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Attorneys for Plaintiff MICHAEL NISTICO
individually, and on behalf of others
similarly situated

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

MICHAEL NISTICO, individually, and on
behalf of others similarly situated,

Plaintiff,

vs.

ENTERPRISE RENT-A-CAR COMPANY OF
LOS ANGELES, LLC, California limited
liability company; and DOES 1 through 50,
inclusive,

Defendants

FILED
Superior Court of California
County of Los Angeles
10/26/2022

Sherri R. Carter, Executive Officer / Clerk of Court
By: D. Tamayo Deputy

Case No. 22STCV05531

FIRST AMENDED COMPLAINT

INDIVIDUAL CLAIMS:

1. Failure to Provide Required Meal Periods
2. Failure to Provide Required Rest Periods
3. Failure to Pay Overtime Wages
4. Failure to Pay Minimum Wages
5. Failure to Pay All Wages Due to Discharged and Quitting Employees
6. Failure to Maintain Required Records
7. Failure to Furnish Accurate Itemized Wage Statements
8. Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties
9. Unfair and Unlawful Business Practices

REPRESENTATIVE CLAIM:

10. Representative Action for Penalties under the Labor Code Private Attorneys General Act

DEMAND FOR JURY TRIAL

1 PLAINTIFF MICHAEL NISTICO (“PLAINTIFF”) an individual, demanding a jury trial,
2 on behalf of herself and other persons similarly situated, hereby alleges as follows:

3 **JURISDICTION AND VENUE**

4 1. The Superior Court of the State of California has jurisdiction in this matter because
5 PLAINTIFF is a resident of the State of California, and Defendants ENTPERISE RENT-A-CAR
6 COMPANY OF LOS ANGELES, LLC, a California limited liability company, and DOES 1
7 through 50 inclusive (collectively “DEFENDANTS”), are qualified to do business in California
8 and regularly conduct business in California. Further, no federal question is at issue because the
9 claims are based solely on California law.

10 2. Venue is proper in this judicial district and the County of Los Angeles, California
11 because PLAINTIFF, and other persons similarly situated, performed work for DEFENDANTS
12 in the County of Los Angeles, DEFENDANTS maintain offices and facilities and transact
13 business in the County of Los Angeles, and because DEFENDANTS’ illegal payroll policies and
14 practices which are the subject of this action were applied, at least in part, to PLAINTIFF, and
15 other persons similarly situated, in the County of Los Angeles.

16 **PLAINTIFF**

17 3. PLAINTIFF is a male resident of the State of California and a former employee of
18 DEFENDANTS.

19 4. PLAINTIFF, on behalf of himself and other similarly situated current and former
20 non-exempt employees of DEFENDANTS in the State of California at any time during the four
21 years preceding the filing of this action, and continuing while this action is pending, brings this
22 individual and representative action to recover, among other things, wages and penalties from
23 unpaid wages earned and due, including but not limited to unpaid minimum wages, unpaid and
24 illegally calculated overtime compensation, illegal meal and rest period policies, failure to pay all
25 wages due to discharged and quitting employees, failure to indemnify employees for necessary
26 expenditures and/or losses incurred in discharging their duties, failure to provide accurate
27 itemized wage statements, failure to maintain required records, and interest, attorneys’ fees, costs,
28 and expenses.

5. PLAINTIFF brings this action as a representative of the following persons: All individuals who were employed by DEFENDANTS as non-exempt employees in California on or after August 10, 2020 (“AGGRIEVED EMPLOYEES”).

DEFENDANTS

6. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANT ENTERPRISE RENT-A-CAR COMPANY OF LOS ANGELES, LLC is, and at all times relevant hereto was, a California limited liability company organized and existing under the laws of the State of California. PLAINTIFF is further informed and believes, and thereon alleges, that DEFENDANT ENTERPRISE RENT-A-CAR COMPANY OF LOS ANGELES, LLC is authorized to conduct business in the State of California, and does conduct business in the State of California. Specifically, DEFENDANT ENTERPRISE RENT-A-CAR COMPANY OF LOS ANGELES, LLC maintains offices and facilities and conducts business in, and engages in illegal payroll practices or policies in, the County of Los Angeles, State of California.

7. The true names and capacities of DOES 1 through 50, inclusive, are unknown to PLAINTIFF at this time, and PLAINTIFF therefore sues such DOE Defendants under fictitious names. PLAINTIFF is informed and believes, and thereon alleges, that each Defendant designated as a DOE is in some manner highly responsible for the occurrences alleged herein, and that PLAINTIFF'S and AGGRIEVED EMPLOYEES' injuries and damages, as alleged herein, were proximately caused by the conduct of such DOE Defendants. PLAINTIFF will seek leave of the court to amend this Complaint to allege their true names and capacities of such DOE Defendants when ascertained.

8. At all relevant times herein, DEFENDANTS were the joint employers of PLAINTIFF and AGGRIEVED EMPLOYEES. PLAINTIFF is informed and believes, and thereon allege, that at all times material to this complaint DEFENDANTS were the alter egos, divisions, affiliates, integrated enterprises, joint employers, subsidiaries, parents, principals, related entities, co-conspirators, authorized agents, partners, joint venturers, and/or guarantors, actual or ostensible, of each other. Each Defendant was completely dominated by his, her or its co-Defendant, and each was the alter ego of the other.

1 9. At all relevant times herein, PLAINTIFF and AGGRIEVED EMPLOYEES were
2 employed by DEFENDANTS under employment agreements that were partly written, partly oral,
3 and partly implied. In perpetrating the acts and omissions alleged herein, DEFENDANTS, and
4 each of them, acted pursuant to, and in furtherance of, their policies and practices of not paying
5 PLAINTIFF and AGGRIEVED EMPLOYEES all wages earned and due, through methods and
6 schemes which include, but are not limited to, failing to pay overtime premiums; failing to
7 provide rest and meal periods; failing to properly maintain records; failing to provide accurate
8 itemized statements for each pay period; failing to properly compensate PLAINTIFF and
9 AGGRIEVED EMPLOYEES for necessary expenditures; and requiring, permitting or suffering
10 the employees to work off the clock, in violation of the California Labor Code and the applicable
11 Welfare Commission ("IWC") Orders.

12 10. PLAINTIFF is informed and believes, and thereon allege, that each and every one
13 of the acts and omissions alleged herein were performed by, and/or attributable to, all
14 DEFENDANTS, each acting as agents and/or employees, and/or under the direction and control
15 of, each of the other DEFENDANTS, and that said acts and failures to act were within the course
16 and scope of said agency, employment and/or direction and control.

17 11. Pursuant to California Labor Code § 558.1, DEFENDANTS and any person acting
18 on behalf of any of the DEFENDANTS, are liable for violating, or causing to violate, any
19 provision regulating minimum wages or hours and days of work in any order of the Industrial
20 Welfare Commission, or Labor Code §§ 203, 226, 226.7, 1193.6, 1194, or 2802.

21 12. As a direct and proximate result of the unlawful actions of DEFENDANTS,
22 PLAINTIFF and AGGRIEVED EMPLOYEES have suffered, and continue to suffer, from loss
23 of earnings in amounts as yet unascertained, but subject to proof at trial, and within the
24 jurisdiction of this Court.

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1 **FIRST CAUSE OF ACTION**

2 **Failure to Provide Required Meal Periods**

3 **[Cal. Labor Code §§ 226.7, 510, 512, 1194, 1197; IWC Wage Order No. 9-2001, § 11]**

4 **(Against all DEFENDANTS)**

5 13. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the
6 allegations in the foregoing paragraphs.

7 14. At relevant times herein mentioned, as part of DEFENDANTS' illegal payroll
8 policies and practices to deprive their non-exempt employees all wages earned and due,
9 DEFENDANTS required, permitted or otherwise suffered PLAINTIFF to take less than the 30-
10 minute meal period, or to work through them, and have failed to otherwise provide the required
11 meal periods to PLAINTIFF pursuant to California Labor Code § 226.7, 512 and IWC Order No.
12 9-2001, § 11.

13 15. DEFENDANTS further violated California Labor Code §§ 226.7 and IWC Wage
14 Order No. 9-2001, § 11 by failing to compensate PLAINTIFF who was not provided with a meal
15 period, in accordance with the applicable wage order, one additional hour of compensation at
16 each employee's regular rate of pay for each workday that a meal period was not provided.

17 16. DEFENDANTS further violated California Labor Code §§ 226.7, 510, 1194,
18 1197, and IWC Wage Order No. 9-2001 by failing to compensate PLAINTIFF for all hours
19 worked during his meal periods.

20 17. As a proximate result of the aforementioned violations, PLAINTIFF has been
21 damaged in an amount according to proof at trial, and seeks all wages earned and due, interest,
22 penalties, expenses, and costs of suit.

23 **SECOND CAUSE OF ACTION**

24 **Failure to Provide Required Rest Periods**

25 **[Cal. Labor Code §§ 226.7, 512; IWC Wage Order No. 9-2001, § 12]**

26 **(Against all DEFENDANTS)**

27 18. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the
28 allegations in the foregoing paragraphs.

1 19. At all times relevant herein, as part of DEFENDANTS' illegal payroll policies and
2 practices to deprive their non-exempt employees all wages earned and due, DEFENDANTS
3 failed to provide rest periods to PLAINTIFF as required under California Labor Code §§ 226.7
4 and 512, and IWC Wage Order No. 9-2001, § 12.

5 20. DEFENDANTS further violated California Labor Code § 226.7 and IWC Wage
6 Order No. 9-2001, § 12 by failing to pay PLAINTIFF who was not provided with a rest period, in
7 accordance with the applicable wage order, one additional hour of compensation at each
8 employee's regular rate of pay for each workday that a rest period was not provided.

9 21. As a proximate result of the aforementioned violations, PLAINTIFF has been
10 damaged in an amount according to proof at trial, and seeks all wages earned and due, interest,
11 penalties, expenses, and costs of suit.

12 **THIRD CAUSE OF ACTION**

13 **Failure to Pay Overtime Wages**

14 **[Cal. Labor Code §§ 510, 1194, 1198; IWC Wage Order No. 9-2001, § 3]**

15 **(Against all DEFENDANTS)**

16 22. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the
17 allegations in the foregoing paragraphs.

18 23. Pursuant to California Labor Code §§ 510, 1194, and IWC Wage Order No. 9-
19 2001, § 3, DEFENDANTS are required to compensate PLAINTIFF for all overtime, which is
20 calculated at one and one-half (1 ½) times the regular rate of pay for all hours worked in excess of
21 eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on the
22 seventh consecutive workday, with double time for all hours worked in excess of twelve (12)
23 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh
24 consecutive day of work in any workweek.

25 24. PLAINTIFF is a former non-exempt employee of DEFENDANTS, entitled to the
26 protections of California Labor Code §§ 510, 1194, and IWC Wage Order No. 9-2001. At all
27 relevant times herein mentioned, DEFENDANTS failed to compensate PLAINTIFF for all
28 overtime hours worked as required under the foregoing provisions of the California Labor Code

1 and IWC Wage Order by, among other things: failing to pay overtime at one and one-half (1 ½)
2 or double the regular rate of pay as provided by California Labor Code §§ 510, 1194, and IWC
3 Wage Order No. 9-2001, § 3; requiring, permitting or suffering PLAINTIFF to work off the
4 clock; requiring, permitting or suffering PLAINTIFF to work through meal and rest breaks;
5 illegally and inaccurately recording time in which PLAINTIFF worked; failing to properly
6 maintain PLAINTIFF'S records; failing to provide accurate itemized wage statements to
7 PLAINTIFF for each pay period; and other methods to be discovered.

8 25. In violation of California law, DEFENDANTS have knowingly and willfully
9 refused to perform their obligations to compensate PLAINTIFF for all wages earned and all hours
10 worked. As a proximate result, PLAINTIFF has suffered, and continue to suffer, substantial
11 losses related to the use and enjoyment of such wages, lost interest on such wages, and expenses
12 and attorneys' fees in seeking to compel DEFENDANTS to fully perform their obligations under
13 state law, all to PLAINTIFF'S damages in amounts according to proof at time of trial, and within
14 the jurisdiction of this Court.

15 26. DEFENDANTS' conduct described herein violates California Labor Code §§ 510,
16 1194, 1198 and IWC Wage Order No. 9-2001, § 3. Therefore, pursuant to California Labor Code
17 §§ 200, 203, 226, 558, 1194, 1197.1, and other applicable provisions under the California Labor
18 Code and IWC Wage Orders, PLAINTIFF is entitled to recover the unpaid balance of wages
19 owed to them by DEFENDANTS, plus interest, penalties, attorneys' fees, expenses, and costs of
20 suit.

21 **FOURTH CAUSE OF ACTION**

22 **Failure to Pay Minimum Wages**

23 **[Cal Labor Code §§ 1194, 1197; IWC Wage Order No. 9-2001, § 4]**

24 **(Against all DEFENDANTS)**

25 27. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the
26 allegations in the foregoing paragraphs.

27 28. Pursuant to California Labor Code §§ 1194, 1197, and IWC Wage Order No. 9-
28 2001, § 4, payment to an employee of less than the applicable minimum wage for all hours

1 worked in a payroll period is unlawful.

2 29. At all relevant times herein mentioned, DEFENDANTS failed to pay PLAINTIFF
3 minimum wages for all hours worked by, among other things: requiring, permitting or suffering
4 PLAINTIFF to work off the clock; requiring, permitting or suffering PLAINTIFF to work
5 through meal and rest breaks; illegally and inaccurately recording time in which PLAINTIFF
6 worked; failing to properly maintain PLAINTIFF records; failing to provide accurate itemized
7 wage statements to PLAINTIFF for each pay period; and other methods to be discovered.

8 30. DEFENDANTS' conduct described herein violates California Labor Code §§
9 1194, 1197, and IWC Wage Order No. 9-2001, § 4. As a proximate result of the aforementioned
10 violations, PLAINTIFF has been damaged in an amount according to proof at trial. Therefore,
11 pursuant to California Labor Code §§ 200, 203, 226, 558, 1194, 1197.1, and other applicable
12 provisions under the Labor Code and IWC Wage Orders, PLAINTIFF is entitled to recover the
13 unpaid balance of wages owed to them by DEFENDANTS, plus interest, penalties, attorneys'
14 fees, expenses, and costs of suit.

15 **FIFTH CAUSE OF ACTION**

16 **Failure to Pay All Wages Due to Discharged and Quitting Employees**

17 **[Cal. Labor Code §§ 201, 202, 203]**

18 **(Against all DEFENDANTS)**

19 31. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the
20 allegations in the foregoing paragraphs.

21 32. Pursuant to California Labor Code § 201, 202, and 203, DEFENDANTS are
22 required to pay all earned and unpaid wages to an employee who is discharged. California Labor
23 Code § 201 mandates that if an employer discharges an employee, the employee's wages accrued
24 and unpaid at the time of discharge are due and payable immediately.

25 33. Furthermore, pursuant to California Labor Code § 202, DEFENDANTS are
26 required to pay all accrued wages due to an employee no later than 72 hours after the employee
27 quits his or her employment, unless the employee provided 72 hours previous notice of his or her
28 intention to quit, in which case the employee is entitled to his or wages at the time of quitting.

34. California Labor Code § 203 provides that if an employer willfully fails to pay, in accordance with California Labor Code §§ 201 and 202, any wages of an employee who is discharged or who quits, the employer is liable for waiting time penalties in the form of continued compensation to the employee at the same rate for up to 30 workdays.

35. At all relevant times herein mentioned, DEFENDANTS have willfully failed to pay accrued wages and other compensation to PLAINTIFF in accordance with California Labor Code §§ 201 and 202.

36. As a result, PLAINTIFF is entitled to all available statutory penalties, including the waiting time penalties provided in California Labor Code § 203, together with interest thereon, as well as other available remedies.

37. As a proximate result of DEFENDANTS' unlawful actions and omissions, PLAINTIFF has been deprived of compensation in an amount according to proof at the time of trial, but in excess of the jurisdiction of this Court, and is entitled to recovery of such amounts, plus interest thereon, and attorneys' fees and costs, pursuant to California Labor Code § 1194.

SIXTH CAUSE OF ACTION

Failure to Maintain Required Records

[Cal. Labor Code §§ 226; IWC Wage Order No. 9-2001, § 7]

(Against all DEFENDANTS)

38. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the allegations in the foregoing paragraphs.

39. At all relevant times, as part of DEFENDANTS' illegal payroll policies and practices to deprive PLAINTIFF of all wages earned and due, DEFENDANTS knowingly and intentionally failed to maintain records as required under California Labor Code §§ 226, 1174, and IWC Wage Order No. 9-2001, § 7, including but not limited to the following records: total daily hours worked by each employee; applicable rates of pay; all deductions; meal periods; time records showing when each employee begins and ends each work period; and accurate itemized statements.

40. As a proximate result of DEFENDANTS' unlawful actions and omissions,

1 PLAINTIFF has been damaged in an amount according to proof at trial, and are entitled to all
2 wages earned and due, plus interest thereon. Additionally, PLAINTIFF is entitled to all available
3 statutory penalties, including but not limited to civil penalties pursuant to California Labor Code
4 §§ 226(e), 226.3, and 1174.5, and an award of costs, expenses, and reasonable attorneys' fees,
5 including but not limited to those provided in California Labor Code § 226(e), as well as other
6 available remedies.

7 **SEVENTH CAUSE OF ACTION**

8 **Failure to Furnish Accurate Itemized Wage Statements**

9 **[Cal. Labor Code §§ 226, 1174; IWC Wage Order No. 9-2001, § 7]**

10 **(Against all DEFENDANTS)**

11 41. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the
12 allegations in the foregoing paragraphs.

13 42. At all relevant times, DEFENDANTS routinely failed to provide PLAINTIFF with
14 timely, accurate, and itemized wage statements in writing showing each employee's gross wages
15 earned, total hours worked, all deductions made, net wages earned, the name and address of the
16 legal entity or entities employing PLAINTIFF, and all applicable hourly rates in effect during
17 each pay period and the corresponding number of hours worked at each hourly rate, in violation
18 of California Labor Code § 226 and IWC Wage Order No. 9-2001, § 7.

19 43. At all relevant times, DEFENDANTS knowingly and intentionally failed to
20 provide PLAINTIFF with timely, accurate, and itemized wage statements in accordance with
21 California Labor Code § 226(a).

22 44. As a proximate result of DEFENDANTS' unlawful actions and omissions,
23 PLAINTIFF has been damaged in an amount according to proof at trial, and seek all wages
24 earned and due, plus interest thereon. Additionally, PLAINTIFF is entitled to all available
25 statutory penalties, including but not limited to civil penalties pursuant to California Labor Code
26 §§ 226(e), 226.3, and 1174.5, and an award of costs, expenses, and reasonable attorneys' fees,
27 including but not limited to those provided in California Labor Code § 226(e), as well as other
28 available remedies.

1 **EIGHTH CAUSE OF ACTION**

2 **Failure to Indemnify Employees for Necessary Expenditures**

3 **Incurred in Discharge of Duties**

4 **[Cal. Labor Code § 2802]**

5 **(Against all DEFENDANTS)**

6 45. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the
7 allegations in the foregoing paragraphs.

8 46. California Labor Code § 2802(a) requires an employer to indemnify an employee
9 for all necessary expenditures or losses incurred by the employee in direct consequence of the
10 discharge of her his or her duties, or of his or her obedience to the directions of the employer.

11 47. At all relevant times, DEFENDANTS knowingly and willfully failed to indemnify
12 PLAINTIFF for all business expenses and/or losses incurred in direct consequence of the
13 discharge of his duties while working under the direction of DEFENDANTS, including but not
14 limited to expenses for uniforms, equipment, tools, and other employment-related expenses, in
15 violation of California Labor Code § 2802.

16 48. As a proximate result of DEFENDANTS' unlawful actions and omissions,
17 PLAINTIFF has been damaged in an amount according to proof at trial, and seek reimbursement
18 of all necessary expenditures, plus interest thereon pursuant to California Labor Code § 2802(b).
19 Additionally, PLAINTIFF is entitled to all available statutory penalties and an award of costs,
20 expenses, and reasonable attorneys' fees, including those provided in California Labor Code §
21 2802(c), as well as other available remedies.

22 **NINTH CAUSE OF ACTION**

23 **Unfair and Unlawful Business Practices**

24 **[Cal. Bus. & Prof. Code §§ 17200 et. seq.]**

25 **(Against all DEFENDANTS)**

26 49. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the
27 allegations in the foregoing paragraphs.

28 50. Each and every one of DEFENDANTS' acts and omissions in violation of the

1 California Labor Code and/or the applicable IWC Wage Order as alleged herein, including but
2 not limited to DEFENDANTS' failure and refusal to provide required meal periods,
3 DEFENDANTS' failure and refusal to provide required rest periods, DEFENDANTS' failure and
4 refusal to pay overtime compensation, DEFENDANTS' failure and refusal to pay minimum
5 wages, DEFENDANTS' failure and refusal to pay all wages due to discharged or quitting
6 employees, DEFENDANTS' failure and refusal to furnish accurate itemized wage statements;
7 DEFENDANTS' failure and refusal to maintain required records, DEFENDANTS' failure and
8 refusal to indemnify PLAINTIFF for necessary expenditures and/or losses incurring in
9 discharging their duties, constitutes an unfair and unlawful business practice under California
10 Business and Professions Code § 17200 et seq.

11 51. DEFENDANTS' violations of California wage and hour laws constitute a
12 business practice because DEFENDANTS' aforementioned acts and omissions were done
13 repeatedly over a significant period of time, and in a systematic manner, to the detriment of
14 PLAINTIFF.

15 52. DEFENDANTS have avoided payment of wages, overtime wages, meal periods,
16 rest periods, and other benefits as required by the California Labor Code, the California Code of
17 Regulations, and the applicable IWC Wage Order. Further, DEFENDANTS have failed to
18 record, report, and pay the correct sums of assessment to the state authorities under the California
19 Labor Code and other applicable regulations.

20 53. At all relevant times, as a result of DEFENDANTS' unfair and unlawful business
21 practices, DEFENDANTS have reaped unfair and illegal profits at the expense of PLAINTIFF
22 and members of the public.

23 54. DEFENDANTS' unfair and unlawful business practices entitle PLAINTIFF to
24 seek preliminary and permanent injunctive relief, including but not limited to orders that
25 DEFENDANTS account for, disgorge, and restore to PLAINTIFF the wages and other
26 compensation unlawfully withheld from him. PLAINTIFF is entitled to restitution of all monies
27 to be disgorged from DEFENDANTS in an amount according to proof at the time of trial, but in
28 excess of the jurisdiction of this Court.

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1 59. If an employee is not relieved of all duty during a meal period, the meal period
2 shall be considered an “on duty” meal period and counted as time worked. A paid “on duty” meal
3 period is permitted only when 1) the nature of the work prevents an employee from being relieved
4 of all duty and 2) the parties have agreed in writing to on duty meal periods.

5 60. PLAINTIFF and AGGRIEVED EMPLOYEES are non-exempt employees and are
6 entitled to the protections of California Labor Code §§ 226.7 and 512 and Wage Order No. 9-
7 2001, § 11. Enterprise failed to provide their employees timely and uninterrupted thirty-minute
8 meal breaks. In fact, PLAINTIFF’S and AGGRIEVED EMPLOYEES’ meal periods were short
9 (less than thirty minutes), late (first meal periods after the fifth hour of work and second meal
10 periods after the tenth hour), interrupted and/or missed. Enterprise consistently failed to provide
11 PLAINTIFF and AGGRIEVED EMPLOYEES meal breaks because PLAINTIFF and
12 AGGRIEVED EMPLOYEES were given too much work to perform to take meal breaks.

13 61. DEFENDANTS further violated Labor Code § 226.7 and Wage Order No. 9-2001
14 by failing to compensate PLAINTIFF and AGGRIEVED EMPLOYEES who were not provided
15 with meal periods in accordance with California law one additional hour of pay at each
16 employee’s regular rate of compensation for each workday a meal period was not provided.

17 **Failure to Authorize and Permit Rest Periods**

18 62. Pursuant to Labor Code § 226.7 and Wage Order No. 9-2001, § 12, an employer is
19 required to provide rest periods to its employees. An employer must provide a ten (10) minute
20 rest period for every four (4) hours worked or major action thereof which insofar as practicable
21 shall be in the middle of each work period. Furthermore, an employer must pay one extra hour of
22 compensation for each workday a rest period is not authorized and permitted.

23 63. PLAINTIFF and AGGRIEVED EMPLOYEES were and are non-exempt
24 employees and are entitled to the protections of Labor Code § 226.7 and Wage Order No. 9-2001.
25 Enterprise failed to authorize and permit their employees to take required rest periods.
26 Specifically, Enterprise maintained a policy or practice of not authorizing and permitting
27 PLAINTIFF and AGGRIEVED EMPLOYEES to take one 10-minute rest break for shifts 3.5-6.0
28 hours, a second rest break for shifts greater than 6 hours and less than or equal to 10 hours, and a

1 third rest break for shifts in excess of 10 hours. DEFENDANTS consistently failed to authorize
2 and permit PLAINTIFF and AGGRIEVED EMPLOYEES to take rest breaks because
3 PLAINTIFF and AGGRIEVED EMPLOYEES were given too much work to perform to take rest
4 breaks. When PLAINTIFF and AGGRIEVED EMPLOYEES were able to take rest breaks,
5 Enterprise failed to authorized and permit PLAINTIFF and AGGRIEVED EMPLOYEES to take
6 their rest breaks in the middle of each work period insofar as practicable.

7 64. DEFENDANTS further violated Labor Code § 226.7 and Wage Order No. 9-2001,
8 § 12 by failing to pay PLAINTIFF and AGGRIEVED EMPLOYEES one additional hour of pay
9 at each employee's regular rate of compensation for each workday a rest period was not
10 authorized and permitted.

11 **Failure to Pay Minimum Wages**

12 65. Pursuant to Labor Code §§ 1194 and 1197 and Wage Order No. 9-2001, § 4,
13 payment to an employee of less than the applicable minimum wage for all hours worked in a
14 payroll period is unlawful.

15 66. PLAINTIFF and AGGRIEVED EMPLOYEES are current and former non-exempt
16 employees and are entitled to the protections of Labor Code §§ 1194 and 1197 and Wage Order
17 No. 9-2001, § 4. Enterprise failed to pay PLAINTIFF and AGGRIEVED EMPLOYEES
18 minimum wages for all hours worked by, among other things: requiring, suffering or permitting
19 PLAINTIFF and other similarly-situated individuals to work off-the-clock; requiring, suffering or
20 permitting PLAINTIFF and AGGRIEVED EMPLOYEES to work through their meal breaks but
21 not compensating them for this time; illegally and inaccurately recording time worked by
22 PLAINTIFF and AGGRIEVED EMPLOYEES ; failing to properly maintain PLAINTIFF'S and
23 AGGRIEVED EMPLOYEES' records; failing to provide accurate itemized wage statements to
24 PLAINTIFF and AGGRIEVED EMPLOYEES for each pay period; and other methods to be
25 discovered.

26 67. DEFENDANTS conduct violates Labor Code §§ 1194 and 1197 and Wage Order
27 No. 9-2001, § 4.

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1 **Failure to Pay Overtime Wages**

2 68. Pursuant to California Labor Code §§ 510 and 1194 and Wage Order No. 9-2001,
3 § 3, an employer must compensate its employees for all overtime, which is calculated at one and
4 one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8) hours per day
5 and/or forty (40) hours per week, and for the first eight (8) hours on the seventh consecutive work
6 day, with double time for all hours worked in excess of eight (8) hours on the seventh day of any
7 workweek, or after twelve (12) hours in any workday.

8 69. PLAINTIFF and AGGRIEVED EMPLOYEES are current and former non-exempt
9 employees and are entitled to the protections of Labor Code §§ 510 and 1194 and Wage Order
10 No. 9-2001. Enterprise failed to compensate PLAINTIFF and AGGRIEVED EMPLOYEES for
11 all overtime hours worked as required under the foregoing provisions of the Labor Code and IWC
12 Wage Order by, among other things: failing to pay overtime at one and one-half (1 ½) times or
13 double the regular rate of pay as provided by Labor Code §§ 510 and 1194 and Wage Order No.
14 9-2001, § 3; requiring, suffering or permitting PLAINTIFF and AGGRIEVED EMPLOYEES to
15 work off-the-clock; requiring, suffering or permitting PLAINTIFF and AGGRIEVED
16 EMPLOYEES to work through meal periods but not compensating them for this time; illegally
17 and inaccurately recording time worked by PLAINTIFF and AGGRIEVED EMPLOYEES ;
18 failing to properly maintain PLAINTIFF'S and AGGRIEVED EMPLOYEES' records through
19 falsifying hours worked; failing to provide accurate itemized statements to PLAINTIFF and
20 AGGRIEVED EMPLOYEES for each pay period; and other methods to be discovered.

21 70. In violation of California law, Enterprise have refused to perform their obligations
22 to compensate PLAINTIFF and AGGRIEVED EMPLOYEES for all wages earned and all hours
23 worked. DEFENDANTS' conduct violates Labor Code §§ 510 and 1194 and Wage Order No. 9-
24 2001, § 3.

25 **Failure to Timely Pay All Wages Earned**

26 71. Pursuant to Labor Code § 204, an employer must pay its employees at least twice a
27 month for all wages earned during the preceding pay period. Labor Code § 204 provides that
28 labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for

1 between the 16th and the 26th day of the month during which the labor was performed, and labor
2 performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for
3 between the 1st and 10th day of the following month. An employer using an alternate payday
4 schedule must pay wages within seven calendar days of the end of the payroll period in which the
5 wages were earned.

6 72. DEFENDANTS failed to pay PLAINTIFF and AGGRIEVED EMPLOYEES on
7 their regularly scheduled payday for all work performed during the preceding pay period.
8 Specifically, DEFENDANTS required PLAINTIFF and AGGRIEVED EMPLOYEES to work
9 off-the-clock without compensation and required PLAINTIFF and AGGRIEVED EMPLOYEES
10 to work through required meal breaks without compensation. Additionally, DEFENDANTS
11 failed to pay PLAINTIFF and AGGRIEVED EMPLOYEES premium wages owed for each
12 workday a meal periods was not provided and each workday a rest period was not authorized and
13 permitted.

14 73. DEFENDANTS also failed to pay PLAINTIFF and AGGRIEVED EMPLOYEES
15 for the overtime wages they earned in violation of Labor Code § 204. Labor Code § 204 requires
16 an employer to pay overtime wages no later than the payday for the next regular payroll period
17 following the payroll period in which the overtime wages were earned. DEFENDANTS knew
18 they were required to pay overtime wages, yet on many occasions failed to pay PLAINTIFF and
19 AGGRIEVED EMPLOYEES overtime wages on any payday.

20 **Failure to Pay All Wages Due Upon Separation**

21 74. Pursuant to Labor Code § 201, 202 and 203, an employer is required to pay all
22 earned and unpaid wages to an employee upon separation. Labor Code § 201 mandates that if an
23 employer discharges an employee, the employee's wages accrued and unpaid at the time of
24 discharge are due and payable immediately. Pursuant to Labor Code § 202, an employer is
25 required to pay all accrued wages due to an employee no later than 72 hours after the employee
26 quits his or her employment, unless the employee provided 72 hours previous notice of his or her
27 intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

28 75. Labor Code § 203 provides that if an employer willfully fails to pay, in accordance

1 with Labor Code §§ 201 and 202, any wages of an employee who is discharged or who quits, the
2 employer is liable for waiting time penalties in the form of continued compensation to the
3 employee at the same rate for up to thirty (30) days.

4 76. DEFENDANTS willfully failed to pay accrued wages and other compensation to
5 PLAINTIFF and AGGRIEVED EMPLOYEES in accordance with Labor Code §§ 201 and 202.
6 Because DEFENDANTS required PLAINTIFF and AGGRIEVED EMPLOYEES to work off-
7 the-clock without compensation and through required meal breaks without compensation and
8 failed to pay PLAINTIFF and AGGRIEVED EMPLOYEES the premium wages for all meal
9 periods which were not provided and all rest periods which were not authorized or permitted,
10 DEFENDANTS failed and continue to fail to pay the full earned and unpaid wages due to
11 PLAINTIFF and AGGRIEVED EMPLOYEES upon separation.

12 **Failure to Furnish Accurate Itemized Wage Statements**

13 77. Labor Code § 226 requires every employer to furnish each of its employees an
14 accurate itemized wage statement in writing showing (1) gross wages earned, (2) total hours
15 worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate
16 if the employee is paid on a piece-rate basis, (4) all deductions, (5) net wages earned, (6) the
17 inclusive dates of the period for which the employee is paid, (7) the name of the employee and
18 only the last four digits of his or her social security number or an employee identification number
19 other than a social security number, (8) the name and address of the legal entity that is the
20 employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding
21 number of hours worked at each hourly rate by the employee.

22 78. DEFENDANTS failed to provide PLAINTIFF and AGGRIEVED EMPLOYEES
23 with timely and accurate itemized wage statements in writing showing each employee's gross
24 wages earned, total hours worked, all deductions made, net wages earned, the name and address
25 of the legal entity or entities employing PLAINTIFF and AGGRIEVED EMPLOYEES , and all
26 applicable hourly rates in effect during each pay period and the corresponding number of hours
27 worked at each hourly rate, in violation of Labor Code § 226 and Wage Order No. 9-2001, § 7.

28 79. Specifically, DEFENDANTS had knowledge they were not providing their

1 employees with proper meal and rest breaks; nevertheless, DEFENDANTS knowingly failed to
2 include in the wage statements the extra hour of compensation owed for each workday a meal
3 break was not provided and each workday a rest break was not authorized and permitted. As a
4 result, PLAINTIFF and AGGRIEVED EMPLOYEES lost wages. In addition, DEFENDANTS
5 had knowledge they were requiring employees to work off-the-clock and were not properly
6 compensating their employees for all hours worked, yet DEFENDANTS knowingly failed to
7 include this time worked in the wage statements. As a result, PLAINTIFF and AGGRIEVED
8 EMPLOYEES lost wages. DEFENDANTS also did not properly calculate the regular rate of pay
9 of PLAINTIFF and AGGRIEVED EMPLOYEES. As a result, PLAINTIFF'S and AGGRIEVED
10 EMPLOYEES' wage statements did not include all applicable hourly rates in effect during the
11 pay period and the corresponding number of hours worked at each hourly rate.

12 **Failure to Maintain Required Records**

13 80. DEFENDANTS failed to maintain records as required under Labor Code §§ 226
14 and 1174 and Wage Order No. 9-2001, § 7, including but not limited to the following records:
15 total daily hours worked by each employee; applicable rates of pay; all deductions; meal periods;
16 time records showing when each employee begins and ends each work period; and accurate
17 itemized statements.

18 81. Specifically, DEFENDANTS had knowledge they were not providing their
19 employees with proper meal and rest breaks; nevertheless, DEFENDANTS knowingly failed to
20 include in the wage statements the extra hour of compensation owed for each workday a meal
21 break was not provided and each workday a rest break was not authorized and permitted. In
22 addition, DEFENDANTS had knowledge they were requiring employees to work off-the-clock
23 and were not properly compensating their employees for all hours worked, yet DEFENDANTS
24 knowingly failed to include this time worked in the regular rate of pay of aggrieved employees.

25 **Failure to Indemnify Employees for Necessary Expenditures**

26 **Incurred in Discharge of Duties**

27 82. Labor Code § 2802(a) requires an employer to indemnify an employee for all
28 necessary expenditures or losses incurred by the employee in direct consequence of the discharge

1 of her his or her duties, or of his or her obedience to the directions of the employer.
2 DEFENDANTS failed to indemnify PLAINTIFF and AGGRIEVED EMPLOYEES for all
3 business expenses and/or losses incurred in direct consequence of the discharge of their duties
4 while working under the direction of DEFENDANTS, including but not limited to expenses for
5 uniforms, equipment, tools, and other employment-related expenses, in violation of Labor Code §
6 2802.

7 83. Pursuant to California Labor Code §§ 2699.3, PLAINTIFF gave written notice on
8 August 10, 2021 by online filing to the California Labor and Workforce Development Agency
9 (“LWDA”), and by certified mail to DEFENDANTS, of the specific provisions of the California
10 Labor Code and IWC Wage Orders alleged to have been violated, including the facts and theories
11 to support the alleged violations. After more than sixty-five (65) days passed without the LWDA
12 having provided notice to PLAINTIFF of its intent to investigate the alleged violations,
13 PLAINTIFF timely amended her complaint to add a cause of action arising under PAGA.

14 **PRAYER FOR RELIEF**

15 **WHEREFORE**, PLAINTIFF, individually and on behalf of all other persons similarly
16 situated, respectfully prays for relief against DEFENDANTS and DOES 1 through 100, inclusive,
17 and each of them, as follows:

- 18 1. For compensatory damages in an amount to be ascertained at trial;
- 19 2. For restitution of all monies due to PLAINTIFF, as well as disgorged profits from
20 DEFENDANTS’ unfair and unlawful business practices;
- 21 3. For meal and rest period compensation pursuant to California Labor Code § 226.7
22 and IWC Wage Order No. 9-2001;
- 23 4. For liquidated damages pursuant to California Labor Code §§ 1194.2 and 1197.1;
- 24 5. For preliminary and permanent injunctive relief enjoining DEFENDANTS from
25 violating the relevant provisions of the California Labor Code and the IWC Wage Orders, and
26 from engaging in the unlawful business practices complained of herein;
- 27 6. For waiting time penalties pursuant to California Labor Code § 203;
- 28 7. For statutory and civil penalties according to proof, including but not limited to all

1 penalties authorized by the California Labor Code § 226(e) and and §§ 2698-2699.5;

2 8. For interest on the unpaid wages at 10% per annum pursuant to California Labor
3 Code §§ 218.6, 1194, 2802, California Civil Code §§ 3287, 3288, and/or any other applicable
4 provision providing for pre-judgment interest;

5 9. For reasonable attorneys' fees and costs pursuant to California Labor Code
6 §§ 1194, 2802, 2699(g)(1), California Civil Code § 1021.5, and any other applicable provisions
7 providing for attorneys' fees and costs;

8 10. For declaratory relief; and

9 11. For such further relief that the Court may deem just and proper.

10 DATED: October 26, 2022

11 Respectfully submitted,

12 **MATERN LAW GROUP, PC**

13
14 By:



15 _____
16 Matthew J. Matern
17 Mikael H. Stahle
18 Attorneys for Plaintiff
19 MICHAEL NISTICO, individually, and on
20 behalf of other persons similarly situated
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DATED: October 26, 2022

MATERN LAW GROUP, PC

Hubert Stahlke

Matthew J. Matern
Mikael H. Stahle
Attorneys for Plaintiff
MICHAEL NISTICO, individually, and on
behalf of other persons similarly situated

1 **PROOF OF SERVICE**

2 I am employed in the County of Los Angeles, State of California. I am over the age of 18 years,
3 and not a party to this action. My business address is 1230 Rosecrans Avenue, Suite 200, Manhattan
Beach, CA 90266

4 On October 26, 2022, I served the following document or documents:

5 **FIRST AMENDED COMPLAINT**

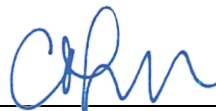


7 **By electronic service (via electronic filing service provider).** I caused the document or
documents to be electronically transmitted to Case Anywhere, an electronic filing service provider,
8 at www.caseanywhere.com pursuant to the Court's Electronic Case Management Order governing
the matter titled *Michael Nistico v. Enterprise Rent-A-Car Company of Los Angeles, LLC*, LASC
9 Case No.: 22STCV05531 mandating electronic service. The transmission was reported as
complete and without error to the addresses as stated on the attached service list.

10 Stephen J. Kepler (SBN 155451) 11 LAW OFFICES OF STEPHEN J. KEPLER 28241 Crown Valley Parkway, Suite F Laguna Niguel, CA 92677 Telephone: (949) 636-0701 Email: skepler@kepler-law.com	Attorneys for Defendant ENTERPRISE RENT-A-CAR COMPANY OF LOS ANGELES, LLC
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15 I declare under penalty of perjury under the laws of the State of California that the foregoing is
16 true and correct.

17 Executed on October 26, 2022 at Manhattan Beach, California.

18 
19 _____
20 Cathy Lozano