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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

WENDY SARINANA and SHELBI
MCFARLAND, as individuals and on behalf of
all similarly situated employees,

Plaintiffs,

v.

SHELFBOT CO., and DOES 1-50, inclusive,

Defendants.

Case No.: 30-2021-01207546-CU-OE-CXC

CLASS ACTION

FIRST AMENDED COMPLAINT FOR DAMAGES

1. Failure to Pay All Wages, Including Overtime Wages and Minimum Wage;
2. Failure to Provide Meal Periods;
3. Failure to Provide Rest Periods;
4. Failure to Provide Accurate Itemized Wage Statements;
5. Failure to Pay Wages Upon Ending Employment;
6. Failure to Indemnify for Expenditures;
7. Unfair Competition (Business and Professions Code § 17200 et seq.); and
8. Violation of Labor Code §§2698-2699 (Private Attorneys General Act ("PAGA")).

DEMAND FOR JURY TRIAL

1 Plaintiff WENDY SARINANA and SHELBI MCFARLAND (hereinafter “Plaintiffs”),
2 as individuals and on behalf of all others similarly situated, complains, and alleges as follows:

3 **INTRODUCTION**

4 1. This is a class action brought on behalf of Plaintiffs and the class of similarly
5 situated former and current employees they seek to represent (“Plaintiff Class” or “Class
6 Members.”) Class Members consist of all non-exempt, hourly-paid employees currently and/or
7 formerly employed by Defendant SHELFBOT CO., (hereinafter “Defendant”) during the Class
8 Period. The term “Class Period” is defined as four (4) years prior to the filing of the complaint
9 through the date of judgment. Plaintiffs reserve the right to amend this complaint to reflect a
10 different “Class Period” as further discovery is conducted.

11 2. Plaintiffs, individually, and on behalf of Class Members seek to represent, seek
12 relief against Defendant for: (1) the failure to pay all wages due in violation in accordance with
13 Labor Code sections 510 and 1194, as well as California Code of Regulations, Title 8, section
14 11160, subdivision (3), including both regular and overtime wages; (2) the failure to provide meal
15 periods or compensation in lieu thereof pursuant to Labor Code sections 226.7, 512 as well as 8
16 CCR section 11160, subd. (10); (3) the failure to provide legally compliant rest periods pursuant
17 to Labor Code sections 226.7, 512 as well as 8 CCR section 11160, subd. (11); (4) the failure to
18 pay wages of terminated or resigned employees pursuant to Labor Code sections 201, 202, 203;
19 (5) the failure to provide accurate itemized wage statements upon payment of wages pursuant to
20 Labor Code sections 226, subdivision (a), 1174, 1175; and (6) failure to indemnify/reimburse
21 employer-related business expenditures pursuant to Labor Code section 2802.

22 3. Plaintiffs further seeks civil penalties in connection with Defendant’s Labor Code
23 violations based on Labor Code section 2698 et seq., the Private Attorneys General Act of 2004
24 (“PAGA”).

25 4. Plaintiffs further seek equitable remedies in the form of declaratory relief and
26 injunctive relief, and relief under the Business and Professions Code sections 17200 et seq. for
27 unfair business practices.

28 / / /

5. At all times relevant herein, Defendant carried out a joint scheme, business plan, or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants. Defendant has consistently maintained and enforced against Class Members the following unlawful practices and policies:

JURISDICTION AND VENUE

6. Venue is proper in this judicial district and the County of Orange because the Defendant maintains a location in this county, transact business in this county, the obligations and liability arise in this county, making the subject of this action in the County of Orange, State of California.

1 8. The California Superior Court has jurisdiction in the matter because the individual
2 claim is under the seventy-five thousand dollars (\$75,000.00) individual claim threshold and five
3 million dollar (\$5,000,000) aggregated jurisdictional threshold for federal court, and, upon
4 information and belief, Plaintiffs and Defendant are residents of and/or domiciled in the State of
5 California. Further, there is no federal question at issue as the issues herein are based solely on
6 California Statutes and law including the California Labor Code, Industrial Welfare Commission
7 Wage Orders, Code of Civil Procedure, Rules of Court, and Business and Professions Code.

8 **ADMINISTRATIVE PREREQUISITES**

9 9. Under Labor Code section 2699.3, subdivision (a), a plaintiff may bring a cause
10 of action under PAGA only after giving the Labor Workforce Development Agency (“LWDA”)
11 and the employer notice of the Labor Code sections alleged to have been violated, and after
12 receiving notice from the LWDA of its intention not to investigate, or after 65 days have passed
13 without notice from the LWDA.

14 10. By this complaint, Plaintiffs bring this case as a representative action seeking
15 penalties for the State of California in a representative capacity, as provided by PAGA, Labor
16 Code section 2698 et seq., to the extent permitted by law, as aggrieved employees who were
17 employed by Defendant and did not receive all wages due, was not paid overtime, was not able
18 to take lawful meal and rest breaks, did not receive all wages due at the termination of
19 employment, did not receive accurate itemized wage statements, and were not reimbursed for all
20 necessary business expenditures..

21 11. On June 8, 2021, prior to the filing of this complaint, Plaintiffs gave written notice
22 of the specified provisions alleged to have been violated, including the facts and theories to
23 support the alleged violations, as required by Labor Code section 2699.3. This written notice was
24 given via certified mail to Defendant(s), and to the LWDA by electronically filing the notice via
25 the Department of Industrial Relations website. Plaintiffs were given a LWDA case number of
26 LWDA-CM-834414-21. A true and correct copy of Plaintiffs’ notice to the LWDA and
27 Defendant(s), dated June 8, 2021, is attached hereto as Exhibit A.

12. The 65-day period for the LWDA to provide notice of its intent to investigate Plaintiffs' claims have been exhausted and the LWDA has failed to provide notice. As such Plaintiffs amend their existing complaint pursuant to Labor Code section 2699.3, subdivision (a)(2)(C): "Notwithstanding any other provision of law, a plaintiff may as a matter of right amend an existing complaint to add a cause of action arising under this part at any time within 60 days of the time periods specified in this part."

THE PARTIES

A. The Plaintiffs

13. Plaintiff, Ms. Sarinana, was employed by Defendant from in or around July 2020 through on or in May 26, 2021. Throughout her employment, Defendant controlled Plaintiff's schedule and directed her duties each day, preventing Plaintiff from exercising any reasonable degree of discretion or independent judgment. Plaintiff is accordingly non-exempt under California labor laws and thereby entitled to civil penalties and all other rights accruing from the alleged violations described herein.

14. Plaintiff, Ms. McFarland, is employed by Defendant beginning in around February 2020 through the present. Throughout her employment, Defendant controlled Plaintiff's schedule and directed her duties each day, preventing Plaintiff from exercising any reasonable degree of discretion or independent judgment. Plaintiff is accordingly non-exempt under California labor laws and thereby entitled to civil penalties and all other rights accruing from the alleged violations described herein.

15. Plaintiffs, at all relevant times herein, were employees of the Defendant and entitled to compensation for: (1) all hours worked, (2) overtime compensation, (3) non-compliant rest and meal periods; (4) unreimbursed business expenses, and (5) penalties from Defendants. At all relevant times herein, Plaintiffs were employed by Defendants during the defined Class Period in a non-exempt hourly capacity. Each of the putative Class Members is an identifiable, current, and/or former similarly situated person who was employed in non-exempt hourly position in California for Defendants during the defined Class Period.

1 **B. The Defendant**

2 16. Plaintiffs are informed and believe and based thereon allege that Defendant
3 Shelfbot Co. is a Delaware corporation. Defendant Shelfbot Co. is duly licensed and in the
4 business of wholesale perishable goods. On information and belief, Defendant Shelfbot Co. was
5 and/or is the employer of Plaintiffs and putative Plaintiff Class during the Class Period. Plaintiffs
6 also allege that Shelfbot Co. is conducting business in good standing in California.

7 17. Plaintiffs are ignorant of the true names, capacities, relationships and extent of
8 participation in the conduct herein alleged, of the Defendants sued herein as DOES 1 through 50,
9 inclusive, but on information and belief allege that said Defendants are legally responsible for the
10 payment of minimum wage and/or overtime compensation, rest period compensation and/or
11 Labor Code section 203 penalties to the putative Plaintiff Class members by virtue of their
12 unlawful practices, and therefore sues these Defendants by such fictitious names. Plaintiffs will
13 amend this complaint to allege the true names and capacities of the DOE Defendants when
14 ascertained.

15 18. Plaintiffs are informed and believe, and based thereon allege, that each Defendant
16 acted in all respects pertinent to this action as the agent of the other Defendant, carried out a joint
17 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant
18 are legally attributable to the other Defendant. Furthermore, Defendant in all respects acted as
19 the employer and/or joint employer of Plaintiffs and Plaintiff Class.

20 19. Plaintiffs are informed and believe, and based thereon allege, that each Defendant
21 acted in all respects as the agent, servant, partner, joint venture, alter-ego, employee, proxy,
22 managing agent, and/or principal of the Defendant, and in performing the actions mentioned
23 below was acting, at least in part, within the course and scope of that authority as such agent,
24 proxy, servant, partner, joint venture, employee, alter-ego, managing agent, and/or principal with
25 permission and consent of the Defendant. Plaintiffs also allege the acts of each Defendant are
26 legally attributable to the other Defendants.

27 20. Plaintiffs are informed and believe, and based thereon allege, that each of the
28 Defendants sued herein was, at all times relevant hereto, the employer, owner, shareholder,

principal, joint venture, proxy, agent, employee, supervisor, representative, manager, managing agent, joint employer and/or alter-ego of the remaining Defendants, and was acting, at least in part, within the course and scope of such employment and agency, with the express and implied permission, consent, and knowledge, approval and/or ratification of the other Defendants.

21. The above Defendants, managing agents, and supervisors aided, abetted, condoned, permitted, approved, authorized and/or ratified the unlawful acts described herein.

GENERAL ALLEGATIONS

22. Labor Code section 1194 provides that notwithstanding any agreement to work for a lesser wage, an employee receiving less than the legal overtime compensation is entitled to recover in a civil action the unpaid balance of their overtime compensation, including interest thereon, reasonable attorneys' fees and costs of suit.

23. Further, Business and Professions Code section 17203 provides that any person who engages in unfair competition may be enjoined in any court of competent jurisdiction. Business and Professions Code section 17204 provides that any person who has suffered actual injury and has lost money or property as a result of the unfair competition may bring an action in a court of competent jurisdiction.

24. During all, or a portion of the Class Period, Plaintiffs and each member of the putative Plaintiff Class was employed by Defendant in the State of California.

25. Plaintiffs and Class Members were non-exempt employees covered under one or more Industrial Welfare Commission ("IWC") Wage Order(s), and Labor Code section 510, and/or other applicable Wage Orders, regulations and statutes, and each Class Member was not subject to an exemption for executive, administrative or professional employees, which imposed obligations on the part of Defendant to pay Plaintiffs and Class Members lawful overtime compensation.

26. Plaintiffs and Plaintiff Class were covered by one or more IWC Wage Order(s), and Labor Code sections 512, 226.7 and other applicable Wage Orders, regulations and statutes which imposed an obligation on the part of Defendant to pay Plaintiffs and Plaintiff Class meal period compensation.

1 27. Plaintiffs and Plaintiff Class were covered by one or more IWC Wage Order(s),
2 and Labor Code section 226.7 and other applicable Wage Orders, regulations and statutes which
3 imposed an obligation on the part of Defendant to pay Plaintiffs and Plaintiff Class rest period
4 compensation.

5 28. During the Class Period, Defendant was obligated to pay Plaintiffs and Class
6 Members for all hours worked. However, Defendant had a policy and practice of not paying
7 Plaintiff and Class Members for all hours worked by requiring its employees to work off-the-
8 clock. This includes: (1) uncompensated time driving or traveling, and (2) uncompensated time
9 spent being subjected to control of Defendant prior to their scheduled shifts and time worked
10 beyond regularly scheduled shift hours. Further, Plaintiffs and Class Members were required to
11 report to different work locations on a daily basis using their own vehicles. Once at the location,
12 Plaintiffs and Class Members were required to clock in by using an application on their personal
13 cell phones. Likewise, Plaintiffs and Class Members were required to clock out prior to leaving
14 a location and then return home.

15 29. Similarly, during the Class Period, Defendant was obligated to pay Plaintiffs and
16 Class Members overtime compensation for all hours worked in excess of eight (8) hours of work
17 in one (1) day or forty (40) hours in one (1) week and double-time compensation for hours worked
18 in excess of twelve (12) hours in one (1) day. However, Defendant did not pay Plaintiffs and
19 Class Members proper overtime and/or double-time rates for overtime hours spent traveling and
20 performing work off-the-clock as required by law.

21 30. During the Class Period, Defendant was obligated to provide Plaintiffs and
22 putative Class Members with a thirty (30) minute meal period for each and every work shift
23 exceeding five (5) hours, commencing no later than the end of the fifth (5th) hour of the shift.
24 Defendant prevented Plaintiff and Class Members from taking timely meal periods throughout
25 their shifts. This was due in part to Defendant's policy and practice of requiring employees to
26 prioritize completion of work tasks ahead of timely meal period compliance. Defendant failed to
27 provide and or schedule a timely duty-free meal period on or before the fifth (5th) hour of work.
28 Further, Defendant failed to advise Plaintiffs and Class Members their right to take timely

uninterrupted meal periods. Accordingly, Plaintiffs and Class Members did not receive compliant duty-free meal periods.

31. During the Class Period, Defendant was obligated to provide Plaintiffs and Class Members with a ten (10) minute rest break for every four (4) hours, or major fraction thereof, worked each day. Defendant prevented Plaintiffs and Class Members from taking rest breaks throughout their shifts. This was due in part to Defendant's policy and practice of scheduling employees to work through their rest periods, as well as Defendant's policy and practice of putting pressure on employees to complete a work during their shifts.

32. In order to facilitate their violations of wage and hour laws pertaining to payment of wages and providing meal and rest periods, Defendant failed to comply statutes and regulations requiring Defendant to accurately document the beginning and end times for each work shift and the start/end times for each meal period, pursuant to Labor Code section 1174, as well as 8 CCR § 11160 (6).

33. Furthermore, Defendant failed and/or refused to pay Plaintiffs and Class Members one (1) hour's pay at the employees' regular rate of pay as premium compensation for Defendant's failure to provide (1) timely meal periods and lawful ten (10) minute rest periods within the statutory time frames.

34. Plaintiff Ms. Sarinana and Class Members who ended their employment with Defendant during the Class Period but were not paid the above due compensation for all hours worked timely upon the termination of their employment as required by Labor Code sections 201, 202, 203 are entitled to penalties as provided by Labor Code section 203. As a result of Defendant's failure to pay Plaintiffs and Class Members all wages due during the Class Period, Defendant failed to provide Plaintiffs and Class Members with accurate itemized wage statements, since said statements did not set forth all regular and overtime hours worked, the compensation owed for said hours, nor did the statements set forth the premiums owed for non-compliant meal and rest periods.

35. During the Class Period, Defendant were obligated to keep and maintain accurate payroll records for Plaintiffs and all Class Members. Defendant's failure to keep and maintain

1 said records as described above, constitutes violations of Labor Code section 226.7, thereby
2 incurring statutory penalties.

3 36. During the Class Period, Defendant was obligated to reimburse Plaintiffs and
4 Class Members for all reasonable expenditures incurred by Plaintiffs and Class Members for the
5 purpose of fulfilling their job duties. Defendant failed to reimburse Plaintiffs and Class Members
6 for work-related cell phone charges when Plaintiffs and Class Members were required by
7 Defendant to clock in and out, see their daily assignments, and communicate with Defendant with
8 personal cell phones in violation of Labor Code section 2802.

9 **CLASS ALLEGATIONS**

10 37. Plaintiffs bring this action on behalf of themselves and all other similarly situated
11 persons ("Plaintiff Class"), as a class action pursuant to Code of Civil Procedure section 382. The
12 Plaintiff Class is composed of and defined as follows: All persons who are employed or have
13 been employed by Defendant, as non-exempt hourly employee, in the State of California, within
14 the four (4) years of the filing of this complaint through the date of judgment.

15 38. Plaintiffs further proposes the following subclasses:

- 16 a. All persons who are employed or have been employed by Defendant in the
17 State of California, and who, within the four (4) years of the filing of this
18 complaint to the present, have worked as non-exempt employees and were not
19 paid all wages owed, including but not limited to the legally requisite minimum
20 wage, wages at the regular time rate, overtime rate and/or double-time rate;
- 21 b. All persons who are employed or have been employed by Defendant in the
22 State of California, and who, within the four (4) years of the filing of this
23 complaint to the present, have worked as non-exempt employees and have not
24 been provided a rest period for every four (4) hours, or major fraction thereof,
25 worked per day, and were not provided compensation of one (1) hour's pay for
26 each day on which such rest period(s) was not provided;
- 27 c. All persons who are employed or have been employed by Defendant in the
28 State of California, and who, within the three (3) years of the filing of this

1 complaint to the present, have worked as non-exempt employees and have
2 been terminated or resigned, and have not been paid wages pursuant to Labor
3 Code section 203 and are owed restitution and waiting time penalties for
4 unpaid wages;

5 d. All persons who are employed or have been employed by Defendant in the
6 State of California, and who, within the one (1) year of the filing of this
7 complaint to the present have worked as non-exempt employees and were not
8 provided an accurate payroll record or wage statement as required under Labor
9 Code sections 226 and 1174;

10 e. All persons who are employed or have been employed by Defendant in the
11 State of California, and who, within the four (4) years of the filing of this
12 complaint to the present, have worked as non-exempt employees and for whom
13 Defendant failed to keep accurate payroll records;

14 f. All persons who are employed or have been employed by Defendant in the
15 State of California, and who, within the four (4) years of the filing of this
16 complaint to the present, have worked as non-exempt employees and were not
17 indemnified for business expenditures incurred in the scope of their
18 employment;

19 g. All persons who are employed or have been employed by Defendant in the
20 State of California, and who, within the four (4) years of the filing of this
21 complaint to the present, have worked as non-exempt employees and were
22 subjected to unlawful and unfair business practices within the meaning of
23 California's Unfair Competition Law and who suffered injury, including lost
24 money, as a result of Defendant's unlawful and unfair business practices; and

25 h. All persons who are employed or have been employed by Defendant in the
26 State of California, and who, within the four (4) years of the filing of this
27 complaint to the present, have worked as non-exempt employees and are
28 entitled to recover unpaid wages, overtime compensation, rest and meal period

1 compensation and penalties, waiting time penalties, and attorneys' fees and
2 costs from Defendant under Labor Code section 2698 et seq.

3 39. Plaintiffs reserve the right under Rule 1855, subdivision (b) of the California Rules
4 of Court, to amend or modify the Plaintiff Class description with greater specificity or further
5 division into subclasses or limitation to particular issues.

6 40. This action has been brought and may be maintained as a class action pursuant to
7 Code of Civil Procedure section 382 because there is a well-defined common interest of many
8 persons and it is impractical to bring them all before the court.

9 41. This Court should permit this action to be maintained as a class action pursuant to
10 Code of Civil Procedure section 382 because:

- 11 a. The questions of law and fact common to the Plaintiff Class predominate over
12 any question affecting only individual members;
- 13 b. A class action is superior to any other available method for the fair and efficient
14 adjudication of the claims of the members of the Plaintiff Class;
- 15 c. The Plaintiff Class is so numerous that it is impractical to bring all member of
16 the Plaintiff Class before the Court;
- 17 d. Plaintiffs and the other members of the Plaintiff Class will not be able to obtain
18 effective and economic legal redress unless the action is maintained as a class
19 action;
- 20 e. There is a community of interest in obtaining appropriate legal and equitable
21 relief for the common law and statutory violations and other improprieties, and
22 in obtaining adequate compensation for the damages and injuries which
23 Defendant's actions have inflicted upon the Plaintiff Class;
- 24 f. There is a community of interest in ensuring that the combined assets and
25 available insurance of the Defendant are sufficient to adequately compensate
26 members of the Plaintiff Class for the injuries sustained;
- 27 g. Without class certification, the prosecution of separate actions by individual
28 members of the Plaintiff Class would create a risk of:

- 1 i. Inconsistent or varying adjudications with respect to individual
2 members of the Plaintiff Class which would establish incompatible
3 standard of conduct for the Defendant; and/or
4 ii. Adjudications with respect to the individual members which would, as
5 a practical matter, be dispositive of the interests of other members not
6 parties to the adjudications, or would substantially impair or impede
7 their ability to protect their interests, including but not limited to the
8 potential for exhausting the funds available from those parties who is,
9 or may be, responsible Defendant(s); and
10 h. Defendant has acted or refused to act on grounds generally applicable to the
11 Class, thereby making final injunctive relief appropriate with respect to the
12 Class as a whole.

13 **FIRST CAUSE OF ACTION**

14 **Failure to Pay All Wages Including Minimum, Regular and Overtime Wages**
15 **(Plaintiffs and Plaintiff Class Members against all Defendants)**

16 42. Plaintiffs and Plaintiff Class reallege and incorporate by reference all preceding
17 paragraphs of this complaint as though fully set forth herein.

18 43. Labor Code section 204 establishes the fundamental right of all employees in the
19 State of California to be paid wages, including straight time and overtime, in a timely fashion for
20 their work.

21 44. Labor Code section 510, subdivision (a) provides that “[a]ny work in excess of
22 eight (8) hours in one (1) workday and any work in excess of forty (40) hours in any one (1)
23 workweek and the first eight (8) hours worked on the seventh (7th) day of work in any one (1)
24 workweek shall be compensated at the rate of no less than one and one-half (1 & ½) times the
25 regular rate of pay for an employee.”

26 45. Labor Code section 510, subdivision (a) further provides that “[a]ny work in
27 excess of twelve (12) hours in one (1) day shall be compensated at the rate of no less than twice
28 the regular rate of pay for an employee.”

1 46. Labor Code section 1194 and applicable IWC Wage Orders make it unlawful for
2 employers not to make required minimum wage payments, including minimum prevailing wage
3 governed by Labor Code sections 1720 et seq, as well as overtime and double time payments
4 identified in the preceding paragraphs, and that employees not paid such payments can recover
5 any monies owed through a civil action.

6 47. Defendant has willfully violated the Labor Code by failing to pay Plaintiffs and
7 Plaintiff Class all wages. Plaintiffs and Plaintiff Class were denied wages as a result of
8 Defendant's policy and practice of failing to compensate Plaintiffs and Plaintiff Class for all
9 regular and overtime hours worked. Further, Defendant has regularly violated the Labor Code
10 with respect to meeting the requirements of paying wages earned, including regular time,
11 overtime, double-time, when calculating the employees' regular rate of pay, as herein alleged.
12 Defendant have intentionally excluded remuneration that must be included in all employees'
13 minimum, regular and overtime rates of pay in order to avoid payment of wages and other benefits
14 in violation of the Labor Code and the applicable IWC Wage Order(s). Defendant is thereby able
15 to reduce its overhead and operating expenses and gain an unfair advantage over competing
16 companies who comply with state law.

17 48. Additionally, Plaintiffs and Plaintiff Class members were required to report to
18 different work locations, some of which were 40 to 50 miles away from their residences, on a
19 daily basis using their own vehicles. Defendant obligated Plaintiffs and Plaintiff Class members
20 to drive at least one-hour to each location. Plaintiffs and Plaintiff Class were required to clock in
21 when they arrived at the location and then clock out at the end of their shift before they returned
22 home. As such, Plaintiffs and Plaintiff Class seek compensation in an amount according to proof.
23 Pursuant to Labor Code section 1194, the Plaintiff Class members seek the payment of all drive
24 time compensation which they earned and accrued four (4) years prior to filing this Complaint,
25 according to proof. Defendants violated Section 5 of Wage Order 4.

26 49. Additionally, Plaintiffs and Plaintiff Class members are entitled to attorneys' fees,
27 costs, pursuant to Labor Code section 1194 and prejudgment interest.
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1 56. Plaintiffs, themselves and on behalf of employees similarly situated, request
2 recovery of meal period compensation pursuant to Labor Code section 226.7, which they are
3 owed beginning four (4) years prior to filing this complaint as well as the assessment of any
4 statutory penalties against Defendants, and each of them, in a sum as provided by the Labor Code
5 and/or any other statute.

6 **THIRD CAUSE OF ACTION**

7 **Failure to Provide Rest Periods or Compensation in Lieu Thereof**

8 **(Plaintiffs and Plaintiff Class against all Defendants)**

9 57. Plaintiffs and Plaintiff Class reallege and incorporate by reference all preceding
10 paragraphs of this complaint as though fully set forth herein.

11 58. Labor Code section 226.7 and California Code of Regulations, Title 8, section
12 11160 (11) provides that employers authorize and permit all employees to take rest periods at the
13 rate of ten (10) minutes rest time per four (4) work hours.

14 59. Labor Code section 226.7, subdivision (b) provides that if an employer fails to
15 provide an employee rest periods in accordance with this section, the employer shall pay the
16 employee one (1) hour of pay at the employee's regular rate of compensation for each workday
17 that the rest period is not provided.

18 60. Defendant did not authorize Plaintiffs and Plaintiff Class to take their ten-minute
19 rest breaks during each four (4) hours of work. Furthermore, Plaintiffs and Plaintiff Class did not
20 receive their rest periods within the required statutory time frame. Further, Plaintiffs and Plaintiff
21 Class were required to remain on premises, were under pressure to finish their assignments, could
22 not leave the store and often their rest breaks were interrupted. By and through their actions,
23 Defendant intentionally and improperly denied rest periods to the Plaintiffs and Plaintiff Class in
24 violation of Labor Code sections 226.7 and 512.

25 61. At all times relevant hereto, Plaintiffs and Plaintiff Class have worked more than
26 four (4) hours in a workday.

27 62. By virtue of the Defendant's unlawful failure to provide rest periods to Plaintiffs
28 and Plaintiff Class as a result of preventing rest breaks, Plaintiffs and Plaintiff Class have suffered,

1 and will continue to suffer, damages, in amounts which are presently unknown, but which exceed
2 the jurisdictional limits of this Court and which will be ascertained according to proof at trial.

3 63. Plaintiffs, themselves and on behalf of employees similarly situated, request
4 recovery of rest period compensation pursuant to Labor Code section 226.7, which they are owed
5 beginning four (4) years prior to filing this complaint as well as the assessment of any statutory
6 penalties against Defendants, and each of them, in a sum as provided by the Labor Code and/or
7 any other statute.

8 **FOURTH CAUSE OF ACTION**

9 **Failure to Provide Accurate Itemized Wage Statements**

10 **(Plaintiffs and Plaintiff Class against all Defendants)**

11 64. Plaintiffs and Plaintiff Class reallege and incorporate by reference all preceding
12 paragraphs of this complaint as though fully set forth herein.

13 65. Labor Code section 1174, subdivision (d) requires an employer to keep at a central
14 location in California or at the plant or establishment at which the employees are employed,
15 payroll records showing the hours worked daily, and the wages paid to, each employee. Plaintiff
16 is informed and believes that Defendants willfully failed to make or keep accurate records for
17 Plaintiff and Plaintiff Class.

18 66. Labor Code section 226, subdivision (a) states that, “every employer shall,
19 semimonthly or at the time of each payment of wages, furnish each of his or her employees, either
20 as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately
21 when wages are paid by personal check or cash, an accurate itemized statement in writing
22 showing: (1) gross wages earned; (2) total hours worked by the employee; (3) number of piece-
23 rate units earned and any applicable piece rate if employee is paid on a piece rate; (4) all
24 deductions; (5) net wages; (6) the inclusive dates of the period for which the employee is paid;
25 (7) the name of the employee and only the last four digits of his or her social security number or
26 an employee identification number other than a social security number; (8) the name and address
27 of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay
28 period and corresponding number of hours worked at each hourly rate by the employee.”

1 67. Industrial Welfare Commission (“IWC”) Wage Order Number 4-2002, paragraph
2 6(a) requires that every employer shall keep accurate information with respect to each employee,
3 including time records showing when each employee begins and ends each work period, the total
4 daily hours worked by each employee and the total hours worked in each payroll period, and
5 applicable rates of pay. Plaintiffs are informed and believe that Defendant willfully and
6 intentionally failed to make and/or keep records which accurately reflect the hours worked by
7 Plaintiffs and Plaintiff Class. Specifically, Plaintiffs believes that Defendant’s records do not
8 accurately reflect the correct amount of gross wages earned, net wages earned, or the applicable
9 hourly rates in effect during the pay period, and the corresponding number of hours worked at
10 each hourly rate.

11 68. Plaintiffs are informed and believe that Defendant’s failure to keep accurate
12 payroll records, as described above, violated Labor Code, sections 226 and 1174, subdivision (d)
13 and the applicable wage order. Plaintiffs and the Plaintiff Class are entitled to penalties of one
14 hundred dollars (\$100.00) for the initial violation and two hundred dollars (\$200.00) for each
15 subsequent violation for every pay period during which these records and information was not
16 kept by Defendant.

17 69. An employee suffering injury as a result of a knowing and intentional failure by
18 an employer to comply with Labor Code sections 226 and 1174, subdivision (a) is entitled to
19 recover the greater of all actual damages or fifty dollars (\$50.00) for the initial pay period in
20 which a violation occurs and one hundred dollars (\$100.00) per employee for each violation in a
21 subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000.00),
22 and is entitled to an award of costs and reasonable attorney’s fees.

23 70. Plaintiffs are informed and believes that Defendant’s failure to keep and maintain
24 accurate records and information, as described above, were willful, and Plaintiffs and Plaintiff
25 Class are entitled to a statutory penalty of five hundred dollars (\$500.00) for Plaintiff and each
26 member of Plaintiff Class pursuant to Labor Code section 1174.5.

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1 **FIFTH CAUSE OF ACTION**

2 **Failure to Pay Wages of Terminated or Resigned Employees**

3 **(Plaintiffs and Plaintiff Class against all Defendants)**

4 71. Plaintiffs and Plaintiff Class reallege and incorporate by reference all preceding
5 paragraphs of this complaint as though fully set forth herein.

6 72. Plaintiff Ms. Sarinana and certain members of the Plaintiff Class who ended their
7 employment with Defendant during the Class Period, were entitled to be promptly paid lawful
8 minimum (prevailing) wages, wages for all hours worked, overtime compensation and other
9 premiums, as required by Labor Code sections 201, 202, and 203. Defendant refused and/or
10 failed to promptly compensate Plaintiff Ms. Sarinana and Plaintiff Class wages owed as a result
11 of their failure to provide meal and rest periods as well as pay minimum (prevailing) wages, off-
12 the-clock and/or overtime compensation. Pursuant to Labor Code section 203, such Plaintiffs and
13 Plaintiff Class seek the payment of penalties pursuant to Labor Code section 203, according to
14 proof.

15 73. Accordingly, Plaintiffs and Plaintiff Class are entitled to attorney's fees and costs,
16 pursuant to Labor Code section 1194 for the underlying claims related to this claim, including but
17 not limited to the recovery of unpaid overtime.

18 **SIXTH CAUSE OF ACTION**

19 **Failure to Indemnify for Expenditures**

20 **(Plaintiffs and Plaintiff Class against all Defendants)**

21 74. Plaintiffs and Plaintiff Class reallege and incorporate by reference all preceding
22 paragraphs of this complaint as though fully set forth herein.

23 75. Labor Code section 2802 states, "An employer shall indemnify his or her
24 employee for all necessary expenditures or losses incurred by the employee in direct consequence
25 of the discharge of his or her duties" (Lab. Code, § 2802.)

26 76. As detailed above, Plaintiffs and the Plaintiff Class were not reimbursed by
27 Defendant for necessary expenditures as a direct consequence of the discharge of their duties.
28 Plaintiffs and Plaintiff Class were required to use their cell phone at all times while working.

77. Defendant knowingly, willingly, and intentionally attempted to offset the cost of doing business on the Plaintiffs and Plaintiff Class.

78. Defendant has and or had a corporate practice and policy of requiring Plaintiffs and Plaintiff Class to shoulder the burden of Defendant's cost of doing business by failing to reimburse Plaintiffs and Plaintiff Class for necessary expenditures.

79. Accordingly, Plaintiffs and Plaintiff Class are entitled to an award of “necessary expenditures or losses” in accordance with Labor Code section 2802, which shall also include all reasonable costs, including, but not limited to, attorneys’ fees and interest.

SEVENTH CAUSE OF ACTION

Unfair Competition Law

(Plaintiffs and Plaintiff Class against all Defendants)

80. Plaintiffs and Plaintiff Class reallege and incorporate by reference all preceding paragraphs of this complaint as though fully set forth herein.

81. Business and Professions Code section 17200 et. seq. (also referred to herein as the “Unfair Business Practices Act” or “Unfair Competition Law”) prohibits unfair competition in the form of any unlawful, unfair or fraudulent business act or practice.

82. Business and Professions Code section 17204 allows “any person who has suffered injury in fact and has lost money or property as a result of such unfair competition” to prosecute a civil action for violation of the Unfair Competition Law (“UCL”). (Bus. & Prof. Code, § 17204.)

83. Labor Code section 90.5, subdivision (a) states that 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.

84. Beginning at an exact date unknown to Plaintiffs, but at least four (4) years prior to the filing of this lawsuit, Defendant has committed acts of unfair competition as defined by the Unfair Business Practices Act, by engaging in the unlawful, unfair and fraudulent business

1 practices and acts described in this complaint, including, but not limited to, violations of Labor
2 Code sections 204, 226, 510, 1174, 1197, 1198, 226.7, 512 and 2802 as well as other statutes.

3 85. The violations of these laws and regulations, as well as of the fundamental
4 California public policies protecting workers, serve as unlawful predicate acts and practices for
5 purposes of Business and Professions Code section 17200 et. seq.

6 86. The acts and practices described above constitute unfair, unlawful and fraudulent
7 Business Practices, and unfair competition, within the meaning of Business and Professions Code
8 section 17200 et. seq. Among other things, the acts and practices have forced Plaintiffs and other
9 similarly situated employees to labor for many hours without receiving meal and rest periods and
10 overtime compensation, to which they are entitled by law, while enabling Defendant to gain an
11 unfair competitive advantage over law-abiding employers and competitors.

12 87. As a result of Defendant's acts, Plaintiffs and Plaintiff Class have suffered injury
13 in fact in being denied their statutorily entitled meal and rest periods and full compensation for
14 hours of labor. As a result of Defendant's unlawful acts of unfair competition, Plaintiffs and
15 Plaintiff Class have lost money and property in the form of a loss of wages in an amount to be
16 proven at trial.

17 88. As a direct and proximate result of the aforementioned acts and practices, Plaintiffs
18 and Plaintiff Class have suffered lost wages in an amount to be proven at trial.

19 89. Business and Professions Code section 17203 provides that a court may make such
20 orders or judgments as may be necessary to prevent the use or employment by any person of any
21 practice which constitutes unfair competition. Injunctive relief is necessary and appropriate to
22 prevent Defendant from repeating their unlawful, unfair and fraudulent business acts and business
23 practices alleged above.

24 90. Business and Professions Code section 17203 provides that the Court may restore
25 to any person in interest any money or property that may have been acquired by means of such
26 unfair competition. Plaintiffs and Plaintiff Class are entitled to restitution pursuant to Business
27 and Professions Code section 17203 for all wages and payments unlawfully withheld from
28

employees, including the fair value of the rest periods taken away from them, during the four-year period prior to the filing of this Complaint.

91. Business and Professions Code section 17202 provides, “Notwithstanding section 3369 of the Civil Code, specific or preventative relief may be granted to enforce a penalty, forfeiture, or penal law in a case of unfair competition.” (Bus. & Prof. Code, § 17202.) Plaintiffs and Plaintiff Class are entitled to enforce all applicable penalty provisions of the Labor Code pursuant to Business and Professions Code section 17202.

92. Plaintiffs’ success in this action will enforce important rights affecting public interest, and in that regard, Plaintiffs sue on behalf of the general public, as well as themselves and other similarly situated employees. Plaintiffs and Plaintiff Class seek and are entitled to restitution, civil penalties, declaratory and injunctive relief, and all other equitable remedies owing them.

93. Plaintiffs herein take upon themselves enforcement of these laws and lawful claims. There is a financial burden involved in pursuing this action, the action is seeking to vindicate a public right, and it would be against the interests of justice to penalize Plaintiffs by forcing them to pay attorneys’ fees from the recovery in this action. Attorneys’ fees are appropriate pursuant to Code of Civil Procedure section 1021.5 and otherwise.

EIGHTH CAUSE OF ACTION

Violation of the California Labor Code Private Attorneys General Act (Plaintiffs and Plaintiff Class against all Defendants)

94. Plaintiffs and Plaintiff Class reallege and incorporate by reference all preceding paragraphs of this complaint as though fully set forth herein.

95. Labor Code sections 2698-2699.5 provide that a civil penalty, assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies or employees (“LWDA”) for certain violations of the Labor Code, may be recovered through a civil action by an aggrieved employee on behalf of herself and collectively on behalf of all other current or former employees.

1 96. California Labor Code section 2699, subdivision (a), also known as the Private
2 Attorneys' General Act of 2004 (or PAGA), states: "Notwithstanding any other provision of law,
3 any provision of this code that provides for a civil penalty to be assessed and collected by the
4 Labor and Workforce Development Agency or any of its departments, divisions, commissions,
5 boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered
6 through a civil action brought by an aggrieved employee on behalf of himself or herself and other
7 current or former employees pursuant to the procedures specified in section 2699.3."

8 97. Plaintiffs and Class Members are "aggrieved employees" as defined by Labor
9 Code section 2698 et seq. in that they are all current or former employees of Defendant, and one
10 or more of the alleged violations was committed against them.

11 98. Prior to filing this complaint on June 8, 2021, Plaintiffs gave written notice via the
12 LWDA's electronic filing platform and to Defendant via certified mail of the specific provisions
13 alleged to have been violated, including the facts and theories to support the alleged violations as
14 required by Labor Code section 2699.3, subdivision (a)(1). (See "Exhibit A"), which are hereby
15 incorporated by reference.

16 99. The LWDA has not provided Plaintiffs with any notice that it intends to investigate
17 the alleged violations. Plaintiffs do not anticipate an investigation into their claims by the LWDA.

18 100. Pursuant to Labor Code section 2699.3, notwithstanding any other provision of
19 law, Plaintiffs may, as a matter of right, amend the existing complaint to add a cause of action
20 under Labor Code section 2698.

21 101. Plaintiffs, individually and on behalf of all aggrieved Class Members, assert all of
22 the claims in this complaint against Defendant under the capacity of PAGA, and seeks all statutory
23 penalties available under the Labor Code.

24 102. Pursuant to Labor Code section 2698 et seq., Plaintiffs, individually and on behalf
25 of all aggrieved Class Members, request and are entitled to recover from Defendant: unpaid
26 wages, overtime compensation, rest and meal period compensation and penalties, reimbursement
27 of business expenditures, waiting period wages and penalties according to proof, penalties for
28 failure to keep accurate payroll records, interest, attorneys' fees and costs pursuant to Labor Code

sections 201, 202, 203, 226, 226.7, 510, 512, 1174, 1182.12, 1194, 1197, and 2802 as well as all statutory penalties, and attorneys' fees against Defendant. The aforementioned penalties include, but are not limited to, the following:

- a. Penalties under Labor Code section 2698 in the amount of \$100.00 for each aggrieved employee per pay period for each initial violation, and \$200.00 for each aggrieved employee per pay period for each subsequent violation;
- b. Penalties under Code of Regulations, Title 8, Section 11070 in the amount of \$50.00 for each aggrieved employee per pay period for the initial violation, and \$200.00 for each aggrieved employee per pay period for each subsequent violation;
- c. Penalties under Labor Code section 210 in addition to and entirely independent and apart from any other penalty provided in the Labor Code in the amount of \$100.00 for each aggrieved employee per pay period for each initial violation, and \$200.00 for each aggrieved employee per pay period for each subsequent violation, plus 25% of the wage wrongly withheld; and
- d. Any and all additional penalties and sums as provided by the Labor Code and/or other statutes

103. In addition thereto, pursuant to Labor Code section 2699, subdivision (i), Plaintiffs seek and is entitled to seventy-five percent (75%) of all penalties obtained under Labor Code section 2698 to be allocated to the Labor and Workforce Development Agency for enforcement of labor laws, including the administration of this part, and for education of employers and employees about their rights and responsibilities under this code, to be continuously appropriated to supplement and not supplant the funding to the agency for those purposes; and twenty-five percent (25%) to the aggrieved employees.

104. Further, Plaintiffs are entitled to seek and recover reasonable attorneys' fees and costs pursuant to Labor Code sections 201, 202, 203, 226.3, 226.7, 510, 511, 512, 1174, 1174.5, 1182.12, 1194, 1197, and 2802 and any other applicable statute.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiffs and Plaintiff Class pray for judgment as follows:

1. For nominal damages;
2. For compensatory damages;
3. For restitution of all monies due to Plaintiffs and Plaintiff Class, and disgorged profits from the unlawful business practices of Defendant;
4. For waiting time penalties pursuant to Labor Code section 203, on behalf of the terminated or resigned employees;
5. For penalties pursuant to Labor Code sections 225.5, 226, 226, subd. (e), 226.7, 512 and 1194, and as provided for by Labor Code section 2699;
6. For interest accrued to date;
7. Injunctive relief, enjoining Defendant from engaging in the unlawful and unfair business practices complained herein;
8. Declaratory relief, enjoining Defendant's practices as being unlawful and unfair business practices within the meaning of Bus. & Prof. Code sections 17200, et seq., and declaring Defendant has unlawfully treated Plaintiffs and Plaintiff Class, failed to pay all wages and overtime compensation in violation of California law, failed to pay wages to former employees, Plaintiffs and other certain members of Plaintiff Class, failed to provide Plaintiffs and Plaintiff Class accurate itemized wage statements upon payment of wages, and declaring the amounts of damages, penalties, equitable relief, costs, and attorneys' fees Plaintiffs and Plaintiff Class are entitled to;
9. For costs of suit and expenses incurred herein pursuant to Labor Code sections 226 and 1194;
10. For reasonable attorneys' fees pursuant to Labor Code sections 226 and 1194; and

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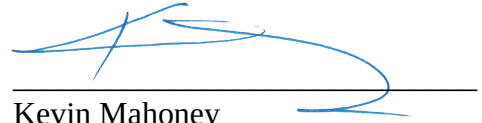
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1 11. For all such other and further relief as the Court may deem just and proper.
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3 Dated: September 2, 2021

MAHONEY LAW GROUP, APC

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Kevin Mahoney

John A. Young

Attorneys for Plaintiffs WENDY

SARINANA and SHELBI

MCFARLAND, as individuals and

on behalf of all similarly situated

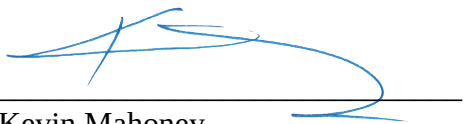
employees
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1 **DEMAND FOR JURY TRIAL**

2 Plaintiffs WENDY SARINANA and SHELBI MCFARLAND hereby demand a jury trial
3 on all issues to triable.

4
5
6 Dated: September 2, 2021

MAHONEY LAW GROUP, APC

7 
8

9 Kevin Mahoney
10 John A. Young
11 Attorneys for Plaintiffs WENDY
12 SARINANA and SHELBI
13 MCFARLAND, as individuals and
14 on behalf of all similarly situated
15 employees
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Kevin Mahoney
(562)590-5550 phone
(562)590-8400 facsimile
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VIA ELECTRONIC FILING

LABOR AND WORKFORCE DEVELOPMENT AGENCY

Attn: PAGA Administrator

<https://dir.tfaforms.net/128>

VIA CERTIFIED MAIL#7019 2280 0002 0214 3678

Return Receipt Requested

Shelfbot Co.

C/O Stefan Kalb

720 3rd Ave Ste 800

Seattle WA 98104

VIA CERTIFIED MAIL#7019 2280 0002 0214 3685

Return Receipt Requested

Shelfbot Co.

C/O Incorp. Services,

Agent for Service of Process

5716 Corsa Ave. Suite 110

Westlake Village, CA 91362-7354

Re: NOTICE OF INTENT TO FILE SUIT (Labor Code § 2699.3)
Wendy Sarinana and Shelbi Mcfarland v. Shelfbot Co. Inc., dba Shelf Engine

Dear Gentlepersons:

This letter is the written notice required by the California Labor Code Private Attorneys General Act of 2004 ("PAGA"), California Labor Code Section 2698 *et seq.*, including without limitation California Labor Code Sections 2699.33 (a)(1), 2699.3(b)(1), and/or 2699.3(c)(1), and any other applicable provision of statute, rule, or law. This letter is being sent simultaneously via online filing to the California Labor and Workforce Development Agency. This letter is an important formal legal notice which may lead to action against you and your company in a court of law and in administrative proceedings, or both and the imposition of substantial penalties and other order and remedies against you and your company.

This office represents Plaintiffs Wendy Sarinana and Shelbi Mcfarland ("Plaintiffs") and a

proposed group (and subgroups) of current and former Aggrieved Employees of Shelfbot Co. Inc. a Delaware Corporation, doing business as Shelf Engine and its co-employers, successors in interest, and/or merged entities ("Defendants") in connection with their individual, class action and PAGA representative claims for civil penalties, based on, without limitation, Defendants':

- (1) Failure to pay all wages for all hours worked including minimum wages as well as overtime wages, which is in violation of Labor Code sections 510, 1194, 1182.12, 1197 and is actionable under Labor Code section 2699.5;
- (2) failure to provide timely and duty-free meal periods within the first five (5) hours and to provide lawful second meal periods for shifts worked in excess of ten (10) hours and/or pay meal period premiums for late meal breaks in violation of Labor Code §§ 226.7 and 512 and Section 11 of the applicable IWC Wage Order;
- (3) failure to provide timely, duty free rest periods for every four hours of work or major fraction thereof in violation of Labor Code § 226.7 and Section 12 of the applicable IWC Wage Order;
- (4) failure to provide accurate itemized wage statements in violation of Labor Code § 226 based upon Defendants' failure to include meal and rest break premiums in stating the total gross and net wages earned;
- (5) Failure to reimburse employees for their expenses incurred in connection with work-related usage of their personal cell phones and maintenance of their uniform in violation of Labor Code section 2802;
- (6) unfair competition in violation of Bus. & Prof. Code § 17200 based upon the foregoing meal and rest break premium claims; and
- (7) statutory penalties under California's Private Attorney General Act ("PAGA") based upon the foregoing under Labor Code sections 2698 et seq.

In connection with her PAGA claims, Plaintiffs seek PAGA penalties from one year prior to the date of this Notice and ongoing (the "PAGA Period"). Plaintiffs seek to represent the following groups of aggrieved employees:

a. The "Aggrieved Employees":

All non-exempt individuals who are or were employed by Shelfbot Co. Inc. in the State of California during the PAGA Period.

DEFENDANTS' COMMUTING TIME VIOLATIONS

By way of background, the numerous IWC Wage Orders all require California employers to pay employees no less than minimum wage for all hours worked. *See e.g.*, IWC Wage Order No. 4, section 4(B). The phrase "hours worked" is defined as "the time during which an employee is subject to the control of an employer and includes all the time the employee is suffered or permitted to work, whether or not required to do so." *Id.*, section 2(G).

In *Morillion v. Royal Packing*, 22 Cal. 4th 575 (2000), where certain agricultural employees were subject to employer control during the time they spent riding to and from fields when required to ride in employer provided buses, such time was held to be compensable under the applicable IWC Wage Order. The California Supreme Court there noted that:

“The two phrases [in Section 2(G) of the Wage Order’s definition of “hours worked”] – “time during which an employee is subject to the control of an employer” and “time the employee is suffered or permitted to work, whether or not required to do so”—can also be interpreted as independent factors, each of which defines whether certain time spent is compensable as “hours worked”. Thus, an employee who is subject to an employer’s control does not have to be working during that time to be compensated under Wage Order 14-80 [internal citation to *Bono* omitted].”

Morillion, 22 Cal.4th at 582.

Recently, the California Supreme Court in *Frlekin v. Apple, Inc.*, 8 Cal. 5th 1038 (2020) also observed that “there are inherent differences between cases involving time spent traveling to and from work, and time spent at work. Commuting is an activity that employees ordinarily initiate on their own, prior to and after their regular workday, and is not generally compensable [except when traveling in a company vehicle, as explained below]. Moreover, in the commute context, an employer’s interest generally is limited to the employee’s timely arrival. Generally speaking, it would not seem to matter to the employer how or when an employee travels, so long as the employee arrives on time. Thus, unless the employer compels the employee to use a certain kind of transportation or employer-provided transportation, it would be, without more, unreasonable to require the employer to pay for travel time.” (*Frlekin*, 8 Cal.5th at 1051.)

The facts here are similar to the facts of *Morillion* and the *Frlekin* dicta. Here, Plaintiffs and the Aggrieved employees were required to report to different work locations on a daily basis using their own vehicles. Plaintiffs and the Aggrieved employees were often required at least one-hour drive time to each location. Once at a location, then Plaintiffs and the aggrieved employees were required to clock in by using their application on their cell-phones. The same was true at the end of their shifts, where Plaintiffs and the Aggrieved Employees were required to clock out first and then return back home. Of note, the location where Plaintiffs and the aggrieved Employees worked was different on a daily basis, and the store were scattered throughout Southern California.

Plaintiffs and the Aggrieved Employees were all under the control and supervision of Defendants during the driving time, since they were all required to report to the location that Defendants had communicated to them. Some of these locations were 40 to 50 miles away from their residence. Plaintiffs and the Aggrieved Employees could not stop to perform personal errands during their commute to work. Nevertheless, Plaintiffs and the Aggrieved Employees never received compensation for their drive time.

Plaintiffs and the Aggrieved Employees did not receive any compensation for their driving time, which would be at least 2 hours of their regular pay. By failing to provide compensation to Plaintiffs and the Aggrieved Employees for driving time, Defendants violated Section 5 of Wage

Order 4 and the statutory provisions set forth above.

DEFENDANTS' WAGE STATEMENT VIOLATIONS

Labor Code § 226 obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage statement in writing showing:

- (1) gross wages earned;
- (2) total hours worked by the employee;
- (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece rate;
- (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;
- (5) net wages earned;
- (6) the inclusive dates of the period for which the employee is paid;
- (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number;
- (8) the name and address of the legal entity that is the employer...; and,
- (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee...

Due to, *inter alia*, Defendants' failure to pay Plaintiff and the other Aggrieved Employees for all wages, and all meal and rest break premiums, the wage statements issued by Defendants to Plaintiffs and the other Wage Statement Aggrieved Employees do not indicate the correct amount of gross wages earned, net wages earned, or the applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate in violation of Labor Code § 226(a)(1), (2), (5) and (9).

Labor Code § 226(e) provides that an employee is entitled to recover \$50 for initial pay period in which a violation of Section 226 occurs and \$100 for each subsequent pay period, not to exceed \$4,000, as well as an award of costs and reasonable attorney's fees, for all pay periods in which the employer fails to provide accurate itemized statements to the employee causing the employee to suffer injury.

DEFENDANTS' MEAL PERIOD VIOLATIONS

Labor Code § 512 requires employers to provide employees with a thirty (30) minute uninterrupted and duty-free meal period within the first five (5) hours of an employee's shift. Moreover, an employee who works more than ten (10) hours per day is entitled to receive a second thirty (30) minute uninterrupted and duty-free meal period.

Under Labor Code § 512, if an employer maintains a uniform policy that does not authorize and permit the amount of duty-free mealtime on or before the fifth hour of work as called for under the law (as specified in the applicable Wage Order), "it has violated the wage order and is liable." As

described above, the *Brinker* Court explained in the context of rest breaks that employer liability attaches from adopting an unlawful policy.

Here, Defendants violated and continue to violate Labor Code § 512 and IWC Wage Order 4-2002 § 11 by, among other things, failing to provide and schedule duty-free meal breaks on or before the fifth hour of work to Meal Break Aggrieved Employees and failed to advise all other Meal Break Aggrieved Employees of their meal break rights with respect to the timing of meal breaks, failed to provide Meal Break Aggrieved Employees with thirty-minute, uninterrupted meal periods within the first five (5) hours of their shifts, and failed to pay meal break premiums for late meal breaks. As a result of Defendants' failure to authorize or permit lawful and timely meal periods, Plaintiff and the other Class members and Meal Period Aggrieved Employees frequently did not receive compliant duty-free meal periods within the first five (5) hours of their work.

DEFENDANTS' REST PERIOD VIOLATIONS

Under Labor Code § 226.7, if an employer maintains a uniform policy that does not authorize and permit the amount of rest time on the schedule called for under the law (as specified in Section 12 of the applicable Wage Order), "it has violated the wage order and is liable." The *Brinker* Court explained in the context of rest breaks that employer liability attaches from adopting an unlawful policy:

An employer is required to authorize and permit the amount of rest break time called for under the wage order for its industry. If it does not—if, for example, it adopts a uniform policy authorizing and permitting only one rest break for employees working a seven-hour shift when two are required—***it has violated the wage order and is liable.***

(*Brinker Rest. Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1033.) [emphasis added].

Here, Defendants did not authorize Plaintiffs and the Rest Break Aggrieved Employees to take their ten-minute rest breaks during each 4 hours of work or major fraction thereof during their shifts. Plaintiffs and the Rest Break Aggrieved Employees were required to remain on premises and were under pressure to finish their assignments. They could not leave the store and often their rest breaks were interrupted. Thus, Defendants violated Labor Code §226.7 by preventing the rest break aggrieved employees from receiving their breaks.

DEFENDANTS' FAILURE TO REIMBURSE BUSINESS EXPENSES

Pursuant to Labor Code § 2802(a) "[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer...." Labor Code Section 2802(c) also clarifies that "the term 'necessary expenditures or losses' shall include all reasonable costs, including, but not limited to, attorney's fees incurred by the employee enforcing the rights granted by this section."

Specifically, under Labor Code § 2802, employers must reimburse employees for required work-

related use of personal cell phones, regardless of whether they incur any additional out-of-pocket expense from that work-related use. *See Cochran v. Schwan's Home Service*, 228 Cal. App. 4th 1137 (2014).

Under Labor Code § 2802, if an employer requires Reimbursement Aggrieved Employees to use their cell phone for work, then Defendants must reimburse employees for a reasonable portion of their monthly cell phone bills. Here, the Reimbursement Aggrieved Employees were expected to use their cell phones at all times while working for Defendants. They were required to download an application where they could clock in and out, and see their daily assignments. The name of this application was Time. Furthermore, the cell phone was the only means for Defendants to stay in touch with Plaintiffs and the Aggrieved Employee. In addition to the Time application, Defendants required Reimbursement Aggrieved Employees to install the following applications on their personal cell phones in order to perform their job responsibilities: Shelf Engine, Slack, Insight, Expensify, and Gusto.

Accordingly, Defendants violated Labor Code § 2802 and continue to do so by failing to reimburse the Reimbursement Aggrieved Employees for all work-related cell phone charges they incurred in connection with their job duties.

Further, Defendants required Reimbursement Aggrieved Employees to wash and maintain their work uniforms which contains Defendants' logo at their own expense. Reimbursement Aggrieved Employees had to wash their uniforms separate from their personal clothing because of their uniforms were heavily soiled as a result of carrying out their job duties. Defendants failed to reimburse Reimbursement Aggrieved Employees for the cost of washing and maintaining Defendants' uniform which is required as part of their employment. Defendants' failure to reimburse Reimbursement Aggrieved Employees for the cost of washing and maintaining Defendants' uniform is in violation of Labor Code section 2802 and therefore is actionable under PAGA.

This notice is hereby given to and is made against Defendants, and all related and/or alter ego companies, corporations, partnerships, and /or business entities, as well as against any and all officers, owners, directors managers, managing agents, or entities who are or may be liable under law for any of those alleges violations as to any locations or employees who worked at any time in the state of California.

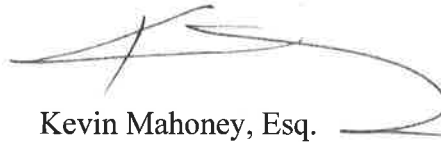
CONCLUSION

Therefore, pursuant to Labor Code § 2699.3, we write to inform you and the Labor and Workforce Development Agency, with whom this PAGA Notice has been filed, of our intent to pursue a PAGA representative action (and a class action) against Defendants seeking, *inter alia*, PAGA penalties under Labor Code § 2699, to be brought by the Plaintiff individually and on behalf of the Aggrieved Employees, as defined above.

Nevertheless, it is the policy of this firm to attempt to negotiate an early resolution of all matters where possible and beneficial to the aggrieved employees. If Defendants are interested in

attempting to resolve this matter, including the PAGA claims, please have counsel contact us by June 30, 2021 so that we may discuss an informal discovery plan and the possibility of early mediation.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Kevin Mahoney', with a long horizontal flourish extending to the right.

Kevin Mahoney, Esq.
MAHONEY LAW GROUP, APC