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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

MELISSA RUBLE, individually, and on
behalf of other members of the general
public similarly situated and as an
aggrieved employee pursuant to the Private
Attorneys General Act ("PAGA"),

Plaintiff,

vs.

REBORN CABINETS, INC., a California
corporation; and DOES 1 through 10,
inclusive,

Defendants.

Case No.: 21STCV31721

**FIRST AMENDED CLASS ACTION
COMPLAINT & ENFORCEMENT
ACTION UNDER THE PRIVATE
ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698, *ET
SEQ.***

- (1) Violation of California Labor Code §§210 and 221 (Unlawful Deductions)
- (2) Violation of California Labor Code §§ 226(a), 1174(d) and 1198 (Non-Compliant Wage Statements and Failure to Maintain Records);
- (3) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (4) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);
- (5) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, *et seq.*;
- (6) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices).

Jury Trial Demanded

1 Plaintiff MELISSA RUBLE, individually, and on behalf of all other members of the
2 public similarly situated and as an aggrieved employee and on behalf of all other aggrieved
3 employees, alleges as follows:

4 JURISDICTION AND VENUE

5 1. This class action and state enforcement action is brought pursuant to California
6 Code of Civil Procedure section 382 and California Labor Code sections 2698 *et seq.*
7 (“PAGA”) to recover damages, statutory penalties, civil penalties and any other available
8 relief on behalf of Plaintiff, the State of California, and other current and former employees
9 who worked for Defendants in California as commissioned outside sales employees who
10 received at least one physical wage statement and against whom one or more violations of any
11 provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision regulating hours
12 and days of work in the applicable Industrial Welfare Commission (“IWC”) Wage Order were
13 committed, as set forth in this complaint. The monetary damages, penalties, and restitution
14 sought by Plaintiff exceed the minimal jurisdiction limits of the Superior Court and will be
15 established according to proof at trial.

16 2. This Court has jurisdiction over this action pursuant to the California
17 Constitution, Article VI, section 10. The statutes under which this action is brought do not
18 specify any other basis for jurisdiction.

19 3. This Court has jurisdiction over all Defendants because, on information and
20 belief, Defendants are citizens of California, have sufficient minimum contacts in California,
21 or otherwise intentionally avail themselves of the California market so as to render the
22 exercise of jurisdiction over them by the California courts consistent with traditional notions
23 of fair play and substantial justice.

24 4. Venue is proper in this Court because Defendants employ persons in this
25 county and Plaintiff and class members performed substantial work in this county, and thus a
26 substantial portion of the transactions and occurrences related to this action occurred in this
27 county.

28 5. California Labor Code sections 2698 *et seq.*, the “Labor Code Private Attorneys

1 General Act of 2004” (“PAGA”), authorize aggrieved employees to sue as private attorneys
2 general their current or former employers for various civil penalties for violations of various
3 provisions in the California Labor Code.

4 **THE PARTIES**

5 6. Plaintiff MELISSA RUBLE, at all times relevant to the claims asserted herein,
6 was a resident of Anaheim, in Orange County, California performing work throughout
7 Southern California, including in Los Angeles County. Defendants employed Plaintiff as
8 commissioned salesperson from on or about December 20, 2015 to on or about September 20,
9 2020. Plaintiff initially started working for REBORN CABINETS INC. (“RBI” or
10 “DEFENDANT”) as a scheduler, but in February 2018 she began performing work as a
11 commissioned outside salesperson who performed her work throughout Los Angeles County,
12 California. Plaintiff’s work required her to travel extensively for Defendants.

13 7. Defendant RBI was and is, upon information and belief, a California
14 corporation doing business in California, with its principal place of business in Anaheim, CA,
15 and at all times hereinafter mentioned, an employer whose employees are engaged throughout
16 this county, the State of California, or the various states of the United States of America.

17 8. Plaintiff is unaware of the true names or capacities of the Defendants sued
18 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to
19 amend the complaint and serve such fictitiously named Defendants once their names and
20 capacities become known.

21 9. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
22 are the partners, agents, owners, shareholders, managers, or employees of RBI at all relevant
23 times.

24 10. Plaintiff is informed and believes, and thereon alleges, that each and all of the
25 acts and omissions alleged herein was performed by, or is attributable to, RBI; and/or DOES 1
26 through 10 (collectively “DEFENDANTS” or “Defendants”), each acting as the agent,
27 employee, alter ego, and/or joint venturer of, or working in concert with, each of the other co-
28 Defendants and was acting within the course and scope of such agency, employment, joint

1 venture, or concerted activity with legal authority to act on the others' behalf. The acts of any
2 and all Defendants were in accordance with, and represent, the official policy of Defendants.

3 11. At all relevant times, Defendants, and each of them, ratified each and every act
4 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
5 and abetted the acts and omissions of each and all the other Defendants in proximately causing
6 the damages herein alleged.

7 12. Plaintiff is informed and believes, and thereon alleges, that each of said
8 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
9 omissions, occurrences, and transactions alleged herein.

10 13. Under California law, Defendants are jointly and severally liable as employers
11 for the violations alleged herein because they have each exercised sufficient control over the
12 wages, hours, working conditions, and employment status of Plaintiff and class members.
13 Each Defendant had the power to hire and fire Plaintiff and class members, supervised and
14 controlled their work schedule and/or conditions of employment, determined their rate of pay,
15 and maintained their employment records. Defendants suffered or permitted Plaintiff and
16 class members to work and/or "engaged" Plaintiff and class members so as to create a
17 common-law employment relationship. As joint employers of Plaintiff and class members,
18 Defendants are jointly and severally liable for the civil penalties and all other relief available
19 to Plaintiff and class members under the law.

20 14. Plaintiff is informed and believes, and thereon alleges, that at all relevant times,
21 Defendants, and each of them, have acted as joint employers with respect to Plaintiff and other
22 class members because Defendants have:

23 (a) jointly exercised meaningful control over the work performed by
24 Plaintiff and class members;

25 (b) jointly exercised meaningful control over Plaintiff and class members'
26 wages, hours, and working conditions, including the quantity, quality
27 standards, speed, scheduling, and operative details of the tasks
28 performed by Plaintiff and class members;

- 1 (c) jointly required that Plaintiff and class members perform work which is
2 an integral part of Defendants' businesses; and
- 3 (d) jointly exercised control over Plaintiff and class members as a matter of
4 economic reality in that Plaintiff and class members were dependent on
5 Defendants, who shared the power to set the wages of Plaintiff and class
6 members and determined their working conditions, and who jointly
7 reaped the benefits from the underpayment of their wages and
8 noncompliance with other statutory provisions governing their
9 employment.

10 15. Plaintiff is informed and believes, and further alleges, that at all relevant times
11 there has existed a unity of interest and ownership between Defendants such that any
12 individuality and separateness between the entities has ceased.

13 16. RBI and DOES 1 through 10 are therefore alter egos of each other.

14 17. Adherence to the fiction of the separate existence of Defendants would permit
15 an abuse of the corporate privilege, and would promote injustice by protecting Defendants
16 from liability for the wrongful acts committed by them under the name RBI.

17 **CLASS ACTION ALLEGATIONS**

18 18. Plaintiff brings this action on her own behalf, as well as on behalf of each and
19 all other persons similarly situated, and thus seeks class certification under California Code of
20 Civil Procedure section 382.

21 19. All claims alleged herein arise under California law for which Plaintiff seeks
22 relief authorized by California law.

23 20. Plaintiff's proposed class consists of and is defined as follows:

24 All persons who are or were employed by Defendants in
25 California within four years prior to the filing of this complaint
until the date of trial ("Class").

26 21. Plaintiff's proposed "Waiting Time Penalties" subclass consists of and is
27 defined as follows:

28 All persons who are or were employed by Defendants in

1 California within four years prior to the filing of this complaint
2 until the date of trial and who were terminated or resigned their
employment with Defendants (“Waiting Time Penalties
Subclass”).

3 22. Plaintiff’s proposed “Wage Statement” subclass consists of and is defined as
4 follows:

5 All persons who are or were employed by Defendants in
6 California within one year prior to the filing of this complaint until
the date of trial and who received a wage statement from
7 Defendants (“Wage Statement Subclass”).

8 23. Members of the Class and Subclasses will hereinafter be referred to as “class
9 members.”

10 24. Plaintiff reserves the right to redefine the Class and Subclasses and to add
11 additional subclasses as appropriate based on further investigation, discovery, and specific
12 theories of liability.

13 25. There are common questions of law and fact as to class members that
14 predominate over questions affecting only individual members, including, but not limited to:

- 15 (a) Whether Defendants improperly taxed Plaintiff and class members’
16 mileage reimbursement;
- 17 (b) Whether Defendants under-reimbursed certain expenses submitted by
18 Plaintiff and class members;
- 19 (c) Whether Defendants failed to reimburse to Plaintiff and class members
20 all certain reasonable business expenses at all;
- 21 (d) Whether Defendants provided Plaintiff and class members with
22 complete and accurate wage statements as required by California Labor
23 Code section 226(a);
- 24 (e) Whether Defendants maintained accurate payroll records as required by
25 California Labor Code section 1174(d);
- 26 (f) Whether Defendants failed to pay earned commission wages due to
27 Plaintiff and class members upon their discharge due to the improper
28 deductions made by Defendants;

- (g) Whether Defendants failed timely to pay commission wages to Plaintiff and class members during their employment;
- (h) Whether Defendants engaged in unfair business practices in violation of California Business & Professions Code sections 17200, *et seq.*; and
- (i) The appropriate amount of damages, restitution, or monetary penalties resulting from Defendants' violations of California law.

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

- (a) Numerosity: The class members are so numerous that joinder of all members would be unfeasible and impractical. The membership of the entire class is unknown to Plaintiff at this time; however, the class is estimated to be greater than one hundred (100) individuals and the identity of such membership is readily ascertainable by inspection of Defendants' employment records.
- (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each class member with whom she has a well-defined community of interest, and Plaintiff's claims (or defenses, if any) are typical of all class members as demonstrated herein.
- (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each class member with whom she has a well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiff acknowledges that she has an obligation to make known to the Court any relationship, conflicts or differences with any class member. Plaintiff's attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement. Plaintiff has incurred, and throughout the duration of this action, will continue to incur costs and attorneys' fees that have been, are, and will be necessarily expended for the prosecution of this action

1 for the substantial benefit of each class member.

2 (d) Superiority: The nature of this action makes the use of class action
3 adjudication superior to other methods. A class action will achieve
4 economies of time, effort, and expense as compared with separate
5 lawsuits, and will avoid inconsistent outcomes because the same issues
6 can be adjudicated in the same manner and at the same time for the
7 entire class.

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

17 **GENERAL ALLEGATIONS**

18 27. Defendants are a California for-profit corporation providing cabinetry
19 restoration services throughout California. Within California, Defendants are estimated to
20 employ over 100 persons.

21 28. Upon information and belief, Defendants maintain a single, centralized Human
22 Resources department in Anaheim, California, which is responsible for collecting and
23 processing all new hire paperwork, and communicating and implementing Defendants'
24 company-wide policies to employees throughout California.

25 29. In particular, Plaintiff and class members, on information and belief, received
26 the same standardized documents and/or written policies. Upon information and belief, the
27 usage of standardized documents and/or written policies, including new hire documents,
28 indicate that Defendants dictated policies at the corporate level and implemented them

1 company-wide, regardless of their employees' assigned locations or positions. Upon
2 information and belief, Defendants set forth uniform policies and procedures in several
3 documents provided at an employee's time of hire.

4 30. On information and belief, all transactions regarding hiring, terminations,
5 promotions, pay increases, and employee transfers, etc., relating to Defendants' California
6 employees were submitted to and processed by Defendants' HR department. Additionally, on
7 information and belief, Defendants' corporate records, business records, data, and other
8 information related to Defendants, including, in particular, HR records pertaining to
9 Defendants' California employees, are also maintained at Defendants' corporate headquarters
10 in Anaheim, California.

11 31. Upon information and belief, Defendants maintain a centralized Payroll
12 department which processes payroll for all employees working for Defendants at their various
13 locations in California, including Plaintiff and class members. Based upon information and
14 belief, Defendants issued the same formatted wage statements to all non-exempt employees in
15 California, irrespective of their work location. Upon information and belief, Defendants
16 process payroll for departing employees in the same manner throughout the State of
17 California, regardless of the manner in which each employee's employment ends.

18 32. Defendants continue to employ commission-based employees within
19 California.

20 33. Plaintiff is informed and believes, and thereon alleges, that at all times herein
21 mentioned, Defendants were advised by skilled lawyers and other professionals, employees
22 and advisors knowledgeable about California labor and wage law, employment and personnel
23 practices, and about the requirements of California law.

24 34. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and class
25 members were not paid all commissioned wages because, among other reasons, Defendants
26 reported Plaintiff and class members' mileage reimbursement as taxable wages, resulting in
27 commission wages being improperly deducted as taxes. A true and accurate copy of
28 Plaintiff's redacted wage statement showing mileage reimbursement as taxable income is

1 attached to this Complaint as Exhibit A.

2 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
3 should have known that Plaintiff and class members should not have had their mileage
4 reimbursement taxed.

5 36. Additionally, Plaintiff is informed and believes, and thereon alleges, that
6 Plaintiff and class members were not reimbursed for their mileage at the correct rate, and in
7 fact were reimbursed at a rate below both their actual expenses and the mileage
8 reimbursement rate set forth by the United States Internal Revenue Service.

9 37. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
10 should have known that Plaintiff and class members were entitled to receive complete and
11 accurate wage statements in accordance with California law. In violation of the California
12 Labor Code, Plaintiff and class members were not provided complete and accurate wage
13 statements.

14 38. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
15 should have known that they had a duty to maintain accurate and complete payroll records in
16 accordance with the Labor Code and applicable IWC Wage Order, but willfully, knowingly,
17 and intentionally failed to do so.

18 39. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
19 should have known that Plaintiff and class members were entitled to timely payment of all
20 wages earned upon termination of employment. In violation of the California Labor Code,
21 Plaintiff and class members did not receive payment of all wages due, including, but not
22 limited to commission wages improperly withheld as taxes.

23 40. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
24 should have known that Plaintiff and class members were entitled to timely payment of wages
25 during their employment. In violation of the California Labor Code, Plaintiff and class
26 members did not receive payment of all wages within permissible time periods.

27 41. Plaintiff is informed and believes, and thereon alleges that Defendants knew or
28 should have known that Plaintiff and class members were entitled to receive reimbursement

1 for all business-related expenses and costs they incurred during the course and scope of their
2 employment, and that they did not receive reimbursement or receive sufficient reimbursement
3 of applicable business-related expenses and costs they incurred.

4 42. Plaintiff is informed and believes, and thereon alleges, that at all times herein
5 mentioned, Defendants knew or should have known that they had a duty to compensate
6 Plaintiff and class members all wages earned, and that Defendants had the financial ability to
7 pay such compensation, but willfully, knowingly, and intentionally failed to do so, and falsely
8 represented to Plaintiff and class members that they were properly denied wages, all in order
9 to increase Defendants' profits.

10 **Claims for Penalties Under 2004 Private Attorneys General Act**

11 43. The duties and business activities of the Aggrieved Employees were essentially
12 the same as the duties and activities of the Plaintiff described above.

13 44. This is a wage and hour representative action filed pursuant to PAGA, §§ 2698,
14 2699, which generally consists of the following group:

15 **All current or former employees who worked in the state of California from**
16 **August 26, 2020 to the present for Defendants.**

17 45. All members of the represented groups will be referred to as the "Aggrieved
18 Employees."

19 46. The "Representative Period" means from **August 26, 2020** to the present, the
20 timeframe where the scope of statute allows Plaintiffs to recover wages and penalties.

21 47. At all times during the Representative Period, all the Aggrieved Employees
22 were employed in the same or similar job as Plaintiff and were paid in the same manner and
23 under the same standard employment procedures and practices as the Plaintiff.

24 48. Plaintiffs further allege, and on information and belief, Aggrieved Employees,
25 did not receive all wages due at the time their employment ended with Defendants.

26 49. On information and belief, current and former employees of Defendants were
27 subject to wage and hour violations by Defendants, including failing to be paid for all wages
28 due.

1 50. California law provides that an employee may file an action against an
2 employer to recover penalties for violations of the Labor Code and Wage Orders provided the
3 aggrieved employee files an action on behalf of him or herself and similarly-situated current
4 and former employees.

5 51. At all material times, Defendants and DOES 1 through 10 were and/or are
6 Aggrieved Employees' employers or persons acting on behalf of Aggrieved Employees'
7 employer, within the meaning of California Labor Code § 558, who violated or caused to be
8 violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision
9 regulating hours and days of work in any Order of the Industrial Welfare Commission and, as
10 such, are subject to penalties for each underpaid employee as set for in Labor Code § 558.

11 52. As set forth in further detail below, because of the analysis and investigation of
12 the Plaintiffs' claims, Plaintiffs' attorneys sent letters to the California Labor and Workforce
13 Development Agency (hereinafter referred to as "LWDA") and to Defendants informing
14 Defendants of their claims and their intent to pursue litigation.

15 **Exhaustion of Administrative Remedies**

16 53. As to penalty claims under the Labor Code Private Attorney General Act, on
17 **August 26, 2021**, Plaintiff provided written notice by online filing to the LWDA and by
18 Certified Mail to Defendants of the specific provisions of the California Labor Code alleged to
19 have been violated, including facts and theories to support the alleged violations, in
20 accordance with California Labor Code section 2699.3. Plaintiff's written notice was
21 accompanied with the applicable filing fee of seventy-five dollars (\$75).

22 54. As of the filing date of this amended complaint, over 65 days have passed since
23 Plaintiff sent the initial LWDA Notice described above, and the LWDA has not responded
24 that it intends to investigate Plaintiff's claims and Defendants have not cured the violations.

25 55. Thus, Plaintiff has satisfied the administrative prerequisites under California
26 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants, in
27 addition to other remedies, for violations of California Labor Code sections 201, 202, 203,
28 204, 210, 225.5, 226(a), 1174(d), 1198, and 2802.

1 56. At all times herein set forth, PAGA provides that any provision of law under
2 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be
3 assessed and collected by the LWDA for violations of the California Labor Code and
4 applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a
5 civil action brought on behalf of themselves and other current or former employees pursuant
6 to procedures outlined in California Labor Code section 2699.3.

7 57. PAGA defines an “aggrieved employee” in Labor Code section 2699(c) as “any
8 person who was employed by the alleged violator and against whom one or more of the
9 alleged violations was committed.”

10 58. Plaintiff and other current and former employees of Defendants are “aggrieved
11 employees” as defined by Labor Code section 2699(c) in that they are all Defendants’ current
12 or former employees and one or more of the alleged violations were committed against them.

13 59. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
14 employee, including Plaintiff, may pursue a civil action arising under PAGA after the
15 following requirements have been met:

- 16 (a) The aggrieved employee shall give written notice by online filing
17 (hereinafter “Employee’s Notice”) to the LWDA and by certified mail
18 to the employer of the specific provisions of the California Labor Code
19 alleged to have been violated, including the facts and theories to support
20 the alleged violations.
- 21 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
22 2699.3(a) and any employer response to that notice shall be
23 accompanied by a filing fee of seventy-five dollars (\$75).
- 24 (c) The LWDA shall provide notice (hereinafter “LWDA Notice”) to the
25 employer and the aggrieved employee by certified mail that it does not
26 intend to investigate the alleged violation within sixty (60) calendar
27 days of the postmark date of the Employee’s Notice. Upon receipt of
28 the LWDA Notice, or if the LWDA Notice is not provided within sixty-

1 five (65) calendar days of the postmark date of the Employee's Notice,
2 the aggrieved employee may commence a civil action pursuant to
3 California Labor Code section 2699 to recover civil penalties in addition
4 to any other penalties to which the employee may be entitled.

5 60. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees,
6 through Plaintiff, may pursue a civil action arising under PAGA for violations of any
7 provision other than those listed in Section 2699.5 after the following requirements have been
8 met:

- 9 (a) The aggrieved employee or representative shall give written notice by
10 online filing to the LWDA and by certified mail to the employer of the
11 specific provisions of the California Labor Code alleged to have been
12 violated (other than those listed in Section 2699.5), including the facts
13 and theories to support the alleged violation.
- 14 (b) An aggrieved employee's notice filed with the LWDA pursuant to
15 2699.3(c) and any employer response to that notice shall be
16 accompanied by a filing fee of seventy-five dollars (\$75).
- 17 (c) The employer may cure the alleged violation within thirty-three (33)
18 calendar days of the postmark date of the notice. The employer shall
19 give written notice by certified mail within that period of time to the
20 aggrieved employee or representative and the agency if the alleged
21 violation is cured, including a description of actions taken, and no civil
22 action pursuant to Section 2699 may commence. If the alleged violation
23 is not cured within the 33-day period, the employee may commence a
24 civil action pursuant to Section 2699.

25 61. Defendants, at all times relevant to this complaint, were employers or persons
26 acting on behalf of an employer(s) who violated Plaintiff's and other aggrieved employees'
27 rights by violating various sections of the California Labor Code as set forth above.

28 62. As set forth below, Defendants have violated numerous provisions of both the

1 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage
2 Order.

3 63. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
4 2699.3(a), 2699.3(c), and 2699.5, Plaintiff, acting in the public interest as a private attorney
5 general, seeks assessment and collection of civil penalties for herself, all other aggrieved
6 employees, and the State of California against Defendants, in addition to other remedies, for
7 violations of California Labor Code sections 201, 202, 203, 204, 210, 225.5, 226(a), 1174(d),
8 1198, and 2802.

9 **FIRST CAUSE OF ACTION**

10 **Violation of Labor Code §§ 210, 221—Unlawful Deductions**

11 **(Against all Defendants)**

12 64. Plaintiff hereby incorporates by reference the allegations contained in the
13 preceding paragraphs of this Complaint.

14 65. Under California Labor Code § 221, it is unlawful for any employer to collect
15 or receive from an employee any part of wages theretofore paid by said employer to said
16 employee.

17 66. Plaintiff and class members' pay was regularly subjected to unlawful
18 deductions without Plaintiff or the class members' written agreement or consent as a result of
19 Defendant improperly classifying Plaintiff and class members' mileage reimbursement as
20 taxable income. Defendants' involvement in this scheme willfully and intentionally violated
21 California Labor Code § 221.

22 67. As a direct and proximate result, Plaintiff and class members have suffered
23 damages.

24 68. Plaintiff is entitled to recovery of wages unlawfully deducted as well as
25 penalties for such unlawful deductions for at least the three years preceding the filing of this
26 Complaint.

27 69. For unlawfully withholding and deducting wages in violation of California
28 Labor Code § 221, Defendants are liable for the penalties described in Labor Code § 210.

1 70. Plaintiffs request relief as described below and as permitted by law.

2 **SECOND CAUSE OF ACTION**

3 **Violation of California Labor Code §§ 226(a) and 1174(d)—Non-Compliant Wage**
4 **Statements and Failure to Maintain Accurate Payroll Records**
5 **(Against all Defendants)**

6 71. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
7 and every allegation set forth above.

8 72. At all relevant times herein, California Labor Code section 226(a) provides that
9 every employer shall furnish each of his or her employees an accurate and complete itemized
10 wage statement in writing, including, but not limited to, the name and address of the legal
11 entity that is the employer, the inclusive dates of the pay period, all applicable rates of pay,
12 and all deductions authorized by the employee.

13 73. During the relevant time period, Defendants have knowingly and intentionally
14 provided Plaintiff and class members with uniform, incomplete, and inaccurate wage
15 statements. Specifically, Defendants violated sections 226(a)(1), 226(a)(4) and 226(a)(5), as
16 the wage statements contained improperly taxed reimbursable expenses, resulting in incorrect
17 gross and net wages. Moreover, Defendant’s wage statements list other reimbursed expenses
18 as “negative deductions” which are likewise improper and confusing, as shown in Exhibit A.
19 Accordingly, a reasonable person would be unable to ascertain the information required by
20 statute. Thus, Defendants did not furnish wage statements to Plaintiff and class members
21 containing accurate gross wages (Lab. Code § 226(a)(2)), proper deductions authorized by the
22 employees (Lab. Code § 226(a)(4), or the net wages earned (Lab. Code § 226(a)(5)).

23 74. California Labor Code section 1174(d) provides that “[e]very person employing
24 labor in this state shall ... [k]eep a record showing the names and addresses of all employees
25 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
26 plants or establishments at which employees are employed, payroll records showing the hours
27 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
28 applicable piece rate paid to, employees employed at the respective plants or

1 establishments...” During the relevant time period, and in violation of Labor Code
2 section 1174(d), Defendants willfully failed to maintain accurate payroll records for Plaintiff
3 and class members.

4 75. Because Defendants failed to provide the accurate gross wages earned, net
5 wages earned, and deductions on wage statements, Plaintiff and class members have been
6 prevented from verifying, solely from information on the wage statements themselves, that
7 they were paid correctly and in full. Instead, Plaintiff and class members have had to look to
8 sources outside of the wage statements themselves and reconstruct time records to determine
9 whether in fact they were paid correctly and the extent of underpayment, thereby causing them
10 injury.

11 76. Plaintiff and class members are entitled to recover from Defendants the greater
12 of their actual damages caused by Defendants’ failure to comply with California Labor Code
13 section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per
14 employee.

15 **THIRD CAUSE OF ACTION**

16 **Violation of California Labor Code §§ 201 and 202 – Wages Not Timely Paid Upon** 17 **Termination** 18 **(Against all Defendants)**

19 77. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
20 and every allegation set forth above.

21 78. At all times relevant herein set forth, Labor Code sections 201 and 202 provide
22 that if an employer discharges an employee, the wages earned and unpaid at the time of
23 discharge are due and payable immediately, and that if an employee voluntarily leaves his or
24 her employment, his or her wages shall become due and payable not later than seventy-two
25 (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of
26 his or her intention to quit, in which case the employee is entitled to his or her wages at the
27 time of quitting.

28 79. During the relevant time period, Defendants willfully failed to pay Plaintiff and

1 class members all wages earned upon their discharge or resignation by taxing reimbursed
2 expenses. Accordingly, Defendant willfully failed to pay Plaintiff and other class members
3 who are no longer employed by Defendants all their earned wages within seventy-two (72)
4 hours of their leaving Defendants' employ.

5 80. Defendants' failure to pay Plaintiff and those class members who are no longer
6 employed by Defendants their wages earned and unpaid at the time of discharge, or within
7 seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201
8 and 202.

9 81. Plaintiff and class members are therefore entitled to recover from Defendants
10 the statutory penalty wages for each day they were not paid, at their regular rate of pay, up to
11 a thirty (30) day maximum pursuant to California Labor Code section 203.

12 **FOURTH CAUSE OF ACTION**

13 **Violation of California Labor Code § 2802 – Unpaid Business-Related Expenses** 14 **(Against all Defendants)**

15 82. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
16 and every allegation set forth above.

17 83. At all times herein set forth, California Labor Code section 2802 provides that
18 an employer must reimburse employees for all necessary expenditures and losses incurred by
19 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
20 to prevent employers from passing off their cost of doing business and operating expenses on
21 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
22 (2014).

23 84. During the relevant time period, Defendants, on a company-wide basis,
24 required that Plaintiff and class members use their own cell phones and electricity to charge
25 their phones for use by Defendants. Despite the fact that 70-80% of Plaintiff's cell phone use
26 was for business purposes, Defendants only reimbursed Plaintiff and class members \$12.00
27 each month.

28 85. Moreover, during the relevant time period, on information and believe,

1 Defendant failed to reimburse Plaintiff and class members either their actual expenses or the
2 standard mileage reimbursement used by the Internal Revenue Service. Moreover,
3 Defendants refused to reimburse Plaintiff and class members for all of their mileage.
4 Accordingly, Plaintiff failed to sufficiently reimburse Plaintiff and other employees for those
5 costs.

6 86. Defendants engaged in a systematic, company-wide policy to not reimburse its
7 employees for necessary business expenses. Defendants could have reimbursed employees for
8 the costs they incurred in performing their work, but instead, Defendants passed these
9 operating costs off onto Plaintiff and class members.

10 87. Defendants' company-wide policy and/or practice of passing its operating costs
11 on to Plaintiff and class members is in violation of California Labor Code section 2802.
12 Defendants have intentionally and willfully failed to fully reimburse Plaintiff and class
13 members for necessary business-related expenses and costs.

14 88. Plaintiff and class members are entitled to recover from Defendants their
15 business-related expenses incurred during the course and scope of their employment, plus
16 interest.

17 **FIFTH CAUSE OF ACTION**

18 **For Civil Penalties Pursuant to California Labor Code §§ 2698, *et seq.***

19 **(Against all Defendants)**

20 89. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
21 and every allegation set forth above.

22 90. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover
23 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
24 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 221,
25 226(a), 1198, and 2802.

26 91. Defendants' conduct, as alleged herein, violates numerous sections of the
27 California Labor Code, including, but not limited to, the following:

28 (a) Violation of Labor Code sections 210 and 221 for Defendants' unlawful

deductions of taxes due to the improper reporting of reimbursed expenses as taxable income and the penalties derived from 221;

- (b) Violation of Labor Code sections 226(a), 1198, and the applicable IWC wage order for failure to provide accurate and complete wage statements to Plaintiff and other aggrieved employees, as alleged herein;
- (c) Violations of Labor Code sections 1174(d), 1198, and the applicable IWC wage order for failure to maintain payroll records as alleged herein;
- (d) Violation of Labor Code section 204 for failure to pay all earned wages during employment as set forth below;
- (e) Violation of Labor Code sections 201, 202, and 203 for failure to pay all earned wages upon termination as alleged herein;
- (f) Violation of Labor Code section 2802 for failure to reimburse Plaintiff and other aggrieved employees for all business expenses necessarily incurred, as alleged herein; and

92. At all relevant times herein set forth, California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed. Labor Code section 204 further provides that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month.

93. At all relevant times herein, California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, at all relevant times herein, Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not

1 more than seven (7) calendar days following the close of the payroll period.

2 94. During the relevant time period, Defendants willfully failed to pay Plaintiff and
3 other aggrieved employees all wages due to them within any time period specified by
4 California Labor Code section 204. Plaintiff and other aggrieved employees are therefore
5 entitled to recover civil penalties pursuant to Labor Code sections 225.5 and/or 2699(a), (f),
6 and (g).

7 **SIXTH CAUSE OF ACTION**

8 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

9 **Unlawful Business Practices**

10 **(Against all Defendants)**

11 95. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
12 and every allegation set forth above.

13 96. Defendants are a “person” as defined by California Business & Professions
14 Code sections 17201, as they are corporations, firms, partnerships, joint stock companies
15 and/or associations.

16 97. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair,
17 unlawful and harmful to Plaintiff, class members, and to the general public. Plaintiff has
18 suffered injury in fact and has lost money as a result of Defendants’ unlawful business
19 practices. Plaintiff seeks to enforce important rights affecting the public interest within the
20 meaning of Code of Civil Procedure section 1021.5.

21 98. Defendants’ activities, as alleged herein, are violations of California law, and
22 constitute unlawful business acts and practices in violation of California Business &
23 Professions Code sections 17200, *et seq.*

24 99. A violation of California Business & Professions Code sections 17200, *et seq.*
25 may be predicated on the violation of any state or federal law. In the instant case, Defendants’
26 policies and practices have violated state law in at least the following respects:

- 27 (a) Failing to provide Plaintiff and class members with accurate wage
28 statements in violation of California Labor Code section 226(a) and the

1 applicable IWC Order and failing to maintain accurate payroll records in
2 violation of Labor Code section 1174(d), as alleged herein;

3 (b) Failing timely to pay all earned wages to Plaintiff and class members in
4 violation of California Labor Code section 204 and the applicable IWC
5 Order, as alleged herein;

6 (c) Improperly deducting wages from Plaintiff and class members due to
7 Defendant improperly classifying expense reimbursements as taxable
8 income; and

9 (d) Failing to reimburse Plaintiff and class members for all business
10 expenses necessarily incurred in violation of California Labor Code
11 section 2802, as alleged herein.

12 100. As a result of the violations of California law herein described, Defendants
13 unlawfully gained an unfair advantage over other businesses. Plaintiff and class members
14 have suffered pecuniary loss by Defendants' unlawful business acts and practices alleged
15 herein.

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

22 **REQUEST FOR JURY TRIAL**

23 Plaintiff requests a trial by jury.

24 **PRAYER FOR RELIEF**

25 Plaintiff, on behalf of all others similarly situated, prays for relief and judgment
26 against Defendants, jointly and severally, as follows:

27 1. For damages, unpaid wages, penalties, injunctive relief, and attorneys' fees in
28 excess of twenty-five thousand dollars (\$25,000), exclusive of interest and costs. Plaintiff

1 reserves the right to amend his prayer for relief to seek a different amount.

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

3 3. That Plaintiff be appointed as the representative of the Class and subclass;

4 4. That counsel for Plaintiff be appointed as class counsel.

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

6 5. That the Court declare, adjudge, and decree that Defendants violated California
7 Labor Code sections 210 and 221 by willfully failing to pay all wages due to Plaintiff and
8 class members;

9 6. For general unpaid wages and such general and special damages as may be
10 appropriate;

11 7. For statutory penalties under Labor Code section 210 pursuant to section 98,
12 i.e., \$100 for the initial violation and \$200 for every subsequent violation, plus 25% of the
13 amount unlawfully withheld;

14 8. For pre-judgment interest on any unpaid compensation commencing from the
15 date such amounts were due, or as otherwise provided by law;

16 9. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
17 California Labor Code section 1194(a); and

18 10. For such other and further relief as the Court may deem equitable and
19 appropriate.

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

21 11. That the Court declare, adjudge and decree that Defendants violated the
22 recordkeeping provisions of California Labor Code section 226(a) and applicable IWC Wage
23 Orders as to Plaintiff and class members, and willfully failed to provide accurate itemized
24 wage statements thereto;

25 12. For all actual, consequential and incidental losses and damages, according to
26 proof;

27 13. For injunctive relief pursuant to California Labor Code section 226(h);

28 14. For statutory penalties pursuant to California Labor Code section 226(e);

1 15. For attorneys' fees and costs pursuant to California Labor Code section
2 226(e)(1); and

3 16. For such other and further relief as the Court may deem equitable and
4 appropriate.

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

6 17. That the Court declare, adjudge and decree that Defendants violated California
7 Labor Code sections 201, 202, and 203 by willfully failing to wages owed at the time of
8 termination of the employment of Plaintiff and other terminated class members;

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

11 19. For waiting time penalties according to proof pursuant to California Labor
12 Code section 203 for all employees who have left Defendants' employ;

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

15 21. For attorneys' fees pursuant to California Code of Civil Procedure section
16 1021.5, or as otherwise provided by law; and

17 22. For such other and further relief as the Court may deem equitable and
18 appropriate.

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

20 23. That the Court declare, adjudge and decree that Defendants violated California
21 Labor Code section 2802 by willfully failing to reimburse and/or indemnify all business-
22 related expenses and costs incurred by Plaintiff and class members;

23 24. For unpaid business-related expenses and such general and special damages as
24 may be appropriate;

25 25. For pre-judgment interest on any unpaid business-related expenses from the
26 date such amounts were due, or as otherwise provided by law;

27 26. For all actual, consequential, and incidental losses and damages, according to
28 proof;

1 27. For attorneys' fees and costs pursuant to California Labor Code section
2 2802(c), or as otherwise provided by law; and

3 28. For such other and further relief as the Court may deem equitable and
4 appropriate.

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

6 29. That the Court declare, adjudge and decree that Defendants violated the
7 following California Labor Code provisions as to Plaintiff and aggrieved employees: 210 and
8 221 (unlawful deductions); 226(a), 1174(d) and 1198 (by failing to provide accurate wage
9 statements and maintain accurate payroll records); 201, 202, 203 (by failing timely to pay all
10 earned wages upon termination); 204 (by failing timely to pay all earned wages during
11 employment); and 2802 (by failing to reimburse business expenses).

12 30. For civil penalties, pursuant to California Labor Code sections 225.5, 226.3,
13 2699(a) and/or 2699(f) and (g), for violations of California Labor Code sections 201, 202,
14 203, 204, 226(a), 1198, and 2802;

15 31. For attorneys' fees and costs pursuant to California Labor Code section
16 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
17 Labor Code sections 201, 202, 203, 204, 226(a), 1198, and 2802;

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

19 33. For such other and further relief as the Court may deem equitable and
20 appropriate.

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

22 34. That the Court declare, adjudge and decree that Defendants conduct of failing
23 to provide Plaintiff and class members all wages due to them, failing to provide Plaintiff and
24 class members accurate and complete wage statements, failing to maintain accurate payroll
25 records for Plaintiff and class members, failing timely to pay Plaintiff and class members all
26 earned wages during employment, failing to reimburse Plaintiff and class members for
27 business-related expenses, and failing to provide written notice of information material to
28 employment, constitutes an unlawful business practice in violation of California Business and

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

2 35. For restitution of unpaid wages and unreimbursed expenses to Plaintiff and all
3 class members and prejudgment interest from the day such amounts were due and payable;

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

8 37. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
9 California Code of Civil Procedure section 1021.5; and

10 38. For such other and further relief as the Court may deem equitable and
11 appropriate.

12 Dated: November 10, 2021

Respectfully submitted,

13
14
15 By: 

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