongs alleged herein for the following reasons:

19 41. The State of California, for which there is a named representative, has a public
20 policy which encourages the use of the class action device.

21 42. By establishing a technique whereby, the claims of many individuals can be
22 resolved at the same time, the class suit both eliminates the possibility of repetitious litigation
23 and provides small claimants with a method of obtaining redress for claims which would
24 otherwise be too small to warrant individual litigation.

25 43. This case involves a large corporate Defendant and a large number of
26 individual Class Members with many relatively small claims and common issues of law and
27 fact.

28 44. If each individual member of the Class was required to file an individual
lawsuit, the large corporate Defendant would necessarily gain an unconscionable advantage

1 because Defendant would be able to exploit and overwhelm the limited resources of each
2 individual member of the Class with Defendant's vastly superior financial and legal resources.

3 45. Requiring each individual member of the Class to pursue an individual remedy
4 would also discourage the assertion of lawful claims by the members of the Class who would
5 be disinclined to pursue action against Defendant because of an appreciable and justifiable fear
6 of retaliation and permanent damage to their lives, careers and well-being.

7 46. Proof of a common policy and practice or factual pattern, of which the
8 members of the Class experienced, is representative of the Class herein and will establish the
9 right of each of the members of the Class to recover on the causes of action alleged herein.

10 47. Absent class treatment, the prosecution of separate actions by the individual
11 members of the Class, even if possible, would likely create:

12 48. a substantial risk of each individual Plaintiff presenting in separate, duplicative
13 proceedings the same or essentially similar arguments and evidence, including expert
14 testimony;

15 49. a multiplicity of trials conducted at enormous expense to both the judicial
16 system and the litigants;

17 50. inconsistent or varying verdicts or adjudications with respect to the individual
18 members of the Class against Defendant;

19 51. potentially incompatible standards of conduct for Defendant; and

20 52. potentially incompatible legal determinations with respect to individual
21 members of the Class which would, as a practical matter, be dispositive of the interests of the
22 other members of the Class who are not parties to the adjudications or which would
23 substantially impair or impede the ability of the members of the Class to protect their interests.

24 53. The claims of the individual members of the Class are not sufficiently large to
25 warrant vigorous individual prosecution, considering all of the concomitant costs and expenses
26 attendant thereto.

27 54. Courts seeking to preserve efficiency and other benefits of class actions
28 routinely fashion methods to manage any individual questions.

55. Judicial precedent urges trial courts, which have an obligation to consider the
use of innovative procedural tools to certify a manageable class, to be procedurally innovative
in managing class actions.

1 56. Manageability of Class and Common Proof: The nature of this action and the
2 nature of law available to Plaintiff makes use of the class action format and procedure a
3 particularly efficient and appropriate procedure to afford relief to Plaintiff and the members of
4 the Class for the wrongs alleged herein. Specifically, liability will turn on Defendant's own
5 uniform, systemic practices failing to provide nonexempt employees with proper rest and meal
6 break periods and will also turn on Defendant's systemic and uniform practices regarding
7 reimbursement of expenses incurred by their employees in the discharge of their work-related
8 duties. Therefore, the violations alleged are predominant questions of fact that are easily capable
9 of being determined through manageable devices of common proof, such as statistical random
10 sampling, survey evidence based on scientific principles, representative testimony, documentary
11 evidence and common practices/procedures of Defendant in treating each of the Class Members
12 as a homogeneous group. Once the predominant issues are determined, then each of the
13 derivative claims and damages suffered by each member of the Class will be capable of being
14 shown by several means of common proof and limited by individual showings of entitlement to
15 recovery that can be professionally administered and tailored to the facts and circumstances of
16 the case.

17 57. Class certification of the First through the Tenth causes of action is appropriate
18 under *Cal. Civ. Proc. Code* § 382 because questions of law and fact common to the Class
19 predominate over any questions affecting only individual members of the Class of this litigation.
20 Defendant's policies and practices unlawfully treated member of the Class in a uniform fashion.
21 The damages suffered by individual members of the Class are small compared to the expense
22 and burden of individual prosecution of this litigation. In addition, class certification is superior
23 because it will obviate the need for unduly duplicative litigation that might result in inconsistent
24 judgments about Defendant's practices.

25 58. Class Certification of the First through the Tenth causes of action is also
26 appropriate pursuant to *Cal. Civ. Proc. Code* § 382 because Defendant has acted or refused to
27 act on grounds generally applicable to the Class, making appropriate declaratory relief with
28 respect to the Class as a whole.

 59. Plaintiff intends to send notice to all members of the Class to the extent
required by law and each will be given an opportunity to opt of the proceedings.

60. Each of the following allegations pertain and apply to Plaintiff and the Class equally throughout all or a substantial part of the Class Period. Defendant has engaged in and enforced the following unlawful practices and policies against Plaintiff and the Class Members he seeks to represent:

FIRST CAUSE OF ACTION

Failure to Provide Meal Breaks

In Violation of Labor Code §§ 226.7 and 512

(As to Defendant and Does 1-25, Inclusive)

61. Plaintiff on his own behalf and on behalf of the similarly situated Class Members, realleges and incorporates by reference all of the foregoing paragraphs, as though fully set forth herein.

62. California Labor Code Sections 226.7 and 512 and IWC No. 9 provide that employees who work in excess of five hours must be provided at least a half-hour uninterrupted meal break in which they are relieved of all duty.

63. When Plaintiff and the Class Members work(ed) shifts in excess of five hours, they are or were not provided with a half-hour, duty free, uninterrupted meal break.

64. Defendant, by and through its workplace policies and operational practices fail or have failed to provide or have impeded the ability of the Plaintiff and Class Members to take half-hour uninterrupted meal breaks.

65. As a result of Defendant's failure to afford proper meal break periods, they are liable to the Plaintiff and Class Members for one hour of additional pay at the regular rate of compensation for each workday that proper meal periods are or were not provided, pursuant to California Labor Code section 226.7

66. Defendant has not paid such premiums to Plaintiff and the Class Members.

67. As a result of Defendant's conduct, Plaintiff and the Class Members are entitled to damages to compensate them for the unpaid premiums, as well as injunctive relief-requiring Defendant to comply with the California Labor Code and Wage Order No.

1 7-2001 with respect to meal periods.

2 68. As a result of Defendant's conduct, the Plaintiffs and the Class Members are
3 also entitled to attorneys' fees under Labor Code sections 218.5 and 1194, in addition to
4 interest, expenses and costs of suit.

5 69. Wherefore, Plaintiff and the Class Members request judgment as is further
6 set forth herein below.

7 **SECOND CAUSE OF ACTION**

8 **Failure to Provide Rest Breaks**

9 **In Violation of Labor Code §§226.7 and IWC No. 9-2001**

10 **(As to Defendant and Does 1-25, Inclusive)**

11 70. Plaintiff on his own behalf and on behalf of the similarly situated Class
12 Members realleges and incorporates by reference all of the foregoing paragraphs as though
13 fully set forth herein.

14 71. During the Class Period, Defendant did not permit or impeded Plaintiff and
15 the Class Members' ability to take rest periods.

16 72. By their failure to provide rest period for every four hours or major fraction
17 thereof worked per day and by failing to provide compensation for such unprovided rest
18 periods, as alleged above, Defendant willfully violated the provisions of Labor Code
19 Section 226.7 and IWC Wage Order 9-2001.

20 73. The Plaintiff and Class Members did not voluntarily or willfully waive their
21 rest periods.

22 74. By their failure to keep adequate records as required by sections 226 and
23 1174(d) of the Labor Code, Defendant has injured the Plaintiff and Class Members and
24 made it difficult for them to calculate their unpaid rest period compensation (including
25 wages, interest, and penalties thereon) due the Plaintiff and Class Members.

26 75. As a result of the unlawful acts of Defendant, the Plaintiff and Class
27 Members have been deprived of compensation in amounts to be determined at trial, and are
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1 entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees,
2 and costs, under Labor Code §§ 203, 226, 226.7, and 1194, and the applicable IWC Wage
3 Order.

4 76. Wherefore, the Plaintiff and the Class Members request relief as described
5 herein and below.

6 **THIRD CAUSE OF ACTION**

7 **Failure to Maintain Records of All Hours Worked**

8 **In Violation of Labor Code § 1174(d)**

9 **(As to Defendant and Does 1-25, Inclusive)**

10 77. Plaintiff on his own behalf and on behalf of the similarly situated Class
11 Members realleges and incorporates by reference all of the foregoing paragraphs as though
12 fully set forth herein.

13 78. California Labor Code § 1174(d), which was in force and effect at all
14 relevant times herein, provides in pertinent part, that "Every person employing labor in this
15 state shall keep... at a central location in the state or at the plants or establishments at
16 which employees are employed, payroll records showing the hours worked daily by and the
17 wages paid to, and the number of piece-rate units earned by and any applicable piece rate
18 paid to, employees employed at the respective plants or establishments. These records shall
19 be kept in accordance with rules established for this purpose by the commission, but in any
20 case shall be kept on file for not less than three years. An employer shall not prohibit an
21 employee from maintaining a personal record of hours worked, or, if paid on a piece-rate
22 basis, piece-rate units earned."

23 79. Defendant failed to track and record all hours that the Plaintiff and Class
24 Members worked, including the time they were working during their rest period and meal
25 break period.

26 80. Labor Code Section 1174.5 provides that an employer who fails to maintain
27 the records pursuant to 1174 (d) shall be subject to a civil penalty of five hundred (\$500)
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1 dollars.

2 81. As a result of Defendant's violation of Section 1174 (d) Plaintiff and the
3 Class Members are entitled to and do hereby seek civil penalties in the amount of \$500.00
4 each.

5 82. Wherefore, the Plaintiff and the Class Members request relief as described
6 herein and below.

7 **FOURTH CAUSE OF ACTION**

8 **Failure to Pay All Wages Owed**

9 **In Violation of Labor Code § 1194**

10 **(As to Defendant and Does 1-25, Inclusive)**

11 83. Plaintiff on his own behalf and on behalf of the similarly situated Class
12 Members realleges and incorporates by reference all of the foregoing paragraphs, as though
13 fully set forth herein.

14 84. As alleged herein, during the Class Period Defendant failed to properly
15 compensate Plaintiff and the Class Members for all hours worked, included overtime hours
16 worked due to the time they were working during their rest and meal break periods.

17 85. By uniformly failing to track and record all of the hours worked by Plaintiff
18 and members of the Class and failing to compensate them for all hours actually worked,
19 including overtime, Defendant was able to skim wages from employees by not paying them
20 a separate hourly wage for each and every hour worked as clearly required by California
21 law. Through this unlawful and illegal policy and practice, Defendant has failed to pay
22 Plaintiff and the Class all wages owed to them.

23 86. Pursuant to Labor Code § 1194, "... any employee receiving less than the
24 legal minimum wage or the legal overtime compensation applicable to the employee is
25 entitled to recover in a civil action the unpaid balance of the full amount of this minimum
26 wage or overtime compensation, including interest thereon, reasonable attorney's fees, and
27 costs of suit.
28

1 87. Plaintiff is informed and believes and based thereupon alleges that the result
2 of the Defendant's unlawful and illegal policy and practices has caused damage in the
3 nonpayment of wages to himself and to the proposed Class in an amount according to proof
4 at trial.

5 88. Plaintiff is informed and believes that the nonpayment of his wages and that
6 of the Class Members is fixed and ascertainable on a class wide basis such that
7 prejudgment interest on those wages is recoverable.

8 89. Plaintiff is informed and believes that the nonpayment of wages for all labor
9 performed also entitles Plaintiff and the proposed Class Members to attorneys' fees and
10 costs, and liquidated damages in an amount equal to the amount unlawfully unpaid
11 according to Labor Code § 1194.2.

12 **FIFTH CAUSE OF ACTION**

13 **Failure to Pay Overtime Wages Earned**

14 **In Violation of Labor Code §§ 510, 1198 and IWC No. 9**

15 **(As to Defendant and Does 1-25, Inclusive)**

16 90. Plaintiff on his own behalf and on behalf of the similarly situated Class
17 Members realleges and incorporates by reference all of the foregoing paragraphs, as though
18 fully set forth herein.

19 91. California Labor Code § 510 provides that work in excess of eight hours in a
20 day, or 40 hours in a week, must be compensated at a rate of not less than one and one-
21 half times the regular rate of pay for an employee; and for the first eight hours worked on
22 the seventh consecutive day of work in a workweek; and double the employee's regular
23 rate of pay for all hours worked in excess of 12 hours in any workday and double the
24 employee's regular rate of pay for all hours worked in excess of eight on the seventh
25 consecutive day of work in a workweek.

26 92. IWC Wage Order 7-2001 and Cal. Code Reg., Title 8, section 11100 also
27 provide that work in excess of eight hours in a day, or 40 hours in a week, must be
28

1 compensated at not less than one and one-half times the regular hourly rate of pay for an
2 employee.

3 93. Labor Code Section 1198 makes unlawful the employment of any employee
4 under conditions of labor prohibited by the applicable Wage Order.

5 94. The Plaintiff and Class Members work, or have worked, more than eight
6 hours in a day and were not paid at the overtime rate for all hours worked and/or work or
7 have worked in excess of eight hours on the seventh consecutive day of work in a
8 workweek without being paid their proper overtime wages.

9 95. Pursuant to Labor Code sections 218 and 1194, the Plaintiff and Class
10 Members are entitled to recover in a civil action the unpaid balance of the full amount of
11 overtime compensation for all hours worked in excess of eight hours a day.

12 96. Wage Order 9-2001 provides for civil penalties for violations of the Wage
13 Order. As result of Defendant's violation of Wage Order 9-2001 the Plaintiff and Class
14 Members are entitled to and hereby seek civil penalties in the amount of \$50 for the first
15 violation and \$100 for each subsequent violation.

16 97. Labor Code Section 558 provides that any employer who violates any
17 provision regulating hours and days of work in any order of the IWC shall be subject to
18 civil penalties.

19 98. As a result of Defendant's violation of Wage Order 9-2001, the Plaintiff and
20 Class Members are entitled to and hereby seek civil penalties in the amount of \$50 for the
21 first violation and \$100 for each subsequent violation.

22 99. Labor Code Section 218.6 provides for interest on all unpaid wages in any
23 action brought for nonpayment of wages.

24 100. The Plaintiff and Class Members seek to recover interest on all unpaid
25 wages due.

26 101. The Plaintiff and Class Members seek liquidated damages pursuant to Labor
27 Code section 1194.2.
28

1 102. The Plaintiff and Class Members seek to recover all unpaid overtime wages,
2 penalties and interest and interest due to them.

3 103. As a result of Defendant's conduct, the Plaintiff and Class Members are also
4 entitled to attorneys' fees under Labor Code sections 218.5 and 1194, in addition to
5 interest expenses and costs of suit.

6 **SIXTH CAUSE OF ACTION**

7 **Failure to Pay All Wages Earned When Due**

8 **In Violation of Labor Code Section 201-204**

9 **(As to Defendant and Does 1-25, Inclusive)**

10 104. Plaintiff on his own behalf and on behalf of the Class Members realleges and
11 incorporates by reference all of the foregoing paragraphs, as though fully set forth herein.

12 105. California Labor Code Sections 201 and 202 require Defendant to pay its
13 employees all wages due within the time specified by law under Labor Code Section 204.
14 California Labor Code Section 203 provides that if an employer willfully fails to timely
15 pay such wages, the employer must continue to pay the subject employees' wages until the
16 back wages are paid in full or an action is commenced, up to a maximum of thirty days'
17 wages.

18 106. The Plaintiff on his own behalf, and on behalf of the Class Members who
19 are currently or were formerly employed with Defendant during the Class Period are
20 entitled to unpaid compensation, but to date have not received such compensation.

21 107. The Defendant did not or have not paid the Plaintiff and Class Members
22 who are currently or were formerly employed by Defendant, their accrued and rightfully
23 earned wages for each and every hour of labor worked during each and every pay period of
24 their employment pursuant to Labor Code Section 204.

25 108. The Plaintiff and the Class Members were not and/or have not been
26 properly compensated for overtime wages and wages for they work or worked during and
27 through their rest and meal break periods, each and every pay period, to which they are and
28

1 were entitled, during the term(s) of their employment.

2 109. As a result of Defendant's unlawful conduct as alleged herein, the Plaintiff
3 and Class Members have sustained economic damages, including, but not limited to such
4 unpaid wages and lost interest in an amount to be determined at trial.

5 110. As a result of Defendant's conduct, Plaintiff and the Class Members are
6 also entitled to attorneys' fees, in addition to interest, expenses and costs of suit, pursuant
7 to Labor Code sections 218.5 and 1194.

8 111. Wherefore, Plaintiff and the Class Members request judgment as is further
9 set forth herein below.

10 **SEVENTH CAUSE OF ACTION**

11 **Failure to Furnish Accurately Itemized Wage Statements**

12 **In Violation of Labor code Section 226 (a)**

13 **(As to Defendant and Does 1-25, Inclusive)**

14 112. Plaintiff on his own behalf and on behalf of the similarly situated Class
15 Members realleges and incorporates by reference all of the foregoing paragraphs as though
16 fully set forth herein.

17 113. California Labor Code Section 226(a) provides that, semimonthly or at the
18 time of each payment of wage, an employer shall provide each employee with a wage
19 statement itemizing, among other things, the total hours worked by the employee in the pay
20 period.

21 114. An employee suffers injury if the employer fails to provide a wage statement
22 or an employee suffers injury if the employer fails to provide accurate and complete
23 information as required by any one or more items listed in section 226(a)(1)-(9) and the
24 employee cannot "promptly and easily" ascertain one or more of the following without
25 reference to other documents or information the amount of gross wages or net wages paid
26 during the pay period: The total number of hours worked if the employee is not salaried;
27 the number of piece-rate units earned and the piece rate; deductions made; the dates of the
28

1 pay period; all applicable hourly rates in effect during that pay period; the name and
2 address of the employer; or the name of the employee and either the last four digits of his
3 or her social security number or an employee identification number other than the social
4 security number.

5 115. California Labor Code Section 226(e) provides that an employee suffering
6 injury as a result of a knowing and intentional failure by an employer to comply with Labor
7 Code section 226(a) is entitled to recover the greater of his or her actual damages or a
8 penalty of \$50 for the initial pay period in which a violation occurs and \$100 per employee
9 for each violation in a subsequent pay period (up to a maximum of \$4,000), in addition to
10 attorneys' fees and costs.

11 116. The Plaintiff and Class Members are and/or were entitled to payment and
12 accompanying accurately itemized wage statements semimonthly.

13 117. Defendant knowingly and intentionally failed to provide accurately itemized
14 wage statements to Plaintiff and Class Members that correctly reflected all hours worked,
15 including hours worked during their rest and meal break periods, overtime and hours
16 otherwise worked off the clock and failed to pay them premium pay for missed rest and or
17 meal break periods in accordance with California Labor Code Section 226.

18 118. Defendant's failure to provide accurately itemized wage statements to
19 Plaintiff and the Class Members caused injury to Plaintiff and the Class Members by,
20 among other things, impeding them from knowing the accurate amount of wages to which
21 they were entitled.

22 119. As a result of Defendant's unlawful conduct, as alleged herein, Plaintiff and
23 the Class Members are entitled to the damages and penalties under California Labor Code
24 section 226(e).

25 120. As a result of Defendant's conduct, Plaintiff and the Class Members are also
26 entitled to injunctive relief under Labor Code Section 226(g) and in addition to attorneys'
27 fees, interest, expenses and costs of suit pursuant to Section 226(e).
28

1 **EIGHTH CAUSE OF ACTION**

2 **Failure to Pay All Wages Due Upon Termination**
3 **In Violation of Labor Code Sections 201(a), 202-203**
4 **(As to Defendant and Does 1-25, Inclusive)**

5 121. Plaintiff on his own behalf and on and on behalf of the Class Members
6 realleges and incorporate by reference all of the foregoing paragraphs as though fully set
7 forth herein.

8 122. Labor Code Section 201(a) requires an employer who discharges an
9 employee to pay all compensation due and owing to the employee immediately upon the
10 employee's discharge from employment.

11 123. Labor Code Section 202 requires an employer to pay within 72 hours all
12 compensation due and owing to an employee who quits his or her employment.

13 124. Labor Code Section 203 provides that if an employer willfully fails to pay,
14 without abatement or reduction, in accordance with Labor Code Sections 201, 201.3, 201.5,
15 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the
16 wages of the employee shall continue as a penalty from the due date thereof at the same
17 rate until paid or until an action therefor is commenced; but the wages shall not continue
18 for more than 30 days.

19 125. By failing to compensate Plaintiff and Class Members as required by law,
20 Defendant has willfully failed to make timely payment of the full wages due to such Class
21 Members who resigned or were discharged during the Class Period.

22 126. As a result of Defendant's unlawful conduct as alleged herein, Plaintiff and
23 such Class Members have sustained economic damages, including, but not limited to,
24 unpaid wages and lost interest in an amount to be determined at trial.
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(As to Defendant and Does 1-25, Inclusive)

128. California Labor Code Section 2802 provides that an employer shall indemnify his or her employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties.

130. As a result of Defendant's non reimbursement for expenses incurred in direct consequence of the discharge of their duties, Plaintiff and the Class Members have sustained economic damages, including but not limited to such lost reimbursement of work-related personal cell phone expenses.

TENTH CAUSE OF ACTION

(As to Defendant and Does 1-25, Inclusive)

133. California Business and Professions Code Section 17200, et seq. prohibits

1 unfair competition in the form of any unlawful, unfair or fraudulent business act or
2 practice.

3 134. California Business and Professions Code Section 17202 provides:
4 “Notwithstanding Section 3369 of the Civil Code, specific or preventative relief may be
5 granted to enforce a penalty, forfeiture, or penal law in case of unfair competition.”

6 135. California Business and Professions Code Section 17203 provides in
7 relevant part that the court may “restore to any person in interest any money or property,
8 real or person, which may have been acquired by means of such unfair competition.”

9 136. California Business and Professions Code Section 17203 also provides that
10 any person who meets the standing requirements of Section 17204 and complies with
11 California Code of Civil Procedure Section 382 may pursue representative claims for relief
12 on behalf of others.

13 137. California Business and Professions Code Section 17204 allows any “person
14 who has suffered injury in fact and has lost money or property as a result of such unfair
15 competition” to prosecute a civil action for violation of the Unfair Business Practices Act.

16 138. Pursuant to Section 17204, Plaintiff and the other similarly situated Class
17 Members are entitled to enforce all applicable provisions of the Labor Code.

18 139. Beginning at an exact date unknown to Plaintiff, but at least since the date
19 four years prior to the filing of this suit, Defendant has committed acts of unfair
20 competition as defined by the Unfair Business Practices Act, by engaging in the unlawful,
21 unfair and fraudulent practices and acts described in the Complaint, including, but not
22 limited to violations of Labor Code Sections 201-204, 226(a), 226.7, 510, 512, 1174 (d),
23 1194, 2802 and the provisions of IWC No. 9-2001.

24 140. The violations of these laws and regulations, as well as of fundamental
25 California public policies protecting workers, serve as unlawful predicate acts and practices
26 for purposes of Business and Professions Code Section 17200 et seq.

27 141. The acts and practices described above constitute unfair, unlawful and
28

1 fraudulent business practices, and unfair competition, within the meaning of Business and
2 Professions Code Section 17200, et seq. Among other things, Defendant's acts and
3 practices have forced Plaintiff and other similarly situated workers to labor without
4 receiving appropriate compensation.

5 142. The acts and practices described above have allowed Defendant to gain an
6 unfair competitive advantage over law-abiding employers and competitors.

7 143. As a result of the acts and practices described herein, Plaintiff and other
8 similarly situated workers have been denied compensation in an amount to be proven at
9 trial.

10 144. Plaintiff and other similarly situated Class Members are therefore, entitled
11 to restitution pursuant to Business and Professions Code Section 17203 and 17208 for all
12 wages and other compensation unlawfully withheld from them during the four-year period
13 prior to the filing of the complaint.

14 145. As a result of the aforementioned acts and practices, Defendant has
15 received and continues to receive ill-gotten gains belonging to Plaintiff and other similarly
16 situated Class Members.

17 146. Injunctive relief is necessary and appropriate to prevent Defendant from
18 repeating their unlawful, unfair and fraudulent business acts and practices described herein.

19 147. Pursuant to Section 17203 and/or any other applicable law, Plaintiff seeks
20 an order-preventing Defendant from engaging in unlawful, unfair and fraudulent conduct
21 and preventing Defendant from profiting and benefiting from their illegal and wrongful
22 acts.

23 148. Plaintiff's success in this action will enforce important rights affecting the
24 public interest. Therefore, Plaintiff sues on behalf of himself as an individual and other
25 similarly situated employees.

26 149. An award of attorneys' fees is appropriate pursuant to California Civil Code
27 Section 1021.5 because 1) this action will confer a significant benefit upon a large class of
28

persons; and 2) there is a financial burden involved in pursuing this action; and 3) it would be against the interest of justice to force Plaintiff to pay attorneys' fees from any amount recovered in this action.

ELEVENTH CAUSE OF ACTION

Violations of the PAGA

Pursuant to Labor Code Section 2698 et seq.

(As to Defendant and Does 1-25, Inclusive)

150. Plaintiff realleges and incorporates by reference, all of the foregoing paragraphs, as though fully set forth herein.

151. Plaintiff, by his employment with Defendant and Defendant's violations of the Labor Code as alleged herein, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff, by virtue of **Exhibit A** hereto, has satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws including, without limitation, the penalty provisions identified in Labor Code § 2699.5. Since the LWDA took no steps within the time period required to intervene and because Defendant took no corrective action to remedy the allegations set forth above, Plaintiff as a representative of the people of the State of California, will seek any and all penalties otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes each of the following, as is set forth in Labor Code § 2699.5, which states:

“The provisions of subdivision (a) of Section 2699.3 apply to any alleged violation of the following provisions: subdivision (k) of Section 96, Sections 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, and 224, subdivision (a) of Section 226, Sections 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, and 403, subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of Section 1174, Sections 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of Section 1198.3, Sections 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309,

1 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section
2 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6,
3 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, paragraphs (1),
4 (2), and (3) of subdivision (a) of and subdivision (e) of Section 1701.4, subdivision (a)
5 of Section 1701.5, Sections 1701.8, 1701.10, 1701.12, 1735, 1771, 1774, 1776, 1777.5,
1811, 1815, 2651, and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800,
2801, 2802, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3095, 6310,
6311, and 6399.”

6 152. Plaintiff is informed and believes that Defendant has violated and continues to
7 violate the provisions of the Labor Code and applicable Wage Order No. 9-2001.

8 49. Pursuant to Labor Code section 2699, any provision of the Labor Code that
9 already provides a civil penalty to be assessed and collected by the Labor and Workforce
10 Development Agency, or any of its departments, divisions, commissions, boards, agencies or
11 employees for violation of the code or does not provide a civil penalty may be recovered
12 through a civil action brought by an aggrieved employee on behalf of himself or herself, and
13 other current or former employees pursuant to the procedures set forth in Labor Code, section
14 2699.3.

15 50. Plaintiff is an “aggrieved employee” because he was employed by the violators
16 during the relevant one-year statutory time period and during such time period, was subject to
17 one or more violations, including Labor Code §§ 201-204, 226 (a), 226(e), 226.7, 510, 512,
18 1174(d) 1194, 2802 and applicable IWC Wage Order No. 9-2001 and is therefore properly suited
19 to represent the interests of a PAGA Member.

20 51. On or about November 30, 2020, Plaintiff on his own behalf and on behalf of
21 the Aggrieved Employee PAGA Members served via certified mail, the notice of Plaintiff’s
22 PAGA claims to Defendant. A true and correct copy of the November 30, 2020 notice is
23 attached hereto as **Exhibit A**.

24 52. Plaintiff is informed and believes that Defendant has violated and continue to
25 violate provisions of the Labor Code and applicable Wage Order No. 9. Despite mailing of
26 **Exhibit A** at least 65-days prior to the filing of this Complaint, the LWDA has not notified
27 Plaintiff that it intends to investigate the alleged Labor Code violations identified in **Exhibit A**,
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such that, by operation of law Plaintiff is entitled to commence this cause of action as a representative action under the PAGA. *See Lab. Code 2699.3(a)(2)(A)*.

53. Upon information and belief and thereupon Plaintiff alleges that pursuant to 2699(f), Defendant at the very least owes penalties for each violation of Labor Code §§ 201-204, 226 (a), 226(e), 226.7, 510, 512, 1174(d) 1194, 2802 and applicable IWC Wage Order No. 9-2001.

54. Plaintiff as the personal representative of the Aggrieved Employees, will and does seek to recover any and all penalties for each and every violation shown to exist or to have occurred during the liability period, in an amount according to proof, as to those penalties that are otherwise only available to public agencies. Said funds recovered will be distributed in accordance with the PAGA, with at least 75% of said PAGA penalty recovery being reimbursed to the State of California and the LWDA.

55. Further, pursuant to Labor Code, section 2698 *et. seq.* Plaintiff and similarly situated Aggrieved Employee Class Members are entitled to recover their attorney's fees and costs.

PRAYER FOR RELIEF

Plaintiff on his own behalf and on behalf of the similarly situated Class Members he seeks to represent requests relief as follows:

1. For an order, pursuant to California Code of Civil Procedure Section 382, certifying this action as a class action, appointing Plaintiff as Class Representative and or any other subclasses under CCP Section 382;
2. For an order appointing Plaintiff's attorney as Class Counsel;
3. For a declaratory judgment that Defendant has violated California Labor Laws and public policy, as alleged herein;
4. For a declaratory judgment that Defendant has violated California Business and Professions Code sections 17200 *et seq.* as a result of the aforementioned violations of the Labor

Code and of California public policy protecting workers by ensuring that workers are paid for all hours worked;

5. For a permanent and mandatory injunction prohibiting Defendant, its officers, agents, employees, affiliated companies and all those working in concert with them from committing future violations of the laws and public policies described herein;

6. For an award of restitution;

7. For an order imposing all statutory and/or civil penalties provided by law, including, but not limited to penalties under California Labor Code Sections 201-204, 226 (a), 226(e), 226.7, 510, 512, 1174(d) 1194, 2802 and applicable IWC Wage Order No. 9-2001.

8. For waiting time penalties pursuant to Labor Code Section 203 according to proof for all employees who have left Defendant's employment during the Class Period;

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

10. For injunctive relief pursuant to Labor Code Section 226(h);

11. For an order awarding Plaintiff on behalf of himself and the Class Members compensatory damages, including, but not limited to wages, earnings, and other compensation, according to proof and interest on these amounts;

12. For award of reasonable attorneys' fees as provided by California Labor code sections 218.5, 218.6, 226 (g), 558, 1194.2(a), 1021.5, 2802(c);

13. An award and administrative priority claim against the Defendant in favor of the individual Plaintiff and the other similarly situated Class Members equal to the sum of their unpaid wages and unpaid expenses, pursuant to California Labor Code Sections 201, 202 and 203;

14. For all costs of suit herein; and

15. For such other and further relief as this Court deems just and proper.

ON THE PAGA CAUSE OF ACTION

1. Upon the PAGA Cause of Action, for civil penalties and wages pursuant to statute as set forth in Labor Code §2698 et seq., for Defendant's violations of Labor Code §§

Sections 201-204, 226 (a), 226(e), 226.7, 510, 512, 1174(d) 1194, 2802 and applicable IWC Wage Order No. 9-2001.

2. Upon the PAGA Cause of Action, for attorneys' fees and costs pursuant to Labor Code §2699 and any other applicable statute; and

3. For such other and further relief the Court may deem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

DATED: April 7, 2021

WHITEHEAD EMPLOYMENT LAW

By: _____


Jacob N. Whitehead, Esq.
Meghan Higday, Esq.
Attorneys for Plaintiff and
All others similarly situated

EXHIBIT A



November 30, 2020

Via Online Filing

California Labor & Workforce
Development Agency
455 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102

Via Certified Mail

Corporate Creations Network, Inc.
Registered Agent for
Pods Enterprises, LLC
4640 Admiralty Way, 5th Floor
Marina del Ray, California 90292

Via First Class Mail

Pods, LLC, Managing Member for
Pods Enterprises, LLC
13535 Feather Sound Drive, 4th Floor
Clearwater, Florida 33762

Via First Class Mail

John Koch, CEO of
Pods, LLC
13535 Feather Sound Drive, 4th Floor
Clearwater, Florida 33762

Re: Notice Pursuant to the Private Attorneys General Act, California Labor
Code § 2699.3 (the "PAGA")

Dear Sir(s) and/or Madam:

Please be advised that the representative plaintiff Chris Rogers ("Plaintiff") has retained Whitehead Employment Law to represent him and other similarly-situated current and former employees (collectively, the "Aggrieved Employees") of Pods Enterprises, LLC, a Florida limited liability company (hereinafter "Defendant") regarding claims of violations of the California Labor Code, the Industrial Welfare Commission Wage Orders, and other applicable employment laws.

Defendant currently or formerly employed Plaintiff and other Aggrieved Employees, who work or have worked as exempt or non-exempt employees, including but not limited to warehouse managers or other similarly situated positions (the "Covered Positions"). This notice formally serves to notify Defendant of Plaintiff's intent to file a PAGA class action complaint against Defendant and bring causes of action for violations of the PAGA and for injunctive relief including, but not limited to claims for Defendant's failure to provide compliant rest/meal breaks; failure to pay for every hour worked; failure to maintain accurate records of all hours worked; failure to reimburse job-related expenses; failure to furnish accurately itemized wage statements; failure to timely pay all wages due to Plaintiff and the Aggrieved Employees who ceased employment with Defendant during the statutory period upon their separation or termination of employment.

Based upon these violations, as further detailed below, Defendant violated numerous provisions of California's Labor Code including, but not limited to, violations of Labor Codes 201-203, 204, 226(a), 226.7, 510, 512, 1174 (d), 1194(a), 2802, and Industrial Welfare Commission Wage Order No. 9-2001 (IWC No. 9).

Chris Rogers was formerly employed by Defendant from approximately January 1, 2016 until approximately June 30, 2020 as a full time, hourly compensated, non-exempt warehouse manager who provided assistance and oversight to the employees at the warehouse, answered questions, resolved issues that arose within the warehouse, and executed miscellaneous managerial duties to ensure the warehouse ran smoothly.

During the relevant statutory period, Plaintiffs and the Aggrieved Employees were routinely prohibited from receiving proper, timely, Labor Code compliant rest breaks. The amount of work that Defendant demanded be completed during each shift left no time for rest breaks. Plaintiff routinely had too many job duties, with no other employee able to cover his duties, to take a rest break. As a result, Plaintiff rarely ever had time to take a rest break, and most every single rest break that was taken was interrupted and never duty free. As a result, Plaintiffs and the Aggrieved Employees were rarely able to take rest breaks due to the lack of staffing and/or due to the unreasonable instructions and demands of Defendant and level of work expected to be completed during a shift prior to taking any break regardless of what California law provides.

Similarly, Plaintiff and the Aggrieved Employees were not provided uninterrupted meal breaks. Plaintiff had never taken a duty-free meal break, and instead ate lunch from his desk every day while he executed his job duties and helped the employees under him. Defendant has never paid Plaintiff and the Aggrieved employees for the time they worked during their breaks nor the premium pay to which they are/were entitled for the missed and non-compliant rest and meal breaks. Further, at no time has Plaintiff or the Aggrieved Employees validly waived their rest and meal break periods.

Further, during the relevant statutory period, Plaintiff and certain, similarly situated Aggrieved Employees were required to utilize their personal cell phones in order to perform their work related duties and for work-related communications. Although Defendant provided some employees with company issued cell phones, Plaintiff and certain other Aggrieved Employees were not provided a company-issued cell phone and had to use their personal cell phones. Plaintiff and some of the Aggrieved Employees used their personal cell phones to contact supervisors, to communicate with other employees on shift and off shift, and as a way for other employees to contact Plaintiff and some of the Aggrieved Employees when they were moving around the warehouse and not at their desks. At no time has Defendant ever reimbursed Plaintiff or the Aggrieved Employees for the expenses they incurred in the utilization of their personal cell phones for work.

Plaintiff is informed and believes, and thereon alleges that the above-described violations are ongoing, systematic and uniform. If Defendant fails to cure these alleged violations, Plaintiff will bring an action against Defendant under the PAGA to recover wages and penalties and for injunctive relief as provided by California law.¹

¹ Without limitation, Plaintiff, if permitted, will seek any and all penalties otherwise capable of being collected by the Labor & Workforce Development Agency ("LWDA"). This includes each of the following, as is set forth in Labor Code § 2699.5, which states:

The provisions of subdivision (a) of § 2699.3 apply to any alleged violation of the following provisions: subdivision (k) of § 96, § s 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of § 213, § s 221, 222, 222.5, 223, and 224, paragraphs (1) to (5), inclusive, (7), and (9) of subdivision (a) of § 226, § s 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of § 232, subdivision (c) of § 232.5, § s 233, 234, 351, 353, and 403, subdivision (b) of § 404, § s 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101,

Due to the foregoing-described actions, Defendant has unlawfully failed to timely pay all wages due pursuant to Labor Code § 204 and have unlawfully failed to pay all wages due upon termination to Plaintiffs and those Aggrieved Employees who ceased their employment relationship with Defendant during the statutory period.

Rest/M meal Break Violations

Under Labor Code § 226.7 “(a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.

(b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable 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 work day that the meal or rest period is not provided.”

Further, under Labor Code § 512 (a) “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.”

Per the IWC Wage Order No. 9, Section 12(A) & B “Employers of California employees covered by the rest period provisions of the Industrial Welfare Commission Wage Orders must authorize and permit a net 10-minute paid rest period for every four hours worked or major fraction thereof. If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the rest period is not provided.

As stated, during the relevant statutory period, Plaintiff and the Aggrieved Employees, were rarely able to take Labor Code Compliant, timely and duty-free rest breaks. Plaintiff and the Aggrieved Employees were rarely provided an uninterrupted meal break due to chronic shortage of adequate staffing and the unreasonable level of work expected to be completed. Defendant actively failed to relinquish control to permit Plaintiff and the Aggrieved Employees opportunities for lawful breaks. Defendant has not paid premium pay penalties for the missed and non-compliant rest and meal breaks.

This is a clear violation of the provisions of the Labor Code and the IWC No. 9 which set forth California employers’ affirmative obligation to provide timely, duty-free rest and meal break periods.

1102, 1102.5, and 1153, subdivisions (c) and (d) of § 1174, § s 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of § 1198.3, § s 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of § 1695.5, § s 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, § s 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, and 2673, subdivision (a) of § 2673.1, § s 2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of § 2929, and § s 3073.4, 6310, 6311, and 6399.7.

Pursuant to §512 of the Labor Code and Section 12 (B) of IWC No. 9, Plaintiff and the Aggrieved Employees are owed premium pay penalties for each missed rest and meal break for which they were not paid during the statutory period.

Failure to Compensate Employees For Every Hour Worked

Labor Code § 204 (a) states *“All wages, other than those mentioned in §§ 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.”*

Under Labor Code §1194 (a) *“Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.”*

Labor Code §§ 204 and 1194 (a) have been violated and Plaintiff and the Aggrieved Employees are entitled to recover payment for all hours worked, including time worked off the clock, with penalties and interest thereon, as well as their attorney’s fees and costs.

Failure To Maintain Records of Hours Worked

Labor Code § 1174(d) provides, *“Every person employing labor in this state shall:... (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments...shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.”*

As indicated above, Plaintiff and some of the Aggrieved Employees were often required to work during their rest or meal breaks due to shortage of staffing and the unreasonable amount of work required to be completed. The time Plaintiff and similarly situated Aggrieved Employees spent working while off the clock is/was not ever tracked or recorded by the Defendant in violation of Lab. Cod. § 1174(d).

Failure to Furnish Accurate Wage Statements

As a direct consequence of Defendant’s unlawful business and compensation practices under the Labor Code and IWC No. 9, Plaintiff and the Aggrieved Employees were/are not provided with accurately itemized wage statements.

At all times relevant, Labor Code § 226 requires Defendant to *“furnish each of [its] employees, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately when wages are paid by personal check or cash, an itemized statement in writing showing: (1) gross wages earned, (2) total hours worked by the employee, ... (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.”*

As indicated above, Plaintiff and the Aggrieved Employees often work/worked during their meal breaks, due to Defendant’s unreasonable amount of work expected of them, forcing them to work while off the clock. Hours worked off the clock are/were not recorded at the proper pay rate

and no premium pay is reflected on Plaintiff and the Aggrieved Employees' pay stubs during the statutory period.

In failing to account and compensate with accuracy, all of the hours worked by Plaintiff and the Aggrieved Employees, and by failing to accurately set forth the net and gross wages earned, Defendant violated the wage statement requirements of Labor Code § 226 by failing to accurately record Plaintiff and the Aggrieved Employees' respective (1) gross wages earned, (2) net wages earned, and (3) all applicable hourly rates and the corresponding number of hour worked at each applicable hourly rate.

Failure to Timely Pay all Wages Due Upon Separation or Termination of Employment

At all times relevant, Labor Code § 201 provides that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.

At all times relevant, Labor Code § 202 provides that if employees not having a written contract for a definite period quits their employment, their wages shall become due and payable no later than 72 hours thereafter, unless the employee has given 72 hours advance notice of their intention to quit, in which case the employee is entitled to their wages at the time of quitting.

At all times relevant, Labor Code § 203 provides that an employer who willfully fails to pay, without abatement or reduction, in accordance with §§ 201 and 202, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, but the wages shall not continue for more than 30 days.

During the statutory period, when Plaintiff and certain of the Aggrieved Employees' employment relationships with Defendant terminated, Defendant failed to pay them all of their earned wages (as set forth above), immediately upon their discharge or within 72 hours thereafter. In addition, Defendant has failed to pay the waiting time penalties to which Plaintiff and such Aggrieved Employees are lawfully entitled under Labor Code § 203.

To date, Defendant has failed to pay the Plaintiff and the Aggrieved Employees all of their earned wages, overtime, accrued interest thereon, and failed to remit the Labor Code penalties to be imposed as a consequence of said violations of the Labor Code.

Failure To Reimburse Work Related Expenses

Labor Code § 2802(a) provides, "*An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.*"

As described above, Plaintiff and certain of the Aggrieved Employees daily utilize or utilized their personal cell phones data through calls and texts in the course of performing their work-related duties without being reimbursed for these work-related cell phone expenses by Defendant. Defendant violated Labor Code § 2802 and Plaintiff and the Aggrieved Employees seek reimbursement of these work-related expenses incurred, as well as their attorney's fees, penalties and interest thereon as permitted by §2802.

Conclusion

In sum, as has been factually alleged, Defendant violated among other statutes and regulations Labor Code §§ 201-203, 204, 226, 226.7, 510, 512, 1174(d), 1194 (a), 2802, and IWC

No. 9. Plaintiff on his own behalf and on behalf of all similarly situated Aggrieved Employees, seeks to recover any and all applicable statutory penalties, interest, and attorneys' fees and civil penalties as provided under Labor Code 2699.

Plaintiff requests the LWDA to investigate the above claims and to provide notice of the investigation under the PAGA's provisions. Alternatively, Plaintiff requests the agency inform him if it does not intend to investigate these violations so that he may bring a civil action under the PAGA for the violations alleged herein.

Should you have any questions or comments regarding the foregoing, or any aspect of this matter, please do not hesitate to contact our offices.

Sincerely,

WHITEHEAD EMPLOYMENT LAW

A handwritten signature in blue ink, appearing to read 'J. Whitehead', is written over the printed name.

Jacob N. Whitehead

JNW/mnh