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Individually and on behalf of all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

Georgi Vuchkov, Individually and on behalf of
all others similarly situated,

Plaintiff,

v.

Whole Foods Market California, Inc.; and
Does 1 through 20, inclusive,

Defendants.

Case No.: RG21092593

Honorable Noël Wise – Dept. 24

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

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

- 1. Failure to Pay Minimum Wages;**
- 2. Failure to Pay Overtime Wages;**
- 3. Failure to Provide Meal Periods;**
- 4. Failure to Permit Rest Breaks;**
- 5. Failure to Pay Unused Vested
Vacation Wages;**
- 6. Failure to Pay All Wages Due Upon
Separation of Employment**
- 7. Failure to Reimburse for Business
Expenses; and**
- 8. Violation of Business and
Professions Code §§ 17200, et seq.**

**9. Enforcement of Labor Code § 2698
et. seq. (“PAGA”)**

Jury Trial Demanded

Plaintiff Georgi Vuchkov, individually and on behalf of others similarly situated, alleges as follows:

NATURE OF ACTION AND INTRODUCTORY STATEMENT

1. Plaintiff Georgi Vuchkov (“Plaintiff”) brings this putative class action against defendants Whole Foods Market California, Inc. and Does 1 through 20, inclusive (collectively, “Defendants”), on behalf of himself individually and a putative class of non-exempt employees employed by Defendants at their California facilities.

2. Defendants operate grocery shopping centers throughout the state of California.

3. Through this action, Plaintiff alleges that Defendants have engaged in a systematic pattern of wage and hour violations under the California Labor Code and Industrial Welfare Commission (“IWC”) Wage Orders, all of which contribute to Defendants’ deliberate unfair competition.

4. Plaintiff is informed and believes, and thereon alleges, that Defendants have increased their profits by violating state wage and hour laws by, among other things:

(a) Failing to pay all wages for all hours worked, including minimum and overtime wages;

(b) Failing to provide meal periods or compensation in lieu thereof;

(c) Failing to authorize or permit rest breaks or provide compensation in lieu thereof;

(d) Failing to pay all wages due upon separation of employment including all unused vested vacation wages; and

(e) Failing to reimburse all reasonable and necessary business expenses.

5. Plaintiff brings this lawsuit seeking monetary relief against Defendants on behalf of himself and all others similarly situated in California to recover, among other things,

1 unpaid wages and benefits, interest, attorneys' fees, costs and expenses and penalties pursuant
2 to Labor Code §§ 201-203, 210, 221, 226.7, 227.3, 510, 511, 512, 1182.12 1194, 1194.2, 1197
3 1198, 2800, and 2802.

4 **JURISDICTION AND VENUE**

5 6. This is a class action, pursuant to California Code of Civil Procedure § 382.
6 The monetary damages and restitution sought by Plaintiff exceeds the minimal jurisdictional
7 limits of the Superior Court and will be established according to proof at trial.

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

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

17 9. Venue is proper in this Court because, upon information and belief, Defendants
18 reside, transact business or have offices in this county and the acts and omissions alleged
19 herein took place in this county.

20 **THE PARTIES**

21 10. Plaintiff is a citizen of California. Plaintiff was employed by Defendants
22 during the Class Period in California.

23 11. Plaintiff is informed and believes, and thereon alleges, that Defendants at all
24 times hereinafter mentioned, were and are employers as defined in and subject to the Labor
25 Code and IWC Wage Orders, whose employees were and are engaged throughout this county
26 and the State of California.

27 12. Plaintiff is unaware of the true names or capacities of the defendants sued
28 herein under the fictitious names DOES 1 through 20 but will seek leave of this Court to

1 amend this Complaint and serve such fictitiously named defendants once their names and
2 capacities become known.

3 13. Plaintiff is informed and believes, and thereon alleges, that each defendant
4 acted in all respects pertinent to this action as the agent of the other defendant, carried out a
5 joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each
6 defendant are legally attributable to the other defendant. Furthermore, defendants in all
7 respects acted as the employer and/or joint employer of Plaintiff and the class members.

8 14. Plaintiff is informed and believes, and thereon alleges, that each and all of the
9 acts and omissions alleged herein were performed by, or are attributable to, Defendants and/or
10 DOES 1 through 20, acting as the agent or alter ego for the other, with legal authority to act
11 on the other's behalf. The acts of any and all Defendants were in accordance with, and
12 represent, the official policy of Defendants.

13 15. At all relevant times, Defendants, and each of them, acted within the scope of
14 such agency or employment, or ratified each and every act or omission complained of herein.
15 At all relevant times, Defendants, and each of them, aided and abetted the acts and omissions
16 of each and all the other Defendants in proximately causing the damages herein alleged.

17 16. Plaintiff is informed and believes, and thereon alleges, that each of said
18 Defendants is in some manner intentionally, negligently or otherwise responsible for the acts,
19 omissions, occurrences and transactions alleged herein.

20 **CLASS ACTION ALLEGATIONS**

21 17. Plaintiff brings this action under Code of Civil Procedure § 382 on behalf of
22 himself and all others similarly situated who were affected by Defendants' Labor Code,
23 Business and Professions Code §§ 17200 and IWC Wage Order violations.

24 18. All claims alleged herein arise under California law for which Plaintiff seeks
25 relief authorized by California law.

26 19. Plaintiff's proposed Class consists of and is defined as follows:

27 Class

28 All current or former non-exempt California employees of Defendants from

four years and 179 days preceding the filing of this Complaint.¹

20. Plaintiff also seeks to certify the following Subclass of employees:

Waiting Time Subclass

All members of the Class who separated their employment from three years and 179 days preceding the filing of this Complaint.

21. Members of the Class and Subclass described above will be collectively referred to as “class members.” Plaintiff reserves the right to establish other or additional subclasses, or modify any Class or Subclass definition, as appropriate based on investigation, discovery and specific theories of liability.

22. This action has been brought and may properly be maintained as a class action under the California Code of Civil Procedure § 382 because there are common questions of law and fact as to the Class that predominate over questions affecting only individual members including, but not limited to:

- (a) Whether Defendants failed to compensate Plaintiff and class members to work off-the-clock, resulting in a failure to pay all minimum wages and overtime wages;
- (b) Whether Defendants deprived Plaintiff and class members of compliant meal periods or required Plaintiff and class members to work through meal periods without compensation;
- (c) Whether Defendants deprived Plaintiff and class members of compliant rest breaks;
- (d) Whether Defendants failed to timely pay Plaintiff and former class members all wages due upon termination or within 72 hours of resignation;
- (e) Whether Defendants failed to timely pay Plaintiff and former class members all accrued but unused vacation wages at the properly hourly rate;
- (f) Whether Defendants required Plaintiff and class members to use their personal automobiles and then failed to reimburse Plaintiff and class members for gas

¹ The statute of limitations for this matter was tolled for 179 days pursuant to Cal. Rules of Court, Appendix I, Emergency Rule No. 9.

1 mileage and wear and tear on the car, resulting in failure to reimburse Plaintiff
2 and class members for all business expenses necessarily incurred in their
3 duties, for expenses related to the catering of events, and reasonable cellular
4 phone expenses; and

5 (g) Whether Defendants engaged in unfair business practices in violation of
6 Business & Professions Code §§ 17200, *et seq.*

7 23. There is a well-defined community of interest in this litigation and the Class is
8 readily ascertainable:

9 (a) Numerosity: The members of the Class are so numerous that joinder
10 of all members is impractical. Although the members of the Class are
11 unknown to Plaintiff at this time, on information and belief, the Class
12 is estimated to be greater than 100 individuals. The identities of the
13 class members are readily ascertainable by inspection of Defendants'
14 employment and payroll records.

15 (b) Typicality: The claims (or defenses, if any) of Plaintiff are typical of
16 the claims (or defenses, if any) of the Class because Defendants' failure
17 to comply with the provisions of California wage and hour laws entitled
18 each class member to similar pay, benefits and other relief. The
19 injuries sustained by Plaintiff are also typical of the injuries sustained
20 by the Class because they arise out of and are caused by Defendants'
21 common course of conduct as alleged herein.

22 (c) Adequacy: Plaintiff is qualified to and will fairly and adequately
23 represent and protect the interests of all members of the Class because
24 it is in his best interest to prosecute the claims alleged herein to obtain
25 full compensation and penalties due to him and the Class. Plaintiff's
26 attorneys, as proposed class counsel, are competent and experienced in
27 litigating large employment class actions and are versed in the rules
28 governing class action discovery, certification and settlement. Plaintiff

1 has incurred and, throughout the duration of this action, will continue
2 to incur attorneys' fees and costs that have been and will be necessarily
3 expended for the prosecution of this action for the substantial benefit
4 of each class member.

5 (d) Superiority: The nature of this action makes the use of class action
6 adjudication superior to other methods. A class action will achieve
7 economies of time, effort and expense as compared with separate
8 lawsuits, and will avoid inconsistent outcomes because the same issues
9 can be adjudicated in the same manner and at the same time for each
10 Class. If appropriate this Court can, and is empowered to, fashion
11 methods to efficiently manage this case as a class action.

12 (e) Public Policy Considerations: Employers in the State of California and
13 other states violate employment and labor laws every day. Current
14 employees are often afraid to assert their rights out of fear of direct or
15 indirect retaliation. Former employees are fearful of bringing actions
16 because they believe their former employers might damage their future
17 endeavors through negative references and/or other means. Class
18 actions provide the class members who are not named in the complaint
19 with a type of anonymity that allows for the vindication of their rights
20 at the same time as affording them privacy protections.

21 **GENERAL ALLEGATIONS**

22 24. At all relevant times mentioned herein, Defendants employed Plaintiff and
23 other persons as non-exempt employees at their California shopping centers.

24 25. Plaintiff was employed in a non-exempt position at one of Defendants'
25 California shopping centers.

26 26. Defendants continue to employ non-exempt employees at their California
27 shopping centers.

28 27. Plaintiff is informed and believes, and thereon alleges, that at all times herein

1 mentioned, Defendants were advised by skilled lawyers, employees and other professionals
2 who were knowledgeable about California's wage and hour laws, employment and personnel
3 practices and the requirements of California law.

4 28. Plaintiff is informed and believe, and thereon allege, that Defendants knew or
5 should have known that Plaintiff and class members were entitled to receive wages for all
6 hours worked and that they were not receiving all wages earned for work that was required to
7 be performed. In violation of the Labor Code and IWC Wage Orders, Plaintiff and class
8 members were not paid wages (including minimum wages and overtime wages) when
9 Defendants required Plaintiff and class members to work off-the-clock before their shifts, for
10 example to undergo "temperature checks" when entering Defendant's facility. Although
11 Plaintiff and class members were under Defendant's control while waiting in line and
12 undergoing these temperature checks, Defendants did not compensate Plaintiff and class
13 members for this time worked. Defendants also required Plaintiff and other class members to
14 work after their shifts and during meal periods, or otherwise failed to pay the correct overtime
15 rate of pay including all non-discretionary bonuses and other wages.

16 29. Similarly, Plaintiff is informed and believes that Defendants failed to pay all
17 mandatory paid sick leave to its employees. Employers must provide to employees who work
18 for 30 or more days within a year from the commencement of employment one hour of paid
19 sick leave for every 30 hours worked paid at the regular rate of pay, including non-
20 discretionary bonuses and other wages. Defendant however had failed to do this by, for
21 example, failing to include all non-discretionary wages and other wages into the paid sick
22 leave paid to its employees.

23 30. Plaintiff is informed and believes, and thereon alleges, Defendants failed to
24 provide Plaintiff and class members timely, uninterrupted, off-duty meal periods of no less
25 than thirty minutes before their fifth hour of work. Plaintiff and class members would also
26 often be required to work through meal periods. Defendants routinely failed to provide
27 Plaintiff and class members with a second, off-the-clock meal break for shifts lasting ten hours
28 or longer. Further, Defendants required Plaintiff and, on information and belief, other class

1 members to sign purported meal period waivers at the beginning of their employment. These
2 waivers, however, are invalid because Defendants did not sign said waivers, they were not
3 signed voluntarily, and signing was a condition of employment. See *Faulkinbury v. Boyd &*
4 *Associates, Inc.* (2013) 216 Cal. App. 4th 220, 234. These policies, among others, have
5 resulted in a denial of these employees' rights to 30-minute meal periods in violation of
6 California law.

7 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew
8 or should have known that Plaintiff and class members were entitled to receive all required
9 meal periods or payment of one (1) additional hour of pay at Plaintiff and class members'
10 regular rate of pay when they did not receive a timely meal period. In violation of the Labor
11 Code and IWC Wage Orders, Plaintiff and class members did not receive all timely meal
12 periods or payment of one (1) additional hour of pay at Plaintiff and class members' regular
13 rate of pay, including all non-discretionary bonuses, when they did not receive a timely,
14 uninterrupted meal periods.

15 32. Upon information and belief, Defendants failed to provide Plaintiff and class
16 members timely, uninterrupted, on-the-clock rest period of no less than ten minutes for every
17 four hours worked, or every major fraction thereof. Defendants also routinely failed to
18 provide Plaintiff and class members with a second rest period for shifts lasting longer than six
19 hours, or a third rest period for shifts lasting longer than ten hours. These policies, among
20 others, have resulted in a denial of these employees' rights to a ten-minute rest period in
21 violation of California law.

22 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew
23 or should have known that Plaintiff and class members were entitled to receive all rest breaks
24 or payment of one (1) additional hour of pay at Plaintiff and class members' regular rate of
25 pay when a rest break was missed. In violation of the Labor Code and IWC Wage Orders,
26 Plaintiff and class members did not receive all rest breaks or payment of one (1) additional
27 hour of pay at Plaintiff and class members' regular rate of pay, including all non-discretionary
28 bonuses, when a rest break was missed.

1 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew
2 or should have known that Plaintiff and Waiting Time Subclass members were entitled to
3 timely payment of wages due upon separation of employment. In violation of the Labor Code,
4 Plaintiff and Waiting Time Subclass members did not receive payment of all wages within
5 permissible time periods.

6 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew
7 or should have known that Plaintiff and other class members were entitled to payment of all
8 their unused by vested vacation wages at their final regular rate of pay upon cessation of
9 employment. In violation of the Labor Code, Plaintiff and other class members did not receive
10 payment for all their unused but vested vacation wages.

11 36. Plaintiff is informed and believes, and thereon alleges, that Defendants employ
12 a pattern and practice of ignoring and refusing to produce employee records in violation of
13 the California Labor Code. Upon making valid requests for the inspection and production of
14 records by Plaintiff and other aggrieved employees, Defendants, as a matter of pattern and
15 practice, ignored and refused to produce these records or make them available to Plaintiff and
16 other aggrieved employees within the timeframe required by statute.

17 37. Plaintiff is informed and believe, and thereon alleges, that Defendants knew or
18 should have known that they had a duty to indemnify Plaintiff and class members for all
19 necessary expenditures or losses incurred in the discharge of their duties, including, for
20 example, Plaintiff and class members automobile expenses, expenses related to the catering
21 of events as part of their employment, and reasonable cellphone expenses as it related to their
22 employment. In violation of the Labor Code, Defendants did not indemnify Plaintiff and class
23 members for the necessary expenses they incurred in the discharge of their duties.

24 38. Plaintiff is informed and believes, and thereon alleges, that Defendants knew
25 or should have known they had a duty to compensate Plaintiff and class members, and
26 Defendants had the financial ability to pay such compensation but willfully, knowingly and
27 intentionally failed to do so all in order to increase Defendants' profits.\

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1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY MINIMUM WAGES**

3 **(Violation of Labor Code §§ 1194, 1194.2, and 1197; Violation of IWC Wage Order)**

4 39. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above
5 as though fully set forth herein.

6 40. Labor Code §§ 1194 and 1197 provide that the minimum wage for employees
7 fixed by the IWC is the minimum wage to be paid to employees, and the payment of a lesser
8 wage than the minimum so fixed is unlawful.

9 41. During the relevant time period, Defendants paid Plaintiff and class members
10 less than minimum wages when Defendants required Plaintiff and class members to work off-
11 the-clock.

12 42. During the relevant time period, Defendants regularly failed to pay at least
13 minimum wages to Plaintiff and class members for all hours worked pursuant to Labor Code
14 §§ 1194 and 1197.

15 43. Defendants' failure to pay Plaintiff and class members the required minimum
16 wages violates Labor Code §§ 1194 and 1197. Pursuant to these sections, Plaintiff and class
17 members are entitled to recover the unpaid balance of their minimum wage compensation as
18 well as interest, costs and attorneys' fees.

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

22 **SECOND CAUSE OF ACTION**

23 **FAILURE TO PAY OVERTIME WAGES**

24 **(Violation of Labor Code §§ 510, 1194 and 1198; Violation of IWC Wage Order)**

25 45. Labor Code § 1198 and the applicable IWC Wage Order provide that it is
26 unlawful to employ persons without compensating them at a rate of pay either one and one-
27 half or two times the person's regular rate of pay, depending on the number of hours worked
28 by the person on a daily or weekly basis.

1 46. Pursuant to California Labor Code §§ 510 and 1194, during the relevant time
2 period, Defendants were required to compensate Plaintiff and class members for all overtime
3 hours worked, calculated at one and one-half (1½) times the regular rate of pay for hours
4 worked in excess of eight (8) hours per day and/or forty (40) hours per week and for the first
5 eight (8) hours of the seventh consecutive work day, with double time after eight (8) hours on
6 the seventh day of any work week, or after twelve (12) hours in any work day.

7 47. Plaintiff and class members were non-exempt employees entitled to the
8 protections of California Labor Code §§ 510 and 1194.

9 48. During the relevant time period, Defendants failed to pay Plaintiff and class
10 members overtime and doubletime wages when Defendants required Plaintiff and class
11 members to work off-the-clock before and after their shifts, including during temperature
12 checks, and during meal periods, or otherwise failed to include non-discretionary bonuses and
13 all other wages in the calculation of the overtime rate of pay. As Plaintiff and class members
14 worked shifts of eight hours or more, this unpaid time qualified for overtime premium
15 payment.

16 49. In violation of state law, Defendants have knowingly and willfully refused to
17 perform their obligations and compensate Plaintiff and class members for all wages earned as
18 alleged above.

19 50. Defendants' failure to pay Plaintiff and class members the unpaid balance of
20 overtime compensation, as required by California law, violates the provisions of Labor Code
21 §§ 510 and 1198, and is therefore unlawful.

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

24 **THIRD CAUSE OF ACTION**

25 **FAILURE TO PROVIDE MEAL PERIODS**

26 **(Violation of Labor Code §§ 226.7 and 512; Violation of IWC Wage Order)**

27 52. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above
28 as though fully set forth herein.

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

3 54. Section 11 of the applicable IWC Wage Order states, “no employer shall
4 employ any person for a work period of more than five (5) hours without a meal period of not
5 less than 30 minutes, except that when a work period of not more than six (6) hours will
6 complete the day’s work the meal period may be waived by mutual consent of the employer
7 and the employee.”

8 55. Labor Code § 512(a) provides that an employer may not require, cause or
9 permit an employee to work for a period of more than five (5) hours per day without providing
10 the employee with an uninterrupted meal period of not less than thirty (30) minutes, except
11 that if the total work period per day of the employee is not more than six (6) hours, the meal
12 period may be waived by mutual consent of both the employer and the employee.

13 56. Labor Code § 512(a) also provides that an employer may not employ an
14 employee for a work period of more than ten (10) hours per day without providing the
15 employee with a second meal period of not less than thirty (30) minutes, except that if the
16 total hours worked is no more than twelve (12) hours, the second meal period may be waived
17 by mutual consent of the employer and the employee only if the first meal period was not
18 waived.

19 57. During the relevant time period, Plaintiff and class members did not receive
20 compliant meal periods for each five hours worked per day. Defendants routinely failed to
21 provide Plaintiff and class members with a second, off-the-clock meal break for shifts lasting
22 longer than ten hours.

23 58. Labor Code § 226.7(b) and section 11 of the applicable IWC Wage Order
24 require an employer to pay an employee one additional hour of pay for each workday that a
25 meal period is not provided.

26 59. At all relevant times, Defendants often failed to pay Plaintiff and class
27 members meal period premiums for meal period violations, at the regular rate of pay including
28 all non-discretionary bonuses, pursuant to Labor Code § 226.7(b) and section 11 of the

1 applicable IWC Wage Order.

2 60. As a result of Defendants' failure to pay Plaintiff and class members an
3 additional hour of pay for each day a meal period was not provided, Plaintiff and class
4 members suffered and continue to suffer a loss of wages and compensation.

5 **FOURTH CAUSE OF ACTION**

6 **FAILURE TO PERMIT REST BREAKS**

7 **(Violation of Labor Code §§ 226.7; Violation of IWC Wage Order)**

8 61. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above
9 as though fully set forth herein.

10 62. Labor Code § 226.7(a) provides that no employer shall require an employee
11 to work during any rest period mandated by the IWC Wage Orders.

12 63. Section 12 of the applicable IWC Wage Order states "every employer shall
13 authorize and permit all employees to take rest periods, which insofar as practicable shall be
14 in the middle of each work period" and the "authorized rest period time shall be based on the
15 total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major
16 fraction thereof" unless the total daily work time is less than three and one-half (3½) hours.

17 64. During the relevant time period, Plaintiff and class members did not receive a
18 ten (10) minute rest period for every four (4) hours or major fraction thereof worked.
19 Defendants routinely failed to provide Plaintiff and class members with a second rest period
20 for shifts lasting eight hours or longer, or a third rest period for shifts lasting twelve hours or
21 longer.

22 65. Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order
23 requires an employer to pay an employee one additional hour of pay at the employee's regular
24 rate of compensation for each workday that the rest period is not provided.

25 66. At all relevant times, Defendants failed to pay Plaintiff and class members all
26 rest period premiums at their regular rate of compensation, including all non-discretionary
27 bonuses, due for rest period violations pursuant to Labor Code § 226.7(b) and section 12 of
28 the applicable IWC Wage Order.

1 67. As a result of Defendants' failure to pay Plaintiff and class members an
2 additional hour of pay for each day a rest period was not provided, Plaintiff and class members
3 suffered and continue to suffer a loss of wages and compensation.

4 **FIFTH CAUSE OF ACTION**

5 **FAILURE TO PAY UNUSED VESTED VACATION WAGES**

6 **(Cal. Lab. Code §§ 227.3)**

7 68. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above
8 as though fully set forth herein.

9 69. California Labor Code § 227.3 provides that where an employee is terminated
10 without having taken off his or her vested vacation time, all vested vacation shall be paid to
11 said employee as wages at the final rate of pay upon termination.

12 70. Specifically, Plaintiff and class members accrued vacation time during their
13 employment with Defendants. Plaintiff and class members did not use all vested vacation
14 time during their employment, and thus have unused vested vacation wages. However, upon
15 the cessation of their employment, Defendants failed to pay Plaintiff and class members their
16 unused accrued vacation wages at their final rate of pay, including all non-discretionary
17 bonuses and other wages. Such conduct is a violation of Labor Code § 227.3.

18 71. During the Class period, Labor Code Section 203 provides that, if an employer
19 such as Defendant fails to pay any of the wages owed to an employee who is discharged or
20 who quits, the wages of the employee shall continue as a penalty from the due date thereof at
21 the same rate until paid or until an action therefore is commenced, but the wages shall not
22 continue for more than thirty (30) days.

23 72. Accordingly, Plaintiff and the members of the Class who were discharged or
24 who quit during the Class period are entitled to receive their earned and unused vacation
25 wages, plus for each day they were not paid their vacation wages upon the last day of
26 employment, up to a maximum of thirty (30) days, plus interest, costs and reasonable
27 attorneys' fees.

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SIXTH CAUSE OF ACTION
FAILURE TO PAY ALL WAGES DUE UPON SEPARATION OF EMPLOYMENT
AND WITHIN THE REQUIRED TIME

(Violation of Labor Code §§ 201, 202 and 203; Violation of IWC Wage Order)

73. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

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

75. During the relevant time period, Defendants willfully failed to pay Plaintiff and Waiting Time Subclass members all their earned wages upon termination including, but not limited to, proper minimum wages and overtime and doubletime compensation, either at the time of discharge or within seventy-two (72) hours of their leaving Defendants' employ.

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

77. California Labor Code § 203 provides that if an employer willfully fails to pay wages owed immediately upon discharge or resignation in accordance with Labor Code §§ 201 and 202, then the wages of the employee shall continue as a penalty from the due date at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

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

1 **SEVENTH CAUSE OF ACTION**

2 **FAILURE TO REIMBURSE ALL BUSINESS EXPENSES**

3 **(Violation of Labor Code §§ 2800, 2802)**

4 79. Plaintiff hereby re-alleges and incorporate by reference all paragraphs above
5 as though fully set forth herein.

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

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

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

15 83. During the relevant time period, Defendants required Plaintiff and class
16 members to use their own automobiles, among other things, and were rarely, if ever,
17 compensated for wear and tear on their vehicles.

18 84. During the relevant time period, Defendants required Plaintiff and class
19 members to undertake expenses related to the catering of events but were not reimbursed for
20 these expenses.

21 85. During the relevant time period, Defendants required Plaintiff and class
22 members to undertake expenses related to their use of a personal cellular phone but were not
23 reimbursed for these expenses.

24 86. During the relevant time period, Defendants were required to indemnify and
25 reimburse Plaintiff and class members for all expenditures or losses caused by the employer’s
26 want of ordinary care and/or incurred in direct consequent of the discharge of their duties, but
27 failed to indemnify and reimburse Plaintiff and class members in violation of Labor Codes §§
28 2800 and 2802.

1 87. As a direct and proximate result, Plaintiff and class members have suffered,
2 and continue to suffer, substantial losses, related to the use and enjoyment of such monies to
3 be reimbursed, lost interest on such monies, and expenses and attorney's fees in seeking to
4 compel Defendants to fully perform their obligations under California law, all to their damage
5 in amounts according to proof at the time of trial.

6 **EIGHTH CAUSE OF ACTION**

7 **(VIOLATION OF BUSINESS AND PROFESSIONS CODE §§ 17200, ET SEQ.)**

8 88. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above
9 as though fully set forth herein.

10 89. Defendants' conduct, as alleged herein, has been and continues to be unfair,
11 unlawful and harmful to Plaintiff and class members. Plaintiff seek to enforce important rights
12 affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

13 90. Defendants' activities, as alleged herein, violate California law and constitute
14 unlawful business acts or practices in violation of California Business and Professions Code
15 §§ 17200, *et seq.*

16 91. A violation of Business and Professions Code §§ 17200, *et seq.* may be
17 predicated on the violation of any state or federal law.

18 92. Defendants' policies and practices have violated state law in at least the
19 following respects:

20 (a) Failing to pay all minimum wages to Plaintiff and class members in violation
21 of Labor Code §§ 1194, 1194.2, and 1197;

22 (b) Failing to pay all overtime wages to Plaintiff and class members in violation
23 of Labor Code §§ 510, 1194 and 1198;

24 (c) Failing to provide timely meal periods without paying Plaintiff and class
25 members premium wages for every day said meal periods were not provided in violation of
26 Labor Code §§ 226.7 and 512;

27 (d) Failing to authorize or permit rest breaks without paying Plaintiff and class
28 members premium wages for every day said rest breaks were not authorized or permitted in

violation of Labor Code § 226.7;

(e) Failing to timely pay all unused, vested vacation wages at the time of cessation of employment at the regular rate of pay in violation of Labor Code § 227.3;

(e) Failing to timely pay all earned wages to Plaintiff and Waiting Time Subclass members upon separation of employment in violation of Labor Code §§ 201, 202 and 203; and

(f) Failing to reimburse Plaintiff and class members for all business expenses incurred in violation of Labor Code §§ 2800 and 2802.

93. Defendants intentionally avoided paying Plaintiff and class members' wages and monies, thereby creating for Defendants an artificially lower cost of doing business in order to undercut their competitors and establish and gain a greater foothold in the marketplace.

94. Pursuant to Business and Professions Code §§ 17200, *et seq.* Plaintiff and class members are entitled to restitution of the wages unlawfully withheld and retained by Defendants during a period that commences four years prior to the filing of the Complaint; an award of attorneys' fees pursuant to Code of Civil Procedure § 1021.5 and other applicable laws; and an award of costs.

NINTH CAUSE OF ACTION

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

95. Plaintiff hereby re-alleges and incorporate by reference all paragraphs above as though fully set forth herein.

96. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency ("LWDA") or any of its departments, divisions, commissions, boards, agencies or employees for violation of the code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself and other current or former employees pursuant to the procedures specified in Labor Code § 2699.3.

1 97. Defendants' conduct violates numerous Labor Code sections including, but
2 not limited to, the following:

3 (a) Violation of Labor Code §§ 201, 202, 203, 204, 210, 227.3, 510, 511, 558,
4 1182.12, 1194, 1197 and 1198 for failure to timely pay all earned wages (including minimum
5 wages, overtime wages, and vacation wages) owed to Plaintiff and other aggrieved
6 employees during employment and upon separation of employment as herein alleged;

7 (b) Violation of Labor Code §§ 226.7 and 512 for failure to provide meal periods
8 to Plaintiff and other aggrieved employees and failure to pay premium wages for missed
9 meal periods as herein alleged;

10 (c) Violation of Labor Code § 226.7 for failure to permit rest breaks to Plaintiff
11 and other aggrieved employees and failure to pay premium wages for missed rest periods as
12 herein alleged;

13 (d) Violation of Labor Code §§ 2800 and 2802 for failure to reimburse reasonable
14 and necessary business expenses of Plaintiff and other aggrieved employees as herein
15 alleged;

16 (e) Violation of Labor Code § 246 for willfully failing to provide all mandatory
17 paid sick leave; and

18 (f) Violation of Labor Code §§ 226, 432, and 1198.5 for failure to produce
19 personnel records.
20

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

24 99. Plaintiff has exhausted the procedural requirements under Labor Code §
25 2699.3 as to Defendants and is therefore able to pursue a claim for penalties on behalf of
26 himself and all other aggrieved employees under PAGA.
27
28

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

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

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

PRAYER FOR RELIEF

Plaintiff, on his own behalf and on behalf of all others similarly situated, pray for relief and judgment against Defendants, jointly and severally, as follows:

1. For certification of this action as a class action, including certifying the Class and Subclass alleged by Plaintiff;

2. For appointment of Georgi Vuchkov as the class representative;

3. For appointment of Lebe Law, APLC as class counsel for all purposes;

4. For compensatory damages in an amount according to proof with interest thereon;

5. For economic and/or special damages in an amount according to proof with interest thereon;

6. For reasonable attorneys' fees, costs of suit and interest to the extent permitted by law, including pursuant to Code of Civil Procedure § 1021.5 and Labor Code § 1194;

7. For statutory penalties to the extent permitted by law, including those pursuant to the Labor Code and IWC Wage Orders;

8. For restitution as provided by Business and Professions Code §§ 17200, *et seq.*;

9. For an order requiring Defendants to restore and disgorge all funds to each employee acquired by means of any act or practice declared by this Court to be unlawful, unfair or fraudulent and, therefore, constituting unfair competition under Business and

1 Professions Code §§ 17200, *et seq.*;

2 10. For an award of damages in the amount of unpaid compensation including, but
3 not limited to, unpaid wages, benefits and penalties, including interest thereon;

4 11. For pre-judgment interest;

5 12. For civil penalties; and

6 13. For such other relief as the Court deems just and proper.
7

8 DATED: May 27, 2021

Lebe Law, APLC

9
10
11 By: 
Jonathan M. Lebe

12 Attorney for Plaintiff Georgi Vuchkov,
13 Individually and on behalf of all others
14 similarly situated

15 **DEMAND FOR JURY TRIAL**

16 Plaintiff hereby demands a jury trial with respect to all issues triable of right by jury.
17

18 DATED: May 27, 2021

Lebe Law, APLC

19
20
21 By: 
Jonathan M. Lebe

22 Attorney for Plaintiff Georgi Vuchkov,
23 Individually and on behalf of all others
24 similarly situated
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