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State of California and Aggrieved Employees*

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

JENNIFER BURSACK, MICHELLE
MANESSE, NATASHA GILMAN, CURTIS
ALLEN, JOSHUA PAVELKO,
CONSTANCE GORMAN, MELINDA
GUERRERO, KENNETH CHUNG, LISA
FLOWER, EDWARD LIU, MARVIN
MENEFE, HEATHER RANDRUP, JUNG
SEO, JASON SHUMSKI, JENNIFER
TALLEY, JENNIFER VENEGAS, FRANK
VASQUEZ, ROBERT RODRIGUEZ,
LAURA BRIGHT, RYAN LEONARDO,
KARYN STEVENS, and LUIS ROSSI, each
as an individual and on behalf of all other
aggrieved employees,

Plaintiffs,

v.

LOANDEPOT.COM, LLC, a Delaware
corporation; and DOES 1-50, inclusive,

Defendant.

Honorable William Claster
Department CX101
Case No.: 30-2022-01298792-CU-OE-CXC

FOURTH AMENDED COMPLAINT FOR:
(1) FAILURE TO PROVIDE MEAL PERIODS
(Labor Code §§ 226.7, 512, and 1198);
(2) FAILURE TO PROVIDE REST PERIODS
(Labor Code §§ 226.7, 1198, and IWC NO. 4
2001);
(3) FAILURE TO PAY WAGES (Labor Code
§§ 510, 1194);
(4) FAILURE TO MAINTAIN ACCURATE
RECORDS (Labor Code § 1174(d));
(5) FAILURE TO PAY ALL WAGES WHEN
DUE (Labor Code § 204);
(6) FAILURE TO PROVIDE ACCURATE
ITEMIZED WAGE STATEMENTS (Labor
Code § 226(a), 226.3);
(7) FAILURE TO REIMBURSE WORK
EXPENSES (Labor Code § 2802);
(8) FAILURE TO PAY ALL WAGES DUE
UPON TERMINATION (Labor Code §§
201-203);
(9) FAILURE TO PRODUCE EMPLOYEE
RECORDS UPON REQUEST (Labor Code
§ 1198.5(k);
(10) PENALTIES PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL ACT
(Labor Code § 2699(a)); and
(11) PENALTIES PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL ACT
(Labor Code § 2699(f)).
JURY TRIAL DEMANDED

1 INTRODUCTION

2 1. This is a hybrid individual wage and hour lawsuit on behalf of Plaintiff Luis Rossi
3 (“Plaintiff Rossi”) and a Representative Private Attorneys General Act of 2004, Labor Code §§ 2698
4 *et seq.* (“PAGA”) action on behalf of Plaintiffs Jennifer Bursack, Michelle Manesse, Natasha Gilman,
5 Curtis Allen, Joshua Pavelko, Constance Gorman, Melinda Guerrero, Kenneth Chung, Lisa Flower,
6 Edward Liu, Marvin Menefee, Heather Randrup, Jung Seo, Jason Shumski, Jennifer Talley, Jennifer
7 Venegas, Frank Vasquez, Robert Rodriguez, Laura Bright, Ryan Leonardo, Karyn Stevens, and Luis
8 Rossi (collectively “Plaintiffs”) against Defendant LOANDEPOT.COM, LLC (“Defendant” or “Loan
9 Depot”) and any subsidiaries or affiliated companies (hereinafter, along with DOES 1 through 50,
10 collectively referred to as “Defendants”) for violations of California wage and hour laws stemming
11 from Defendants’ unlawful policies and practices, including failing to pay all wages owed, including
12 minimum and overtime wages; failing to provide or make available meal periods and rest breaks
13 entitled by law, and failing to pay premium payments for non-compliant meal periods and/or rest
14 breaks; failing to reimburse work-related expenses incurred in the discharge of job duties; failing to
15 provide accurate wage statements; failing to pay all wages due upon termination; and failing to
16 maintain accurate records of hours worked and wages earned.

17 2. Consistent with PAGA case law including the California Supreme Court’s decision in
18 *Adolph v. Uber Technologies, Inc.*, 14 Cal. 5th 1104 (2023), Plaintiff Rossi participates in the case as
19 a plaintiff and PAGA representative. Accordingly, in this Fourth Amended Complaint, Plaintiffs add
20 Mr. Rossi’s individual wage-and-hour claims from a related case, *Ekhmies et al. v. LoanDepot.com*,
21 *LLC et al.*, Case No. 30-2022-01244317, and PAGA representative claims, on behalf of Aggrieved
22 Employees.

23 3. Plaintiff Luis Rossi’s claims in this Fourth Amended Complaint, by stipulation of the
24 Parties, relate back to Plaintiff Rossi’s PAGA notice dated June 1, 2022 and the First Amended
25 Complaint in *Ekhmies* with respect to Rossi’s PAGA claims against Defendants. Plaintiff Rossi’s
26 claims in the Fourth Amended Complaint and the *Ekhmies* First Amended Complaint rest on the same
27 general set of facts—Defendants’ alleged failure to pay for all hours worked, to pay all overtime wages
28 due, to provide compliant meal and rest breaks, and to reimburse all expenses necessarily incurred by

employees—and involve the same injuries, as they seek recovery for the same wages and violations alleged in the *Ekhmies* complaint. Additionally, or alternatively, in the interests of justice, the Parties agree that Rossi’s statute of limitations shall be tolled with respect to the time between the filing of the *Ekhmies* complaint and the complaint initiating this action. This shall not impact the claims asserted by the other Plaintiffs in this case.

4. Plaintiffs seek penalties pursuant to PAGA based on Defendants’ violations of Labor Code §§ 201-203, 210, 226, 226.3, 226.7, 558, 512, 1174.5, 2802, and 2698 *et seq*, and the applicable Industrial Welfare Commission (“IWC”) Orders regulating wages including without limitation IWC Order No. 4-2001 (hereinafter referred to for convenience as “Wage Order No. 4”); as well as interest, attorney’s fees and costs, equitable relief, declaratory and/or injunctive relief, and other relief as requested in this Fourth Amended Complaint and/or otherwise provided by law.

THE PARTIES

Plaintiffs

5. Plaintiff Jennifer Bursack is an individual over the age of eighteen, and at all times mentioned in this Fourth Amended Complaint was a resident of the State of California. Upon information and belief, Plaintiff Bursack worked for Defendant as a non-exempt, hourly mortgage banker in Foothill Ranch, California from approximately April 2020 to April 2022.

6. Plaintiff Michelle Manesse is an individual over the age of eighteen, and at all times mentioned in this Fourth Amended Complaint was a resident of the State of California. Upon information and belief, Plaintiff Manesse worked for Defendant as a non-exempt, hourly employee in Foothill Ranch, California from approximately October 25, 2021 to March 8, 2022.

7. Plaintiff Natasha Gilman is an individual over the age of eighteen, and at all times mentioned in this Fourth Amended Complaint was a resident of the State of California. Upon information and belief, Plaintiff Gilman worked for Defendant as a non-exempt, hourly senior account manager in Hollister, California from approximately September 2019 to April 2022.

8. Plaintiff Curtis Allen is an individual over the age of eighteen, and at all times mentioned in this Fourth Amended Complaint was a resident of the State of California. Upon information and belief, Plaintiff Allen worked for Defendant as a non-exempt, hourly Mortgage Loan

1 Officer in California from approximately September 2021 to June 2022.

2 9. Plaintiff Joshua Pavelko is an individual over the age of eighteen, and at all times
3 mentioned in this Fourth Amended Complaint was a resident of the State of California. Upon
4 information and belief, Plaintiff Pavelko worked for Defendant as a non-exempt, hourly Loan Officer
5 in California from approximately August 30, 2021 to April 15, 2022.

6 10. Plaintiff Constance Gorman is an individual over the age of eighteen, and at all times
7 mentioned in this Fourth Amended Complaint was a resident of the State of California. Upon
8 information and belief, Plaintiff Gorman worked for Defendant as a non-exempt hourly Loan
9 Processor in California from approximately October 05, 2020 to May 13, 2022.

10 11. Plaintiff Melinda Guerrero is an individual over the age of eighteen, and at all times
11 mentioned in this Fourth Amended Complaint was a resident of the State of California. Upon
12 information and belief, Plaintiff Guerrero worked for Defendant as a non-exempt hourly Loan
13 Processor in California from approximately April 12, 2021 to April 26, 2022.

14 12. Plaintiff Kenneth Chung is an individual over the age of eighteen, and at all times
15 mentioned in this Fourth Amended Complaint was a resident of the State of California. Upon
16 information and belief, Plaintiff Chung worked for Defendant as a non-exempt hourly Mortgage Loan
17 Officer in California from approximately September 2021 to June 24, 2022.

18 13. Plaintiff Lisa Flower is an individual over the age of eighteen, and at all times
19 mentioned in this Fourth Amended Complaint was a resident of the State of California. Upon
20 information and belief, Plaintiff Flower worked for Defendant as a non-exempt, hourly Underwriter
21 in California from approximately August 2019 to April 26, 2022.

22 14. Plaintiff Edward Liu is an individual over the age of eighteen, and at all times
23 mentioned in this Fourth Amended Complaint was a resident of the State of California. Upon
24 information and belief, Plaintiff Liu worked for Defendant as a non-exempt hourly Mortgage
25 Underwriter in California from approximately June 2019 to March 2022.

26 15. Plaintiff Marvin Menefee is an individual over the age of eighteen, and at all times
27 mentioned in this Fourth Amended Complaint was a resident of the State of California. Upon
28 information and belief, Plaintiff Menefee worked for Defendant as a Mortgage Closer Funder in

1 California from approximately June 2020 to March 25, 2022.

2 16. Plaintiff Heather Randrup is an individual over the age of eighteen, and at all times
3 mentioned in this Fourth Amended Complaint was a resident of the State of California. Upon
4 information and belief, Plaintiff Randrup worked for Defendant as a non-exempt hourly Loan
5 Processing Team Leader in California from approximately August 2020 to June 2022.

6 17. Plaintiff Jung Seo is an individual over the age of eighteen, and at all times mentioned
7 in this Fourth Amended Complaint was a resident of the State of California. Upon information and
8 belief, Plaintiff Seo worked for Defendant as a non-exempt hourly Loan Officer in California from
9 approximately February 2020 to April 2022.

10 18. Plaintiff Jason Shumski is an individual over the age of eighteen, and at all times
11 mentioned in this Fourth Amended Complaint was a resident of the State of California. Upon
12 information and belief, Plaintiff Shumski worked for Defendant as a non-exempt hourly Senior
13 Account Manager in California from approximately October 20, 2020 to March 13, 2022.

14 19. Plaintiff Jennifer Talley is an individual over the age of eighteen, and at all times
15 mentioned in this Fourth Amended Complaint was a resident of the State of California. Upon
16 information and belief, Plaintiff Talley worked for Defendant as a Loan Closer in California from
17 approximately October 26, 2020 to August 12, 2022.

18 20. Plaintiff Jennifer Venegas is an individual over the age of eighteen, and at all times
19 mentioned in this Fourth Amended Complaint was a resident of the State of California. Upon
20 information and belief, Plaintiff Venegas worked for Defendant as a non-exempt hourly Loan Officer
21 in California from approximately July 2021 to May 2022.

22 21. Plaintiff Frank Vasquez is an individual over the age of eighteen, and at all times
23 mentioned in this Fourth Amended Complaint was a resident of the State of California. Upon
24 information and belief, Plaintiff Vasquez worked for Defendant as a non-exempt hourly Senior Loan
25 Officer in California, including Irvine and Foothill Ranch, from approximately November 2018 to
26 November 2022.

27 22. Plaintiff Robert Rodriguez is an individual over the age of eighteen, and at all times
28 mentioned in this Fourth Amended Complaint was a resident of the State of California. Upon

1 information and belief, Plaintiff Rodriguez worked for Defendant as a non-exempt, hourly Loan
2 Officer in California from approximately August 2020 to June 7, 2022.

3 23. Plaintiff Laura Bright is an individual over the age of eighteen, and at all times
4 mentioned in this Fourth Amended Complaint was a resident of the State of California. Upon
5 information and belief, Plaintiff Bright worked for Defendant as a non-exempt hourly underwriter in
6 California from approximately November 2020 to August 2022.

7 24. Plaintiff Ryan Leonardo is an individual over the age of eighteen, and at all times
8 mentioned in this Fourth Amended Complaint was a resident of the State of California. Upon
9 information and belief, Plaintiff Leonardo worked for Defendant as a non-exempt, hourly license
10 lending officer and mortgage banker in California from approximately May 2019 to October 2022.

11 25. Plaintiff Karyn Stevens is an individual over the age of eighteen, and at all times
12 mentioned in this Fourth Amended Complaint was a resident of the State of California. Upon
13 information and belief, Plaintiff Stevens worked for Defendant as a non-exempt, hourly loan processor
14 and later underwriter administrator in California from approximately September 2019 to August 2022.

15 26. Plaintiff Luis Rossi (named in the *Ekhmies* complaint as Lou Rossi) is and was, at all
16 times relevant to this Complaint, an adult individual who lived in California and worked for Defendant
17 in the City of Lake Forest in the County of Orange, California. Defendant employed Plaintiff Rossi as
18 a Loan Officer from in or about October 01, 2020, until on or about March 31, 2022.

19 27. Aggrieved Employees are former hourly, non-exempt employees of Defendants,
20 including but not limited to loan officers, senior loan officers, lending officers, customer lending
21 representatives, business intelligence analysts, loan consultants, escrow administrators, mortgage loan
22 officers, mortgage consultants, mortgage bankers, loan specialists, loss mitigation specialists,
23 foreclosure specialists, tax specialists, and other employees with similar job duties, in California.

24 **Defendant**

25 28. Plaintiffs are informed and believe and thereon allege that Defendant LoanDepot.com,
26 LLC (“Defendant”) is a residential and consumer lending company. Defendant is a Delaware limited
27 liability company headquartered in Foothill Ranch, California. Defendant is registered to do business
28 in California, does business in California, and employs and employed thousands of hourly, non-

1 exempt employees, including Plaintiffs in California. Defendant may be served with process by
2 serving its registered agent, Registered Agent Solutions, Inc., 720 14th Street, Sacramento, California
3 95814.

4 29. Plaintiffs are unaware of the true names or capacities of Defendants sued herein under
5 the fictitious names DOES 1–50, inclusive, but pray for leave to amend and serve such fictitiously-
6 named Defendants pursuant to California Code of Civil Procedure § 474 once their names and
7 capacities become known.

8 30. Plaintiffs are informed and believe and thereon allege that DOES 1–50, inclusive, are
9 the partners, agents, owners, shareholders, managers, principals or employees of Defendant and/or
10 were acting on behalf of Defendant in doing the acts and omissions alleged herein.

11 31. Plaintiffs are informed and believe and thereon allege that each and all of the acts and
12 omissions alleged herein was performed by or is attributable to Defendants, each acting as the agent
13 for the other, with legal authority to act on the other’s behalf. The acts of any and all Defendants were
14 in accordance with, and represent the policy of, Defendants.

15 32. At all times relevant herein, Defendants ratified each and every act or omission
16 complained of herein. At all times herein mentioned, Defendants aided and abetted the acts and
17 omissions of each and all of the other Defendants in proximately causing the damages herein alleged.

18 33. Defendants, directly or indirectly, controlled at all relevant times the employment
19 terms, pay practices, timekeeping practices, and daily work of Plaintiffs and Aggrieved Employees.
20 Thus, each Defendant is an “employer” as that term is used in the Labor Code and IWC Wage Orders.

21 34. At all relevant times, Defendants have done business under the laws of California, have
22 had places of business in California including in this judicial district, and have employed Plaintiffs
23 and Aggrieved Employees in California and in this judicial district. At all relevant times, each
24 Defendant was a “person” as defined in Labor Code § 18 and Business and Professions Code § 17201.

25 35. Plaintiffs are informed and believe and thereon allege that Defendants are in some
26 manner, intentionally, negligently or otherwise, responsible for the acts, omissions, occurrences and
27 transactions alleged herein.

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1 **JURISDICTION AND VENUE**

2 36. The civil penalties sought by Plaintiffs exceed the minimum jurisdiction limits of the
3 Orange County Superior Court and will be established according to proof at trial.

4 37. This Court has jurisdiction of this action pursuant to the California Constitution, Article
5 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except those given
6 by statute to other courts.

7 38. This Court has jurisdiction over LoanDepot.com, LLC because it does business in
8 California, is authorized to do business in the State of California, and is registered with the California
9 Secretary of State.

10 39. This Court has jurisdiction over the violations alleged herein and over Defendants
11 because upon information and belief, each party has sufficient minimum contacts in California or
12 otherwise intentionally avails itself of California law so as to render the exercise of jurisdiction over
13 it by the California courts consistent with traditional notions of fair play and substantial
14 justice. Defendant at all relevant times employed Plaintiffs and Aggrieved Employees who performed
15 their work duties throughout the State of California, including in the County of Orange.

16 40. This Court has general jurisdiction over Plaintiffs' and the Aggrieved Employees'
17 claims pursuant to the California Labor Code Private Attorneys General Act.

18 41. Venue is proper in this Court because, upon information and belief, the named
19 Defendant maintains an office in this county and the acts and omissions alleged herein took place in
20 this county.

21 **GENERAL ALLEGATIONS AND SUMMARY OF CLAIMS**

22 42. Loan Depot is a residential and consumer lending company with locations throughout
23 California, including the County of Orange.

24 43. Plaintiffs and Aggrieved Employees are current and former employees of Defendants
25 in California, including but not limited to loan officers, senior loan officers, lending officers, customer
26 lending representatives, business intelligence analysts, loan consultants, escrow administrators,
27 mortgage loan officers, mortgage consultants, mortgage bankers, loan specialists, loss mitigation
28 specialists, foreclosure specialists, tax specialists, and other employees with similar job duties.

1 Plaintiffs' and Aggrieved Employees' job duties generally include but are not limited to providing
2 customer service and support to Defendants' lending clients.

3 44. Plaintiffs are informed and believe and thereon allege that the policies and practices
4 of Defendants have at all relevant times been similar for Plaintiffs and Aggrieved Employees,
5 regardless of the particular job assignment or location.

6 45. The nature of Plaintiffs' and Aggrieved Employees' work, providing loan services to
7 clients, is time-sensitive, rigorous, and nonstop. As such, Plaintiffs and Aggrieved Employees were
8 frequently prevented from taking timely meal periods and rest breaks and were not relieved of all
9 duties to take such breaks due to constant work demands and staffing shortages.

10 46. Plaintiffs and Aggrieved Employees were regularly and systematically prohibited by
11 Defendants from taking timely, compliant, uninterrupted, unpaid 30-minute meal periods for every
12 five hours worked as required by Labor Code § 512 and Wage Order No. 4, nor were Plaintiffs or
13 Aggrieved Employees paid a one-hour premium wage at their regular rate of pay for each missed,
14 short, late or interrupted meal period.

15 47. Plaintiffs and Aggrieved employees were regularly and systematically prohibited by
16 Defendants from taking timely, compliant, uninterrupted paid 10-minute rest periods for every four
17 hours worked or major fraction thereof as required by Labor Code §§ 226.7 and 512 and Wage Order
18 No. 4, nor were Plaintiffs or Aggrieved Employees paid a one-hour premium wage at their regular rate
19 of pay for each missed, short, late or interrupted rest period.

20 48. Defendants knew or reasonably should have known that Plaintiffs and Aggrieved
21 Employees were not timely relieved of all duties and were impeded or prevented from taking timely
22 all meal periods and rest breaks.

23 49. Defendants maintained a policy and/or practice of failing to properly compensate
24 Plaintiffs and Aggrieved Employees for work related tasks performed while "off-the-clock," either
25 before/after their scheduled shifts or during their meal periods while clocked out. Defendants' failure
26 to compensate Plaintiffs and Aggrieved Employees for work performed while off-the-clock results in
27 a failure to compensate Plaintiffs and Aggrieved Employees for all time spent working for Defendants'
28 benefit, including at minimum wage, overtime, and/or double time under California law.

1 50. Further, many Plaintiffs and Aggrieved Employees receive commission payments from
2 Defendant that are not factored into the regular rate for purposes of calculating overtime
3 compensation, resulting in them performing services for the benefit of Defendant without proper
4 compensation.

5 51. Plaintiffs are informed, believe, and thereon allege that Defendants utilize the same or
6 substantially similar timekeeping mechanisms throughout all of California.

7 52. As a result of these policies and/or practices, Plaintiffs and Aggrieved Employees are
8 denied compensation for all hours worked, including minimum wages and overtime.

9 53. Defendants' common course of wage-and-hour abuse includes routinely failing to
10 maintain true and accurate records of the hours worked by Plaintiffs and Aggrieved Employees.
11 Defendants have failed to record hours that Plaintiffs and Aggrieved Employees work off-the-clock,
12 as well as non-compliant meal and rest periods.

13 54. Defendants do not provide Plaintiffs and Aggrieved Employees with accurate wage
14 statements as required by California law. Plaintiffs and Aggrieved Employees receive wage statements
15 that do not reflect all hours worked, premium pay for missed meal and rest periods, and applicable
16 overtime premiums.

17 55. Defendants also fail to reimburse Plaintiffs and Aggrieved Employees for all business
18 expenses incurred while on the job. Plaintiffs and Aggrieved Employees must use their personal
19 cellphones and personal cell voice, text, and data plans for extensive, work-related communications,
20 such as speaking with supervisors, clients, and coworkers about mortgage loans in process. Defendants
21 fail to reimburse Plaintiffs and Aggrieved Employees for expenses incurred while using their home
22 internet to complete required job duties. Defendants fail to reimburse Plaintiffs and Aggrieved
23 Employees for such "out-of-pocket" business expenses in violation of Labor Code § 2802.

24 56. Defendants do not provide Plaintiffs and Aggrieved Employees with full payment of
25 all wages owed upon separation from employment. At the time their employment ends, Plaintiffs and
26 Aggrieved Employees are owed wages and premium pay for all time worked, overtime, and missed
27 meal and rest breaks, whether their termination was voluntary or involuntary; yet Defendants fail to
28 provide Plaintiffs and Aggrieved Employees with such payments. As a result, Defendants are subject

1 to waiting time penalties pursuant to the California Labor Code.

2 57. Plaintiffs are informed and believe and thereon allege that Defendants are aware that
3 their policies and practices deprive Plaintiffs and Aggrieved Employees of substantial pay for all time
4 worked, including overtime compensation and minimum wages, and that their workers do not receive
5 legally compliant meal and rest periods. Thus, Defendants' denial of wages, compliant meal and rest
6 periods, and premium payments is and was deliberate and willful.

7 58. Plaintiffs are informed and believe and thereon allege that Defendants' unlawful
8 conduct has been widespread, repeated, and consistent as to the Plaintiffs and Aggrieved Employees
9 throughout Defendants' operations in California.

10 59. Defendants' conduct was willful, carried out in bad faith, and triggers significant civil
11 penalties in an amount to be determined at trial.

12 60. Defendants' company-wide policies and practices violate California law as pled herein.
13 Plaintiffs seek penalties pursuant to PAGA based on Defendants' violations of the Labor Code alleged
14 herein, interest, attorney's fees and costs, injunctive and/or declaratory relief, and other relief as
15 provided by law and/or requested in this Fourth Amended Complaint

16
17 **FIRST CAUSE OF ACTION**
18 **FAILURE TO PROVIDE MEAL PERIODS**
19 **In Violation of Labor Code §§ 226.7(c), 512(a), 1198 and IWC Order No. 4-2001 (Brought by**
20 **Plaintiff Luis Rossi, on Behalf of Himself Against Defendant and Does 1-50, inclusive)**

21 61. Plaintiff Rossi realleges and incorporates by reference all preceding paragraphs as
22 though fully set forth herein.

23 62. Defendants routinely fail to provide or make available compliant meal periods to
24 Plaintiff Rossi.

25 63. The work demands placed on Plaintiff Rossi regularly prevent him from taking first
26 meal periods, and, when applicable, second meal periods throughout the day. Plaintiff Rossi does not
27 receive the requisite premium pay for his missed meal breaks as required by California law.

28 64. Labor Code §§ 226.7 and 512, and Wage Order No. 4, require Defendants to provide
or make available meal periods to their employees. These statutes and order prohibit employers from
employing an employee for more than five hours without a meal period of not less than thirty minutes,

1 and from employing an employee more than ten hours per day without providing the employee with
2 a second meal period of not less than thirty minutes.

3 65. Unless the employee is relieved of all duty during the thirty-minute meal period, the
4 employee is considered “on duty” and the meal period is counted as time worked under Wage Order
5 No. 4.

6 66. Under Labor Code § 226.7(b) and Wage Order No. 4, an employer who fails to provide
7 or make available a required meal period must, as compensation, pay the employee one hour of pay
8 at the employee’s regular rate of compensation for each workday that the meal period was not provided
9 or made available.

10 67. Despite these requirements, Defendants have knowingly and willfully refused to
11 perform their obligations to provide or make available to Plaintiffs the ability to take the off-duty meal
12 periods to which they are entitled.

13 68. Defendants have also failed to pay Plaintiff Rossi one hour of pay for each day an off-
14 duty meal period was denied. Defendants’ conduct described herein violates Labor Code §§ 226.7
15 and 512. Therefore, pursuant to Labor Code § 226.7(b), Plaintiff Rossi is entitled to compensation for
16 the failure to provide or make available meal periods, plus interest, attorneys’ fees, expenses and costs
17 of suit.

18 69. As a proximate result of the violations set forth above, Plaintiff Rossi has suffered
19 damages in amounts to be established by proof at trial.

20 70. Based on the foregoing, Plaintiff Rossi requests the relief set forth below.

21 **SECOND CAUSE OF ACTION**
22 **FAILURE TO PROVIDE REST PERIODS**
23 **In Violation of Labor Code §§ 226.7(c), 1198 and IWC Order No. 4-2001 (Brought by Plaintiff**
Luis Rossi, on Behalf of Himself Against Defendant and Does 1-50, inclusive)

24 71. Plaintiff Rossi realleges and incorporates by reference all preceding paragraphs as
25 though fully set forth herein.

26 72. Defendants routinely fail to authorize and permit rest periods to Plaintiff Rossi.

27 73. Labor Code § 226.7 and Wage Order No. 4 require employers to authorize and permit
28 employees to take ten minutes of net rest time per four hours or major fraction thereof of work, and to

1 pay employees their full wage during those rest periods.

2 74. Under Labor Code § 226.7(b) and Wage Order No. 4, an employer who fails to provide
3 or make available a required rest period must, as compensation, pay the employee one hour of pay at
4 the employee's regular rate of compensation for each workday that the rest period was not provided
5 or made available.

6 75. Despite these requirements, Defendants have knowingly and willfully refused to
7 perform their obligations to provide or make available to Plaintiff Rossi the ability to take the off-duty
8 rest periods to which he is entitled.

9 76. Defendants have also failed to pay Plaintiff Rossi one hour of pay for each day an off-
10 duty rest period was denied. Defendants' conduct described herein violates Labor Code § 226.7.
11 Therefore, pursuant to Labor Code § 226.7(b), Plaintiff Rossi is entitled to compensation for the failure
12 to authorize and permit rest periods, plus interest, attorneys' fees, expenses, and cost of suit.

13 77. As a proximate result of the violations set forth above, Plaintiff Rossi has suffered
14 damages in amounts to be established by proof at trial.

15 78. Based on the foregoing, Plaintiff Rossi requests the relief set forth below.

16 **THIRD CAUSE OF ACTION**
17 **FAILURE TO PAY WAGES, INCLUDING MINIMUM AND OVERTIME**
18 **In Violation of Labor Code §§ 510, 1194**
(Brought by Plaintiff Luis Rossi, on Behalf of Himself Against Defendant and Does 1-50,
19 **inclusive)**

20 79. Plaintiff Rossi realleges and incorporates by reference all preceding paragraphs as
though fully set forth herein.

21 80. At all relevant times, the governing regulations, including but not limited to Wage
22 Order No. 4 as the wage order applicable to Plaintiff Rossi, require employers to pay their employees
23 for each hour worked at no less than minimum wage. "Hours worked" means the time during which
24 an employee is subject to the control of an employer, and includes all the time the employee is suffered
25 or permitted to work, whether or not required to do so, and in the case of an employee who is required
26 to reside on the employment premises, that time spent carrying out assigned duties shall be counted
27 as hours worked.

28 81. At all relevant times, Wage Order No. 4 provided that employees working for more

1 than eight hours in a day or 40 hours in a work week were and are entitled to overtime compensation
2 at the rate of one and one-half times the regular rate of pay for all hours worked in excess of eight
3 hours in a day or 40 hours in a work week. An employee who works more than twelve hours in a day
4 is entitled to overtime compensation at a rate of twice the regular rate of pay.

5 82. Labor Code § 510 codifies the right to overtime compensation at the rate of one and
6 one-half times the regular rate of pay for all hours worked in excess of eight hours in a day or 40 hours
7 in a work week, and to overtime compensation at twice the regular rate of pay for hours worked in
8 excess of twelve hours in a day or eight hours in a day on the seventh day of work in a particular work
9 week.

10 83. Labor Code § 1197.1 states, “Any employer or other persons acting individually as an
11 officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage
12 less than the minimum fixed by an applicable state or local law, or by an order of the commission shall
13 be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and
14 any applicable penalties pursuant to Section 203[.]”

15 84. At all times relevant, Plaintiff Rossi regularly performed non-exempt work and thus
16 were subject to the overtime requirements of Wage Order No. 4, CCR §§ 11000 *et. seq.*, and the Labor
17 Code.

18 85. As discussed herein, Defendants did not compensate Plaintiff Rossi for all hours
19 worked as required by California law and regulations. As a result, Plaintiff Rossi was not paid all
20 lawful wages, including minimum wages and overtime wages. Plaintiff Rossi are informed and
21 believe, and thereon allege, that Defendants knew or should have known that Plaintiff Rossi was
22 entitled to receive all wages owed yet failed to do so.

23 86. Pursuant to Labor Code §§ 510, 558, 1194.2 and 1194, Plaintiff Rossi is entitled to
24 recover their unpaid wages and overtime compensation, as well as interest, costs, and attorneys’ fees.

25 87. As a proximate result of the violations set forth above, Plaintiff Rossi has suffered
26 damages in amounts to be established by proof at trial.

27 88. Based on the foregoing, Plaintiff Rossi requests the relief set forth below.

28 ///

FOURTH CAUSE OF ACTION
FAILURE TO MAINTAIN ACCURATE RECORDS
In Violation of Labor Code § 1174(d) (Brought by Plaintiff Luis Rossi, on Behalf of Himself
Against Defendant and Does 1-50, inclusive)

89. Plaintiff Rossi realleges and incorporates by reference all preceding paragraphs as though fully set forth herein.

90. California Labor Code § 1174(d) provides in pertinent part, “Every person employing labor in this state shall 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. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case 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.” *Id.*

91. Defendants knowingly and intentionally failed to accurately record, track, maintain and keep accurate records of each and every hour worked, and wages earned for Plaintiff Rossi.

92. Upon information and belief, Plaintiff Rossi has alleged herein that in an effort to fabricate the appearance of compliance with the provisions of the Labor Code, Defendants routinely required Plaintiff Rossi to work off-the-clock and prohibited Plaintiff Rossi from receiving proper, timely, and compliant meal and rest breaks to avoid paying overtime. Thus, at all relevant times, Defendants failed to maintain accurate records of all hours Plaintiff Rossi worked, including hours they were working during meal periods and rest breaks, and for the days they worked in excess of eight hours, and/or work weeks in excess of forty hours. As a result of Defendants’ failure to maintain proper accurate records, premium penalties to which Plaintiff Rossi was entitled for meal period and rest break violations were not properly recorded either.

93. Plaintiff Rossi is therefore entitled to and seek to recover penalties, pursuant to Labor Code § 1174.5, which provides that an employer who fails to properly maintain records pursuant to section 1174(d) shall be subject to a civil penalty of \$500.00.

94. As a proximate result of the violations set forth above, Plaintiff Rossi has suffered damages in amounts to be established by proof at trial.

95. Based on the foregoing, Plaintiff Rossi requests the relief set forth below.

FIFTH CAUSE OF ACTION
FAILURE TO PAY ALL WAGES EARNED WHEN DUE
In Violation of Labor Code § 204
(Brought by Plaintiff Luis Rossi, on Behalf of Himself Against Defendant and Does 1-50,
inclusive)

96. Plaintiff Rossi realleges and incorporates by reference all preceding paragraphs as though fully set forth herein.

97. The California Labor Code requires employers to pay all wages due within the time specified by law. California Labor Code § 204 was in full force and effect at all relevant times herein.

98. Pursuant to § 204, for employees entitled to pay twice per month, two periods of pay are required. Labor performed between the 1st and 15th of the month must be paid between the 16th and 26th of the same month and labor performed on the 16th and the end of the month must be paid on pay days between the 1st and 10th of the following month. Labor Code § 210 provides that “ ...

(a) In addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in §§ 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and 1197.5, shall be subject to a penalty as follows:

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

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

101. Plaintiff Rossi was entitled to be paid twice monthly for all labor performed. Although Plaintiff Rossi was paid twice monthly, Defendants failed and intentionally refused to pay Plaintiff Rossi all wages he was entitled to, twice monthly, including overtime pay during each and every pay period of their employment.

102. As alleged herein, Plaintiff Rossi was not paid for all of his wages, for each and every hour worked, including *inter alia* time worked during rest and meal breaks, time worked off the clock and overtime hours, as alleged herein, during every single pay period during the term(s) of their employment.

103. Accordingly, as a result of the unlawful acts of Defendants, Plaintiff Rossi has been

1 deprived of wages in amounts to be determined according to proof at trial, and is entitled to recovery
2 of such amounts, plus interest and penalties thereon, attorneys' fees, and costs of suit, pursuant to
3 Labor Code § s 210, 218 and 1194.

4
5 **SIXTH CAUSE OF ACTION**
6 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**
7 **In Violation of Labor Code § 226(a) (Brought by Plaintiff Luis Rossi, on Behalf of Himself**
8 **Against Defendant and Does 1-50, inclusive)**

9 104. Plaintiff Rossi realleges and incorporates by reference all preceding paragraphs as
10 though fully set forth herein.

11 105. Labor Code § 226(a) requires Defendants to itemize in wage statements all deductions
12 from payment of wages and to accurately report total hours worked by Plaintiff Rossi including
13 applicable hourly rates and reimbursement expenses among other things. Defendants knowingly and
14 intentionally failed to comply with Labor Code § 226 on wage statements they provided to Plaintiff
15 Rossi.

16 106. The applicable regulations, including without limitation Wage Order No. 4, require
17 Defendants to maintain time records for each employee showing, among other things, start and end
18 times for each work period, meal periods, split shift intervals, and total daily hours worked in an
19 itemized wage statement; Defendants must show all deductions and reimbursements from payment of
20 wages, and accurately report total hours worked by Plaintiff Rossi. On information and belief,
21 Defendants have failed to record all or some of the items required pursuant to Labor Code § 226 and
22 Wage Order No. 4.

23 107. As a result of Defendants' knowing and intentional failure to comply with Labor Code
24 § 226(a), Plaintiff Rossi has suffered injury and damage to their statutorily protected rights.
25 Specifically, Plaintiff Rossi has been injured by Defendants' intentional violation of Labor Code §
26 226(a) because he was denied both his legal right to receive, and his protected interest in receiving,
27 accurate itemized wage statements under Labor Code § 226(a). In addition, Defendants have made it
28 difficult to calculate the amount of wages and compensation owed to Plaintiff Rossi. Plaintiff Rossi
has had to file this lawsuit and will be required to conduct discovery and perform computations to
analyze whether in fact Plaintiff Rossi was paid correctly and the extent of the underpayment, thereby

1 causing Plaintiff Rossi to incur expenses and lost time. Plaintiff Rossi would not have had to engage
2 in these efforts and incur these costs had Defendants provided wage statements accurately showing
3 his regular and overtime rates of pay and the other information specified above. This has also impaired
4 and delayed Plaintiff Rossi's ability to demand and recover underpaid wages from Defendants.

5 108. Plaintiff Rossi is entitled to recover from Defendants the greater of his actual damages
6 caused by Defendants' failure to comply with Labor Code § 226(a) or an aggregate penalty not
7 exceeding \$4,000.00.

8 109. Based on the foregoing, Plaintiff Rossi requests the relief set forth below.

9 **SEVENTH CAUSE OF ACTION**
10 **FAILURE TO REIMBURSE WORK EXPENSES**
11 **In Violation of Labor Code § 2802**
(Brought by Plaintiff Luis Rossi, on Behalf of Himself Against Defendant and Does 1-50,
12 **inclusive)**

13 110. Plaintiff Rossi realleges and incorporates by reference all preceding paragraphs as
14 though fully set forth herein.

15 111. Labor Code § 2802 requires employers to indemnify employees for all necessary
16 expenditures or losses incurred by employees in direct consequence of the discharge of their duties.

17 112. Plaintiff Rossi is required to pay out of pocket for necessary business expenses incurred
18 as a result of his work for Defendants, but he was not reimbursed for these expenses. Defendant
19 required Plaintiff Rossi to use personal cell phones and personal cell voice, text, and data plans for
20 extensive, work-related communications, such as speaking with supervisors, clients, and coworkers
21 about mortgage loans in process. Defendants also required Plaintiff Rossi to use his home internet to
22 successfully complete tasks as part of his employment. Defendants did not reimburse Plaintiff Rossi
23 for such "out-of-pocket" business expenses in violation of Labor Code § 2802.

24 113. As a proximate result of the violations set forth above, Plaintiff Rossi has suffered
25 damages in amounts to be established by proof at trial.

26 114. Based on the foregoing, Plaintiff Rossi requests the relief set forth below.

27 ///

28 ///

///

EIGHTH CAUSE OF ACTION
FAILURE TO PAY ALL WAGES DUE UPON TERMINATION
In Violation of Labor Code §§ 201-203 (Brought by Plaintiff Luis Rossi, on Behalf of Himself
Against Defendant and Does 1-50, inclusive)

115. Plaintiff Rossi realleges and incorporates by reference all preceding paragraphs as though fully set forth herein.

116. Defendants did not provide Plaintiff Rossi with his wages when due under California law after his employment with Defendants ended.

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

118. Labor Code § 202 provides:

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

119. Labor Code § 203 provides, in relevant part:

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, 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 therefor is commenced; but the wages shall not continue for more than 30 days.

120. Plaintiff Rossi left his employment with Defendants during the statutory period, at which time Defendants owed him unpaid wages. These earned, but unpaid, wages derive from time spent working off-the-clock for the benefit of Defendants before and after their scheduled shifts and during missed or interrupted meal periods, and/or missed or interrupted second meal periods.

121. Defendants willfully refuse and continue to refuse to pay Plaintiff Rossi all the wages that are due and owing to him for the work performed and premium payments for missed or interrupted meal periods, and/or missed or interrupted second meal periods, upon the end of his employment. As a result of Defendants’ actions, Plaintiff Rossi has suffered and continue to suffer substantial losses, including lost earnings, and interest.

122. Defendants’ willful failure to pay Plaintiff Rossi the wages due and owing them constitutes a violation of Labor Code §§ 201-202. As a result, Defendants are liable to Plaintiff Rossi for all penalties owing pursuant to Labor Code §§ 201-203.

123. In addition, Labor Code § 203 provides that an employee's wages will continue as a penalty up to thirty days from the time the wages were due. Therefore, Plaintiff Rossi is entitled to penalties pursuant to Labor Code § 203, plus interest.

124. Based on the foregoing, Plaintiff Rossi requests the relief set forth below.

NINTH CAUSE OF ACTION
UNFAIR BUSINESS PRACTICES
**In Violation of Bus. & Prof. Code §§ 17200 *et seq.* (Brought by Plaintiff Luis Rossi, on Behalf
of Himself Against Defendant and Does 1-50, inclusive)**

125. Plaintiff Rossi realleges and incorporates by reference all preceding paragraphs as though fully set forth herein.

126. Business and Professions Code §§ 17200 *et seq.*, the Unfair Competition Law (the “UCL”), prohibits unfair competition in the form of any unlawful, unfair, or fraudulent business acts or practices.

127. Business and Professions Code § 17204 allows a person injured by unfair business acts or practices to prosecute a civil action for violation of the UCL.

128. Labor Code § 90.5(a) states it is the public policy of California to vigorously enforce minimum labor standards in order to ensure employees are not required to work under substandard and unlawful conditions, and to protect employers who comply with the law from those who attempt to gain competitive advantage at the expense of their workers by failing to comply with minimum labor standards.

129. Beginning at an exact date unknown to Plaintiffs, but at least since the date four years prior to the filing of this lawsuit, Defendants have committed acts of unfair competition as defined by the UCL, by engaging in the unlawful, unfair, and fraudulent business acts and practices described in this Complaint, including, but not limited to:

- a. violations of Labor Code §§ 226.7 and 512 and Wage Order No. 4 pertaining to meal breaks;
- b. violations of Labor Code § 226.7 and Wage Order No. 4 pertaining to rest breaks;
- c. violations of Labor Code §§ 1182.11, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, and Wage Order No. 4 pertaining to payment of wages, including minimum wage,

1 for all hours worked;

2 d. violations of Labor Code § 2802 and Wage Order No. 4 pertaining to
3 reimbursement of necessary business expenses;

4 e. violations of Labor Code §§ 226, 226.3 and 226.6 regarding accurate, timely
5 itemized wage statements; and

6 f. violations of Labor Code §§ 201-203 pertaining to payment of all wages owed
7 during employment and following separation from employment.

8 130. The violations of these laws and regulations, as well as of the fundamental California
9 public policies protecting wages, serve as unlawful predicate acts and practices for purposes of the
10 UCL. The acts and practices described above constitute unfair, unlawful, and fraudulent business
11 practices, and unfair competition, within the meaning of the UCL. Among other things, the acts and
12 practices described herein have taken from Plaintiffs wages rightfully earned by them, while enabling
13 Defendants to gain an unfair competitive advantage over law-abiding employers and competitors.

14 131. Business and Professions Code § 17203 provides that a court may make such orders or
15 judgments as may be necessary to prevent the use or employment by any person of any practice which
16 constitutes unfair competition. Injunctive relief is necessary and appropriate to prevent Defendants
17 from repeating the unlawful, unfair, and fraudulent business acts and practices alleged above.

18 132. As a direct and proximate result of the aforementioned acts and practices, Plaintiff
19 Rossi has suffered a loss of money and property, in the form of unpaid wages, which are due and
20 payable.

21 133. Business and Professions Code § 17203 provides that the Court may restore to any
22 person in interest any money or property which may have been acquired by means of such unfair
23 competition. Plaintiff Rossi is entitled to restitution pursuant to Business and Professions Code §
24 17203 for all wages and payments unlawfully withheld from them during the four-year period prior to
25 the filing of this Complaint. Plaintiff Rossi's success in this action will enforce important rights
26 affecting the public interest. Plaintiff Rossi seeks and is entitled to unpaid wages, declaratory and
27 injunctive relief, and all other equitable remedies owing to him.

28 134. Plaintiff Rossi herein takes upon himself enforcement of these laws and lawful claims.

1 135. There is a financial burden involved in pursuing this action, the action is seeking to
2 vindicate a public right, and it would be against the interests of justice to penalize Plaintiff Rossi by
3 forcing him to pay attorneys' fees from any recovery thereof. Attorneys' fees are appropriate pursuant
4 to Code of Civil Procedure § 1021.5 and otherwise.

5 136. Based on the foregoing, Plaintiff Rossi requests the relief set forth below.

6 **TENTH CAUSE OF ACTION**
7 **PENALTIES PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT**
8 **[Labor Code § 2699(a)]**
9 **(Brought by All Plaintiffs on Behalf of Aggrieved Employees,**
10 **Against Defendant and Does 1-50, inclusive)**

11 125. Plaintiffs reallege and incorporate the foregoing paragraphs as though fully set forth
12 herein.

13 126. PAGA expressly establishes that penalties pursuant to any provision of the California
14 Labor Code which provides for a civil penalty to be assessed and collected by the Labor and Workforce
15 Development Agency (the "LWDA"), or any of its departments, divisions, commissions, boards,
16 agencies, or employees for a violation of the Labor Code, may be recovered through a civil action
17 brought by an aggrieved employee on behalf of himself or herself and other current or former
18 employees.

19 127. Plaintiffs Curtis Allen, Jennifer Bursack, Kenneth Chung, Lisa Flower, Natasha
20 Gilman, Constance Gorman, Melinda Guerrero, Edward Liu, Michelle Manesse, Marvin Menefee,
21 Joshua Pavelko, Robert Rodriguez, Heather Randrup, Jung Seo, Jason Shumski, Jennifer Talley, Frank
22 Vasquez, Jennifer Venegas, Laura Bright, Ryan Leonardo, Karyn Stevens, and Luis Rossi
23 (collectively the "PAGA Plaintiffs"), by their employment with Defendants and Defendants'
24 violations of the Labor Code as alleged herein, are Aggrieved Employees with standing to bring an
25 action under PAGA.

26 128. Defendants do not provide PAGA Plaintiffs and Aggrieved Employees with accurate
27 itemized wage statements as required by California law, as a result of the meal and rest break, off-the-
28 clock work, and overtime violations set forth above, and Defendants' failure to provide premium pay
for the missed breaks.

 129. Labor Code § 226(a) provides:

1 An employer, semimonthly or at the time of each payment of wages,
2 shall furnish to his or her employee, either as a detachable part of the
3 check, draft, or voucher paying the employee's wages, or separately if
4 wages are paid by personal check or cash, an accurate itemized statement
5 in writing showing (1) gross wages earned, (2) total hours worked by the
6 employee, except as provided in subdivision (j), (3) the number of piece-
7 rate units earned and any applicable piece rate if the employee is paid on
8 a piece-rate basis, (4) all deductions, provided that all deductions made
9 on written orders of the employee may be aggregated and shown as one
10 item, (5) net wages earned, (6) the inclusive dates of the period for which
11 the employee is paid, (7) the name of the employee and only the last four
12 digits of his or her social security number or an employee identification
13 number other than a social security number, (8) the name and address of
14 the legal entity that is the employer ... and (9) all applicable hourly rates
15 in effect during the pay period and the corresponding number of hours
16 worked at each hourly rate by the employee ... The deductions made
17 from payment of wages shall be recorded in ink or other indelible form,
18 properly dated, showing the month, day, and year, and a copy of the
19 statement and the record of the deductions shall be kept on file by the
20 employer for at least three years at the place of employment or at a
21 central location within the State of California.

22 *See also* Wage Order No. 4.

23 148. Labor Code § 226(e)(1) provides:

24 An employee suffering injury as a result of a knowing and intentional
25 failure by an employer to comply with subdivision (a) is entitled to
26 recover the greater of all actual damages or fifty dollars (\$50) for the
27 initial pay period in which a violation occurs and one hundred dollars
28 (\$100) per employee for each violation in a subsequent pay period, not
to exceed an aggregate penalty of four thousand dollars (\$4,000), and is
entitled to an award of costs and reasonable attorney's fees.

19 149. Defendants' failure to provide PAGA Plaintiffs and Aggrieved Employees with
20 compliant meal and rest periods is and was in violation of Labor Code § 512 and Wage Order No. 4.

21 150. Due to Defendants' failure to pay one hour of premium pay to PAGA Plaintiffs for
22 each missed or noncompliant meal period, along with the off-the-clock work, and overtime violations,
23 the wage statements Defendants provided PAGA Plaintiffs did not reflect the actual gross wages
24 earned, actual net wages earned, or actual hours worked. Accordingly, Defendants have knowingly
25 and willfully failed to provide timely, accurate itemized wage statements to PAGA Plaintiffs in
26 accordance with Labor Code §§ 226, 226.3, and 226.6, and Wage Order No. 4.

27 151. On information and belief, Defendants violated Labor Code §§ 201-202, 510, 512,
28 1182.11, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, and Wage Order No. 4 pertaining to payment of

1 wages, including minimum wage, for all hours worked, including but not limited to failing to pay
2 PAGA Plaintiffs at no less than minimum wage for all time spent working for Defendants, and/or by
3 failing to pay the legal overtime rate as set forth above.

4 152. Labor Code §§ 201-202 require employers to immediately pay wages earned and
5 unpaid to an employee that is discharged, and to pay an employee who quits within 72 hours after he
6 or she quits, at the latest.

7 153. Defendants failed to timely pay PAGA Plaintiffs all wages owed pursuant to Labor
8 Code §§ 201-202. PAGA Plaintiffs seek civil penalties pursuant to section 2699(a) for Defendants'
9 failure to timely pay all wages owed to PAGA Plaintiffs in compliance with sections 201-202 in the
10 amounts established by sections 203 and 256. [See Labor Code §§ 201-203, 256, 2699(a).] PAGA
11 Plaintiffs seek such penalties as an alternative to the penalties available under section 203, as prayed
12 for herein.

13 154. On information and belief, Defendants violated Labor Code § 2802 and Wage Order
14 No. 4 pertaining to reimbursement of necessary business expenses, by failing and refusing to
15 reimburse PAGA Plaintiffs' expenses necessarily incurred in the discharge of job duties for
16 Defendants.

17 155. On information and belief, Defendants violated Labor Code § 1174(d) and IWC Wage
18 Order 4-2001(7) by failing to keep accurate records, making it difficult to calculate the minimum wage
19 compensation due to PAGA Plaintiffs.

20 156. Defendants did not pay PAGA Plaintiffs all wages when due under California law,
21 including but not limited to after the termination of PAGA Plaintiffs' employment, as a result of the
22 meal break, off-the-clock work, and overtime violations set forth herein and Defendants' failure to
23 provide premium pay for the noncompliant breaks. PAGA Plaintiffs left employment with Defendants
24 during the statutory period, at which time Defendants owed PAGA Plaintiffs unpaid wages for
25 premium pay for missed and/or noncompliant meal periods.

26 157. Defendants willfully refused and continue to refuse to pay PAGA Plaintiffs all the
27 wages that are due and owing to them, in the form of meal period premium pay and other wages due
28 and owing, upon the end of their employment. Defendants' failure to pay all premiums required for

1 noncompliant meal periods is and was in violation of Labor Code § 226.7.

2 158. As a result of Defendants’ actions, PAGA Plaintiffs have suffered and continue to suffer
3 substantial losses, including lost earnings, and interest.

4 159. Labor Code § 2699(a) provides:

5 Notwithstanding any other provision of law, any provision of this code that
6 provides for a civil penalty to be assessed and collected by the Labor and
7 Workforce Development Agency or any of its departments, divisions,
8 commissions, boards, agencies or employees, for a violation of this code,
9 may, as an alternative, be recovered through a civil action brought by an
10 aggrieved employee on behalf of himself or herself and other current or
11 former employees.

12 160. Pursuant to Labor Code § 2699.3(a)(1) and (2), on August 31, 2022, PAGA Plaintiffs
13 Jennifer Bursack, Michelle Manesse, Curtis Allen, Joshua Pavelko, Natasha Gilman, and Robert
14 Rodriguez provided the LWDA with notice of their intention to file these claims, and 65 calendar days
15 have passed without notice from the LWDA. These plaintiffs have satisfied the administrative
16 prerequisites to commence this civil action in compliance with Labor Code § 2699.3(a).

17 161. Pursuant to Labor Code § 2699.3(a)(1) and (2), on December 22, 2022, PAGA
18 Plaintiffs Constance Gorman, Kenneth Chung, Heather Randrup, Jung Seo, Jennifer Venegas, Melinda
19 Guerrero, Lisa Flower, Edward Liu, Marvin Menefee, Jason Shumski, and Jennifer Talley provided
20 the LWDA with notice of their intention to file these claims, and 65 calendar days have passed without
21 notice from the LWDA. These plaintiffs have satisfied the administrative prerequisites to commence
22 this civil action in compliance with Labor Code § 2699.3(a).

23 162. Pursuant to Labor Code § 2699.3(a)(1) and (2), on December 30, 2022, PAGA Plaintiff
24 Frank Vasquez provided the LWDA with notice of his intention to file these claims, and 65 calendar
25 days have passed without notice from the LWDA. Vasquez has satisfied the administrative
26 prerequisites to commence this civil action in compliance with Labor Code § 2699.3(a).

27 163. Pursuant to Labor Code § 2699.3(a)(1) and (2), on January 31, 2023, PAGA Plaintiffs
28 Laura Bright, Ryan Leonardo, and Karyn Stevens provided the Labor and Workforce Development
Agency (“LWDA”) with notice of their intention to file a claim under PAGA, and 65 calendar days
have passed without notice from the LWDA. These plaintiffs have satisfied the administrative
prerequisites to commence this civil action in compliance with Labor Code § 2699.3(a).

1 164. PAGA Plaintiff Luis Rossi gave notice to the LWDA of his intention to file these
2 claims on or about June 1, 2022, and 65 calendar days have passed without notice from the LWDA.
3 Rossi has satisfied the administrative prerequisites to commence this civil action in compliance with
4 Labor Code § 2699.3(a).

5 165. Therefore, all PAGA Plaintiffs have satisfied all necessary administrative prerequisites
6 to bring this action.

7 166. PAGA Plaintiffs seek civil penalties pursuant to Labor Code § 2699(a) for each failure
8 by Defendants, alleged above, to provide PAGA Plaintiffs accurate, itemized wage statements in
9 compliance with section 226(a), additionally or alternatively to the penalties established by sections
10 226(e) and 226.3, as prayed for herein. PAGA Plaintiffs seek the maximum penalties provided by law
11 for each violation of each provision of the Labor Code, on behalf of the State and Aggrieved
12 Employees.

13 167. PAGA Plaintiffs also seek civil penalties pursuant to Labor Code § 2699(a) for
14 Defendants' other and/or further violations of the Labor Code and regulations thereunder, including
15 but not limited to Labor Code §§ 201-204, 225.5, 226(a), 226.3, 226.6, 226.7, 256, 510, 512, 1174,
16 1182.11, 1182.12, 1193, 1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802, 2804; and Wage Order Nos.
17 1-2001, 4-2001, and 7-2001, as alleged in this Fourth Amended Complaint.

18 168. Defendants are liable to PAGA Plaintiffs, Aggrieved Employees, and the State of
19 California for the civil penalties set forth in this Fourth Amended Complaint, with interest thereon.
20 PAGA Plaintiffs are also entitled to an award of attorneys' fees and costs as set forth below.

21 169. Based on the foregoing, PAGA Plaintiffs request the relief set forth below.

22 **ELEVENTH CAUSE OF ACTION**
23 **PENALTIES PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT**
24 **[Labor Code § 2699(f)]**
25 **(Brought by All Plaintiffs on Behalf of Aggrieved Employees,**
26 **Against Defendant and Does 1-50, inclusive)**

27 170. Plaintiffs reallege and incorporate the foregoing paragraphs as though fully set forth
28 herein.

27 171. Labor Code § 200 defines wages as "all amounts for labor performed by employees of
28 every description, whether the amount is fixed or ascertained by the standard of time, task, piece,

1 commission basis or method of calculation.”

2 172. IWC Wage Order 4-2001(2)(K) defines “hours worked” as “the time during which an
3 employee is subject to the control of an employer and includes all the time the employee is suffered
4 or permitted to work, whether or not required to do so.”

5 173. Labor Code § 1198 makes it unlawful for employers to employ employees under
6 conditions that violate applicable Wage Order(s).

7 174. Defendants violated the Labor Code sections cited above as set out more fully above
8 in this Fourth Amended Complaint.

9 175. Labor Code § 2699(f) provides:

10 For all provisions of this code except those for which a civil penalty is
11 specifically provided, there is established a civil penalty for a violation of
12 these provisions, as follows: . . . (2) If, at the time of the alleged violation,
13 the person employs one or more employees, the civil penalty is one hundred
dollars (\$100) for each aggrieved employee per pay period for the initial
violation and two hundred dollars (\$200) for each aggrieved employee per
pay period for each subsequent violation.

14 176. PAGA Plaintiffs seek penalties pursuant to Labor Code § 2699(f) for Defendants’
15 violations of section 2802.

16 177. To the extent that any violation alleged in this Fourth Amended Complaint does not
17 carry penalties under Labor Code § 2699(a), PAGA Plaintiffs seek civil penalties pursuant to section
18 2699(f) for each pay period in which he or she was aggrieved, in the amounts established by section
19 2699(f).

20 178. Pursuant to Labor Code § 2699.3(a)(1) and (2), on August 31, 2022, PAGA Plaintiffs
21 Jennifer Bursack, Michelle Manesse, Curtis Allen, Joshua Pavelko, Natasha Gilman, and Robert
22 Rodriguez provided the LWDA with notice of their intention to file these claims, and 65 calendar days
23 have passed without notice from the LWDA. These plaintiffs have satisfied the administrative
24 prerequisites to commence this civil action in compliance with Labor Code § 2699.3(a).

25 179. Pursuant to Labor Code § 2699.3(a)(1) and (2), on December 22, 2022, PAGA
26 Plaintiffs Constance Gorman, Kenneth Chung, Heather Randrup, Jung Seo, Jennifer Venegas, Melinda
27 Guerrero, Lisa Flower, Edward Liu, Marvin Menefee, Jason Shumski and Jennifer Talley provided
28 the LWDA with notice of their intention to file these claims, and 65 calendar days have passed without

1 notice from the LWDA. These plaintiffs have satisfied the administrative prerequisites to commence
2 this civil action in compliance with Labor Code § 2699.3(a).

3 180. Pursuant to Labor Code § 2699.3(a)(1) and (2), on December 30, 2022, PAGA Plaintiff
4 Frank Vasquez provided the LWDA with notice of his intention to file these claims, and 65 calendar
5 days have passed without notice from the LWDA. Vasquez has satisfied the administrative
6 prerequisites to commence this civil action in compliance with Labor Code § 2699.3(a).

7 181. Pursuant to Labor Code § 2699.3(a)(1) and (2), on January 31, 2023, PAGA Plaintiffs
8 Laura Bright, Ryan Leonardo, and Karyn Stevens provided the Labor and Workforce Development
9 Agency (“LWDA”) with notice of their intention to file a claim under PAGA, and 65 calendar days
10 have passed without notice from the LWDA. These plaintiffs have satisfied the administrative
11 prerequisites to commence this civil action in compliance with Labor Code § 2699.3(a).

12 182. PAGA Plaintiff Luis Rossi gave notice to the LWDA of his intention to file these
13 claims on or about June 1, 2022, and 65 calendar days have passed without notice from the LWDA.
14 Rossi has satisfied the administrative prerequisites to commence this civil action in compliance with
15 Labor Code § 2699.3(a).

16 183. PAGA Plaintiffs Jennifer Bursack, Michelle Manesse, Natasha Gilman, Curtis Allen
17 a/k/a Allen Curtis, Joshua Pavelko, Constance Gorman, Melinda Guerrero, Kenneth Chung, Lisa
18 Flower, Edward Liu, Marvin Menefee, Heather Randrup, Jung Seo, Jason Shumski, Jennifer Talley,
19 Jennifer Venegas, Frank Vasquez, Robert Rodriguez, Laura Bright, Ryan Leonardo, Karyn Stevens,
20 Luis Rossi, Mena Mansour, Christine Gomez Zagorski, Peter Chavez, Mercurious Hanna a/k/a
21 Mercurios Hanna provided the LWDA with an amended notice of their intention to amend their PAGA
22 claims to include additional allegations on or about July 11, 2024, and 65 calendar days have passed
23 without notice from the LWDA. These PAGA Plaintiffs named in this paragraph have satisfied the
24 administrative prerequisites to commence this civil action in compliance with Labor Code § 2699.3(a).

25 184. Therefore, all PAGA Plaintiffs have satisfied all necessary administrative prerequisites
26 to bring this action.

27 185. PAGA Plaintiffs seek the aforementioned penalties on behalf of the State and
28 Aggrieved Employees as set forth in Labor Code § 2699(g)(1).

186. Defendants are liable to PAGA Plaintiffs, Aggrieved Employees, and the State of California for the civil penalties set forth in this Fourth Amended Complaint, with interest thereon. PAGA Plaintiffs are also entitled to an award of attorneys' fees and costs as set forth below.

187. Based on the foregoing, PAGA Plaintiffs request the relief set forth below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief as follows:

1. Appropriate equitable relief to remedy Defendants' violations of California law including, but not necessarily limited to, an order enjoining Defendants from continuing their unlawful practices;

2. Damages and restitution according to proof at trial for all unpaid wages and other injuries, as provided by the California Labor Code, California Business and Professions Code, and other laws of the State of California;

3. All appropriate California statutory penalties;

4. Declaratory judgment that Defendants have violated the California Labor Code and California Business and Professions Code §§ 17200 *et seq.*, as a result of the aforementioned violations of the California Labor Code and of California public policy protecting wages;

5. An award of compensatory damages, including lost wages, liquidated damages, and other employee benefits, restitution, recovery of all money, actual damages, and all other sums of money owed to Plaintiff Rossi, together with interest on these amounts, according to proof;

6. Declaratory relief, and other and/or further injunctive relief, as provided by law;

7. An award of civil penalties to the full extent allowed by PAGA to the State of California, PAGA Plaintiffs, and Aggrieved Employees;

8. Any other damages and/or restitution authorized by law;

9. Pre-judgment and post-judgment interest, as provided by law;

10. Such other relief as the Court may deem just and proper; and

11. Attorneys' fees and costs of suit, including expert fees and fees pursuant to California Labor Code §§ 218.5, 226, 1194, Code of Civil Procedure § 1021.5, Labor Code § 2699(g)(1), and other applicable California law.

1 Dated: September 24, 2024

Respectfully Submitted,

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3 

4 Carolyn H. Cottrell

Ori Edelstein

SCHNEIDER WALLACE

COTTRELL KONECKY LLP

6 *Attorneys for Plaintiffs on behalf of the State of*
7 *California and Aggrieved Employees*

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1 **DEMAND FOR JURY TRIAL**

2 Plaintiffs hereby demand a trial by jury on all claims and issues for which Plaintiffs are
3 entitled to a jury.

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5 Dated: September 24, 2024

Respectfully Submitted,

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7 _____
Carolyn H. Cottrell

8 Ori Edelstein

9 **SCHNEIDER WALLACE**

COTTRELL KONECKY LLP

10 *Attorneys for Plaintiffs on behalf of the State of*
11 *California and Aggrieved Employees*

1 **PROOF OF SERVICE**

2 I, Rocio D. Espinoza, declare the following:

3 I am over the age of eighteen years and not a party to the within entitled action. I am employed
4 at Schneider Wallace Cottrell Konecky LLP located at 2000 Powell Street, Suite 1400, Emeryville,
5 California 94608.

6 On September 24, 2024, I served the following document(s) described as:

7 • **FOURTH AMENDED COMPLAINT; AND PROOF OF ELECTRONIC SERVICE**

8 on the following interested party(s):

9 Jacqueline Beaumont

10 Julie Trotter

11 Michael Y. Lu

12 Denise Reigel, Assistant

13 Carrie Daly, Assistant

14 CALL & JENSEN

15 CA SBN 209675

16 610 Newport Center Drive, Suite 700

17 Newport Beach CA 92660

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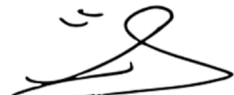
mlu@calljensen.com

cdaly@calljensen.com

dreigel@calljensen.com

18 [✓] **BY ELECTRONIC SERVICE** by electronically mailing a true and correct copy in PDF
19 format through SWCKW's electronic mail system to the email address(s) set forth above.
20

21 I declare under penalty of perjury under the laws of the State of California that the foregoing is
22 true and correct. Executed on September 24, 2024, at Petaluma, California.

23 
24 _____
25 Rocio D. Espinoza
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27
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